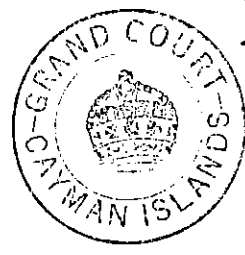


18/5/2000

See
Sam
22/7/2000



1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2
3 INDICTMENT 57A AND 57B
4
5
6

7 THE QUEEN

8
9 V

10
11 DESMOND BAILEY
12 DELBERT BAKER
13 ALPHONSO SMITH
14 KENNETH RICHARDS
15



16
17 (Written judgment delivered convictions entered against the defendant
18 Richards; other defendants already convicted on their own pleas).
19

20
21 **SENTENCE**
22
23

24 **Desmond Bailey**

25 By your pleas which have been accepted by the Crown, you stand convicted for the
26 offences of being an accessory after the fact to robbery and handling stolen goods.

27 Both counts relate to your involvement after the fact of the robbery by which you
28 accepted \$12,000 stated in the indictment (or \$13,000 based on the evidence) - the
29 difference is immaterial now - from the defendant Kenneth Richards to be delivered to
30 Peter Bogle. You knew or believed that this money came from the robbery. You must
31 also have known that persons had been shot and seriously injured during the course of the
32 robbery.

1 As you plead to being an accessory after the fact, it is appropriate that I also note the
2 circumstances in which you acted: you facilitated the removal of the sum of 12 or 13
3 thousand dollars from the Cayman Islands to Jamaica for delivery to Peter Bogle and you
4 did so with the intent to impede the apprehension or prosecution of Kenneth Richards and
5 Peter Bogle - those whom you knew or believed had committed these very serious
6 offences. You admitted in your statements to the police that you received this money on
7 18th or 19th April by which time you would likely have heard that Mr. Myles one of the
8 security guards who had been shot, had died. You have not however been convicted of
9 being an accessory after the fact to murder. Nonetheless, your involvement although
10 after the fact to robbery is to be regarded as of the most serious kind as an accessory and
11 that is the starting point for the purposes of sentencing.

12 This Court has a duty to make it plain, in order to deter others, that those who assist in
13 any way in the disposal of the proceeds of serious crime must expect to receive severe
14 sentences.

15 I must, before deciding, however, consider the factors in your favour.

16 You have no previous convictions. At 30 years of age that is significant indication that
17 until now your natural inclination has been to prefer right over wrong for, as your
18 attorney has observed, your personal circumstances have been such that the slippery
19 slope of temptation has perhaps never been far from your path until now. It seems you
20 have been well served by your religious beliefs. But for the influence of those who got
21 you involved, I must assume that you would not be before the Court today.

22 I note also that you gained no personal benefit from the money which you handled for
23 Peter Bogle's benefit. He remains a fugitive at large in Jamaica.

1 By your willingness to admit guilt from very early after arrest, you have shown
2 contrition.

3 You have co-operated with the police and the prosecution and your evidence which was
4 accepted on the most material issues was of value to the Crown's case.

5 For the offence of **being an accessory after the fact to robbery** (assisting an offender)
6 the Law prescribes a maximum of 3 years imprisonment. The sentence I impose is 18
7 **months**.

8 For the offence of **handling stolen goods** the maximum prescribed by Law is 14 years.

9 Even for a first offender, the circumstances here would justify a starting point of at least 7
10 years. However I take into account the significant factors in your favour amongst which I
11 count as most significant your apparently sincere contrition.

12 The sentence for this offence will be **4 years** imprisonment.

13 The sentences will run concurrently and time already spent in prison will be taken into
14 account.

15

16 **Delbert Baker**

17 You have been convicted on your own pleas of guilty to the offences of manslaughter and
18 robbery. These relate to the death of Mr. Myles resulting from the shooting during the
19 course of the robbery. You have also pleaded to being an accessory after the fact to
20 grievous bodily harm – the shooting of Mr. Ebanks.

21 As to the offences of manslaughter and robbery your pleas were accepted by the Crown
22 on the basis that although they drove them to the scene you were unaware that Richards
23 and Bogle had guns which they were prepared to use but that you expected they would

1 use some form of bodily force if met with resistance. I have nonetheless found that on
2 your evidence you were, along with Richards and Bogle, within the inner circle of
3 conspirators.

4 As to being an accessory after the fact, having heard the shots and so being aware that
5 serious injury might have been inflicted on the security officers, you nonetheless assisted
6 Richards and Bogle by taking them away in your car.

7 Now, while I must accept that you had no prior knowledge of the guns and - however
8 unintended the shooting and killing of Mr. Myles was from your point of view - the
9 sentence must reflect the gravity of the fact that death has been caused.

10 You are 39 years old with no previous convictions. By your early show of a willingness
11 to plead and to co-operate, I will accept that you have shown contrition.

12 You have in fact co-operated in very significant ways with the authorities and your
13 testimony has been helpful to the prosecution.

14 These are factors which the case law advises should entitle you to a significant discount
15 in sentence. From what Mr. Furniss has said, your co-operation has been in the face of
16 threats you have received and that is a matter which you have recorded with the police.

17 For the offence of manslaughter the case law suggests that the starting point should be, in
18 a case such as this - killing in the course of robbery - in the region of 18 to 22 years: See
19 Tominey 1986 8 Cr. App. Repts. 161. I am also aware of the case of R v Thomas and
20 Christian 1990 - 91 CILR 294 in which when a sentence of 14 years was imposed by this
21 Court for manslaughter. That was 9 years ago and the incidence of violent crimes have
22 only increased since then.

1 However, neither of those earlier cases had the factors which entitle you to a significant
2 discount - in particular that which I must accept because the Crown has accepted it - that
3 you had no prior knowledge of the intention to use guns.

4 The sentence for the offence of **manslaughter** will be **13 years**. The sentence for the
5 offence of **robbery** will be **10 years** and for being **an accessory after the fact to the**
6 **offence of grievous bodily harm - driving them away to prevent their arrest - 2**
7 **years**.

8 The sentences will run concurrently and time already served to be taken into account.

9 **Alphonso Smith**

10 Your pleas have been accepted by the Crown to 3 counts of the indictment: conspiracy to
11 commit robbery; handling stolen goods (the sum of \$5,000 which you accepted from
12 Richards) and possession of unlicensed firearms (the keeping and concealing of the guns
13 after the incident at Richard's request).

14 From your admitted involvement in the conspiracy, it must be seen as a fortunate
15 circumstance from your point of view, that you happened to have been away from the
16 Island at the time the robbery and shooting were committed. However you received a
17 large sum of money which you kept and used, and even if applied in the unselfish way
18 which you claim your discount cannot entitle you to the same treatment as Bailey on this
19 offence. The maximum penalty for the offence of conspiracy is 7 years imprisonment.

20 For the offence of handling, the maximum is 14 years and for unlawful possession of the
21 firearms, the maximum is 20 years.

22 In your favour I note that you have no previous convictions and that you made a clean
23 breast of your involvement, as your attorney has emphasised, within 5 days of your arrest.

1 You pleaded guilty, offered co-operation and did give important evidence for the Crown.

2 These are factors which the law says will entitle you to significant discounts from what
3 must in any event be strict and serious penalties.

4 For the offence of **conspiracy** the sentence will be **4 years** imprisonment.

5 For the offence of **handling the stolen money** the sentence will be **6 years**.

6 For the **unlawful possession of firearms** - you knew they had been used in the robbery
7 and shooting and you delivered them back to Richards nonetheless. The tariff of 10 years
8 of which the former Chief Justice spoke in the published guidelines was intended in
9 relation to less aggravated circumstances of illegal possession of firearms. Here though, I
10 must apply the discounts to which you are entitled from the which the sentence would
11 otherwise have been 14 years and the sentence will be **9 years**.

12 The sentences are to run concurrently with time already served to be taken into account.

13

14 **Kenneth Richards**

15 The sentence for your conviction for the offence of **murder is mandatory**: it is
16 **imprisonment for life** and I so pronounce.

17 There are however other counts on the indictment in respect of which you have been
18 convicted and I have had to consider the appropriate sentences.

19 **Grievous Bodily Harm**: I have found that the other man Peter Bogle must have fired the
20 shot that injured David Samuel Ebanks. This was nonetheless within the common design
21 of robbery hence your conviction on the count for G.B.H.. The sentence will be **10 years**
22 imprisonment on that count.

1 The offence of robbery was of the most serious possible kind - large sums of money
2 were stolen, violence was used which resulted in serious injury and death. The sentence
3 will be 18 years imprisonment.

4 As to the illegal possession of firearms - here too the circumstances are most egregious
5 including the manner in which you discarded one of them fully loaded in the vacant lot in
6 Windsor Park caring not at all whether some child may have come across it or whether,
7 some other person having a criminal intent might use it to take yet another life. That sort
8 of wanton disregard for the safety and life of others is exactly the conduct from which
9 society must be protected. This is the view I take even though you knew where the gun
10 was and could have retrieved it.

11 Your plea of guilty during the trial to the illegal possession simpliciter, but only as to
12 possession on the date the firearms were recovered; was obviously contrived to facilitate
13 your continued denial of involvement in the conspiracy, the robbery and shooting
14 incident and was in no sense a genuine expression of contrition.

15 Here too I can find no mitigating factor in your favour. The sentence for the illegal
16 possession of the firearms will be 14 years.

17

18

19

20


Anthony Smellie

21

CHIEF JUSTICE

22

23 Dated this the 18th Day of May 2000.

