

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 0002/2014 + 0006/2014**

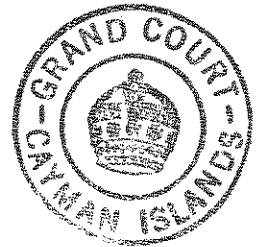
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7 **THE QUEEN**

8
9 **v.**

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11 **CHRISTOPHER JULIAN MYLES**

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13 **JAMES HERBERT MCLEAN**

14
15 **JONATHAN MARK RAMOON (IND. No. 0006/14)**



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18 **Appearances:**

**Ms. Cheryll Richards Q.C., DPP, and Ms.
Marilyn Brandt for the Crown**

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21 **Mr. John Furniss for Defendant Myles**

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23 **Mr. Nick Hoffman of Priestleys for
Defendant McLean**

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26 **Mr. Irvin Banks for Defendant Ramoon**

27 **Before:**

The Hon. Mr. Justice Charles Quin Q.C.

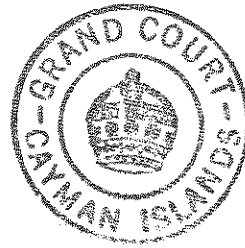
28 **Sentencing Submissions Heard:**

10th December 2014 & 8th January 2015

29 **Written Submissions filed:**

29th December 2014

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31 **SENTENCE JUDGMENT**
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INTRODUCTION

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1. This is the case of an armed robbery which was perpetrated on the Diamonds International Store on North Church Street, George Town, Grand Cayman, shortly after 8 a.m. on the morning of New Year's Day 2014.

2. The Defendants are charged with Robbery, contrary to s.242 of the Penal Code (2013 Revision) and the particulars of this offence are that James McLean, Christopher Myles and Jonathan Ramoon on the 1st day of January 2014 at Diamonds International Jewellery Store, North Church Street, George Town, Grand Cayman, together with another person unknown, stole jewellery valued at US\$814,750.00 and, at the time of so doing, and in order to do so, used force on Orlando Villegas.

3. The Defendants, McLean and Ramoon are also charged with Possession of an Unlicensed Firearm contrary to s.15(1) and s.15(5) of the Firearms Law (2008 Revision). The particulars of this offence are that James McLean, and Jonathan Ramoon on the 1st day of January 2014 at Diamonds International Jewellery Store, North Church Street, George Town, Grand Cayman, together with another person unknown had in their possession a firearm, namely, a Smith and Wesson .38 Spl revolver except under and in accordance with the terms of a Firearms Users Licence.

4. The three Defendants were all arrested on the 1st January 2014. When the Defendant Myles was arrested he made an admission of guilt. On the 2nd January 2014 the Defendants Myles and McLean were interviewed under caution. The Defendant McLean made no comment. The Defendant Myles also made no comment and denied his previous admission.



CHRONOLOGY OF PROCEEDINGS

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5. 17th January 2014: The case first came before the Grand Court and the Defendant McLean indicated through his then counsel that he may possibly plead guilty.
6. 24th January 2014: The Indictment was amended to correct the middle names of the Defendants Myles and McLean.
7. 31st January 2014: The Court heard an application for bail in relation to Jonathan Ramoon. This application was rejected.
8. 14th February 2014: To allow the Defence more time to review the papers and prepare for arraignment of the Defendants the case was re-listed for the 28th February 2014.
9. 28th February 2014: Defendant Ramoon changed counsel from Samson & McGrath to Mr. Irvin Banks, and was awaiting the transfer of legal aid.
10. 24th April 2014: The Defendant Ramoon only recently instructed Mr. Banks. Defendants Myles and McLean were still negotiating their Bases of Plea.
11. 22nd May 2014: Defence counsel for Defendant McLean applied to come off the record.
12. 5th June 2014: The Court sets a trial date for the 15th September 2014. Defendant Ramoon pleaded guilty to both counts. Mr. Hoffman comes on record on behalf of Defendant McLean and asks that the Court preserve any credit in relation to his client's indication of a possible early guilty plea while he takes instructions.

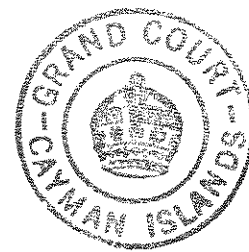
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13. 24th July 2014: Defendant McLean pleaded guilty to both counts on the Indictment. Defendant McLean's position is that he never had a firearm in his hand but accepts possession of the firearm on the basis of the joint enterprise – although it was agreed between the Crown and the Defence that Defendant McLean did not know that the firearm was loaded. Defendant Myles was unable to agree a Basis of Plea and he was not arraigned.

14. 7th August 2014: The Defendant Myles pleaded guilty to Count 1 and pleaded not guilty to Count 2. The trial remains set for the 15th September 2014.

15. 29th August 2014: The trial date of the 15th September 2014 is vacated and the Crown accepts the guilty plea to Count 1 entered by Defendant Myles and agreed to leave count 2 on the file.





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SUMMARY OF FACTS

16. The DPP, Mme. Cheryll Richards Q.C., stated that the Robbery of Diamonds International Jewellery Store on North Church Street opposite the Royal Watler cruise terminal was effected by four (4) men shortly after 8 a.m. on the 1st January 2014 when the store had just opened for holiday business serving cruise ship passengers and other tourists.

17. Three of the men wore masks and entered the store, while the fourth, Defendant Myles, remained in a green 4-door Honda Civic which was located outside in the carpark beside Diamonds International – waiting for the robbers.

18. The issue as to the role each robber played in the robbery is addressed by a review of the CCTV footage of the incident from the Diamonds International security system. A visual match was made with the clothing each Defendant wore and a further forensic video analysis of that footage has been conducted along with DNA analysis of items of clothing conducted by an expert, Grant Fredericks.

19. Defendant Ramoon: This defendant entered the store first, with his face masked and carrying a gun. He was wearing a dark blue shirt with a distinctive striped undershirt and a pair of black cloth gloves. Upon entry, Defendant Ramoon ran towards the security guard, Orlando Villegas and pointed his gun into the upper chest-lower neck area of his body. The Defendant told the security guard to put his head to the ground and he forced the security guard down to the ground. The Defendant Ramoon then grabbed hold of the security guard's neck and dragged him further inside the store and then stood in the centre of his lower back. The Defendant Ramoon held the security guard down, still holding the gun to the security guard.

1 20. The Unknown Fourth Robber: The unknown robber entered the store with his face
2 masked, carrying a yellow bag. He wore a dark coloured shirt with a white
3 undershirt, white gloves and white sneakers.

4 21. Defendant McLean: He was the third robber to enter the store. He entered wearing a
5 mask and carrying a hammer. He wore a distinctive light blue buttoned up shirt. He
6 wore black sneakers and bright yellow gloves on his hands. Defendant McLean had
7 a hammer. Whilst Defendant Ramoon held down the security guard, the Defendant
8 McLean went through the store using the hammer to smash the glass showcases
9 containing the jewellery.

10 22. The Unknown Fourth Robber: After the Defendant McLean had smashed the
11 showcases, the unknown fourth robber then followed McLean, selected the items of
12 jewellery to be stolen and removed the jewellery from the cases and placed the
13 items in the yellow bag which he had brought into the store.

14 23. Inside the store there were a number of employees and the CCTV footage confirms
15 that the robbery inside the store lasted 1 minute and 26 seconds.

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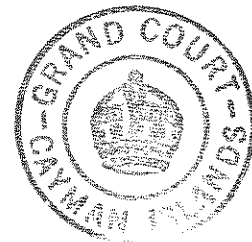
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APPREHENSION OF THREE ROBBERS

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2 24. Having stolen the jewellery from Diamonds International, the robbers fled from the
3 store to the green Honda Civic and to the driver Defendant Myles who was waiting
4 for them to make good their escape.

5 25. As the robbers left the store carrying the large yellow bag with the jewellery and the
6 firearm, and attempted to leave the area in the green car, Royal Cayman Islands
7 Police Service (RCIPS) Commissioner of Police David Baines (“Commissioner
8 Baines”), who was off-duty that morning, happened to be in the vicinity and saw
9 the robbers leave the store. Commissioner Baines reacted immediately, drove his
10 vehicle into the carpark beside Diamonds International from North Church Street,
11 struck the robbers’ green Honda Civic and attempted to push it backwards.
12 Commissioner Baines, by driving his vehicle against the driver’s door and the rear
13 passenger door, was attempting to push the Honda Civic against the wall of the
14 building, thereby trapping all four robbers. However the Honda Civic crashed into
15 another parked car and the four robbers managed to alight from their car.
16 Commissioner Baines drove after the robbers, struck two of them, and managed to
17 trap one, namely Defendant Ramoon. Commissioner Baines told Ramoon to stay
18 where he was and that he would call an ambulance and the fire brigade.

19 26. Mr. Robert Micic (“Mr. Micic”) the Head of Security for Diamonds International
20 also gave chase to the robbers and apprehended one of them. However, that robber
21 turned and punched Mr. Micic on his left cheekbone and threatened to kill him.
22 There was a struggle during which the Mr Micic received scratches to his face and
23 his neck.

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1 27. A member of the public who wishes to remain anonymous was across the road at
2 the Watler Terminal and was one of the persons who ran to assist. He apprehended
3 one of the three robbers. The robber punched him in his face and the ensuing
4 struggle dislocated his arm from the shoulder and he had to be taken to hospital
5 where his arm was x-rayed and put back in place.

6 28. A second member of the public, who also wishes to remain anonymous, assisted in
7 the apprehension of the robbers. This member of the public was kicked to the left
8 side of his head with enough force to cause pain and deafness in his left ear for
9 about 15 minutes.

10 29. The two members of the public who wish to remain anonymous also ran to give
11 assistance and apprehended the Defendants Myles and McLean who were held on
12 to by struggling with them, sitting on them and holding them down until the police
13 came to take them into custody. It was then discovered that the Defendant McClean
14 had a pillow under his clothes in order to alter his physical appearance

15 30. The fourth robber whose identity is still unknown escaped over the fence and has
16 not yet been found.

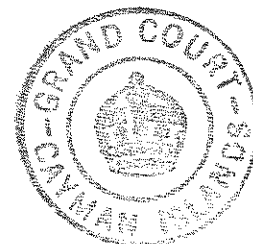
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1 31. ***Items Recovered:***

2 i. *A .38 Spl Smith and Wesson revolver containing five live rounds and one spent*
3 *shell casing:*

4 A. This was recovered close to the area where the Defendant Ramoon was
5 trapped under Commissioner Baines' Chevy Trailblazer.

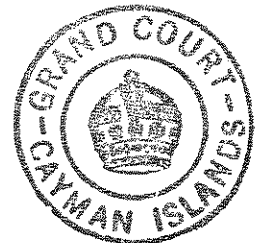
6 B. The firearm was examined by Ballistics Expert, Allen Greenspan, and
7 by the RCIPS firearms instructor, PC Anthony Stewart. The weapon
8 was found to be an operable firearm in good working order.
9 Consequently the revolver is a lethal barrelled weapon, within the
10 meaning of the Firearms Law. None of the three defendants hold
11 firearms licences.

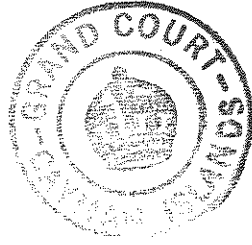
12 ii. *The yellow bag which had been carried into the store by the unknown fourth*
13 *robber:*

14 A. This was dropped by the unknown fourth robber during the chase. It
15 contained jewellery.

16 iii. *Jewellery:*

17 A. The yellow bag was recovered with jewellery in it. The jewellery
18 valued at US\$814,750.00 was returned to the store and the items were:





- i. 39 loose diamonds
- ii. 6 gold and diamond bracelets
- iii. 11 gold and diamond pendants
- iv. 71 yellow and white diamond rings
- v. 1 diamond necklace
- vi. 15 gold diamond rings.

iv. The hammer:

A. The hammer had been carried into the store by Defendant McLean and was used to smash the jewellery cases.

v. A car key:

A. A search was carried out along the pathway used by the robbers for their escape and some 515 feet from the front door of Diamonds International a car key was discovered.

B. The key matched a parked rental car which was later recovered from Watler's Carpark on School Road – a distance of 3/10ths to 5/10ths of a mile from the store.

C. This was the key to the “switch” motor vehicle which was hired and parked so that the robbers could abandon the previously used green Honda Civic and make their escape in an unrecognizable car.

32. Three (3) diamond rings valued at a total of US\$3,922.68 remain outstanding.



MITIGATION

CHRISTOPHER JULIAN MYLES

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3 33. Mr. Furniss, counsel for Defendant Myles, asks the Court to accept that the
4 Defendant pleaded guilty to Count 1, the Robbery charge, at the earliest
5 opportunity, and, further, that he admitted his involvement to the police officer
6 upon his arrest. The Defendant Myles pleaded guilty to Count 1 on the 7th August
7 2014 and on the 29th August 2014 the Crown discontinued the charge on Count 2
8 against him.

9 34. The Defendant Myles admitted that he drove his co-defendants McLean, Ramoon
10 and the unknown fourth robber to Diamonds International Store to commit the
11 robbery.

12 35. The Crown has accepted that the Defendant Myles stayed in the car whilst the
13 robbery took place, to act as the getaway driver.

14 36. As soon as the robbers came back into his car they urged him to drive off, but
15 before he could put the car in reverse, the driver's side was rammed by the vehicle
16 driven by the Commissioner of Police.

17 37. Defendant Myles contends that he was not part of the planning of the robbery. It is
18 his position that, at a party which began on the night before and ended at 3 a.m. on
19 the morning of the robbery, he had consumed alcohol and cocaine. He said he only
20 agreed to take on the role of getaway driver in order to be provided with more
21 cocaine. After the party he had gone home, changed his clothes and picked up the
22 latex gloves and drove the robbers to Diamonds International for the robbery.

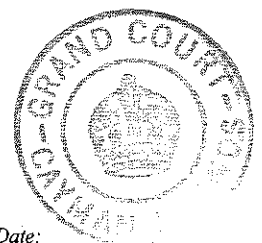
1 38. Counsel points out that the Defendant Myles has a record of 15 previous
2 convictions. The Defendant Myles has four (4) previous convictions for assault,
3 previous convictions for drug offences but no convictions for offences of
4 dishonesty.

5 39. Counsel submits that it was a last-minute foolish decision on the part of the
6 defendant to participate in the robbery and the Defendant stated that this is "*the*
7 *stupidest mistake he has ever made in his life*". In addition counsel informs the
8 Court that the Defendant is very remorseful.

9 40. Defendant Myles has written a letter of apology to Diamonds International
10 Jewellery Store staff, customers and visitors to the Island, as well as to the public of
11 the Cayman Islands. The Court has also read the helpful Social Inquiry Report
12 (SIR) and a letter from the Prison Chaplain.

13 41. Defendant Myles is a 32-year old man and the father of 5 children – who all have
14 been mentally affected by his unacceptable behaviour. The Defendant submits that
15 he was battling a serious drug and alcohol addiction problem and asks the Court to
16 be as lenient as possible.

17 42. Defendant Myles grew up with his mother as a single parent. His father left the
18 family when he was 2 years of age. He has had a scattered employment record,
19 mainly in the construction or refrigeration industries. The SIR prepared by the
20 Probation Officer confirms that this Defendant has a very serious cocaine and
21 alcohol problem. The report submits that the Defendant was raised in a
22 dysfunctional family setting without a supportive father figure.



1 43. The Court notes that he was cooperative with the Probation Officer and that the
2 report states that the Defendant would benefit from a structured supervision plan
3 with specific treatment options to appropriately address his addictions.

4 44. Whilst in custody Defendant Myles has obtained several certificates in relation to
5 gymnastics, drug education, employment programmes and spiritual health
6 programmes. The Court also notes that he has received an outstanding achievement
7 award for his efforts and commitment to rehabilitation.

8 45. In mitigation Defendant Myles relies on his early guilty plea and the fact that he is
9 very remorseful.

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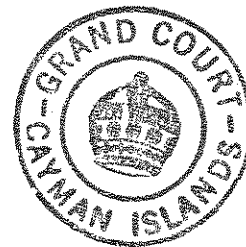
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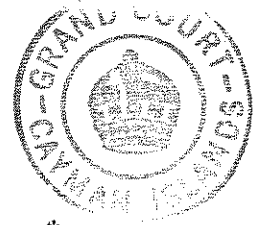
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DEFENDANT JAMES HERBERT MCLEAN

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46. Mr. Hoffman, counsel for the Defendant, McLean, relies on the fact that on the 24th July 2014 the Defendant McLean pleaded guilty to both counts on the Indictment.

47. In addition, counsel submits that Defendant McLean has only minor previous convictions for failing to surrender to custody and for consumption of ganja – in March 2013.

48. Counsel highlights the fact that at 23 years of age the Defendant McLean is much younger than his co-accused Defendants and, his young age, and lack of previous convictions, put him in a different category from the other Defendants. In this respect counsel submits that Defendant McLean is much more likely to *take* orders than to give orders – particularly in light of the maturity of his co-robbers and their previous criminal convictions.

49. Counsel submits that Defendant McLean followed orders in running into the store and smashing the glass jewellery cases and then running out. Counsel submits that that the Defendant did not brandish the hammer with which he cracked the glass and he did not specifically threaten any customers or staff.

50. Counsel submits that the Defendant accepts that the criminal responsibility for the firearm is his and as matter of law, the custody threshold is passed. Counsel submits that the Defendant McLean was not aware that the firearm was going to be used and that it was loaded. However, the Defendant accepts that a firearm was used by one his co-defendants, and he accepts that once the firearm was pulled out by his co-defendant he (Defendant McLean) failed to withdraw from the robbery.

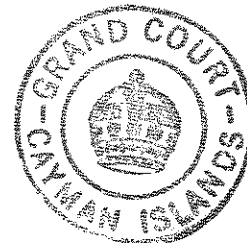
1 51. Counsel accepts that it would be unrealistic and almost churlish not to accept the
2 serious impact that this robbery has had along with the serious aggravating features
3 associated with it.

4 52. Counsel respectfully submits that the UK cases relied upon by the DPP are not so
5 relevant and, further, submits that this case can be considered less serious than the
6 bank robbery cases referred to by the DPP. Counsel submits that this case is more
7 along the lines of the less sophisticated commercial robberies.

8 53. The Court has reviewed the SIR which reveals that Defendant McLean was subject
9 to some abuse as a child and, regrettably, he became involved with drugs at an early
10 age – becoming addicted to cocaine as a teenager. On the night in question the
11 Defendant was taking cocaine when he agreed to take part in this robbery.

12 54. Whilst in prison Defendant McLean has taken part in drug education courses,
13 spiritual health activity and the 2014 song festival.

14 55. In conclusion defence counsel for Defendant McLean accepts that this was a very
15 serious offence but also submits that the defendant is genuinely remorseful.
16 Defence counsel submits Defendant McLean was not the prime mover – pointing to
17 the Defendant's young age and lack of previous convictions – and therefore asks
18 the Court to be as lenient as possible. In mitigation the Defendant McLean relies on
19 his early guilty plea, his young age, his heartfelt remorse and the fact that he has
20 only two minor convictions.





DEFENDANT JONATHAN MARK RAMOON

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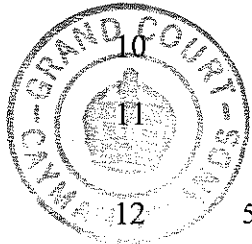
56. Mr. Irvin Banks, counsel for this Defendant, also asks the Court to take into consideration the guilty plea entered by this Defendant on the 5th June 2014. Defendant Ramoon is 36 years of age with 9 previous convictions and he has spent time in prison for causing Grievous Bodily Harm and for Assault Causing Actual Bodily Harm. In addition, in August 2005 the Defendant Ramoon was sentenced to eight (8) years' imprisonment for possession of an unlicensed firearm.

57. Defendant Ramoon's parents separated when this Defendant was 3 years old and, following that, the Defendant had very little contact with his father. In his teenage years the Defendant's behaviour deteriorated and he was involved in criminal activity before he was 20 years of age.

58. Defence refers to the SIR and the fact that the Defendant has had some significant employment – working as a labourer for Arch Construction and with the Port Authority. It is noted that during his work history the Defendant engaged well with fellow workers and supervisors.

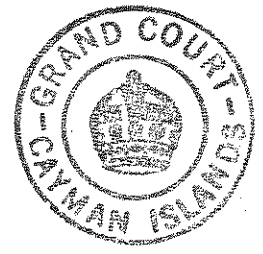
59. This Defendant said he and his co-defendants had discussed targeting Diamonds International and had met to make the final arrangements on the morning before the offence was carried out. It was arranged that Defendant Ramoon would carry the gun. When asked for further information by the Probation Officer Defendant Ramoon was hesitant to reveal more, but accepted that what was read as the Statement of Facts was correct.

60. Defendant Ramoon said his motive for committing the offence was to acquire cash after selling the proceeds of the robbery.



1 61. Defence counsel submits in mitigation that the Defendant pleaded guilty and is
2 genuinely remorseful. The Defendant Ramoon has stated:

3 *“When I see the hurt that it caused, not only to myself but to my family, my*
4 *loved ones and the community, it hurts. I am saying what was done was wrong*
5 *but two wrongs don’t make a right, but for my role it was wrong. Now that I see*
6 *the effect, and people [were] expecting different from me I beat myself up, it*
7 *hurts.”*



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THE LAW

62. I am grateful to both Madam DPP and defence counsel for their helpful bundles of authorities and submissions in relation to sentencing on both Counts 1 and 2.

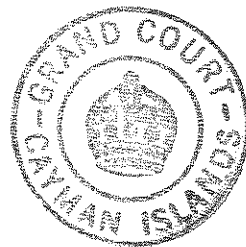
Count 1 – Robbery

63. Section 242(1) and (2) of the Penal Code (2013 Revision) reads:

“242. (1) *A person commits robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.*
(2) *A person who commits robbery is liable to imprisonment for life.”*

64. Accordingly, it is implicit in this maximum sentence that the Legislative Assembly takes the view that the offence of robbery in the Cayman Islands is one of the utmost seriousness.

65. Counsel for McLean cited the Sentencing Judgment of Henderson J. in *R v. Tamasa, Cole, Mignott, Edwards and Burton (CNB Robbery)*¹. Henderson J reviewed the UK Guidelines and the English case of *Turner*² and the CICA cases of *R v. Haylock, Avila, McLaughlin, Watson*³ and *R v. Barnett*⁴. In *Barnett*, after being found guilty and sentenced to 12 years’ imprisonment for demanding money from a petrol station, the CICA reduced the sentence to nine (9) years.



¹ Ind. Nos. 60, 62 and 63 of 2012 and 14 of 2013. Judgment dated the 29th October 2014.
² [1975] 61 Cr. App. R. 67
³ CICA (Crim) No. 33 of 2010
⁴ CICA 5/12 24th December 2012

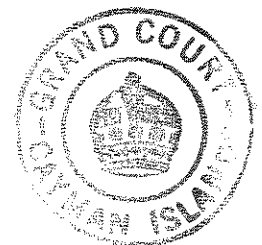
1 66. Counsel highlighted the CICA case of *Haylock*, in which the President of the
2 CICA, Sir John Chadwick, stated at paragraph 11:

3 *“Nevertheless those who arm themselves with weapons and undertake pre-*
4 *meditated robbery of small commercial businesses in these islands must expect*
5 *at least five years’ imprisonment if they are convicted.”*

6
7 67. Counsel for McLean relies on the English Court of Appeal case of *R v. Laschelles,*
8 *Naithen, Laurence and Ors*⁵. This was a smash-and-grab case in which the
9 Appellants stole jewellery to the value of £150,000.00. Furthermore, one of the
10 robbers pointed a gun at a member of staff and told her not to move. In *Laurence,*
11 counsel argued that it was a less sophisticated commercial robbery falling within
12 Part I of the UK Sentencing Guidelines. In this case, the English Court of Appeal
13 held that the Sentencing Judge was correct to find that Part I of the Guidelines did
14 not apply. The English Court of Appeal found that the appropriate sentence was 11
15 to 12 years. The Court of Appeal made allowances for the appellants’ youth, lack of
16 relevant previous convictions and guilty pleas and found the correct sentence was 7
17 years imprisonment.

18 68. Defence counsel, Mr. Hoffman, urges the Court to consider a starting point of ten
19 (10) years, and, at the same time, submits that the Defendant McLean is entitled to
20 a discount of 33 1/3% in the sentence— bringing the sentence for robbery to 7 years’
21 imprisonment. In addition, counsel submits that the case before me is similar to the
22 *Laurence* case in which the English Court of Appeal reduced the sentences of all
23 three Appellants to seven years’ imprisonment.

⁵ [2012] 2 Cr. App. R. (S) 6



1 69. The Chief Justice's Sentencing Guidelines⁶ (the Chief Justice's Guidelines) state
2 that for a first offence of Robbery involving the use of a firearm could attract a
3 tariff of 14 years' imprisonment.

4 70. I turn now to the Sentencing Guidelines produced by the UK Sentencing Guidelines
5 Council ("UK Sentencing Guidelines") in relation to Robbery dated July 2006.

6 71. The UK Sentencing Guidelines state:

7 *"It is the use of violence that is the most serious part of the offence of robbery,*
8 *but it is not the only determinative factor.*
9 *The relative seriousness of each offence depends on factors such as the degree*
10 *of injury to the victim or the nature and duration of threats.*
11 *The degree of force used is important in determining the seriousness of the*
12 *offence but the degree of fear which was experienced by the victim is a relevant*
13 *consideration."*

14
15 72. Having heard the DPP, Ms. Richards Q.C. and Mr. Hoffman, it is clear that there is
16 some controversy as to whether the Robbery in this case comes within Part I or Part
17 II of these Guidelines.

18 73. Part I of the UK Sentencing Guidelines deals with "street robbery or mugging,
19 robberies of small businesses and less sophisticated commercial robberies". Part II
20 deals with "professionally planned commercial robberies."

21 74. The DPP submits that if Part I applies this is a Level III level of seriousness
22 because of the use of the weapon. Although it would appear that Level III requires
23 that serious injury must be sustained, the statement at the top of page 6, reads:

24 *"The presence of one or more aggravating features will indicate a more severe*
25 *sentence within the suggested range. If the aggravating features are*
26 *exceptionally serious the case then will move to the next level of seriousness."*

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⁶ Statement on Tariffs and Guidelines for Sentencing for Certain Offences 2002

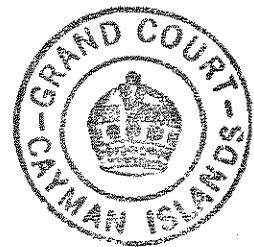
1 As there are a number of serious aggravating factors the DPP submits that this is a
2 Level III offence.

3 75. Counsel for Defendant McLean, as well as the other Defence counsel, submits that
4 the robbery is more akin to a Level II offence because amongst other matters no
5 serious injuries were inflicted.

6 76. At page 11 of the UK Sentencing Guidelines, Level III has a starting point of 8
7 years' custody and a range of 7 to 12 years' custody depending on the aggravating
8 and mitigating factors. Level II has a starting point of 4 years' custody and a
9 sentencing range of 2 to 7 years' custody.

10 77. If this robbery is classified as a "professionally planned commercial robbery" it
11 comes within Part II of the UK Sentencing Guidelines and not Part I.

12 78. Part II of the UK Sentencing Guidelines deals with "professionally planned
13 commercial robberies" involving firearms and high-valued theft, but without the
14 additional elements that categorise the most serious cases. The English Court of
15 Appeal in *Turner*⁷ said it comes to the conclusion that the normal sentence for
16 anyone taking part in a bank robbery or in the hold up of a security or post office
17 van should be 15 years' imprisonment – if firearms were carried and no serious
18 injury done.



⁷ Op. cit. *ibid.*

1 79. In *R v. David Jenkins & Ors*⁸ the Judgment of Moses LJ stated that the case of
2 *Turner* no longer had any relevance as a reliable guide to the appropriate level of
3 sentence for armed robberies. In *Jenkins* the Court English Court of Appeal was
4 dealing with a case where the Appellants were involved in a number of robberies of
5 security guards delivering cash to Building Societies at night. Furthermore, on the
6 occasion of the last robbery the Appellants were confronted by armed police and
7 there was an exchange of fire in which the principal robber was shot dead. The
8 English Court of Appeal in the headnote said,

9 “The issue is whether the starting point of 25 years is too high for this type of
10 robbery.”

11 The Court stated:

12 “Those who choose to involve themselves in such offences must expect the most
13 serious of sentences.”

14

15 80. In *Jenkins* the English Court of Appeal referred to the cases of *McCartney*⁹ and
16 *Atkinson & Smith*¹⁰ and said those cases demonstrated that the maximum sentence
17 for a number of armed robberies where violence was actually used appeared to be in
18 the region of 25 years. The Court had been persuaded that, in order to achieve
19 consistency, the starting point of 25 years was too high. They considered that those
20 sentences which might be on the low side for robberies in which robbers were
21 prepared to use and fire loaded guns in seeking to attack security guards. In *Jenkins*
22 the Court of Appeal took the appropriate starting point as being 21 years and gave
23 each of the appellants a reduction of 2 years thereby imposing sentences of 15 from
24 17, 10 from 12 and 8 years from 10 years respectively.

⁸ [2009] 1 Cr. App. R. (S) 20

⁹ [2003] EWCA Crim. App. R. 1372

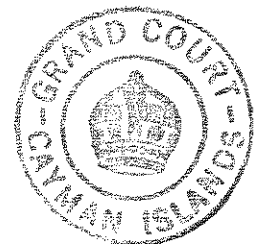
¹⁰ [2005] 2 Crim. App. R. (S) 34

1 81. *In R v Thomas, Thomas &Ors*¹¹ the appellants were concerned in a robbery of a
2 jewellery store where jewellery worth £40 million was stolen. One appellant was
3 convicted of kidnapping and possession of a firearm and a second appellant was
4 convicted of possession of a firearm along with the conspiracy to rob the jewellery
5 store. In *Thomas* three of the Appellants entered the Jewellery Store carrying
6 imitation firearms which had been converted to fire live ammunition. Four of the
7 staff were ordered to the ground and ordered not to look and a fifth employee was
8 ordered to open the display cases. One of the appellants grabbed an employee as a
9 hostage for approximately 40 seconds in order to facilitate their escape. Death
10 threats were made to the hostage and other employees. A security guard approached
11 two of the robbers as they went to their getaway car and one of the appellants fired
12 a shot to the ground. Further shots were fired to allow the appellants to escape and
13 escape vehicles had been put in place.

14
15 82. Although the value of the jewellery was higher in *Thomas* than in this case, and
16 although in *Thomas* shots were fired to enable the robbers to escape, there are
17 many striking similarities. There was significant planning, it was a jewellery store,
18 the robbers carried a firearm to execute the robbery, they had face masks to conceal
19 their identity and they subjected staff and members of the public to a terrifying
20 experience. In *Thomas* the employee was restrained for 40 seconds. In this case the
21 unfortunate security guard was dragged along the store floor and, in the process, cut
22 by the broken glass, and restrained with a gun held to him for a period of 86
23 seconds.

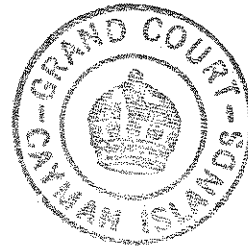
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¹¹ [2012] I Cr. App. R (S) 43



1 83. The robbers in *Thomas* were sentenced to terms of imprisonment varying from a
2 total of 23 years down to a total of 16 years. The Court of Appeal reviewed the
3 relevant case law, considered the totality of the sentences imposed on the appellants
4 and concluded that none of the sentences was manifestly excessive or wrong in
5 principle.

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1 **POSSESSION OF A FIREARM**

2 84. Section 39(2) of the Firearms Law (2008 Revision) reads:

3 “(2) Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code
4 (2006 Revision), the court of summary jurisdiction or the Grand Court
5 before which the individual pleads guilty or is convicted, shall-

6 (a) in a case where the individual pleads guilty, impose a sentence
7 of imprisonment for a term of at least seven years (with or
8 without a fine); or

9
10 (b) in any other case, impose a sentence of imprisonment for a
11 term of at least ten years (with or without a fine),

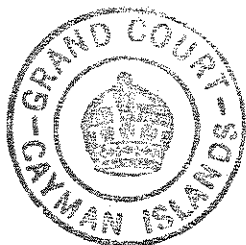
12 unless the relevant court is of the opinion that there are exceptional
13 circumstances relating to the offence or to the offender which justify its
14 not doing so; and such exceptional circumstances shall be stated by the
15 relevant court.”

16
17 85. There are no exceptional circumstances and counsel for Defendants McLean and
18 Ramoon accept that they are liable to a minimum of seven (7) years’ imprisonment.

19 86. In the English Court of Appeal case of *R v. Avis et al*¹² the then Lord Chief Justice
20 Lord Bingham asked the four questions which a sentencing court should ask itself:

21 “The appropriate level of sentence for firearm offences will depend on all the
22 facts and circumstances relevant to the offence and the offender. It will usually
23 be appropriate for the sentencing court to ask itself a series of questions:

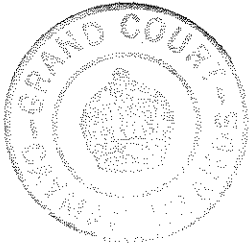
24 (1) What sort of weapon is involved? Genuine firearms are
25 more dangerous than imitation firearms. Loaded
26 firearms are more dangerous than unloaded firearms.
27 Unloaded firearms for which ammunition is available
28 are more dangerous than firearms for which no
29 ammunition is available. Possession of a firearm which
30 has no lawful use (such as a sawn-off shotgun) will be
31 viewed even more seriously than possession of a
32 firearm which is capable of lawful use.



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¹² [1998] 2 Cr App R. (S) 178

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(2) What (if any) use has been made of the firearm? It is necessary for the Court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: The more prolonged and premeditated and violent the use, the more serious the offence is likely to be.

(3) With what intention (if any) did the Defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.

(4) What is the Defendant's record? The seriousness of any firearms offence is inevitably increased if the offender has an established record of committing firearm offences or crimes of violence."

87. In *R v. Avis et al* Lord Bingham went on to state:

"Given the clear public need to discourage the unlawful possession and use of firearms both real and imitation, and the intention of Parliament expressed in a continuing increase in maximum penalties, the court should treat any offence against the provisions of the Firearms Act 1968 as amended, as serious."

88. The Cayman Islands Court of Appeal in the case of *Chavarria-Atily v. R*¹³ applied Lord Bingham's dicta in *R v. Avis et al*. The Acting President Forte JA set out Lord Bingham's guidelines and added the following words at paragraph 10 of his Judgment:

"In the Cayman Islands, it has been the massive increase in offences under the Firearms Law that has led Parliament to enact the minimum sentences in respect of those offences, while at the same time making special provision for cases of exceptional circumstances. The mere possession of a firearm, even without any intention to use it for a criminal offence, can still be a danger to the public for the reason that it could get into the hands of someone who does have that intent."

¹³ [2009] CILR 118

1 89. Therefore, in the case before this Court I follow the Court of Appeal in adopting
2 Lord Bingham's guidelines and ask myself the same questions:

3 A. What sort of weapon was involved?: The firearm – a .38 Spl Smith and
4 Wesson loaded with live ammunition. As the Acting President Forte JA
5 stated in *Chavarria-Atily v. R*:

6 *“The mere possession of a firearm, even without any intention*
7 *to use it for a criminal offence, can still be a danger to the*
8 *public.”*

9
10 B. What (if any) use has been made of the firearm?: It is this Court's view
11 that the robbers used the firearm to immobilize the security and drive
12 fear into the staff so that they could carry out their robbery.

13 C. With what intention (if any) did the Defendant possess or use the
14 firearm?: The intent behind the use of the firearm by the robbers
15 Ramoon, McLean and the unknown fourth man was to subject the staff
16 to fear so that they could successfully carry out the robbery.

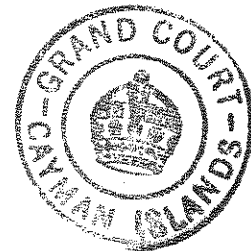
17 D. What is the [Defendants'] record? The Defendant Ramoon has a
18 previous conviction for possession of an unlicensed firearm.

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AGGRAVATING FACTORS

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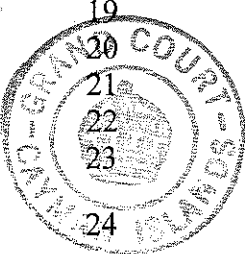
90. I have covered the mitigating factors as set out by Defence counsel for their respective clients. I turn now to examine what aggravating factors were present and the degree of aggravation with each factor.

91. There is clear evidence that this robbery involved significant planning. The four robbers all had specific roles.

92. The Defendant Ramoon’s role was to silence the security guard by use of the loaded firearm. The Defendant McLean’s role was to enter the store and break the glass showcases after the security guard had been rendered impotent. The Defendant McLean proceeded to use his hammer to break the glass showcase in which the jewellery was on display. The unknown fourth robber followed the Defendant McLean, selected the jewellery, collected the items and put them in the yellow bag. All four robbers had specifically defined roles and all three defendants before this Court made essential contributions. The Court has not been provided with any evidence as to which, if any, of the four men involved in this robbery, was the ringleader.

93. I think it is appropriate to remind myself of the provisions of s.19 of the Penal Code (2013 Revision) which reads:

“19. When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the prosecution of such purpose, each of them is deemed to have committed the offence.”



1 This was a classic joint enterprise in which all four robbers played a separate and
2 significant role to prosecute the unlawful purpose.

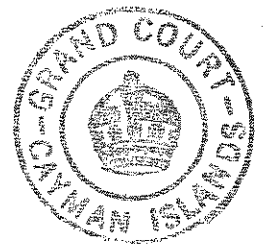
3 94. The UK Sentencing Guidelines state;

4 *“Group offending will aggravate an offence because the level of intimidation*
5 *and fear is likely to be greater.”*

6
7 95. The wearing of disguise to conceal the identities of the robbers indicates a high
8 degree of planning.—Not only did they disguise their faces but the Defendant
9 McLean had a pillow hidden in his clothing to disguise his true size and shape. In
10 addition, the robbers wore gloves to prevent the transfer of any fingerprints or
11 DNA.

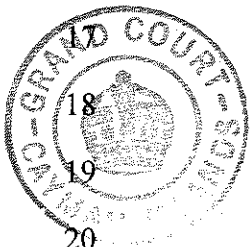
12 96. Another aggravating factor is the high value of the items stolen. This again
13 demonstrates a highly planned and professional robbery and the Court must take the
14 high value into account. The *CNB Robbery* involved the theft of \$500,000. This
15 robbery of the Diamonds International Store in George Town involved the theft of
16 jewellery of over \$800,000.

17 97. Probably the single most aggravating factor is that the robbers used a loaded
18 revolver to execute the robbery. To use this firearm and point it at the security
19 guard to ensure that the other robbers were left free to carry out the robbery was
20 intended to and did instill a very high degree of fear amongst the staff and the
21 customers of the store.



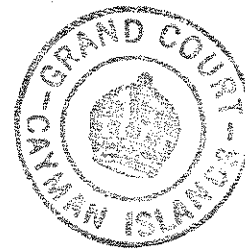
1 98. Yet another aggravating factor was that the victims were particularly vulnerable.
2 There were young girls and future mothers – all who experienced fear, terror and
3 possible life-long trauma. The security guard said he was extremely frightened and
4 scared. This never happened to him before, and he could only think of his wife and
5 his children and he described this robbery as the most frightening thing that had
6 ever happened to him. The victims in Diamonds International were particularly
7 vulnerable. There were several young girls and also some girls who were pregnant.
8 One can see from the CCTV footage that these girls were terrified by the sight of
9 three masked men entering the store with a revolver and a hammer to carry out a
10 violent armed robbery. Furthermore, the situation was exacerbated by the fact that
11 there were innocent tourists who were just coming off the cruise ships to shop and
12 see the islands.

13 99. One can only imagine the effect this robbery on New Year’s morning had on the
14 hundreds of tourists who had disembarked from the cruise ships. The tourists who
15 were in the vicinity must have been shocked and frightened at the sight of three
16 masked robbers entering a major jewellery store on the front street of George Town
17 on New Year’s morning. Word of this armed robbery must have spread like wild
18 fire amongst the tourists who visited Grand Cayman on New Year’s Day 2014.
19 Such a robbery could seriously jeopardise the tourist industry in the Cayman
20 Islands. Cruise ships and their passengers, upon hearing of such a robbery taking
21 place in the very centre of the city, in broad daylight, when families and children
22 would be present everywhere, and, on New Year’s Day, of all days, may well form
23 the view that gun-related criminal activity is a frequent occurrence in the Cayman
24 Islands. If this negative image pervades it could lead to tourists thinking twice of
25 visiting or returning to these islands.



1 100. The Defendants have failed to reveal the identity of the unknown fourth robber. The
2 case law states that this failure to assist the authorities cannot be classified as an
3 aggravating factor. However, it does, to some extent dilute the sincerity and
4 genuineness of the robbers' professed remorse. To put it another way, if the
5 robbers, now before the Court had delivered up the identity of the fourth robber,
6 then their assistance would then have been a significant mitigating factor, which
7 would have resulted in a considerable reduction in sentence.

8 101. The Court also notes that there has been no voluntary return of the missing rings
9 nor has any information been provided as to the likely whereabouts of this
10 jewellery. This fact also dilutes the sincerity and genuineness of the defendants'
11 professed remorse.



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CONCLUSION

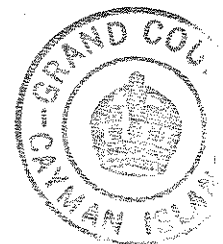
102. In my view, this armed robbery falls under Part II of the SGC Guidelines, in that it can properly be described as a “professionally planned commercial robbery”. The Penal Code provides for a sentence of life imprisonment and the Chief Justice’s Guidelines state that a first offence of robbery involving the use of a firearm could attract a tariff of 14 years.

103. The English Court of Appeal decision of *Thomas* has very striking similarities to this case, and in that particular case the Court of Appeal upheld terms of imprisonment from 23 years down to a total of 16 years.

104. The UK Guidelines are promulgated to provide guidance for the Courts of England and Wales as to sentencing for all criminal offences. England and Wales has population of approximately 58 million. Grand Cayman has a population of just over 58,000 with a land area of approximately 123 sq. mls. Consequently a professional planned commercial robbery of the kind that has been perpetrated in this case has a much more damaging effect on a small jurisdiction such as the Cayman Islands. As Lord Judge said at paragraph 62 in *Thomas*:

“... the fact-specific nature of the criminal activity involved in each offence remains the paramount consideration.”

105. I adopt this dicta of Lord Judge particularly as it relates to Count 1 on this Indictment.



1 106. In the past five or six years we have seen what the Cayman Islands Court of Appeal
2 has described as a “massive increase in offences under the Firearms Law.” The
3 Cayman Islands has also experienced a corresponding massive increase in armed
4 robberies. It is a very sad and depressing state of affairs that all commercial
5 properties and their staff must be protected from robbers by security guards. In the
6 best interests of these islands all residents must consider it a duty to support the
7 RCIPS in its efforts to combat these evil and violent crimes. People must know
8 something about the identity and whereabouts of the fourth robber who regrettably
9 is still at large along with the unrecovered jewellery.

10 107. This was a most violent armed robbery by three masked men armed with a firearm
11 and a hammer. A large number of innocent staff and innocent tourists were put in
12 fear of their lives. There is a distinct absence of meaningful mitigating factors in
13 this case and a large number of very serious aggravating factors. The crime is of a
14 higher value than the CNB bank robbery, which was said to be the largest in the
15 Cayman Islands, if not the Caribbean. This armed robbery of Diamonds
16 International also has a very detrimental effect on the reputation of the Cayman
17 Islands. If our islands are thought to be losing the battle against crime, this would
18 have a very damaging effect on our tourist industry. This is a serious aggravating
19 factor and the Courts are entitled to take it into account. Therefore, in light of the
20 many serious aggravating factors, in my view, the starting point for the offence of
21 robbery in this case is 14 years’ imprisonment. I find that the appropriate sentence
22 for two of the three defendants, for the offence of armed robbery, is higher than 14
23 years’ imprisonment.



1 108. Sentence for Defendant Ramoon: The Defendant Ramoon has nine (9) previous
2 convictions – including one for possession of an unlicensed firearm. Accordingly,
3 his sentence is 19 years’ imprisonment for Robbery and 14 years’ imprisonment for
4 Possession of an unlicensed firearm. I address considerations related to the guilty
5 plea later.

6 109. Sentence for Defendant McLean: The Defendant McLean has two (2) previous
7 convictions – one for failing to surrender to custody (dated September 2013) and
8 one for consumption of ganja (dated September 2013). Regrettably, this Defendant
9 played a major role in the robbery and, accordingly, his sentence is 16 years’
10 imprisonment for Robbery and 8/10 years’ imprisonment for Possession of an
11 unlicensed firearm and, again, I address considerations for the guilty plea later in
12 this Judgment.

13 110. Sentence for Defendant Myles: The Defendant Myles has fifteen (15) previous
14 convictions – although none for offences of dishonesty but several for offences of
15 violence. Accordingly, his sentence is 12 years’ imprisonment for Robbery. Again,
16 I address considerations for the guilty plea later in this Judgment.

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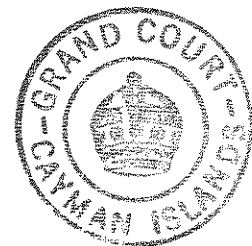
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1 *REDUCTION IN SENTENCE FOR GUILTY PLEAS*

2 111. In England, the question of a reduction in Sentence for a guilty plea is dealt with by
3 the Criminal Justice Act of 2003. In the Cayman Islands we have no corresponding
4 statutory provisions.

5 112. It has been the practice of our Courts to follow the UK Sentencing Guidelines
6 promulgated for reductions in sentences for guilty pleas in July 2007 and therefore
7 accord defendants who plead guilty at the first reasonable opportunity will be
8 entitled to a 33 1/3 % reduction of a prison sentence. However, in order to gain the
9 full reduction, a defendant must either plead guilty, or give an unequivocal
10 indication that he will plead guilty at the first reasonable opportunity. This did not
11 happen in this case.

12 113. Where the admission of guilt comes later than the first reasonable opportunity the
13 reduction in sentence will be less. If it is after a trial date has been set, the reduction
14 would be in the region of 20% to 25%. And, if the plea of guilty is entered at the
15 trial or just before the trial it would be in the region of 10%.

16 114. Where, as in this case, the prosecution case is overwhelming, it may not be
17 appropriate to give a full reduction, as the Defendants have been caught in the act of
18 a robbery with a firearm. In these circumstances paragraph 5.4 on page 6 of the UK
19 Sentencing Guidelines is relevant and it states:

20 *"Where a Court is satisfied that a lower reduction should be given, for this*
21 *reason a recommended reduction of 20% is likely to be appropriate where the*
22 *guilty plea was indicated at the first reasonable opportunity."*
23



1 115. In this case, the Defendant Ramoon pleaded guilty on the 5th June 2014. The
2 Defendant McLean pleaded guilty on the 24th July 2014. The Defendant Myles
3 pleaded guilty to Count 1 on the 3rd August 2014.

4 116. As a result of the overwhelming prosecution case and the delayed guilty pleas, the
5 Court is ordering a discount of slightly more than 20 % for each Defendant and
6 therefore, the sentences are as follows:

7 i. Defendant Ramoon:

8 A. Count 1 – 15 years’ imprisonment

9 B. Count 2 – 12 years’ imprisonment – to run concurrent.

10 ii. Defendant McLean:

11 A. Count 1 – 12 years’ imprisonment

12 B. Count 2 – 7 years’ imprisonment – to run concurrent.

13 iii. Defendant Myles:

14 A. Count 1 – 10 years’ imprisonment.

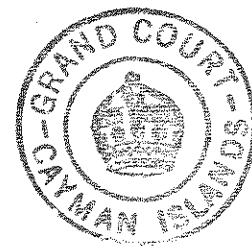
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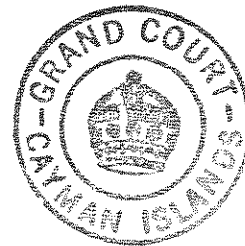
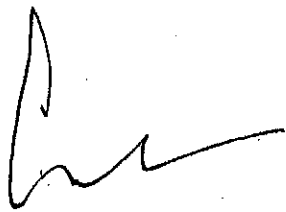
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ASSISTANCE BY COMMISSIONER BAINES AND OTHERS

117. Mme. DPP has quite properly acknowledged the decisive and courageous intervention by Commissioner Baines. Had Commissioner Baines not acted so quickly in ramming and immobilising the getaway car used by the robbers, and had he not pursued the robbers – eventually stopping Defendant Ramoon in flight – all the robbers could have escaped and avoided apprehension. The country is grateful for the quick and brave actions of Commissioner Baines in trapping the getaway car and Defendant Ramoon.

118. The Court also acknowledges the brave and timely interventions by the head of security at Diamonds International, Mr. Micic, and the two courageous members of the public who, with little regard for their own safety, assisted in apprehending Defendants Myles and McLean. Their actions remind all of us of our duty to assist the RCIPS in their efforts to combat the very regrettable rise in crime that the Cayman Islands has experienced in the past six years.

Dated this the 19th January 2015



**Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court**