

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
Criminal Appeal No. 21 of 2010
(Indictment Nos. 72,B,C,D/08)
C#(05213/08, 05217/08, 05215/08)

Between:

HER MAJESTY THE QUEEN

Respondent

- and -

JAMES ORVILLE EBANKS

Appellant

NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that JAMES ORVILLE EBANKS having sought leave to appeal against *his* SENTENCES passed upon *him* by the Grand Court on the 14th day of April, 2010, as set out below:

THEFT (04952/08)
1 year imprisonment.
THEFT (05213/08) Count 1
1 year imprisonment consecutive.
CRIMINAL DAMAGE (05213/08) – Count 2
6 months imprisonment concurrent.
THEFT (05217/08) Count 3
1 year imprisonment consecutive.
THEFT (05215/08) Count 5
6 months imprisonment concurrent.
THEFT (05217/08) Count 7
1 year imprisonment consecutive.

The Court of Appeal has this 29th day of November, 2010 given judgment therein to the effect following:

1. Appeals against sentences having been withdrawn on all counts except count 3 (Stocks and Blondes) are therefore dismissed.
2. Appeal against sentence on count 3 dismissed.
3. Conviction and sentences affirmed.
4. Legal aid granted to John Furniss. Transcript of oral judgment to be released.

Dated 12th September, 2011

Registrar



IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIM. APPEAL NO. 21/10

BETWEEN:

JAMES ORVILLE EBANKS

Appellant

and

THE QUEEN

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK, President
THE HON. JUSTICE I. FORTE J.A.
THE HON. JUSTICE E. MOTTLEY J.A.

Court Proceedings on 29 November 2010

APPEARANCES:

Mr. J. Furniss

for the Appellant

Ms. C. James

for the Respondent



1 theft from that vessel of fishing rods, fishing
2 tackle, towels, a wallet and a duffle bag.

3 The fourth was a catamaran known as
4 "Spirit of Calypso", some 65 feet long. Mr.
5 Ebanks was sailing this vessel towards
6 Venezuela when picked up by the marine
7 services. That vessel, therefore, was also
8 recovered. The value of the catamaran was
9 close to \$1,000,000.

10 The judge sentenced Mr. Ebanks to one year
11 imprisonment on each of the counts of theft of
12 a vessel; making four years in all. He
13 sentenced him to six months on the count of
14 criminal damage and to six months on one of the
15 counts of theft. He does not appear to have
16 sentenced on Count 4, which was theft from
17 Stocks and Blondes. The judge directed that
18 those sentences of six months' imprisonment
19 should run concurrently. The total time to be
20 served, therefore, was four years overall.

21 In passing sentence, the judge said this:

22 "In imposing sentence, I must
23 consider all of the relevant
24 principles of sentencing; that
25 is to say, deterrence of this

1 offender, deterrence of other
2 like-minded members of the
3 public, protection of the
4 public, and the possibility of
5 rehabilitation. No violence has
6 been involved in any of these
7 crimes against property so the
8 protection of the public, while
9 it is a significant factor, does
10 not outweigh the need to
11 consider the rehabilitation of
12 the offender. All of the
13 principles of sentencing must be
14 taken into account and balanced
15 against each other. In
16 addition, I must arrive at a
17 global sentence which is fair in
18 all of the circumstances."

19 The possibility of rehabilitation had been
20 raised in a social inquiry report which was
21 before the judge. The conclusion of the
22 probation officer was that Mr. Ebanks presented
23 a very high risk of reoffending. His record
24 stretched back to 1982; and -- as appears from
25 the information before the Court -- involved

1 some 53 separate offences. It is plain that
2 the judge did not think that there was any real
3 prospect that Mr. Ebanks would respond to a
4 sentence involving rehabilitation. He went on
5 to say this:

6 "Taking into account everything
7 I have said and the arguments of
8 counsel, it is my view that an
9 appropriate sentence is
10 imprisonment for one year on
11 each count. That would
12 ordinarily result in a term of
13 imprisonment of six years, but
14 it should be reduced because of
15 the guilty plea. I will reduce
16 that to four years. I will
17 allocate the sentence in this
18 way: I sentence Mr. Ebanks to
19 prison for one year [in] respect
20 to each of the four counts of
21 theft of a boat, and I sentence
22 him to six months on the theft
23 of items from a boat and the
24 damage to property counts. All
25 of the sentences of theft of a

1 boat are to be consecutive to
2 each other. The two six-month
3 sentences are to be concurrent
4 with all other sentences. So
5 the global sentence is four
6 years' imprisonment."

7 The judge fell into error in failing to
8 sentence on one of the counts of theft to which
9 Mr. Ebanks had plead guilty, but it may be
10 assumed that he would have passed a sentence of
11 six months on that count also; and would have
12 directed the sentence to be served
13 concurrently. So, overall, the position would
14 have been the same.

15 Mr. Ebanks appealed from all of those
16 sentences. He asked the Court to consider
17 substituting a rehabilitation sentence in the
18 place of the sentences of imprisonment.

19 This morning, when represented by Mr.
20 Furniss -- and having no doubt in mind the
21 possibility that this Court might think it
22 appropriate to exercise its power to increase
23 the sentences for theft of the more valuable
24 boats -- Mr. Ebanks instructed counsel to
25 abandon his appeal against sentences on all

1 counts except the count relating to the theft
2 of the vessel Stocks and Blondes on 12th May
3 2008. It is said that we should reduce the
4 sentence passed in respect of Count 3 -- that
5 is, the single sentence of one year in relation
6 to the theft of Stocks and Blondes -- on the
7 grounds that, in comparison with the thefts of
8 the other vessels, that was a less serious
9 offence and should have attracted a lesser
10 sentence than the one year for which Mr. Ebanks
11 was sentenced on each of those other offences.

12 The first question, therefore, is whether
13 one year was an excessive sentence for the
14 theft of the 29-foot Boston Whaler on the
15 12th of May 2008. Mr. Ebanks had taken that
16 vessel from its mooring at Laguna Del Mar to
17 the north of the island, east of Pappagallo in
18 the Barkers area of Grand Cayman. Mr. Ebanks
19 said that essentially he took the boat for a
20 joyride when under the influence of crack
21 cocaine and alcohol.

22 To persuade us to reduce that sentence or
23 interfere with the judge's conclusion, counsel
24 must persuade us that a one-year sentence for
25 the taking of a 29-foot Boston Whaler for a

1 joyride without damaging the vessel is
2 manifestly excessive on a guilty plea. The
3 maximum sentence which courts would pass on a
4 count of theft would be ten years. Taking
5 account of the guilty plea and of the
6 difference between the value of the vessel
7 Stocks and Blondes and the other vessels, we
8 are not persuaded that a one-year sentence is,
9 of itself, manifestly excessive.

10 The second question is whether a one-year
11 sentence on Count 3 is manifestly excessive
12 when compared to the sentences passed on the
13 other counts of theft. Had the judge
14 considered each vessel separately, it is likely
15 that he would have come to the conclusion that
16 a greater sentence would be appropriate for the
17 more valuable vessels: in particular, in
18 respect of the "Carib Wave" which was sailed to
19 Honduras and sold and the catamaran "Spirit of
20 Calypso" that was intercepted on its way to
21 Venezuela. But, in the circumstances of this
22 case, where the judge was considering the
23 matter on a global basis, the individual
24 sentences do not provide appropriate
25 yardsticks; and the attempt to put the others

1 on one side by abandoning the appeals may be
2 seen as opportunistic. We are not impressed by
3 it.

4 In those circumstances, the appeals on all
5 counts other than Count 3 are treated as
6 abandoned; and the Court dismisses the appeal
7 against sentence on Count 3.

