

29/6/04

IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN IN GEORGE TOWN, GRAND CAYMAN

IND. NO. 61 OF 2003

- Criminal.

REGINA

- VS -

LEONARD ANTONIO EBANKS

Transcript of the reasons for sentence before
THE HONOURABLE JUSTICE SANDERSON on the 29th day of
June, 2004, in George Town, Grand Cayman.

CHARGE: ROBBERY

APPEARANCES:

For the CROWN:

MS. M. SMITH

For the DEFENDANT:

MR. J. FURNISS

1
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- Sanderson J.

1 Tuesday, June 29, 2004

2
3 R E A S O N S F O R S E N T E N C E
4

5 SANDERSON J.:

6
7 Leonard Antonio Ebanks has plead guilty to
8 the offence of robbery which carries a maximum
9 penalty of life in prison.

10
11 The facts are these:

- 12
13 1. On June 16, 2003, he entered the property of
14 his neighbour at around 10:00 p.m. His
15 neighbour was Alvey Webster, who was also his
16 cousin.
17
18 2. He asked Mr. Webster for some cigarettes but
19 Mr. Webster refused. This conversation
20 occurred through the open back door of Mr.
21 Webster's home.
22
23 3. After Mr. Webster's refusal, Mr. Ebanks walked
24 in through the open door. He had been in this
25 house on previous occasions. He repeated his

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1 request for cigarettes and it was again
2 refused.

3
4 4. A scuffle then broke out between the two men.
5 Mr. Ebanks drew a machete from his waistband
6 that Mr. Webster had not seen before. He
7 waved the machete in the air. Mr. Ebanks had
8 grabbed Mr. Webster by the shirt near his
9 neck and Mr. Webster's gold chain and
10 medallion were broken off.

11
12 5. Mr. Ebanks kept the gold chain and medallion
13 and left with it. It was valued by Mr.
14 Webster at \$398. Mr. Ebanks sold it I think
15 for approximately \$20.

16
17 In passing sentence, I consider generally the
18 following factors:

- 19
20 1. Protection of the public.
21 2. Deterrence to others.
22 3. Rehabilitation of the accused.

23
24 In this country, robbery is viewed as an
25 extremely serious offence. The sentencing

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1 guidelines provide that for a first offence, if it
2 involves the use of a firearm it could attract a
3 tariff of 14 years. Otherwise, for a first
4 offence of an aggravated nature eight years will
5 be imposed.

6
7 The aggravating features of this case are
8 these:

- 9
- 10 1. Mr. Ebanks was carrying a weapon and he chose
11 to take it out and threaten its use by waving
12 it around. If weapons are carried and then
13 drawn, it is just a matter of luck whether or
14 not someone gets hurt or killed. If the
15 weapon had not been carried and drawn, this
16 sentencing would have been quite different. - 17
 - 18 2. The robbery occurred in the complainant's
19 home.
 - 20
 - 21 3. Mr. Ebanks has a long criminal record. He has
22 31 prior convictions, dating back to 1988 when
23 he first began to use cocaine. He has been a
24 cocaine user since that time. The significant
25 prior convictions are these:

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1 (a) In 1990 he was convicted of robbery and
2 sentenced to four and a half years. He
3 robbed a gas station in West Bay using a
4 firearm.

5
6 (b) He has two other previous convictions for
7 carrying an offensive weapon, one in 1997
8 for carrying a knife that he found, and
9 one in 2003 for carrying a machete.

10
11 In addition to the robbery, Mr. Ebanks has
12 three convictions for assault, the first in 1991,
13 the second in 2000 and the third in 2003.

14
15
16 The mitigating factors to consider are these:

- 17
18 1. He plead guilty, although only after the
19 complainant and eyewitness gave their
20 testimony.
21
22 2. He said however, and I accept, that he was
23 always prepared and had offered to plead
24 guilty to theft and assault.
25

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- 1 3. His family has already paid Mr. Webster
2 compensation in the amount of \$150.
3
4 4. The complainant says that he has forgiven
5 Mr. Ebanks and he did not want to proceed
6 with the charges.
7
8 5. I am told that for the first time in his life
9 Mr. Ebanks is now undergoing drug counselling
10 and has been doing so for approximately two
11 months.
12
13 6. In my view, Mr. Ebanks did not enter into
14 Mr. Webster's home with any intention of
15 committing a robbery. That intention
16 occurred later during the scuffle.
17
18 7. Apart from the drawing of the machete, the
19 scuffle between the two men was relatively
20 minor and no significant injuries were
21 reported.
22

23 In my view, the most significant factors in
24 this case are the use of the machete and the
25 accused's criminal record. He has used weapons

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1 and behaved violently towards others on too many
2 occasions. I feel he is a threat to society. I
3 believe that he has not learned very much from his
4 previous convictions, and if I were to impose a
5 light sentence it would be served and he will be
6 back on the street in a short period of time,
7 putting himself and others at risk.

8
9 On the other hand, I am not without hope that
10 he can turn his life around. That hope is slim,
11 but I feel I must give it some chance.

12
13 In all of the circumstances, I think a
14 sentence of five years imprisonment is
15 appropriate. During incarceration, I order that
16 you undergo all drug treatment and drug
17 counselling that is available to you in prison.
18 MR. FURNISS: My Lord, could I ask that whatever
19 time that he has available -- it will be a matter
20 I say between him and the prison authorities, in
21 view of those convictions from May of this year,
22 that whatever time, if there is any left, might
23 count towards the sentence, My Lord?

24 THE COURT: Yes, the ordinary rule that will
25 apply, Mr. Furniss, which is this, as I understand

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1 it: time served in custody will count towards the
2 sentence provided that that time served has not
3 gone towards the counting of some other sentence.
4 MR. FURNISS: Indeed, sir.
5 THE COURT: So I think the answer to your question
6 is yes.
7 MR. FURNISS: Thank you.
8 THE COURT: Mr. Ebanks, you have a question.
9 MR. EBANKS: My Lord --
10 THE COURT: Perhaps you'd like to speak to Mr.
11 Furniss before you ask me.
12 MR. EBANKS: No, sir.
13 THE COURT: No?
14 MR. EBANKS: This is for you, sir.
15 THE COURT: All right.
16 MR. EBANKS: This is about the times that -- I can
17 understand not getting from May 4th until the 24th
18 of this month, which my incarceration was
19 finished, but from July 10th until May 4th, Your
20 Honour, I was remanded before both the summary
21 matters and the Grand Court matters. So I am
22 begging the court to have that time restored back
23 on me, sir.
24
25 After May 4th I was sentenced, so I can't

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1 expect no time from there until the completnce
2 (phonetic) of that sentence, which was completed
3 on the 24th of this month. So from the 4th of May
4 till the 24th of June I can only expect one.

5 THE COURT: I understand your request, Mr. Ebanks,
6 and I've granted that request. If you were on
7 remand for this offence and your time is not
8 served, has not been used to the credit of any
9 sentence that you were under, then it will count
10 towards the five years.

11 MR. EBANKS: This is what I'm saying, Your Honour.
12 Truth is I was remanded in both cases at the same
13 time. The prison gave me that back when I got
14 sentenced on the 4th. So unless you directly say,
15 well, the fairness of it -- being on remand for it
16 to have it back, if only you, the --

17 THE COURT: I understand, Mr. Ebanks. If you were
18 on remand -- the time will count as time served if
19 you are on remand. Mr. Furniss will check with
20 the prison authorities, and if there's a
21 difficulty with the prison authorities or any
22 problem with calculation, he can come back before
23 a judge at any time. My order is clear, if you're
24 on remand then the time served on remand will
25 count towards the sentence. If the time that you

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1 were serving has been counted towards another
2 sentence or a conviction, then it will not count
3 as time served on this offence. And the five
4 years in this case will run consecutive to any
5 other time that is being served for any other
6 offence.

7
8 Mr. Ebanks, I want you to do your best on the
9 drug rehab program. If you do that sooner rather
10 than later, I hope you can turn things around.

11 MR. FURNISS: Obligated, My Lord.

12 MR. EBANKS: Your Honour, I'd like to speak my
13 mind frankly, sir, and I --

14 THE COURT: Yes.

15 MR. EBANKS: Thank you for having leniency and
16 mercy on me, first and foremost. But I'm a very
17 strong believer that two wrongs do not make a
18 right, sir. And the way the Crown went about
19 things yesterday was totally wrong, sir, and I
20 think there have to be some guidelines set in
21 place to make -- have them have an understanding
22 that they're not the law, they will uphold it.
23 And you cannot bamboozle people into doing things
24 like yesterday, because when I went and I called
25 my grandmother to let her know what happened --

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1 her and Mr. Webster works together, and I was told
2 by Mr. Webster that he was told by the Crown that
3 -- to just answer the questions and his letter,
4 everything would still stand after he answered the
5 questions, which I know it doesn't go so. He
6 doesn't have the kind of the knowledge of the
7 legal system that I do.

8
9 So, in a sense of speaking, sir, I do take
10 the sentence with a hard heart because it was a
11 all out persistence to carry a matter further that
12 was being resolved between the two individuals,
13 which we know that the court is here to resolve
14 any dispute between two individuals which do not
15 -- cannot find a resolution. Me and Mr. Webster
16 came to a resolution. We came to an answer.

17
18 I can't bring back what I did. And all my
19 convictions, you're looking at them, sir. They're
20 all drug orientated even from the first robbery.
21 Some of them happened 14 years ago, and I'm still
22 being penalized for it.

23
24 I went to prison to start the educational
25 program that is there. I was one of the founders

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1 of that, Your Honour. I sat in the first set of
2 GED's, went to college. I don't blame nobody for
3 my downfalls, I blame myself. I stopped blaming
4 others. I put the blame right square where it
5 lies, within me, because I have that choice. And
6 I know where my problem lie, my problem lie within
7 the use of cocaine.

8 THE COURT: Can you fix that?

9 MR. EBANKS: I'm trying my best to fix it, sir. I
10 have to fix it because I'm pretty sure, sir, the
11 next time you see me it will be either for a
12 murder charge or I'm going to the grave, and I
13 can't afford neither of the two of those, sir.

14 THE COURT: Well, Mr. Ebanks, you strike me as a
15 man who is intelligent --

16 MR. EBANKS: I do have high intelligence, sir.

17 THE COURT: -- and capable enough, so it's a
18 matter of choice.

19 MR. EBANKS: Yes, sir.

20 THE COURT: And you suffer an addiction.

21 MR. EBANKS: Yes, sir.

22 THE COURT: And you need help with that addiction.

23 MR. EBANKS: Yes, sir.

24 THE COURT: And if you can overcome that
25 addiction, I think you'll be all right. And if

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1 you can't, I'm afraid you won't be --

2 MR. EBANKS: And just another --

3 THE COURT: Let me deal with your comments because
4 some people are under the misapprehension that in
5 a criminal case it's a dispute between two
6 individuals and if one person drops the charge
7 then that's the end of the matter. That is a
8 misunderstanding. It is not a dispute between two
9 individuals. If a crime has been committed, an
10 offence has been committed, it is not up to the
11 complainant or the person who's injured to
12 determine whether or not the charge goes ahead.
13 If that were the case, if it was always up to the
14 victim, what would happen in every case is the
15 victim would be under incredible pressure from the
16 accused either directly or through the accused's
17 acquaintances to drop the charges. So you can
18 imagine what the system would be like. Somebody
19 would complain about an offence and the accused
20 would be strong armed by all kinds of unsavoury
21 characters and threatened. And so it can't be up
22 to the accused -- and in some cases it's not even
23 up to the Crown -- it has to be up to the court.
24 The court has to make sure that the rules of the
25 game are kept, that the laws are obeyed, and you

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1 broke the law.

2 MR. EBANKS: I clearly admit that from the
3 beginning.

4 THE COURT: And I did --

5 MR. EBANKS: I was really relying on him for that,
6 sir.

7 THE COURT: I know.

8 MR. EBANKS: And that understanding I do have was
9 more to say that this robbery, how they put it as
10 a robbery, which to me if he never had that knife
11 in my face I would have never pulled the machete
12 out of my waist. I mean -- but as I say, two
13 wrongs cannot make a right.

14 THE COURT: And that's the other option --

15 MR. EBANKS: I --

16 THE COURT: Mr. Ebanks. There was no evidence
17 that he pulled a knife. But even assuming that
18 there was, there's always that other option.

19 MR. EBANKS: Yes, sir.

20 THE COURT: There's always that other option,
21 isn't there?

22 MR. EBANKS: Walk away.

23 THE COURT: Turn around and walk away.

24 MR. EBANKS: But the point I'm getting at, sir,
25 Mr. Webster -- Mr. Jackson clearly stated here

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1 before he left, the problems arises out of his
2 homosexuality. He be's up, he be's waiting up all
3 night, waiting for his, as Mr. Jackson -- and I do
4 quote, "parade". Now, this man -- this man here,
5 he allows his yard for the use and sale of drugs.
6 As far as the last time I checked, pornographic
7 material is illegal in these islands. Same -- DC
8 Julian Lewis, last time I see him at Northward he
9 told me he had searched the place, found these
10 tapes. He's waiting for -- to legally charge him.
11 Mr. Webster is also up on criminal charges for
12 possession of marijuana that never seems to go
13 nowhere. I mean, you stop and you wonder about
14 the system, sir.

15 THE COURT: Well, you know --

16 MR. EBANKS: But --

17 THE COURT: You know what? Mr. Ebanks, just --

18 MR. EBANKS: -- rule it out.

19 THE COURT: Just a second. Just a second. You
20 don't want to rule the system out, it works pretty
21 well. I don't want to hear anything more about
22 Mr. Webster. But if everything you say is true
23 about any victim, if the victim is the most awful,
24 terrible, evil, corrupt person in society, you
25 can't attack them, you can't hurt them.

15
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1 MR. EBANKS: I understand that.

2 THE COURT: You can't commit crimes against them.

3 MR. EBANKS: That's true, sir. They have the --

4 THE COURT: And that's the beauty --

5 MR. EBANKS: -- same rights.

6 THE COURT: That's the beauty of the legal system.

7 It protects everybody the same.

8 MR. EBANKS: I know, sir, but this --

9 THE COURT: Just let me finish this. You have 31
10 convictions.

11 MR. EBANKS: Uhm-hmm.

12 THE COURT: That gives nobody the right, sir, to
13 hold a machete over your head or threaten you,
14 does it? And if somebody does that to you and you
15 complain and you come into this court, the judge
16 will treat the accused exactly the same as he
17 would treat him or her if you had no convictions.
18 Your character doesn't affect what the accused
19 did.

20 MR. EBANKS: Thank you very much, sir.

21 THE COURT: Sir, I want you to do your best.

22 MR. EBANKS: Yeah, man. But to be able to do my
23 best I have to ask you this morning for your
24 consent. Right now where my present stay to me,
25 sir, is the most safest place in the prison.

16
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1 THE COURT: Is what?

2 MR. EBANKS: Is the most safest place in prison.

3 THE COURT: What is the safest place?

4 MR. EBANKS: Well, you see, my understanding is
5 this has to do with time in a safe environment to
6 make the best of it for yourself, to make the most
7 appropriate choices for your rehabilitation. As
8 you see on my convictions and you say of violence,
9 there's quite a few that's there -- that's not
10 there, that has never made it to the legal
11 department, nor even to the police station. I do
12 have quite a few anyways, sir. So I'm asking, for
13 my well-being, that if you can ask the officers to
14 leave me where I am to do my sentence because if I
15 get the ten months back I ain't too far off the
16 parole time because I got 21 months before I'm
17 eligible for parole. I am, for the necessary
18 criteria, to attain that once that day arrives.

19 THE COURT: Where are you now?

20 MR. EBANKS: I'm at Delta Roman. Mr. Brown here,
21 he will be able to instruct the prisons once he
22 gets verification from you.

23 THE COURT: I have no --

24 MR. EBANKS: You have that power, sir.

25 THE COURT: I don't have any power sir, as far as

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1 I'm aware, to direct where you are incarcerated.
2 That's up to the prison authorities.

3 MR. EBANKS: Well, I can pretty much guarantee
4 you, sir, you'll be seeing me again then.

5 THE COURT: Well, what does that mean?

6 MR. EBANKS: Because the first person that's
7 getting me in a bad manner, sir, I'm gonna set
8 them --

9 MR. FURNISS: If I could just indicate in relation
10 to the current situation. Mr. Ebanks was at
11 Central for a period of time because of problems,
12 so I will write to prison authorities in respect
13 of the situation and what has been said in the
14 court this morning so that even if the officer who
15 is present does not pass on that comment and that
16 concern expressed by Mr. Ebanks, I will write to
17 the authorities at Northward.

18 THE COURT: Ms. Smith, do you know if I have any
19 authority to direct where the inmate should be
20 incarcerated?

21 MS. SMITH: No, please, My Lord, I don't believe
22 so. Once you pass sentence, it is up to prison
23 authorities as far as...

24 THE COURT: I did it once before, but that was
25 with the consent of the Crown and the prison

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1 authorities.

2 MS. SMITH: My Lord, Mr. Furniss says that he's
3 aware of these difficulties that Mr. Ebanks has
4 had. I don't believe that the Crown -- I am not
5 aware of them. We are not aware of any particular
6 difficulty. Maybe if it were brought to our
7 attention, maybe senior Crown counsel can have a
8 look at it. But at this point, we are not aware
9 of a particular difficulty.

10 THE COURT: Well, will you do what you can to
11 assist Mr. Furniss in this?

12 MS. SMITH: Yes, please, My Lord.

13 THE COURT: Thank you.

14 MR. FURNISS: Thank you, My Lord.

15

16

17

(COURT ADJOURNED AT 10:45 AM)

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