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

INDICTMENT NO: 68/2010

THE QUEEN

V

JOSH ALEXANDER BODDEN

Appearances:

**For the Crown:
Crown Counsel, Mr. John Masters**

**For the Defendant:
Mr. John Furniss**

Before:

The Honourable Mr. Justice Charles Quin

Heard:

17th December 2010



SENTENCE JUDGMENT

1. The Defendant pleaded guilty to one count of robbery contrary to s.242 of the Penal Code (2007 Revision).
2. The particulars of the offence are that the Defendant, Josh Bodden, on the 21st day of July 2010, at Fountain Road, West Bay, Grand Cayman, stole CI\$46.00 and US\$2.00 from Archibald Bonner, and immediately at the time of doing so, and in order to do so, put Mr. Bonner in fear of being then and there subjected to force.

Facts

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3. At approximately 8:00 a.m. on the 21st July 2010 Mr. Bonner opened his shop when he saw the Defendant, whom he knew, approach him with what appeared to be a firearm. The Defendant pointed the firearm at Mr. Archibald's face. Mr. Archibald thought it was a joke when suddenly the pointed firearm was clicked by the Defendant.

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4. Mr. Archibald was sufficiently frightened enough to pick up the cash box and give it to him, whereupon the Defendant said, "*I will bring you back something.*"

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5. The Crown accepts that the Defendant used an imitation firearm and not an unlicensed, legitimate, gun. The Crown also accepts that the Complainant was very familiar with the Defendant.

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6. The Defendant ran away from the property and was picked up a few hours later by the police and arrested for armed robbery, at which point the Defendant said, "*I understand.*"

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7. Defence counsel, Mr. Furniss, described the Defendant as the most polite of robbers. Whilst the Defendant used a toy gun, Defence counsel accepts that the victim might not immediately be able to distinguish between a real gun and a toy gun, and therefore the fear and terror would be the same, regardless of which implement was being used.

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8. Defence counsel submitted that the Complainant knew the Defendant, and the Defendant knew the Complainant, and the Defendant suggested he would pay him back later.

1 9. The Defence also submits that the Defendant threw the gun and the money away
2 and he admitted his guilt.

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4 10. The Defendant has 11 previous convictions, mainly for drug offences, but also
5 for disorderly conduct and for possessing an offensive weapon. He has no
6 convictions for dishonesty. He received a probation order in November 2008 and
7 another probation order in May 2009. Therefore this offence was committed in
8 breach of the probation orders.

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Analysis

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14 11. The Court accepts that the Defendant used an imitation gun, but, at the same
15 time, notes that this is a very serious offence, and one which put the Complainant
16 in considerable fear for his life. Whether the firearm is real or an imitation is not
17 a major factor in determining the appropriate sentence of imprisonment because
18 the amount of fear created in the victim is likely to be the same.

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20 12. The Court notes that the Defendant was honest with the police, and during the
21 interview process he was forthcoming with information and clearly contrite.

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23 13. I have received a very helpful report dated the 7th December 2010 from the
24 Probation Officer, Tricia Smith. Regrettably, she confirms that there is a high
25 level of risk of the Defendant re-offending, and that he poses a risk of harm to
26 himself and to others.

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28 14. I also note that the Defendant has a significant drug problem, and in fact
29 committed the offence in order to obtain money to support his drug habit.

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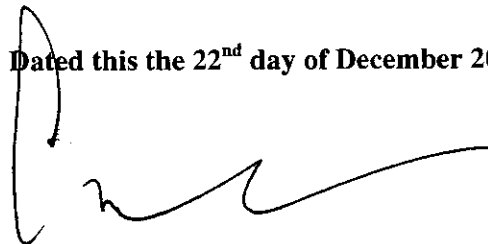
- 1 15. I have listened to all submissions made by Defence counsel on behalf of the
2 Defendant and I have read the Probation Officer's report. I agree with the
3 Probation Officer when she states that the offence is a grave one and cannot be
4 taken lightly – especially when one considers the alarming increase in offences of
5 this nature in recent months.
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7 16. I have received helpful guidance from the Guidelines of the Sentencing
8 Guidelines Council of the United Kingdom, chaired by the President of the
9 Supreme Court, Lord Phillips, and published in February 2008. These can be
10 found at Appendix 8 in Blackstone's Criminal Practice 2008. These Guidelines
11 specifically refer to robberies of small businesses and indicate that where a
12 weapon is produced and used to threaten a victim, the starting point for a first-
13 time offender, after a trial, is 4 years imprisonment and the Sentencing range is
14 between 2 and 7 years.
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16 17. I accept that in this case the Defendant did not conceal his identity nor is there
17 any evidence of any significant planning of the robbery. In fact, on the evidence,
18 I would take the view that this is not a planned robbery but an opportunistic
19 robbery, which was carried out on the spur of the moment.
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21 18. However, on any view, this is a serious offence which put the shopkeeper in fear
22 for his life. It must have been a terrifying experience. The Court takes into
23 account the escalation of this type of offence in the Cayman Islands. The
24 business community and the public deserve and need protection. The Court has
25 to impose a sentence which reflects the appropriate punishment and also acts as a
26 deterrent to others.
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1 19. Therefore, it is the Court's view that in all the circumstances of this case the
2 appropriate sentence is four years imprisonment.

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9 **Dated this the 22nd day of December 2010**

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12 **The Honourable Mr. Justice Charles Quin**
13 **Judge of the Grand Court**

