

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

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5 **CASE NUMBERS: #00387/14; #03746/15; #03745/15**

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8  
9 **THE QUEEN**

10  
11 **V**

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13 **OTIS MELBOURNE MYLES**



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17 **Appearances:**

**Deputy DPP Mr. Patrick Moran for the Crown**

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19 **Ms. Alice Carver of Samson & McGrath for**  
20 **the Defendant**

21 **Before:**

**Mr. Justice Alastair Malcolm (Actg.)**

22 **Submissions heard:**

**23<sup>rd</sup> March 2016**

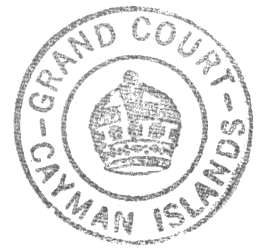
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26 ***HEADNOTE***

27 ***Criminal Procedure – Sentencing - Application of the Sentencing Guidelines***

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29 **SENTENCE RULING**  
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- 1        1.        In this case I have to sentence the Defendant, Otis Myles, who has been sent to  
2                    the Grand Court by the Summary Court under the provisions of s.7(2)(a) of the  
3                    Criminal Procedure Code (2014 Revision). There are three offences, all of  
4                    Burglary, which he contested but of which he was convicted after three trials.
- 5        2.        Charge #00387/14 is a Burglary of #47 Trophy Crescent, Prospect, a dwelling  
6                    house, on 23<sup>rd</sup> .December 2013. To this charge he pleaded not guilty on the 19<sup>th</sup>  
7                    February 2014 and was released on conditional bail which included a curfew  
8                    condition between 7 p.m. and 6 a.m.
- 9
- 10       3.        Charge 3746/15 is a Burglary of Aquatech on Seymour Drive, George Town,  
11                    commercial premises on 24<sup>th</sup> May 2015. This burglary was committed whilst he  
12                    was on the conditional bail.
- 13
- 14       4.        Charge #3745/15 is a Burglary of First Baptist Christian School on 9<sup>th</sup> June  
15                    2015. The alarm at the school was triggered at 4:00 a.m. consequently this  
16                    burglary was committed whilst he was on the conditional bail and in breach of  
17                    his curfew.

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*DWELLING HOME BURGLARY*

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3 5. The first burglary is the most serious. #47 Trophy Crescent is a dwelling home.  
4 On 18<sup>th</sup> December 2013 the owners – a husband and wife – left the Cayman  
5 Islands for the Christmas holidays. On the evening of the 23<sup>rd</sup> December 2013  
6 Special Constable Brooks was in the area of Trophy Crescent as a result of a  
7 reported car theft. While he was there it was discovered that #47 Trophy  
8 Crescent had been burgled. It appeared that the burglary may still have been in  
9 progress at the time of the officer’s arrival as items from the house were found  
10 abandoned nearby. Entry had been gained by forcing open a door leading from  
11 the garage into the house itself. Damage was caused to two doors and the house  
12 had been “ransacked”.

13  
14 6. The items taken from the house, which were found abandoned, consisted of a  
15 television, fishing rods, a laptop and bag, a generator and some diving  
16 equipment. Of much greater significance for the homeowners was that a safe  
17 had been removed from the property and with it jewellery valued at between  
18 US\$125,000 and \$150,000. The jewellery had been collected by the wife over  
19 many years, and it held a great deal of sentimental value to her. It was  
20 described by the husband as his wife’s “*life jewellery collection*”. In addition  
21 the title deeds, identification papers including a passport and a birth certificate,  
22 a Will, 3 watches, a pair of night vision binoculars, and \$150 in cash were  
23 stolen.  
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*BURGLARY AT CHRISTIAN SCHOOL*

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3 9. The third burglary occurred in the early hours of the 1<sup>st</sup> June 2015 at the First  
4 Baptist Christian School on Crewe Road, George Town. A second floor office  
5 was entered and some cabinets and drawers were opened. Files and papers were  
6 on the floor. Below the office on a rooftop there was a headband. An alarm at  
7 the school had been triggered at about 4:00 a.m. No property appears to have  
8 been taken in the course of the burglary. C.C.T.V. footage showed that at  
9 3:31a.m., a grey Honda, which the Defendant had the use of, was seen to travel  
10 in the direction of the school and, at 4:00am the same vehicle was seen to travel  
11 away from the school. D.N.A. on the headband matched that of the Defendant.

12  
13 10. On the 9<sup>th</sup> June.2015, the Defendant was arrested on suspicion of the last two  
14 burglaries. When interviewed, he gave short prepared statements in which he  
15 denied responsibility for the burglaries.

16  
17 *The SIR*

18  
19 11. The Defendant is 29 years old. He first appeared before the Courts in April  
20 2004 and his record shows eight (8) offences of Burglary and five (5) of  
21 Handling Stolen Goods.

22  
23 12. The Social Inquiry Report (SIR) reveals that he has a child aged one (1) and has  
24 been in a relationship with the mother, for some four (4) years. Ms. Judye  
25 Mobley, the author of the SIR, in her assessment, says of the Defendant:  
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1 17. The sentence hearing in the Summary Court was due to take place on 21<sup>st</sup>  
2 October 2015 but the SIR was not ready and the matter was adjourned to 18<sup>th</sup>  
3 November 2015. Subsequently these matters were committed to the Grand  
4 Court on the 25<sup>th</sup> November 2015.

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6 18. Miss Carver submits that I should have no regard to the 2015 Guidelines as  
7 they were not in force at the time of the offences, or, at the end of the trials. Ms.  
8 Carver also submits that, had there not been some delay during the history of  
9 this case, these Guidelines also would not have been in effect at the time when  
10 the sentencing would have been expected to take place. Ms. Carver further  
11 submits that the only Cayman Islands Sentencing Guideline I should take into  
12 account is the learned Chief Justice's Statement on Tariffs and Guidelines for  
13 Sentencing of Certain Offences dated 16<sup>th</sup> January 2002<sup>1</sup>.

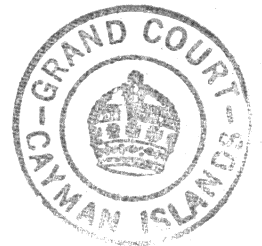
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15 19. In relation to Burglary the Chief Justice's Guidelines state:

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17 *"For Burglary without aggravating circumstances a second or subsequent*  
18 *offence will attract a tariff of 3 to 4 years. It should be emphasised however*  
19 *that we consider home invasions whether by night or by day very serious*  
20 *offences and any such offence is likely to be discouraged by appropriate*  
21 *prison sentences."*  
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23  
24 20. Miss Carver submits that I should not have regard to the 2015 Guidelines as  
25 they set a tariff higher than that set in 2002.  
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<sup>1</sup> Although it is intended that there should be guidelines for sexual offences included in the 2015 Cayman Islands Sentencing Guidelines they have yet to be produced.



1       21.    In England and Wales this problem has arisen – particularly in historic sex  
2           cases where defendants often appear for sentence for offences committed 20 or  
3           30 years before. At the time of offending the maximum sentences were lower in  
4           many cases and the sentencing regime more lenient. In England and Wales  
5           statute demands that a sentencing Judge has regard to the Sentencing Council’s  
6           Guidelines and, in a number of cases, the argument has been made that the  
7           sentencing judge should not take them into account if the offence pre-dates the  
8           issuing of the guideline. The case of *R v Chunxia Bao*<sup>2</sup> referred to by the  
9           Crown is one example. The Court of Appeal in England and Wales has made it  
10          clear that as long as the maximum sentence in force at the time of the offence is  
11          not exceeded, it is permissible to, and indeed a sentencing judge should, have  
12          regard to the current sentencing guidelines.

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14       22.    Although the early Guidelines produced by the Sentencing Guidelines Council  
15          did not have a starting date, those produced now by the Sentencing Council do.

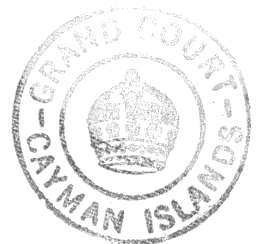
16  
17       23.    As to the starting date: In dismissing the suggestion that a person who was  
18          convicted just before the Guidelines came in to effect could claim the benefit of  
19          a lower tariff in the new guideline, Mr. Moran has referred to *R v Boakye and*  
20          *Others*<sup>3</sup> in which it was said “*the reality is that change has to start at some*  
21          *point*”.

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<sup>2</sup> [2008] 2Cr.App. R (S) 10

<sup>3</sup> [2013] 1Cr.App.R (S) 2



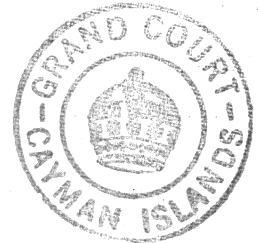
1 24. The purpose of the Guidelines is to ensure a certain consistency in sentencing.  
2 That is the reason why in this jurisdiction, at any sentence hearing, the judge is  
3 provided with reports of cases of a similar nature in the Grand Court. Such  
4 cases being decisions at first instance are not binding on the sentencing judge  
5 but assist in ensuring the consistency in sentencing. In the course of her  
6 submissions I asked Miss Carver whether she could object to a sentencing  
7 judge having a report of a sentence passed after the date of the offence being  
8 committed and she indicated she could not. It seems to me that must also apply  
9 to the Sentencing Guidelines.

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11 25. In my judgment, a sentencing judge can have regard to the 2015 Cayman  
12 Islands Sentencing Guidelines even when the offences occurred before these  
13 Guidelines were issued.

14 *PREVALENCE*  
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16 26. The second matter of principle relates to Prevalence.  
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19 27. Miss Carver has made a separate submission on the question of prevalence as it  
20 has been raised by the Crown as a possible aggravating feature. The only  
21 evidence as to prevalence is a comparison of the Crimes in 2014 with 2015.  
22 Burglaries were 699 in 2014 and 656 in 2015 – a reduction by 43, which  
23 equates to 6%. I am not sure how that shows burglaries are or are not prevalent.  
24 So for the purposes of this case alone, I do not take prevalence to be an  
25 aggravating feature

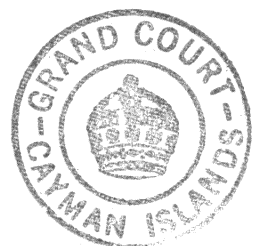


SENTENCE

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3 28. Dwelling house burglaries are serious offences and merit severe sentence even  
4 when committed by persons of good character. The feeling that their house has  
5 been invaded can often last longer in the mind of the owner than the sense of  
6 loss of the items stolen.

7  
8 29. In this case, the offence was compounded by the fact that the house was  
9 ransacked and very valuable and highly cherished jewellery was stolen and has  
10 not been recovered. This was not the Defendant's first burglary offence and,  
11 despite receiving prison sentences up to 3 years, he has continued to commit  
12 burglary. That is an aggravating factor. I must be careful not to take a feature of  
13 the case which puts in a particular category and use it as an aggravating factor  
14 as well, but, I bear in mind that the items stolen were of both high value and of  
15 very high sentimental value. Under the Guidelines the starting point is 6 years  
16 but the appropriate sentence in this case is 6 years 9 months' imprisonment.

17  
18 30. The Aquatech burglary was of commercial premises and the Defendant did not  
19 steal anything – no doubt because, to his surprise, someone was there. This was  
20 committed whilst he was on bail which is the only aggravating factor. The  
21 starting point is 12 months but, in view of the fact that nothing was taken, I  
22 reduce that to 9 months' imprisonment.



1 31. Although he appeared to have searched the office, the Defendant, again,  
2 obtained nothing from the School – no doubt because he was again disturbed,  
3 this time, by the alarm. At the time of this offence the Defendant was on bail  
4 and in breach of his curfew. This offence has the same starting point as the  
5 Aquatech offence and the sentence I impose is 12 months' imprisonment.

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7 32. All three sentences should be consecutive but, with an eye on totality, I make  
8 the 12 months and 9 months sentences concurrent, but consecutive to the 6  
9 years 9 months. That makes a total sentence of 7 years 9 months'  
10 imprisonment. Time spent in custody will be deducted from this term of  
11 imprisonment.

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**Dated this the 24<sup>th</sup> day of March 2016**



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19 **Mr. Justice Alastair Malcolm Q.C.**  
20 **Acting Judge of the Grand Court**