

IN THE COURT OF APPEAL OF CAYMAN ISLANDS

CRIMINAL APPEAL 13/11 (CACR013/2001)

(SCA39/10 & SCA0039/2010A-H)

C#4296/09

BETWEEN:

Thad (Thadd) Bodden

Appellant

AND

HER MAJESTY THE QUEEN

Respondent

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that Thadd Bodden having appealed against the decision of the Grand Court dated 25th day of **March, 2011** which dismissed his appeal against sentence.

The conviction and sentence originally passed upon *him* by the Summary Court on the 30th day of **June, 2010** were as set out below:

C#04926/2009 **Burglary**
2 years imprisonment, consecutive to #05691/2009.
Total: 3 ½ years imprisonment.

C#05691/2009:

- (1) Possession of ganja - 6 months imprisonment, concurrent.
- (2) Consumption of ganja - 6 months imprisonment, concurrent.
- (3) Disorderly conduct at police station - No separate penalty.

C#09407/2009:

- (1) Possession of ganja
6 months imprisonment, concurrent with each other but consecutive to #04926/2009.
- (2) Possession of ganja
6 months imprisonment, concurrent with each other but consecutive to #04926/2009.
- (3) Consumption of ganja
6 months imprisonment, concurrent with each other but consecutive to #04926/2009.
- (4) Consumption of ganja
6 months imprisonment, concurrent with each other but consecutive to #04926/2009.

C#03876/2009:

Interfering with a motor vehicle without consent of the owner
3 months imprisonment, concurrent with #03875/2009.

C#03875/2009: Criminal trespass

3 months imprisonment, consecutive.



C#03877/2009

Interfering with a motor vehicle without consent of owner
3 months imprisonment, concurrent with #03875/2009.

C#06948/2008

- (1) Criminal trespass - 3 months imprisonment.
- (2) Interfering with a motor vehicle - 3 months imprisonment.

C#06955/2008

- (1) Interfering with a motor vehicle
3 months imprisonment, concurrent with #06948/2008.
- (2) Criminal trespass
3 months imprisonment, concurrent with #06948/2008.


C#07492/2008

- (1) Criminal trespass
3 months imprisonment, concurrent with #06948/2008.
- (2) Interfering with a vehicle without consent
3 months imprisonment, concurrent with #06948/2008.

The Court of Appeal has finally determined the said appeals, and has this 5th day of **August, 2011** given judgment therein to the effect following:

1. Appeal against sentence dismissed.
2. Conviction and sentence affirmed.
3. Transcript of oral judgment to be released.

Dated this 19th day of September, 2011


Registrar



IN THE CAYMAN ISLANDS COURT OF APPEAL

CICA (Crim) 13/ 2011

BEFORE

**The Rt Hon Sir John Chadwick, President
The Hon Ian Forte, Justice of Appeal
The Hon Dr Abdulai Conteh, Justice of Appeal**

**ON APPEAL FROM THE GRAND COURT
SCA 39/2010**

BETWEEN

HER MAJESTY THE QUEEN

Respondent

- and -

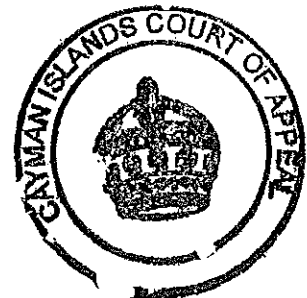
THADD BODDEN

Appellant

The Appellant appeared in person
Ms Manson/Tanya Lobban for the Respondent

Hearing: 5 August 2011

JUDGMENT
Revised from transcript and Approved



Sir John Chadwick, President:

1. On 23 September 2010, the appellant, Thadd Bodden, was sentenced in the Summary Court on a number of offences committed in 2008 and 2009. Among those offences, to all of which the Appellant pleaded guilty, was an offence of burglary committed on 6 February 2009. He was sentenced to a term of two years on that burglary offence; and to lesser terms on the other offences.
2. Mr Bodden appealed to the Grand Court against sentence. That appeal came before Quin J on 25 March 2011 and was dismissed. He now seeks to appeal to this Court against his sentence in relation to the burglary. In his Notice of Appeal, he says that the sentence was excessive in the circumstances:

“I feel as though the sentence for my burglary was excessive because of the amount which was said to be stolen which was a pack of cigarettes and a lighter off of a porch and the time span in which I was charged for my last burglary.”

3. The circumstances of the offence to which he pleaded guilty are set out in the Summary of Facts which was before the Grand Court. They can be recited shortly:

“On Friday February 6, 2009, the complainant retired to bed [at] about 11:00 pm after arming his alarm system and was again awoken by the alarm at 3:10 am on the following morning. He proceeded to the back porch where he saw an intruder trying to exit through the screen door. He shouted at the man, who ran from the premises, and gave chase for a short distance only, because he was improperly dressed. The complainant then noticed that a pack of Marlboro cigarettes and a lighter were missing from the porch area.”

The police found the Appellant running from the direction of the complainant's home. On arrest, Marlboro' cigarettes were found on his person.

4. The reference in his Notice of Appeal to his “last burglary” is, I think, to a conviction on 9 December 1998 for burglary. He received a sentence of fifteen months for that offence. Since that date he has been before the courts on a

number of occasions. Many of the offences for which he has been sentenced have been the possession and consumption of ganja. Most recently, on 20 February 2007, he was sentenced for criminal trespass and theft and for failure to surrender to custody: offences for which he received a total of twelve months. His record, which goes back to 1997, includes a total of thirty three offences. He is an habitual petty criminal.

5. The Chief Magistrate, in sentencing him for burglary on this occasion, said this:

“Mr. Dixey [who was counsel for the Appellant at that hearing, as he was in the Grand Court] points to the fact that only a pack of cigarettes was taken but the value of the property taken does not really matter as it is not what makes burglary a serious offence.

As Bingham LJ noted in *R v Brewster and Others* [1998] 1 CAR (S) 181:

‘The loss of material possessions is, however, only a part (and often a minor part) of the reason why domestic burglary is a serious offence. Most people, perfectly legitimately, attach importance to the privacy and security of their own homes. That an intruder should break and enter for his own dishonest purposes leaves the victim with a sense of violation and insecurity. Even where the victim is unaware at the time that the burglar is in the house, it can be a frightening experience to know that a burglary has taken place; and it is all the more frightening if the victim confronts or hears the burglar.’

This was a case in which the victim confronted the burglar at ten minutes past 3:00 in the morning, having been awoken by his own security system, in a house which he shared with his wife and two young children. It fits plainly within Bingham LJ's observations as to the real vice in cases of burglary.

That domestic burglary is to be regarded as a serious offence was recognised in the Chief Justice's *Statement on Tariff and Guidelines* issued in 2003, where, after indicating that:

‘For BURGLARY, without aggravating circumstances, a second or subsequent offence will attract a tariff of 3-4 years.’

the Chief Justice went on to say this:

‘It should be emphasised however that we consider home invasions whether by night or by day very serious offences and any such offence is likely to be discouraged by appropriate prison sentences’”

6. On appeal to Justice Quin the sentence was upheld. The judge said that the Chief Magistrate's sentence could not be described as manifestly excessive; that it would be wrong to interfere with her findings; and that she could not be faulted in any way. We agree with that assessment.
7. This is a case in which, on a not guilty plea after a trial, the Appellant could have expected a sentence of at least three years. The aggravating factor was that this offence was committed in the early hours of the morning, in a domestic residence which was occupied at the time by the complainant, his wife, and his young family. The mitigating factor was that no violence was used, and that the amount actually taken was minimal.
8. The sentence is not to mark the seriousness of the amount taken (which, as the Chief Magistrate recognised, was trivial), but the seriousness of the invasion of privacy which a domestic burglary represents. As the Chief Magistrate indicated in her sentencing remarks, she arrived at a sentence of two years' imprisonment for the burglary after taking account of the guilty plea and the mitigating factor of the low value of the property stolen. Her conclusion is not one with which this Court could properly interfere.
9. In those circumstances, we dismiss this appeal.

