CAYMAN ISLANDS
CRIMINAL FORM 18
RULE 50(1) & 51(1)

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

Criminal Appeal No. 33 of 2010
(Indictment No. 53/2010)
(C#05987/2010)

Between:

HER MAJESTY THE QUEEN

Appellant

- and -

ADDIE SHANICE HAYLOCK
JULISSA MONIQUE AVILA
ARIEL RENDI McLAUGHLIN
& ANASTASIA ANASIA WATSON

Respondents

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that **THE ATTORNEY-GENERAL** having appealed against the rulings of the Grand Court dated the 15th December 2010:

Ind 53/10 Robbery:

HAYLOCK, AVILA & WATSON
Two years imprisonment, six months thereof to be served and the remainder shall be held in suspense.
Time spent in custody not to be deducted from the six months period in prison.
Defendants to pay $90.00 to Dominos Pizza as compensation. Payment to be made within 28 days hereof

McLAUGHLIN
Probation order for **two years** with conditions:

To reside with parents at #44 Outpost St, George Town for the duration of the order. To resume his education at UCCI no later that the second semester commencing in January 2011. To attend The Training Counselling Centre (TTCC) and actively participate in the drug counselling programme. To submit to random drug testing. To observe a curfew between the hours of 10:00 p.m. and 6:00 a.m. daily during the duration of the order unless otherwise adjusted by the Court. To make payment of $90.00 to Dominos Pizza as compensation. Payment to be made within 28 days hereof.

The Court of Appeal has this **7th day of April, 2011** given judgment therein to the effect following:

CAYMAN ISLANDS COURT OF APPEAL

1. **Counsel for Haylock being unable to come to Court, Haylock's case adjourned.**
2. **Avila, Watson & McLaughlin no other sentences to be substituted.**
3. **Transcript of Reasons for Judgment to be released.**

Dated this 7th day September, 2011

Registrar

****Notice of abandonment of appeal against Addie Haylock filed by the Crown 20th July 2011**. Transcript of reasons for judgment released 7th September 2011.

IN THE CAYMAN ISLANDS COURT OF APPEAL

Chadwick P
Forte JA
Campbell JA

CRIMINAL APPEAL No 33 of 2010

THE QUEEN

-v-

ADDIE SHANICE HAYLOCK
JULISSA MONIQUE AVILA
ARIEL RENDI McLAUGHLIN
ANASTASIA ANASIA WATSON

Hearing date: 7 April 2011
Transcript released: 7th September 2011

JUDGMENT

Sir John Chadwick, President

1. On 15 December 2010, Addie Shanice Haylock, Julissa Monique Avila, Ariel Rendi McLaughlin and Anastasia Anasia Watson were sentenced following their pleas of guilty to the crime of robbery committed on 3 June 2010. Miss Haylock, Miss Avila and Miss Watson were each sentenced to two years' imprisonment; six months of which was to be served and the remainder was to be held in suspense. The judge directed that the time which they had spent in custody between arrest and sentence was not to be taken into account by way of deduction from the term they were to serve. Mr. McLaughlin was sentenced to a probation order for two years subject to conditions which included the requirement that he reside with his parents, resume his education, submit to random drug testing and observe a curfew. At the time of the offence, the defendants were all aged 17

years. At the time of sentence .Miss Haylock, Miss Avila and Miss Watson were just over the age of 18 years and Mr. McLaughlin was just under that age.

2. The Crown brings the matter to this Court under section 30(1) of the Court of Appeal Law (2006 Revision). That section provides that, if in a case in which sentence is passed in the Grand Court on a person for an offence triable on indictment it appears to the Attorney-General that the sentence has been unduly lenient or is wrong in law, then the Attorney-General may, with leave of the Court, refer the case to it to review the sentencing of that person. On such reference the Court may quash any sentence passed on the person in the proceeding; and in place of it, pass such sentence as they think appropriate for the case and that the court below had power to pass when dealing with the accused.

3. When the matter came before the court for hearing this morning, Miss Haylock was not represented. Her counsel was indisposed. Accordingly, we have heard the Crown's reference only in relation to the respondents Avila, McLaughlin and Watson: and we have adjourned the Crown's reference in relation to Haylock to be considered, if necessary, at a later time.

4. The circumstances of the offence are not in dispute. Put shortly, for reasons which have so far been wholly unexplained, these offenders decided on the morning of 3 June 2010 to rob a pizza house (Domino's Pizza). They equipped themselves with machetes and masks for that purpose. Later in the day they proceeded to the pizza house in a car driven by Mr. McLaughlin. The three girls entered the pizza house with their weapons and demanded money. Mr. McLaughlin remained in the car The amount of money which they obtained was comparatively small, under some $400. On the way out they helped themselves to two bottles of fizzy drink.

5. The four respondents were arrested and they pleaded guilty: Miss Avila on 23 July; Mr. McLaughlin and Miss Watson on 6 August 2010.

6. In the course of his sentencing remarks, the judge was referred to the sentencing guidelines issued by the Chief Justice on 16 January 2002. The relevant guideline in relation to robbery is in these terms:

"As regards offences of dishonesty:
For robbery, a first offence involving the use of a firearm could attract a tariff of 14 years.
Otherwise for a first offence of an aggravated nature, eight years will be imposed."

Those guidelines can be compared with the guidelines current in the United Kingdom relating to the robbery of small businesses, or less sophisticated commercial robberies, which suggest that, where a weapon is produced or used to threaten and/or force is used which results in injury to the victim, the starting point would be four years in custody with two to seven years being the appropriate sentencing range. In the case of a young offender, the starting point was rather lower - three years' detention with a range of one to six years.

7. The courts in this jurisdiction have emphasised - most recently in the case of *R v Josh Bodden*, who was sentenced on 17 December 2010 - that there has been an alarming increase in offences of this nature (that is robbery of small commercial premises) in recent months. There is, therefore, a particular need in this jurisdiction to mark the seriousness of such offences by an appropriate sentence. Hence the concern which has led the Attorney-General to refer the matter to this Court.

8. The seriousness of an offence of this nature does not lie, primarily, in the amount that is obtained in the robbery: for that amount is likely to depend on how much there happens to be in the till at the time when the robbery takes place. The seriousness of the offence lies in the threat to those who own and work in such businesses which, generally, are not protected by sophisticated security. They are entitled to go about their daily business, and to earn their living, without the threat of being accosted by a gang of young offenders wielding machetes. It must be made clear that the conduct of the offenders in this case is unacceptable: it should be recognised in this jurisdiction that the courts will take a serious view of such conduct.

9. The judge, having been referred to the guidelines, reminded himself first of the observations of Lord Lane, CJ, in the United Kingdom case of *R v Bibi* [1980] 1 W.L.R. 1193:

> "[The] sentencing court must be particularly careful to examine each case to ensure, if an immediate custodial sentence is necessary, that the sentence is as short as possible, consistent only with the duty to protect the interests of the public and to punish and deter the criminal."

But he then went on to say this:

> "I adopt that statement as relevant to this particular case bearing in mind, as I said before, the guidelines distributed by the learned Chief Justice would not apply to this particular case where the defendants have pleaded guilty."

10. That, if I may respectfully say so, was not the correct approach. The guidelines apply in all cases. Where there has been a guilty plea, it will be appropriate to allow a suitable and proportionate discount from the sentence which would have been passed had the matter been fought on a plea of not guilty and gone to trial. That is common to all sentencing exercises and is based on the desirability of encouraging offenders who recognise their guilt to plead guilty and so avoid the waste of time and expense and the need for witnesses to come to court to give evidence which is involved in a trial. So a discount is appropriate; but it is a discount starting from a point indicated by the guidelines.

11. Of course the guidelines are no more than guidelines: as is often said, they are not tramlines. Nevertheless, those who arm themselves with weapons and undertake premeditated robbery of small commercial premises in this island must expect at least five years' imprisonment if they are convicted. From that starting point, the judge ought to have asked himself what was an appropriate discount having regard to both the aggravating factors and the mitigating factors in this case.

12. The aggravating factors, as the judge identified at page 99 in the transcript with which we have been provided, were that machetes and threatening words were used to intimidate the staff at the pizza house. The mitigating factors, as the judge also identified, was that the defendants pleaded guilty and cooperated with the police at an early stage, Further, as the judge saw it – despite the fact that none of these offenders have thought fit to tell either the Social Services or the court why it was that they decided to embark on a premeditated robbery on 3 June 2010 - there was some indication of remorse.

13. In our view, had the judge tackled his sentencing exercise in accordance with principle starting with a sentence in mind of five years on a guilty plea for this type of offence, he could not have reached the conclusion that an appropriate sentence, after taking account of the guilty plea and the youth of the offenders in question, was less than three years.

14. The judge sentenced these offenders, other than Mr. McLaughlin, to two years. The effect of sentencing for two years was that the judge was able, under the provisions of section 27(2) of the Penal Code, to suspend 75 percent of that sentence and to direct that only six months needed to be served. Had he sentenced to three years, that option would not have been available to him.

15. In imposing a sentence of two years, the judge gave no credit for the period that the defendants had already spent in custody while on remand. It is important to appreciate that a sentence of two years without credit for time already spent in custody was, in the circumstances of the present case, the equivalent to a sentence of some 30 months (or a little more) if, following the usual practice in this island, credit had been given for time spent on remand. But, again, had the judge imposed a sentence of 30 months, he would not have been able to suspend 75% of that sentence.

16. In the events which have occurred, the defendants Avila and Watson were released from custody in February 2011. The effect, now, of imposing a sentence of three years would be not only to return them to custody, but to return them to custody for the full period of three years: less, of course, the normal opportunity for earlier release which applies to any term of imprisonment. We have to consider whether that is an appropriate response in the circumstances in which this matter now comes before the court.

17. We have given that question anxious consideration. We have reached the conclusion that it is not necessary, in order to maintain public confidence in the proper administration of justice, to return these offenders to custody. Accordingly, without in any way intending to detract from our view that three years' imprisonment would have been the proper sentence for the judge to impose

in this case, we do not think it appropriate, under the powers conferred by section 30 of the Court of Appeal Law, now to substitute, in place of the sentence actually imposed by the judge, a sentence of three years (or some other sentence).

18. .In the outcome, the defendants Avila and Watson can regard themselves as fortunate: in that the passage of time has placed them in a position which is considerably more favourable than they would have been had an appropriate sentence been passed in December 2010. But, in the circumstances that they have served a not inconsiderable time in prison - and are faced, as they should appreciate, with the probability that any further infringement of the law during the remaining period of their suspended sentence will result in their being returned to prison - we do not think it necessary to do so now.

19. For similar reasons we do not think it necessary to interfere with the probation order which has been passed on Mr. McLaughlin. We were told - and it is to the credit of his parents – that that order is working. We hope that it will continue to work. If it does not, the court will have the ability to deal with the problem as it arises.

20. In those circumstances, therefore, in relation to the offenders Avila, McLaughlin and Watson, we do not substitute other sentences in the place of those which were imposed by the judge.

21. As I have said, we have adjourned the reference in relation to the defendant Haylock for consideration. But the Attorney-General may take the view - and it is of course a matter for him – that, in the light of the reasons just given, it is unnecessary to pursue that reference further.

Chadwick P

Forte JA

Campbell JA