

IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEALS 15/2017

IND 81/2015

SC#6377/2015

BETWEEN:

Christine Rae-Smith

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

CRIMINAL APPEAL 16/2017

IND. 61/2015

SC#4950/2015

BETWEEN

Paul Myles

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

CRIMINAL APPEAL 17 & 20/2017

IND. 78/2016

SC#4591/2016

BETWEEN

Antonio Elvis Kelly

Appellant

-and-

HER MAJESTY THE QUEEN

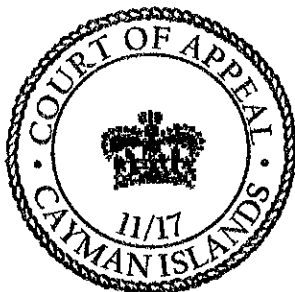
Respondent

BEFORE:

The Rt. Hon Sir John Goldring, President

The Rt. Hon John Martin, Justice of Appeal

The Rt. Hon Sir Richard Field, Justice of Appeal



Appearances: Ms. Lee Halliday-Davis of Brady Law for the Christine Rae-Smith
Ms. Amelia Fosuhene of Brady Law for Paul Myles
Ms. Prathna Bodden of Samson Law for Antonio Kelly
Mr. Patrick Moran for the DPP for the Respondent

JUDGMENT

Revised from transcript of oral judgment 25th April 2018 and Approved
Released 31st July 2018

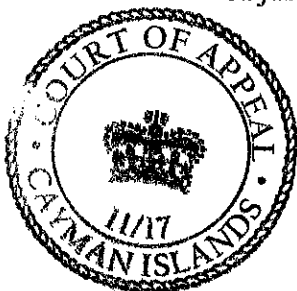
The President:

1. On 2 June 2017 Mr. Justice Quin sentenced all three Applicants for their joint involvement in an armed robbery on 10 August 2015 at a nail salon and hairdressing business called Elegant Nails and More ("Elegant Nails"). Christine Rae-Smith pleaded not guilty and was convicted by the learned judge sitting alone. The other two Applicants pleaded guilty to the counts they faced, albeit the applicant, Paul Myles, later sought unsuccessfully to change that plea. The applicant, Antonio Kelly, was also sentenced in respect of other offences committed by him. Each of the Applicants seeks leave to appeal against sentence.

The armed robbery

The indictments

2. There were three separate indictments laid against each Applicant in respect of the armed robbery. Counts 1 to 3 were of robbery, contrary to section 242 of *the Penal Code (2013 Revision)*. Each count alleged that the robbery was committed with the two other Applicants. Count 4 alleged in respect of each Applicant, possession of two imitation firearms with intent to commit robbery contrary to section 18(6) of the *Firearm's Law (2008 Revision)*. Count 5, laid only against Antonio Kelly, alleged perverting the course of justice contrary to section 107(1)(d) of the *Penal Code (2013 Revision)*.



3. The victim of the robbery in count 1 was said to be Kadean Downer, the co-owner of Elegant Nails. The victims of counts 2 and 3 respectively were Maria Sanchez and Tanisha Gilbert, customers in the premises. Count 4 was an offence of possessing two imitation firearms with intent to commit the robbery. The total amount allegedly stolen was \$CI641 plus other items set out in the indictment.
4. Count 5 alleged that Antonio Kelly provided an account during an interview with the police in which he falsely sought to exculpate Christine Rae-Smith and Paul Myles of their involvement in the robbery. That count was not proceeded with.

The sentences

The robbery indictment

5. The Applicants were sentenced concurrently on each count on the robbery indictment as follows:

Christine Rae-Smith: 12 years' imprisonment.

Paul Myles: 9 years' imprisonment.

Antonio Kelly: 8 years' imprisonment.

The other offences: Antonio Kelly alone

6. Antonio Kelly pleaded guilty to eight other offences in respect of which he received sentences of imprisonment. For causing death by careless driving on 17 November 2013, he was sentenced to four years' imprisonment consecutive to the 8 year sentence for his involvement in the robbery. For four offences of burglary committed on 24 September 2014, 29 July 2015 and 11 September 2015, he was sentenced to 2.5 years' imprisonment concurrent. A suspended sentence of 11 months' imprisonment in respect of a burglary committed on 15 January 2014 was activated concurrently. For handling stolen goods on



1 December 2014, the sentence was one of 12 months' imprisonment concurrently. For giving false information on that date, the sentence was one of three months' imprisonment concurrently. Finally, for handling stolen goods on 16 October 2015, the sentence was one of 11 months' imprisonment concurrently. The total sentence on Kelly was therefore one of 12 years' imprisonment.

The robbery

The facts

7. We rely substantially on Mr. Justice Quin's summary of the facts.
8. On the evening of 10 July 2015, two armed gunmen dressed from head to foot in black, and wearing masks, entered Elegant Nails. Antonio Kelly had a long black firearm which witnesses described as a rifle. The other gunman, who has never been identified, had what appeared to be a handgun. Neither firearm was recovered. The owner of the store, Kadean Downer, was doing the nails of a customer, Maria Sanchez. Initially she thought it was a prank, until the taller of the gunmen put the gun to her face and demanded the pouch containing the day's takings. One of the customers immediately started to hand over her purse and belongings; cash, mobile phone, debit cards and ID cards in order to placate the robbers. Christine Rae-Smith was in the premises. She was pretending to be a customer. She challenged the robbers. The customers and staff, who were all women, were very frightened. It was a terrifying experience which they will never forget.
9. The learned judge later set out what he considered the many significant features of this robbery when considering the issue of harm for the purpose of the Cayman Islands Sentencing Guidelines. He was able to do so, having heard the evidence during the trial of Christine Rae-Smith. He said:

"This was not just a case where...the armed robbers entered a commercial property, took the business proceeds and left. There were many more aggravating factors in this case.



I look first of all at the robbery of the store at Elegant Nails and the impact of that robbery. The robber with a long black gun [Antonio Kelly] came up...to...Kadean Downer...asked her where the pouch was and pointed the big black gun at her face. 'Where is the pouch with the money? Give me the pouch with the money'. Miss Downer was very nervous, and she said, 'I don't have any money'. She then got the Elegant Nails...pouch and showed the robber there was no money...that the pouch was empty. He asked...again and pointed the gun at her face and she showed him the empty pouch. 'Where is it?' She explained that she had given it to another hairdresser.

So...the intention was to take the whole day's takings. It was only a matter of chance that the takings had left the shop some minutes before the robbery began. The robber seemed to know about Miss Downer's pouch...

...Officer Anderson Taylor gave testimony about how scared all the victims had been after the robbery...

...At one stage the defendant Miss Rae-Smith, in an effort to conceal that she was the orchestrator of the robbery, brazenly challenged the masked armed robbers, knowing that she was safe. Miss Downer was convinced that this apparent bizarre and crazy courage was going to get them all killed. She said the girls were all screaming and crying for her not to do that. Clearly the tension and the extreme fear in the salon that evening was very high".

10. The judge described how a firearm was pointed at each of the women as they were being asked for their money; how Miss Gilbert panicked and took out all her money and valuables in order to placate the robbers; how one of the robbers (Antonio Kelly) told them to put their money and valuables on the tables; how the other, pointed the gun at everyone asking for their money.



11. Paul Myles drove the robbers to the scene. He also provided the weapons.

Events after the robbery

12. The police attended. Christine Rae-Smith pretended to be a victim.

13. In August 2015, Paul Myles became a suspect. In due course so too did Antonio Kelly. The evidence implicating them arose when the police were trying to locate a mobile phone during another investigation. Paul Myles helped them locate it. When the text messages on that phone were analysed, they revealed that Christine Rae-Smith was sending instructions to the holder of the phone from inside the premises. She was indicating where items of value might be found, how the robbers could lock the premises from inside, how many people the robbers would have to deal with inside the store, when the robbery should begin and how the robbers should seek to minimise any noise.

14. There was evidence of a close personal relationship between Paul Myles and Christine Rae-Smith at around the time of these events. She was also employing Paul Myles and Antonio Kelly. Her numbers were stored under the name "*The Boss*".

Paul Myles' interviews

15. In August 2015, Paul Myles denied involvement in the robbery. He later admitted to it and implicated Antonio Kelly. He gave different accounts about Christine Rae-Smith's involvement. He later sought to resile from what he had previously said and gave a completely different account of his involvement.

16. Paul Myles pleaded guilty in the Grand Court. He subsequently sought to vacate his pleas. There was a hearing on 18 March 2016 in which he gave evidence. He claimed, among other things, that he had been put under pressure by his counsel to enter pleas of guilty. His evidence was disbelieved, and his application failed.



Christine Rae-Smith's interviews

17. Christine Rae-Smith was interviewed. She produced a prepared statement claiming to be a victim of the robbery. She maintained that when interviewed a second time.

Antonio Kelly's interviews

18. Antonio Kelly at first denied any involvement in the robbery. He requested a second interview some time later. In December 2015 he admitted his involvement in the robbery. At times he sought to persuade the police to release Christine Rae-Smith and Antonio Myles.

The charge of death by careless driving: Antonio Kelly

19. There were two counts on the indictment. Count 1 alleged causing death by dangerous driving, count 2 of causing death by careless driving. Antonio Kelly pleaded guilty to count 2. Surprisingly, given the facts, that plea was accepted by the Crown.
20. On 17 November 2013 in the early hours of the morning, when driving a Honda Accord motor car, Antonio Kelly, collided with a road side wall on residential premises in Old Robin Road, North Side. The sole other occupant of the vehicle was 23 year old Jordan Ebanks. The vehicle was extensively damaged. Mr. Ebanks suffered multiple injuries from which he died. There were no witnesses.
21. Antonio Kelly was interviewed. He said he had been driving at 85 miles per hour before he lost control of the vehicle and the fatal collision occurred. He later told the probation officer that he was "*rolling a spliff*" at the time.
22. That offence was committed on 17 November 2013. Antonio Kelly was granted bail. All the offences for which he was committed for sentence to the Grand Court were committed on bail. We need not for present purposes to go into their detail, or the detail of his various arrests and interviews in respect of them. Neither do we need to go into the



detail of the commercial burglary in respect of which the suspended sentence had been passed.

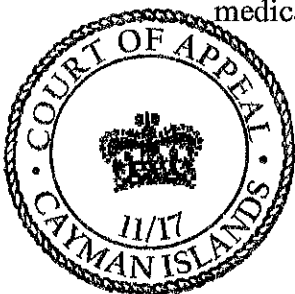
The antecedent histories of the Applicants

23. At the time of sentencing, Christine Rae-Smith was 38. She had no previous convictions.
24. The Paul Myles, was 40. His previous convictions were few and of a comparatively minor nature. He had served a short prison sentence in 2011.
25. Antonio Kelly was much the youngest of the defendants. He was 20. There were three previous court appearances.

The reports before the learned judge.

Christine Rae-Smith

26. In Christine Rae-Smith's case there was a social enquiry report and a series of letters concerning her medical history. The social enquiry report, among other things, spoke of the shock to those who knew Christine Rae-Smith, of learning of her involvement in these offences.
27. She maintained the account rejected at her trial; namely, that she was an innocent victim; that she been set up by the other two.
28. By applying the standard assessment tool, her risk of re-offending was assessed as "*very low*".
29. Christine Rae-Smith has had various medical procedures as a result of having a shattered vertebrae in her back. She is in pain and walks with a stick. She requires pain medication which, according to the doctor Lee, is not as easy to obtain in prison. She receives medication for depression and anxiety. Imprisonment, it is said, will lead to further



psychiatric support and medication being required. She has also required treatment for a condition related to her heart.

Paul Myles

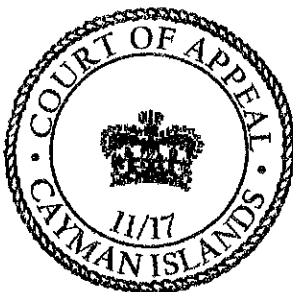
30. There was a social enquiry report on Paul Myles. He told the probation officer that he was not involved in the robbery. His overall risk of re-offending is assessed as "*high*."

Antonio Kelly

31. In Antonio Kelly's case there was a social enquiry report which assessed his risk of re-offending as "*very high*". There was a psychiatric report from Dr. McGill which described a long history of abuse and neglect. He suffers from significant attention deficit hyperactivity disorder. Absent treatment, he has a history of violent and disruptive behaviour.

The judge's sentencing remarks in respect of the robbery.

32. The judge briefly summarised the mitigations and the reports before him. He then went on to consider the Cayman Islands Sentencing Guidelines in respect of robbery. Before turning to his application of them, we shall briefly summarise their relevant features.
33. Robbery is broken down into street robbery (or "*mugging*"), commercial robbery and robbery in a dwelling (see Paragraph B of the unnumbered pages of the Robbery Guideline). This robbery was plainly a commercial robbery of a small business "*such as a small shop or post office....*".
34. Having appropriately placed the robbery in terms of the three possibilities, Paragraph D goes on to consider how sentence in respect of such a robbery should be approached. Under "*Step one*," the judge has to determine the category of the offence by reference to "*culpability*" and "*harm*".



Culpability.

35. The Guideline states:

"Culpability

Particularly demonstrated by one or more of the following:

A-High culpability

- *Production and use of a weapon to **inflict** violence*
- *Production of a bladed article or firearm or imitation firearm to threaten violence*
- *Use of very significant force in the commission of the offence"*

36. There is no dispute but that this was a robbery of high culpability.

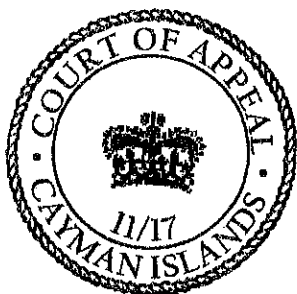
37. The judge next has to consider under "*Step one*" the assessment of harm. The Guideline states:

"The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused to the victim. The victim relates both to the commercial organisation that has been robbed and any individual(s) who has suffered the use or threat of force during the commission of the offence."

38. Three possible 'categories' are set out.

"Category 1

- *Serious physical and/or psychological harm caused to the victim*
- *Serious detrimental effect on business*
- *Very high value goods or sums*



Category 2

- *Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence.*
- *Some detrimental effect on business*
- *High or medium value of goods or sums*

Category 3

Factors in categories 1 and 2 not present"

39. "Step 2" deals with the starting points and category ranges. Under Category 1 of harm, with high culpability ("A"), the starting point is 16 years' custody, with a range of 16 to 20 years. Under Category 2 of harm with high culpability, the starting point is 9 years' custody, with a range of 7 to 14 years. Under Category 3 of harm with high culpability, the starting point is 5 years' custody, with a range of 4 to 8 years.

The learned judge's approach

40. Having assessed culpability as high, he went on to consider the degree of harm. As there were no victim impact statements, the judge had to do his best on the information he had. He said that in order to resolve the category of harm, he "*had gone back to the evidence of the trial of Miss Rae-Smith*". He set out the aggravating features, to which we have already referred. He also said:

"It is not surprising to the Court that in the light of this terrifying experience and the fact that Elegant Nails is now closed, the victim impact reports were difficult to obtain..."

Although there is no independent medical evidence regarding physical and/or psychological harm in relation to the victims, I find it to be harm category 2 in relation to the owner of the salon, and in relation to the five



women victims. Accordingly, the Cayman Islands Guidelines recommend a starting point of nine years and a range of seven to fourteen years".

41. The judge, as is now apparent, mistakenly ascribed the closure of the business to the robbery, a relevant factor when assessing the category of harm into which to place any robbery.
42. Finally, having taken into account the aggravating features as he saw them, the judge arrived at the sentences to which we have already referred.

The causing death by careless driving: Antonio Kelly only

43. The learned judge said:

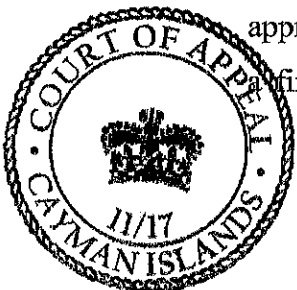
"Mr. Kelly was driving at around 85 in a 30 miles per hour zone. This is definitely category 1, if not the high end of category 1. It's hard to imagine a more serious case of causing death by careless driving".

44. He referred to what he described as *"the total disregard for the speed limit"* and the rolling of a spliff. He described the driving as terrifyingly excessive. He concluded that the appropriate sentence was 4 years' imprisonment.

The grounds of appeal.

The ground common to all 3 Applicants

45. One ground is common to all three applicants. Each, in the able submissions made on their behalf, submits the judge was wrong to place the degree of harm into category 2. It is submitted (and we summarise), firstly, that at no time was violence actually inflicted on anyone. Not very significant force was used. No one was hurt. Secondly, in the absence of victim impact statements, it was not open to the judge to infer harm above that inherent in the offence of robbery. There was an element of double counting in his approach. It was an offence of high culpability because of the use of a firearm. The use of a firearm could not, therefore, increase the degree of harm. Thirdly, the value of the



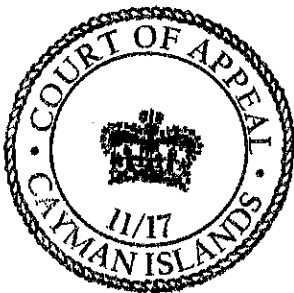
goods or sums taken was not in the high or medium bracket for the purpose of the Guidelines. Fourthly, the judge wrongly took into account that the robbery caused the closure of the business.

46. In the result, the starting point should therefore have been 5 years' custody, with a range of four to eight years.
47. As to the firearms offence, the submission is that because the minimum sentence of 10 years' imprisonment following trial, or 7 years following a plea under section 39 of the Firearm's Law cannot apply (given there was no evidence that the firearms in question were capable of discharging a shot or a bullet), the concurrent sentences in respect of the firearms offences were too high. In Christine Rae-Smith's case, it is also submitted that there should have been some reduction because she was not in physical possession of the firearms.
48. The Court's attention is drawn to the case of *Norval Barrett*, CICA 5/2012. In that case, this Court was considering an armed robbery of a service station at night. The sentence of 12 years' imprisonment was reduced to 9. In the course of giving the judgment of the Court, at paragraph 19, the President said:

"We think that the judge gave inadequate weight to the fact that this was a robbery in which no violence was actually used, that the amount stolen was comparatively small and the robbery took place within a very short space of time, no more than a minute. Taking these factors into account by way of mitigation, the judge should, we think, have reached a conclusion that a sentence of nine years was sufficient to mark the severity of the offence of robbery..."

49. It is submitted that this case is substantially on all fours with that of *Norval Barrett*.

The grounds of appeal in respect of the individual applicants.



Christine Rae-Smith

50. On behalf of Christine Rae-Smith, the matters advanced before the judge are repeated. She has no previous convictions. She has two children. She had a business. She was in employment, employed by two members of the Legislature. She has serious medical conditions which will mean that her period in custody will be particularly harsh.

Paul Myles

51. In respect of Paul Myles, the first submission is that he should have received a greater reduction in sentence for his plea of guilty. Regard should have been had to the fact that he provided a statement implicating his co-defendants. He did so voluntarily. He helped recover a mobile phone.
52. He did not go into the premises. He was the driver, and no more.

Antonio Kelly

53. The first point made in respect of Antonio Kelly is his youth when compared with the other two. There was no recognition of that fact in the sentences imposed by the judge. Nor was sufficient account taken of his psychiatric history as set out in the reports before the judge.
54. As to the 4 years' imprisonment consecutive for the causing death by careless driving, it is said that was manifestly excessive. It is submitted that this case is similar to *Dilroy Linwood Watler*, Criminal Appeal 2/2017. A starting point of between 3.5 and 4 four years' custody was suggested by Justice of Appeal Moses (although in the event a starting point of 3.5 years was taken). The appellant had been driving at 91 miles an hour in a 25 miles-per-hour zone, caused the death of his brother and was himself seriously injured.
55. It is also submitted that a more substantial reduction for the plea of guilty should have been allowed than the 20 percent allowed by the judge.



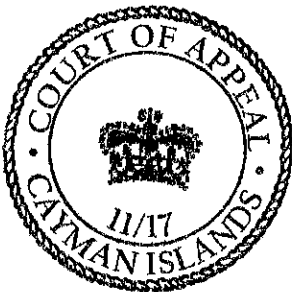
Our view

The level of harm under the Cayman Islands Guidelines.

56. As we have said, the level of harm is to be determined by weighing up "*all the factors of the case.*" It is the harm which "*has been caused or was intended to be caused to the victim.*" In other words, when assessing the degree of harm in any given case, and the appropriate category into which to place it, the judge is entitled to weigh up every aspect of the robbery in question, having regard to the harm which was caused or intended. If, weighing up all those aspects, he concludes there was some physical or psychological harm caused or intended above that inherent in any high culpability robbery, the case will fall into category 2. For, in our judgment, "*this offence*" refers to *any* high culpability robbery; in other words (as presently relevant), any robbery in which a firearm or imitation firearm was used to threaten violence. If the judge concludes from all the evidence, that there was, or was intended to be, some physical or psychological harm above that inherent in any category A robbery, the case will fall into category 2 of harm. Equally, if he concludes there was, or was intended to be, a theft of goods or sums of a high or medium value, the case will fall into category 2 of harm.

57. There was, as it seems to us, sufficient evidence from which it was open to the learned judge to infer that the degree of harm resulting from the robbery in question was inevitably greater than that inherent in any category A robbery. That was particularly so, where the judge had heard the evidence of what happened. He had heard and seen the victims give evidence. In short, this was an armed robbery in which:

- (a) There were two armed robbers, each masked.
- (b) They entered the premises at night.
- (c) Each had what appeared to be a working firearm. We need only to glance at the picture in the Respondent's bundle of Paul Myles brandishing two such weapons, to understand the effect on any victim.

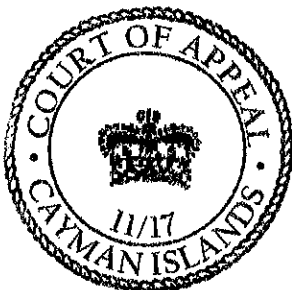


- (d) One of the robbers pointed the weapon at Miss Downer's face and put to it her head when demanding the day's takings. The other robber pointed his weapon at each of the victims when demanding money.
- (e) This was not an armed robbery in which the robbers entered, took the business proceeds and left. They spent some time in the premises. They ushered the victims from one room to another.
- (f) Christine Rae Smith's conduct during the robbery exacerbated the situation for the victims. Her pretence of challenging the robbers caused the victims to scream and beg her not to do so. As the judge said, they were put in "extreme fear" in the salon that evening.
- (g) There was evidence of how frightened all the victims were after the robbery.

58. We have concluded the judge was entitled to infer that it was inconceivable that the victims of this sequence of events did not suffer a degree of harm above the level to be expected during the course of any high culpability robbery. He was entitled to categorise harm in terms of Category 2.

59. Moreover, he was entitled to infer that the intention was to steal the day's takings. It was merely chance that they had been removed just before the robbery. In the context of the robbery of a small business falling within category 2 of robbery offences, it would seem to us plain that the sum it was intended to steal was within the bracket of medium value, and therefore category 2 of harm.

60. It is clear that the business closed for reasons other than the robbery. That is an aspect which the judge was wrong to take into account and which we therefore ignore. However, in our view, that aspect pales into insignificance in the light of the seriousness of the robbery overall and the harm it caused. The fact the judge erred in respect of it does not, in our judgment, affect the sentences it was appropriate to impose.



61. In short, in our view, the judge was entitled to conclude that this was a robbery in which the starting point was 9 years' custody with a range of 7 to 14 years.

62. We derive very limited assistance from *Norval Barrett*. Firstly, the Guidelines were not in force at the time of the judgment. Secondly, there are significant factual differences between that case and the present. In that case there was only one robber, one weapon and no mask.

Our conclusion.

63. We firstly consider whether, having regard to the starting point of nine years' imprisonment in the Guidelines, the judge's conclusion of 12 years' imprisonment after trial was manifestly excessive or wrong in principle.

64. In our judgment, this was a very serious robbery within its categories of culpability and harm. It was planned and to a degree had some sophistication. It was plainly terrifying for the victims. The judge was entitled to conclude that this was a case at the upper end of the bracket provided for in the Guideline: that it was a case in which 12 years of imprisonment was appropriate.

65. We secondly consider whether some reduction in that sentence should have been made in the light of Christine Rae Smith's medical condition. In our view, the judge was entitled to take the view that her medical condition was not such as to warrant a lesser sentence than otherwise would be appropriate: *see Bernard* [1997] 1 Cr. App. R. S. 136.

66. The fact that Christine Rae-Smith herself did not directly have possession of either weapon cannot, in our judgment, reduce her sentence. This was a joint enterprise in which she plainly played a very leading role. She is equally responsible for the use made of the firearms by the two robbers. Indeed, she encouraged it.

We thirdly consider whether in either Paul Myles' or Antonio Kelly's cases some reduction in sentence should have been made to reflect their roles.



68. As Mr. Moran points out, Paul Myles' role was crucial. He was the driver. He may well have supplied the firearms. It cannot be said in his case that he was young or easily led. This was a joint enterprise in which all three were involved. Paul Myles took two men who were, or imminently were about to be, masked, to the premises with weapons which he provided, in order to commit the robbery. As it seems to us, the judge was entitled to approach sentencing for this joint enterprise as far as Christine Rae-Smith and Paul Myles were concerned in the way he did.
69. As to Kelly, he was very much younger than his co-defendants. The medical and social enquiry reports set out the significant mental health issues he faces. Although he plainly played, as Mr. Moran pointed out, a leading role in the events in the salon, it does seem to us that, given his youth in particular, a somewhat lower sentence in his case should have been imposed. In respect of the offences on the robbery indictment, we would reduce the sentence from one of 8 years to 7 years' imprisonment.
70. We fourthly consider whether the judge insufficiently reduced the sentence on Paul Myles to reflect his plea of guilty and such assistance as he provided. We have no doubt that given his attempt to change that plea, the judge was entitled to reduce any discount. Neither do we accept that for the help said to have been given by him to the police, some additional discount should have been imposed. The judge was entitled to reduce his sentence by only 25%.
71. We fifthly consider whether the judge erred in any way in imposing the concurrent sentences in respect of the firearms which he did. In our view, no criticism can be made of his approach. We shall not, therefore, interfere with the concurrent sentences of 12 and 9 years' imprisonment imposed in respect of Christine Rae-Smith and Paul Myles respectively. We reduce the sentences imposed on Antonio Kelly from 8 to 7 years' imprisonment for the reasons we have given.

72. Finally, we turn to consider whether any reduction should be made in respect of the 4 year sentence imposed on Antonio Kelly for causing death by careless driving. As this



court has previously said, it is difficult to reconcile a maximum of seven years' custody for causing death by careless driving with a maximum of only three years more for causing death by dangerous driving. It seems to us that rolling a spliff while driving at 85 miles per hour is a sufficiently aggravating feature which justifies a starting point in excess of the 3.5 years submitted. In our judgment, a starting point on the facts here of four years would have been appropriate. There was a delay of some seven months before a plea of guilty was intimated. It is said that was due to obtaining an expert opinion on the basis of legal advice. The reality is that the Applicant knew perfectly well how fast he was driving and that at the time he was rolling a spliff. The judge was entitled to reduce the sentence by only 20 percent for the late plea of guilty.

73. In the circumstances, therefore, taking into account the reduction for the plea, we think that on that count, a sentence of three years three months would have met the justice of the case. We have no doubt, and it is not urged otherwise upon us, that the judge was right to impose the sentence consecutively.
74. In the result, we think it right to give leave to all the Applicants to appeal against their sentences. In the cases of Christine Rae-Smith and Paul Myles the appeals are dismissed.
75. In the case of Antonio Kelly, the sentences on the robbery indictment are reduced from 8 to 7 years' imprisonment concurrent. For the offence of causing death by careless driving, the sentence is reduced to 3 years 3 months' imprisonment consecutive, making a total sentence of 10 years 3 months' imprisonment in all. The remaining sentences imposed on Antonio Kelly are left unaltered. To that extent one of the appeals against sentence is allowed.

