
THE QUEEN

-v-

SHEEN DEAN

BEFORE Hon. Justice Mr. Robert A Shuster; CRH

Ms. S Hall represented the Crown in this matter

Mr. Missick represented the Defendant

Sentencing date – Wednesday 02nd November 2016 @ 09.30

SENTENCING REMARKS ON CONVICTION FOR THE OFFENCES OF BURGLARY.

1. **HAVING HEARD** from Crown Counsel; from Defence Counsel Mr. Missick and from the defendant in person; the defendant appears for sentencing this morning; having previously pleaded "GUILTY" to an offence of Burglary on Monday 29th August 2016.
2. Because of the serious nature of the offence and implications involving the likely imposition of a prison term on 29th August 2016 the Court formally remanded the defendant in custody to await sentence. He is currently a serving prisoner.
3. The defendant was ordered to appear back before this Court for sentence; on Wednesday 02nd Nov 2016 at 09.30; his remand was to Her Majesty's Prison Grand Turk. In the Court's opinion a full Social Enquiry Report was unnecessary; [a] because of the serious nature of the offence and its stale date and [b] there is no necessity for a victim impact report and [c] the fact the defendant has two [2] previous convictions and he is a current serving prisoner.
4. This Court takes note of the fact that the defendant had initially pleaded "not guilty" to this charge at PDH; as is his legal right and also the Court takes note of the fact that this case is today three years and four [40] months old. The Court was told the defendant has been held in custody since his arrest on this matter from Saturday 09th April 2016.

5. The Court takes note of the fact; that the defendant appears for sentencing today for extremely serious charges; involving an allegation of Burglary whilst wearing a mask. The Court indicated to the defendant that on the facts of this particular case that the Court's starting point would be a sentence in the range of; three and a half [3.5] years - four [4] years imprisonment. That said the Court asked Defence Counsel Mr. Missick to mitigate on the defendants behalf.
6. After hearing from Mr. Missick and the agreed facts; the Court asked the defendant if he had anything to say prior to sentencing. The defendant indicated he was remorseful; he also apologized to the Court for his actions on the day in question. Defence Counsel argued for a sentence at the lower end of the spectrum; because the defendant was still young; he had been led astray; he had become involved with - the wrong crowd
7. The Court informed the defendant; that had he pleaded "Guilty" on first arraignment; and had the defendant had NO previous convictions; then the Court's starting point would have been in the region of two [2] – two and a half [2.5] years imprisonment for a young man with NO previous convictions.
8. However because the Crown had a strong case and the fact the defendant has previously been found guilty of a burglary of a dwelling house in January 2016 and he is serving a three [3] year prison sentence. That fact alone merits this Court imposing a higher starting sentence for this type of offending.
9. There are also clear aggravating feature to this case and the aggravating features clearly outweigh any mitigating features, thus the Courts starting tariff for the offence of Burglary on the facts of the case must be between 6-7 years particularly if the defendant is masked and an aggressor who confronts the occupants of a dwelling during a burglary on a NOT guilty plea.

10.. THE FACTS ALLEGED BY THE CROWN

11. The Court was told [in her agreed facts] by the prosecutor; that on Sunday 07th July 2013 the Loder family were visiting from Massachusetts USA. They were at their villa 24 Reef Coral on Coconut Road located in the Turtle Cove, area of Providenciales. The family were preparing dinner on the second level of their villa while their sons Aaron and Jordan were playing basketball outside. Aaron Loader entered the ground level of the villa and on entering heard sounds coming from the area of the bedrooms and upon entering one of the bedrooms he saw two men, one searching around their belongings while the other who was tall, and slim built stood

near the door dressed in tan shorts, white T-shirt and a white cloth covering his head and face however his eyes were visible. On seeing Aaron the masked man near the door whom the Prosecution believe to be this defendant attempted to grab behind the complainant Aaron Loder as he fled the bedroom. The alarm was set off and the two masked men ran out of the home. Mr. Brian Loder and his son Aaron Loder along with the property security officer gave chase behind the two masked males. The police were contacted and responded immediately. The two men were seen walking the beach where the police gave chase. The two men were seen crossing a canal, where they were apprehended by police. The defendant gave police a statement under caution admitting his involvement.

SENTENCING POLICY

12. Towards an appropriate sentence this Court must compare the case at bar; with cases from this and from our near neighbouring jurisdictions involving these types of offences involving burglary the Court certifies it has done so. This Court must also consider imposing a deterrent sentence; in order to prevent other persons from committing burglary while masked here in the TCI.

13. The Court must also bear in mind the main objectives of a criminal sanction – as has been very succinctly set out in the case of *Desmond Baptiste - et al v R: a decision of the Eastern Caribbean Court*

(1) Retribution - in recognition that punishment is intended to reflect society's and the legislature's abhorrence of the offence and the offender

(2) Deterrence - to deter potential offenders and the offender himself from recidivism

(3) Prevention - aimed at preventing the offender through incarceration from offending against the law and thus protection of society; and

(4) Rehabilitation - aimed at assisting the offender to reform his ways so as to become a contributing member of society.

ORDER

14 Having heard from all the parties including the defendant in person; this Court would be failing in its duty to itself and to all members of the TCI public; if this Court did not take a very serious view of the actions of the defendant on the day in question. The facts of the case clearly revealed that the defendant who was masked and he with another person; entered the complainants dwelling house; against their will and the masked men were seen searching a bedroom

on the lower floor by the complainants. The Court does not know / and was not informed of the age of Aaron who discovered the defendant in the bedroom if they were very young that would be an aggravating factor.

- 15 The facts reveal the offender [by my looking at him] he is a very well-built – very tall man; who approached a victim during the daylight; when the family who are from America were preparing their dinner. The masked men ran when they were discovered by the complainant's son and an alarm was set off. The complainant dialed 911 asking for police assistance. The defendants were subsequently located and they were arrested. The defendant to his credit admitted his offence in his caution statement to the police. The other masked man has not been convicted by a Court.
- 16 This Court adopts the Aggravating and the Mitigation points taken and advanced by Defence counsel today. The Court indicated to the defendant; after hearing mitigation that the Courts starting point in a case such as this would be a sentence of six- seven [6/7] years imprisonment for the burglary charge after a NG trial if masked.
- 17 The Court invited Counsel and the defendant himself to mitigate the sentence downwards if they so wished. The defendant has admitted in open Court today that he is currently serving a three year [3] sentence for a dwelling house burglary and he pleaded not guilty to that offence; but he readily admits his participation in this particular offence. He also indicated his remorse after he is released he has a job to go to. That is to his credit.
- 18 After hearing Defence Counsel's mitigation and upon hearing from the defendant in person; I certify I have considered appropriate guiding principles; when arriving at a proper sentence for this type of case involving serious allegations involving a charge of burglary.
- 19 I have also considered and applied the principles enunciated / set out in the case of *Reginald Raynsford* bearing in mind this case involves a relatively young man; who has no parental responsibility and who told me he fell into a bad crowd. He is twenty three [23] born 05/13/1993 but he has two [2] previous convictions recorded against him and he is currently serving a three year [3] prison sentence.

SENTENCE

20 This Court has carefully considered all the submissions from both counsel and it has also heard from the defendant in person. The Court sees some genuine mitigation on the defendant's part. Though he has a criminal record he does not appear to show a propensity for violence so far. It appears he does wish to take responsibility for his actions. In the circumstances before I heard his mitigation I had considered imposing a sentence of five / six [5/6] year's imprisonment; but I am willing to change my starting point; because the defendant has apologized to the court and his apology does appear to be sincere. According to the Crown he also assisted in the recovery of some stolen property.

21 Because of his apology; this Court today imposes a sentence of **THREE AND A HALF - year's imprisonment** for the burglary charge; which sentence is to start from the date of his first remand on 29th April 2016. The Court was informed the defendant has been remanded in custody on this matter since the 29th April 2016.

22 **THIS COURT ORDERS - TWO [2] years;** of the three and a half year sentence; which I have just passed will be suspended **and come into effect** for a period of two years upon his release from HM prison. This is to be a deterrent sentence applying the principles in the leading case of **CUNNINGHAM** in an attempt to deter other persons from similar actions under similar circumstances and to show to others this Courts displeasure at this particular type of offending.

23 To recap the sentence imposed today the total period for the defendant to serve in prison on this matter is - **EIGHTEEN MONTHS IMPRISONMENT** – [18] which sentence takes effect from the date of the defendant's first remand by the Court on arrest. After his release he is subject to a two-year suspended sentence. The defendant was warned in open Court of the consequences of breaching a suspended prison sentence

24 A copy of this order is to be served on the parties to these proceedings within ten [10] days of today's date. The defendant is **ORDERED** to sign an acknowledgment of this order.

DATED 02nd NOVEMBER 2015

JUDGE OF THE SUPREME COURT

