

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3

4 INDICTMENT NO: 27/18  
5

6  
7 THE QUEEN  
8

9 v.  
10

11 AZEEM DELANO BURTON  
12  
13



14  
15 **Appearances:** Mr. Scott Wainwright, Crown Counsel, Office of  
16 Director of Public Prosecutions for the Crown  
17

18 Mr. Jonathon Hughes of Samson Law Associates for  
19 the Defendant

20 **Before:** Justice Marlene I. Carter (Actg.)

21 **Judge Alone Trial:** 11<sup>th</sup> October 2018  
22

23 **Delivery of Decision:** 1<sup>st</sup> November 2018  
24

25  
26  
27 **HEADNOTE**

28 *Criminal Law – Sentencing – Robbery*  
29 *Newton Hearing - Level of Harm above that inherent in the offence*  
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34  
35 **SENTENCE JUDGMENT**  
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1 1. The Defendant is indicted on one charge of Robbery contrary to s.242(1) of the Penal Code  
2 (2018 Revision). The particulars of that offence are that he “stole a ring, wallet and contents,  
3 and an Apple iPhone 6 of unknown value, belonging to Simon Boxall and immediately  
4 before or at the time of doing so and in order to do used force on the said Simon Boxall.”  
5

6 2. The indictment, dated the 5<sup>th</sup> day of June 2018, was put to the Defendant on the 8<sup>th</sup> June  
7 2018, and, in response he stated “Guilty, but only to the phone.” Defence counsel on that  
8 date advised the Court that the facts of the Crown’s case are in dispute and, therefore, a  
9 *Newton* hearing is requested. On the 11<sup>th</sup> of October 2018 the Court conducted the *Newton*  
10 hearing.  
11

12 3. The Crown called the evidence of the complainant, Simon Boxall. The Crown also relied on  
13 the evidence of two other witnesses whose statements were taken as being read into the  
14 record.  
15

16 4. This Court, having heard the evidence for the Crown, rejected the basis of plea set forth by  
17 the defendant. The matter therefore proceeded to sentence based on the version of the facts  
18 presented by the Crown.  
19

20 5. The facts as accepted by the Court are as follows:

21  
22 i. On the 20<sup>th</sup> of May 2018, the Complainant went to the Country and Western  
23 Bar around 10:30 pm. After about two hours at the Bar during which time  
24 he had consumed two or three beers the Complainant felt unable to drive his  
25 car home.  
26



1           ii.     The defendant was also at the Country and Western Bar. He was in the  
2                     company of three other individuals.

3  
4           iii.    The Complainant spoke to two men outside of the Bar and asked them to  
5                     drive his car back to his home at Prospect Point which was some 1 ½ to 2  
6                     miles away from the Bar. They agreed and one of the men drove the  
7                     complainant's car while the other followed in their vehicle. The men parked  
8                     the complainant's car at his home and left.

9  
10          iv.    As the men drove away and the Complainant was walking up his driveway  
11                    a woman whom the complainant had seen in the company of the defendant  
12                    at the Country and Western Bar approached him in the driveway and called  
13                    out to him. She spoke to him and caused him to walk back down the  
14                    driveway back to the car which the complainant had seen her and the  
15                    defendant and the two others in at the Country and Western Bar.

16  
17          v.     When the Complainant got to the car, the Defendant exited the car and put  
18                    his arm around the complainant's neck and waist from behind. As the  
19                    Complainant struggled to get out of the Defendant's grip, he felt fists  
20                    punching his head. He fell to the ground and while on the ground the  
21                    Defendant continued to punch and also kick the Complainant. The  
22                    Complainant briefly lost consciousness.

23  
24          vi.    When the Complainant regained consciousness, he found himself in the  
25                    middle of the road outside his residence. He had blood pouring out of his  
26                    head. At that point the two men who had earlier helped the complainant  
27                    home returned to the residence. They called an ambulance and the



1 Complainant was taken to the George Town Hospital where he remained  
2 overnight. The Complainant received four stitches to his head. His eyes  
3 were bruised and he had difficulty seeing out of them. He also had scrapes  
4 to his knees and hands.

5  
6 vii. The Complainant later discovered that some items had been taken from him  
7 during the incident including one 14K gold signet ring valued at  
8 approximately \$800.00; one iPhone 6 valued at approximately \$500.00;  
9 together with his wallet which contained, among other cards, his credit  
10 cards, identification and insurance cards, and drivers' licence.

11  
12 viii. On the 26<sup>th</sup> May 2018, the Defendant contacted a police officer and spoke  
13 to him. He thereafter gave a statement under caution in which he admitted  
14 taking the complainant's phone and credit card after a fight.



15  
16 6. Crown Counsel submits, in relation to culpability for a street robbery, that this offence  
17 falls within the B range of Medium Culpability and that the attendant level of harm is at  
18 Category 2. The Crown submits that the evidence of the sustained attack was violence  
19 over and above what was necessary to commit the offence. In light of these, the Crown  
20 invites the court to find that the correct starting point for a custodial sentence is 3 ½  
21 years' custody with a sentencing range of 2 – 5 years.

22  
23 7. Counsel for the Defendant does not dispute the level of culpability submitted by the  
24 Crown. However, Defence Counsel argues that the level of harm should be at Category  
25 3 in all the circumstances. Counsel submits that the Crown did not provide any medical  
26 evidence to show serious or lasting harm which would go the issue of whether the force

1 used during the robbery was above the level of harm inherent in the offence of robbery.  
2 He went on to argue that the limited medical evidence presented to the court was not  
3 sufficient to assist the court to sustain that categorization.  
4

5 8. In submitting to this court that the level of harm for this offence should be characterized  
6 at Category 3, counsel for the Defendant stated that the degree of force used by the  
7 Defendant in committing the robbery was inherent in the offence of robbery itself and  
8 no more than that.

9  
10 9. The evidence of the Complainant before the court was that he was held from the back by  
11 the Defendant around his waist and neck, he then felt fists and blows to his head as the  
12 defendant punched him and, after he fell to the ground, he was kicked and punched until  
13 he lost consciousness.

14  
15 10. It is obvious from Complainant's evidence that he lost consciousness for some minutes  
16 as the Defendant and his companions had left the scene by the time that he regained  
17 consciousness – at which time he found that he was bleeding, at the scene.

18  
19 11. He was hospitalized overnight and received 4 stitches to the wound to his head. He also  
20 had bruising to his face and scrapes on his knees and hands. He described feeling  
21 “emotionally stumped”.

22  
23 12. The complainant's Victim Impact Report (VIR) is relevant here. The Complainant stated:



24 *“I treated Azeem Delano Burton with respect and courtesy when I met him*  
25 *and feel I did nothing to provoke the vicious attack that he (and his friends*  
26 *perpetrated). ...*  
27



1 15. Three possible ‘categories’ are set out in the Guidelines to assist in determining the level  
2 of harm that has been caused or was intended to be caused to the victim.

3  
4 “Category 1

- 5 • Serious physical and/or psychological harm caused to the victim

6 Category 2

- 7 • Some physical and/or psychological harm caused to the victim above  
8 the level of harm inherent in the offence of robbery

9 Category 3

- 10 • Factors in categories 1 and 2 not present”.
- 11

12 16. In the recent judgment of the Cayman Islands Court of Appeal (CICA) in *Christine Rae-*  
13 *Smith v R*<sup>1</sup> the Court of Appeal considered arguments relating to the degree of harm in  
14 Category 2 for robbery. Although that case related to an offence of robbery at  
15 commercial premises, the Court of Appeal’s findings are relevant.

16 *“As we have said, the level of harm is to be determined by weighing up ‘all*  
17 *the factors of the case.’ It is the harm which ‘has been caused or was*  
18 *intended to be caused to the victim.’ In other words, when assessing the*  
19 *degree of harm in any given case, and the appropriate category into which*  
20 *to place it, the judge is entitled to weigh up every aspect of the robbery in*  
21 *question, having regard to the harm which was caused or intended. If,*  
22 *weighting up all those aspects, he concludes there was some physical or*  
23 *psychological harm caused or intended above that inherent in any high*  
24 *culpability robbery, the case will fall into category 2. For, in our judgment,*  
25 *‘this offence’ refers to any high culpability robbery; in other words (as*  
26 *presently relevant), any robbery in which a firearm or imitation firearm was*  
27 *used to threaten violence. If the judge concludes from all the evidence, that*  
28 *there was, or was intended to be, some physical or psychological harm*  
29 *above that inherent in any category A robbery, the case will fall into*  
30 *category 2 of harm. Equally if he concludes there was, or was intended to*  
31 *be, a theft of goods or sums of a high or medium value, the case will fall into*  
32 *category 2 of harm.*<sup>2</sup>  
33

34 17. The CICA went on to uphold the trial judge’s categorization of the harm at category 2.  
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<sup>1</sup> Criminal appeal 15 of 2017

<sup>2</sup> Ibid, at page 15, paragraph 56



1 18. Extrapolating from these pronouncements, this court must consider whether there was  
2 some physical and/ or psychological harm caused to the victim above the level of harm  
3 inherent in any medium culpability street robbery.

4  
5 19. Having carefully considered the evidence advanced by the prosecution as set out at  
6 paragraph 10 above I am satisfied that, in all the circumstances, the level of physical and  
7 psychological harm was above the level of harm inherent in a medium culpability street  
8 robbery.

9  
10 20. There is no evidence that the Complainant was fighting back. He was in shock at what  
11 was occurring. The level of violence inflicted was out of proportion to what may have  
12 been necessary in order to take the personal items from the Complainant at this point.

13  
14 21. I have also considered the psychological harm to the Complainant evident from the VIR  
15 referred to in paragraph 11 above.

16  
17 22. Based on the foregoing, I have come to the conclusion that this is a medium culpability  
18 street robbery at a Category 2 level of harm.

19  
20  
21 *AGGRAVATING AND MITIGATING FACTORS*

22  
23 23. I find the following aggravating factors to be present:

- 24  
25 i. The sentimental value attached to the signet ring taken from the  
26 complainant.: The complainant described that the ring had been given to  
27 him by his father and had been made with gold from a Welsh mine in an  
28 area associated with his family and that for those reasons it meant a lot to  
29 him. This ring was never recovered.



1                   ii.       The level of violence used to commit the offence.

2

3

24.    I consider the following to be mitigating factors:

4

a.    The defendant's good character. He has no previous criminal convictions;

5

b.    The genuine remorse shown by the defendant;

6

c.    Early guilty plea;

7

d.    The relative youth of the defendant: He is now 20 years of age, 19 at the time

8

of commission of the offence.

9

10

*THE CIRCUMSTANCES OF THE DEFENDANT*

11

12

25.    A Social Enquiry Report (SIR) dated the 23<sup>rd</sup> July 2018 highlighted a number of relevant facts regarding the defendant:

13

14

i.     *Mr. Burton described his childhood as good.*

15

ii.    *He disclosed that at age twelve (12) he suffered a traumatic experience when his best friend, whom he used to see on a regular basis and stay over at his house, died of a brain tumour. He explained that he felt that his world had stopped.*

16

17

18

19

iii.   *He himself began abusing ganja and smoking cigarettes.*

20

iv.    *By the time he was aged fifteen (15) he was expelled from school.*

21

v.     *Having returned Mr. Burton stated that he begged to get back into education and was allowed to attend the Cayman Islands Further Education Centre (CIFEC) and informed this officer that he did not attend the graduation ceremony but passed examinations. He also had a placement at the Dolphin Centre as a photographer where he later worked.*

22

23

24

25





1 vi. *Mr. Burton took up employment at the Dolphin Discovery Centre where he*  
2 *had his placements from CIFEC. He worked there for approximately one*  
3 *year and enjoyed the work. However, he moved on to become a handler of*  
4 *stingrays and maintained that employment from 2016 until he was*  
5 *remanded into custody on June 2018.*

6 vii. *The client does not have any savings from when he was in the community.*

7 viii. *Attitude towards offence: Mr. Burton stated that he feels “terrible, I think*  
8 *about it every day and should have controlled my anger”.*

9  
10 26. The Social Worker was of the opinion that the defendant was at medium risk of re-  
11 offending and that he could be addressed by the client undertaking rehabilitative  
12 programmes. However, she was concerned that *“Mr. Burton’s immaturity alongside his*  
13 *anger issues can get in the way of him making a positive change.”* She recommended  
14 that that the defendant could be placed on *“a probation order of sufficient length to take*  
15 *into account the severity of the offence with conditions.”*

16  
17 **COURT’S CONCLUSIONS**

18  
19 27. The Guidelines do contemplate a non-custodial sentence for an offence of Robbery. The  
20 guideline makes clear that *“robbery will usually merit a custodial sentence but that*  
21 *exceptional circumstances may justify a non-custodial penalty for an adult and, more*  
22 *frequently, for a young offender.”*

23  
24 28. Counsel for the defendant has not advanced any exceptional circumstances relating to  
25 this offender to justify consideration of a non-custodial sentence.  
26

1 29. I find, on the facts of this case, that there are no such circumstances and that a custodial  
2 sentence is merited in all the circumstances.

3  
4 30. As outlined above, the mitigating factors outweigh the aggravating factors in this case.  
5 It is within this Court's discretion to "identify whether any combination of relevant  
6 factors should result in an upward or downward adjustment from the starting point. In  
7 some cases, having considered these factors, it may be appropriate to move outside the  
8 identified category range."

9  
10 31. I consider the appropriate starting point to be 3 years' imprisonment.

11  
12 32. Where a Defendant has pleaded to an offence the defendant is usually entitled to a  
13 discount in his sentence to reflect this plea. It is generally the case that the level of  
14 reduction will reflect the stage at which the offender indicated a willingness to admit  
15 guilt to the offence for which he is eventually sentenced. In the present case, the  
16 defendant pleaded guilty at the first reasonable opportunity.

17  
18 33. However, in circumstances where, as in this case, a *Newton* Hearing was sought by the  
19 defendant and this court has rejected the defendant's account, the court should consider  
20 a reduction in the usual discount for the defendant's early guilty plea.<sup>3</sup>

21  
22 34. The court has a wide discretion when determining the appropriate level of reduction to  
23 be discounted for a guilty plea upon a *Newton* Hearing.<sup>4</sup> The fact that the prosecution  
24 was obliged to call the Complainant to give evidence, and the Complainant was

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<sup>3</sup> Cayman Islands Sentencing Guidelines at 10.5 at page 16

<sup>4</sup> *R v Martin* [2013] EWCA Crim 2565



1           subjected to cross examination by counsel for the Defendant, are relevant matters to be  
2           considered in this regard.

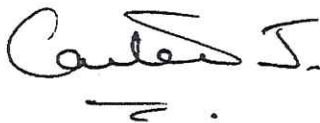
3  
4       35.    I do remind myself of the submission by Counsel for the defendant that the defendant did  
5           not seek a *Newton* Hearing to escape responsibility, but only to air an aspect of the case  
6           that needed a hearing and to demonstrate the genuine remorse shown by the Defendant.

7  
8       36.    Taking all these matters into account, I find that there should be a reduction of the  
9           notional thirty-three and one-third percent discount for a guilty plea to a discount of 30  
10          percent.

11  
12       37.    The sentence of the court is three (3) years' imprisonment discounted by 30 percent.

13  
14       38.    The defendant is therefore sentenced to a term of imprisonment of 2 years' and 1 month,  
15          and the time that the defendant has spent in custody awaiting sentence will be deducted  
16          from this sentence.

17  
18   **Dated this the 1<sup>st</sup> day of November 2018**

19  




20   **Justice Marlene I. Carter**  
21   **Judge of the Grand Court (Actg.)**