

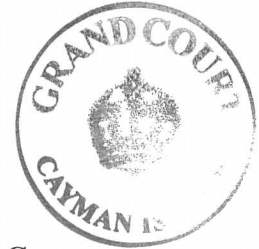
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NO: 75/2010**

5
6 **THE QUEEN**

7
8 **V**

9
10 **NORVAL BARRETT**



11
12
13 **Appearances:**

Ms. Candia James for the Crown

14
15 **Mr. Ben Tonner of Samson &**
16 **McGrath for the Defendant**

17
18 **Before:**

The Hon. Mr. Justice Charles Quin

19 **Heard:**

20 **16th December 2011 and 12th January**
2012 (Sentencing submissions heard)

21
22 **SENTENCE RULING**
23



24 ***Introduction***

25 1. On the 27th January 2011 a jury found the Defendant guilty of robbery
26 contrary to s.242 of the Penal Code and of possession of an imitation firearm
27 contrary s.18(6) of the Firearms Law.

28 2. For reasons that are not relevant to this Ruling, and with the consent of the
29 Crown, the Court acceded to an application by the defence for the sentencing
30 submissions to be heard on the 13th January 2012.

The Facts

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

3. The Defendant is a Jamaican national who entered the Cayman Islands illegally.
4. On Wednesday the 18th August 2010, whilst armed with what appeared to be a firearm, the Defendant robbed the Esso Petrol Station on Shedden Road, in George Town, of \$454.00. The Defendant threatened to shoot the cashier, Maxine Gardner, if she did not hand over the money. The Defendant took the cash and left the scene.
5. The Defendant was identified by Ms. Gardner and the petrol pump attendant, Alberto McLaughlin and the incident was also captured on CCTV.
6. By sheer chance, a few days after the incident, the investigating officer, DC Ronald Francis, was making enquiries at George Town hospital in an unrelated matter, when he recognised the accused as the man he had seen on the CCTV coverage of the robbery.
7. DC Francis then cautioned and arrested the Defendant and took him into custody. The Defendant said he did not have any passport and he had come to Cayman on a boat. The police went to the Defendant's premises and found nothing of evidential value there.
8. The Defendant was subsequently positively identified by Ms. Gardner and Mr. McLaughlin.
9. The Defendant was interviewed at George Town police station and exercised his right to remain silent.

The Law

1

2 10. The maximum penalty for robbery is life imprisonment. The maximum
3 penalty for possession of an imitation firearm is 20 years and a fine of
4 \$100,000.00.

5 11. The Chief Justice’s statement on Tariffs and Guidelines for Sentencing in
6 relation to certain offences, published on the 16th January 2002 provides that
7 for robbery, a first offence involving the use of a firearm could attract a tariff
8 of 14 years.

9 12. Defence counsel has pointed out that the Chief Justice’s Guidelines also state
10 that,

11 *“Otherwise for a first offence of an aggravated nature eight years will be*
12 *imposed.”*

13

14 13. In the United Kingdom the Sentencing Guidelines Council is chaired by the
15 Lord Chief Justice, Lord Judge. The Court notes that under UK legislation
16 robbery also carries a maximum penalty of life imprisonment.

17 14. Under UK Sentencing Guidelines this case would be classified as robbery of
18 small shop or petrol station, and the Court should assess the general
19 seriousness of the offence by taking into consideration the following factors:

20 a. The degree of force and/or the nature and duration of threats;

21 b. The degree of injury to the victim

22 c. The degree of fear experienced by the victim

1 d. The use or presence of a weapon, even if not used

2 e. The value of the property taken

3 15. Under the UK Sentencing Guidelines, where a weapon is produced and used
4 to threaten, the starting point is four years in custody, and is adjusted
5 accordingly with regard to the aggravating and mitigating factors, with a
6 range of two to seven years custody. The starting point is based upon a first-
7 time offender who has pleaded not guilty.

8 16. Our Court of Appeal in *R v. Haylock & Ors* C.I.C.A. No. 33 of 2010 also
9 referred to the UK sentencing guidelines. The President, Sir John Chadwick,
10 stated at paragraph 8,

11 *“The seriousness of an offence of this nature does not lie, primarily, in*
12 *the amount that is obtained in the robbery; for that amount is likely to*
13 *depend on how much there happens to be in the till at the time when the*
14 *robbery takes place. The seriousness of the offence lies in the threat to*
15 *those who own and work in such businesses which, generally, are not*
16 *protected by sophisticated security. They are entitled to go about their*
17 *daily businesses and to earn their living without the threat.”*

18

19 Sir John Chadwick went on to add at paragraph 11,

20 *“Of course the guidelines are no more than guidelines: as is often said,*
21 *they are not tramlines. Nevertheless, those who arm themselves with*
22 *weapons and undertake pre-meditated robbery of small commercial*
23 *businesses in this Island must expect at least five years imprisonment if*
24 *they are convicted. From that starting point the Judge ought to have*
25 *asked himself what was an appropriate discount having regard to both*
26 *the aggravating factors and the mitigating factors in this case.”*

27

28 17. However, in *Haylock* the Defendants had used machetes and there was no
29 evidence of any firearms or imitation firearms. Whilst a machete is a

1 dangerous weapon, I think it has to be accepted that firearms and imitation
2 firearms are in a more serious category.

3 18. More recently in Williams J. *R v. Powell* and *R v. Welcome*, before Williams
4 J.,the facts were more similar. In *Powell* and *Welcome*, an imitation firearm
5 was used in an attempted robbery on a store during opening hours, with an
6 element of pre-planning. Williams J. said,

7 *“I am of the view that the starting point for such an offence, having*
8 *regard to your particular aforementioned circumstances, including your*
9 *young ages, if the matter had been fought on a not guilty plea and gone*
10 *to trial, should be nine years custody.”*

11

12 19. In this case there are several aggravating factors.

13 20. First, the Defendant used an imitation firearm and pointed it at the cashier.
14 As this Court has often said before, whether the weapon is an imitation
15 firearm or a real firearm makes very little difference to the victim, because
16 the fear and terror caused by the production of such a weapon will be the
17 same. The Defendant threatened to shoot the cashier if she didn't hand over
18 the money. The offence occurred at night, and put the cashier and other
19 employees of the petrol station in extreme fear.

20 21. The Court finds that the offence was pre-planned, as evidenced by the fact
21 that the Defendant was armed and attempted to disguise his features by
22 wearing a cap and sunglasses. The Defendant took the money from the
23 cashier and fled the scene.

1 22. There was no guilty plea, no evidence of remorse, and no evidence of any
2 cooperation with the police. Furthermore, neither the money, nor the
3 imitation firearm, has ever been recovered.

4 23. The Court notes that the Defendant has no previous convictions. Counsel for
5 the Defendant highlights the fact that the Defendant has completed an anger
6 management programme whilst in HMPS Northward, and further he has
7 made a pledge to make positive changes towards his life.

8 24. The Court can find no identifiable mitigating factors, but there are several
9 aggravating factors. The Defendant clearly planned this robbery. He used an
10 imitation firearm and threatened to shoot the cashier. As I stated earlier, the
11 cashier could not have known whether the firearm was an imitation firearm
12 or a real firearm.

13 25. As has been stated before, employees working in small businesses and petrol
14 stations are extremely vulnerable. The Court recognises that there has been a
15 marked increase in violent robberies over the past two years. Employees and
16 the general public must be protected from violent robberies of this type and
17 persons contemplating committing such crimes must understand that if they
18 are apprehended and convicted they will receive lengthy terms of
19 imprisonment from the Courts. This was a very serious offence and, in all the
20 circumstances, it is my view that a sentence of twelve (12) years is both
21 appropriate, and in line with the Chief Justice's Guidelines.

22 26. In view of the fact that the imitation firearm was a significant aggravating
23 feature in the robbery charge I impose a sentence of six (6) years for the
24 offence of the possession an imitation firearm and order it to run concurrent

1 to the twelve (12) years imposed for the offence of robbery, with time spent
2 in custody to be taken into consideration.

3 27. Finally, I would like to commend DC Ronald Francis for his alertness in
4 identifying the Defendant as the man he had seen on the CCTV footage and
5 for the immediate arrest of the suspect. Had it not been for DC Francis's
6 prompt action, the Defendant might not have been apprehended and brought
7 to justice.

8
9

10 **Dated this the 31st day of January 2012**

11
12
13
14



15 **Honourable Mr. Justice Charles Quin**
16 **Judge of the Grand Court**