

COMMONWEALTH OF THE BAHAMAS

Information No. 124/5/2021

IN THE SUPREME COURT

Criminal Division

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

The Crown

AND

MARCUS WARD

Convict

Before: The Honourable Madam Justice Camille Darville- Gomez

Appearances: Mr. Roger Minnis Counsel for the Convict

Mr. Basil Cumberbatch along with Ms. Royann Forbes for the Respondent

Sentencing Date: 12th April, 2023

DECISION ON SENTENCING

Introduction/Factual Background

1. The Defendant was convicted on 14th July, 2022 of Armed Robbery contrary to section 339 (2) of the Penal Code, Chapter 84. The offence carries a maximum possible sentence of life imprisonment.
2. The trial lasted ten days, during which time three witnesses were called by the prosecution, including the virtual complainant and her mother. The convict gave evidence and tendered a defence of alibi for which he called his brother as a witness.
3. Upon conviction, I ordered a probation report and adjourned for sentencing to today. The report, was prepared and submitted.
4. The facts are that on Sunday 7th February, 2021 around 9:30 p.m., Marcia Hutchinson was robbed at her business establishment, VIP's clothing situated Dumping Ground Corner, by the Convict with a handgun. She testified that the Convict approached her

and pointed a handgun at her saying "Give me the money, give me the money. Additionally, that after turning her cellphone over to the Convict he said "Give me the money before I shoot you." Her evidence was that she walked over to her vehicle to retrieve her handbag and the Convict began searching the bag before running off.

5. The armed robbery was committed in the presence of her 9 year old son.
6. The virtual complainant was robbed of a Samsung A50 cellphone and \$200.00 cash. During the trial she identified the Convict and asserted that she is certain it was he who robbed her because he purchased items from her store in the past.
7. When asked to describe her feelings during the robbery, Marcia Hutchinson said "I feel like I was gone to die. I thought this was my last time on earth. I was so afraid for my life. I say this how my life gone end. I thought he was going to kill me. I thought he was going to kill me."

Law

8. **Section 339(2) of the Penal Code, Chapter 84** reads as follows:

"(2) Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for twenty years:

Provided that whoever commits robbery, being armed with any offensive instrument shall, where the offensive instrument is a firearm, be liable to imprisonment for life."

9. According to **section 185 of the Criminal Procedure Code, Chapter 91,**

"The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigating or other circumstances which may be relevant."

Crown's Submissions

10. The Crown identified the following mitigating and aggravating factors which they believe to be relevant to the matter at hand:

Mitigating Factors

1. *The Convict has no prior convictions*
2. *The Convict is of young age*
3. *The Convict did not discharge the handgun*

Aggravating Factors

1. *The Convict committed the offence while armed with a handgun.*
2. *The Convict was motivated by financial gain in committing the offence.*

3. *The Convict committed the offence in the presence of the Complainant's 9 year old son causing trauma to the Complainant and to her son.*"

11. Counsel for the Crown invited the court to consider the 4 classical principles of sentencing when determining the appropriate sentence. In addition, Counsel said that a sentence range between 13 – 20 years would be most appropriate considering the circumstances of this case. In support of this position, Counsel relied on the following cases: **Deangelo L. Adderley and Regina SCCrApp No. 105 of 2020; Dudley Seide and Regina SCCrimApp. No. 287 of 2014; and Vincent E. Nairn v Director of Public Prosecutions SCCrApp. No 56 of 2021.**

Defence Submissions: Plea-in-Mitigation

12. Defence Counsel contended that there are 2 aggravating factors: (i) the complainant was known to the Convict, and (ii) a firearm was used. Nonetheless, it was submitted that despite the Convict's guilty verdict, there are some mitigating factors that the Court should take into consideration to arrive at an appropriate sentence for Marcus Ward.

13. The mitigating factors which were identified by Counsel are as follows:

- (i) *"The Defendant has no criminal record and was at the age of Twenty – four (24) when charged with the offence, which is remarkable for a young man who lost his father at the tender age of nine (9) and grew up under severe peer pressure in a crime infested area.*
- (ii) *Everyone interviewed by the Probation Officer still believed that the defendant is innocent, both relatives and non-relatives alike.*
- (iii) *The defendant cooperated fully with the investigating officers.*
- (iv) *The defendant had no gang affiliation.*
- (v) *There is no evidence that the virtual complainant will have to, or underwent any form of counseling as a result of the offence."*

14. Counsel invited the Court to consider section 124 of the Penal Code, Chapter 84 which reads:

"Where a person is convicted of any summary offence or any crime punishable with imprisonment, and the Court is of the opinion that, having regard to the youth, character or antecedents of the offender, or to the trivial nature of the offence, or to any extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment, or any other than a nominal punishment, or that it is expedient that the offender be released on probation of good conduct, the court may instead of sentencing him at once to any punishment, direct an order that he be released on his entering into a recognizance with or without surety or sureties, and during such period, not exceeding three years, as the court may

direct to appear for sentence when called upon, and in the meantime to keep the peace and be of good behaviour.”

15. Counsel also highlighted the purpose of sentencing which is embedded in the four classical sentencing principles. He submitted that based on the information received from interviewees as to the Convict's character, it is unlikely that he will engage in any form of criminal activity. Counsel asserted that the Convict is capable of rehabilitation as he is not an incurable individual or an individual who is on the deep end of any criminal activity. Defence Counsel also underlined the fact that the Convict has not contravened any of the prison's rules and regulations as noted by Probation Officer, Matrena Carey.
16. During oral submissions, Defence Counsel noted that the Court has complete discretion when determining sentence. In this regard, he suggested a non-custodial sentence for the Convict with a probationary period to monitor behaviour.

Analysis and Court's Considerations

Probation Report

17. Mrs. Matrena Carey, Probation Officer at The Department of Rehabilitative/ Welfare Services provided a Probation Report dated the 4th October, 2022 with regard to the Convict, Marcus Ward. The information contained in the report was retrieved from the following interviewees: Marcus Ward, the convict; his mother, Helena Ferguson; brother Jareth Ward, family friend Shirley Symonette; former employer Kayvon Gibson; and neighbours Colette Morley and Jonathan Bellony.
18. I am reminded of my duty as a sentencing judge to take into consideration the 4 classical principles of sentencing: retribution, deterrence, prevention and rehabilitation: **R v Sargeant [1974] 60 Cr. App. R 74**. In addition, the mitigating and aggravating factors surrounding the case. I adopt the approach to sentencing which was pronounced in **Prince Hepburn v Regina SCCrApp No. 79 of 2013**. Adderley JA said:

“ In exercising his sentencing function judicially the sentencing judge must individualize the crime to the particular perpetrator and the particular victim so that he can in accordance with his legal mandate, identify and take into consideration the aggravating as well as the mitigating factors applicable to the particular perpetrator in the particular case. This includes but is not limited to considering the nature of the crime and the manner and circumstances in which it was carried out, the age of the convict, whether or not he pleaded guilty at the first opportunity, whether he had past convictions of a similar nature, and his conduct before and after the crime was committed. He must ensure that having regard to the objects of sentencing: retribution, deterrence, prevention and rehabilitation, that the tariff is reasonable and the sentence is fair and proportionate to the crime. Each case is considered on its own facts.”

19. I also find the case of ***Dustin Taylor and The Commissioner of Police MCCrApp & CAIS No. 63 of 2014*** instructive on the factors to be considered when determining sentence. Crane- Scott JA at paragraph 32 emphasized that:

“When considering the particular circumstances of the offender, sentencers may have regard to such of the following as may be relevant in the particular case.

- (1) An early plea of guilty will always be a strong mitigating factor in favour of the offender and should always be taken into account by way of a discount on sentence;*
- (2) Expressions of remorse (if any) bearing in mind that the absence of remorse should not be held against the offender and cannot be regarded as having aggravated the seriousness of the offence);*
- (3) Clean criminal record and good character (if any);*
- (4) Young age (if applicable);*
- (5) Employment status (if known);*
- (6) Possibility of rehabilitation (if known);*
- (7) Cooperation with the police investigations;*

Needless to say, in an appropriate case, sentencers should endeavor to protect society from persons who (based on the available facts or the evidence before the courts) have no regard for the sanctity of life and the physical well-being of others, bearing in mind that the judicial discretion may in appropriate cases be exercised with a view to general and specific deterrence.”

20. Having read a number of cases relative to the offence of armed robbery, it is clear that the sentences imposed are a reflection of the circumstances of each particular case. The range of those sentences spanned between 9 – 25 years.

21. As already indicated, this offence carries a potential maximum penalty of life imprisonment, so the offence has to be considered a serious offence. There is nothing about the character or antecedents of the convict which brings him into the category for consideration based on youth, character antecedents. He was 24 year old single man at the time of the commission of the offence, who is highly regarded by neighbours, friends and family and he has no previous convictions. However, there is no compelling reason or any extenuating circumstances under which the offence took place to invoke the provisions of section 124 of the Penal Code. Accordingly, I am unable to accede to the request of the Defence Counsel to sentence the convict under the provisions of section 124 of the Penal Code.

22. Similarly, there is no reason to not impose a custodial sentence.

23. I have found the following mitigating factors:

- (i) The convicts clean criminal history; this being his first offence, in his mid-twenties;

- (ii) The fact that his previous employer expressed a willingness to mentor him if the Court chose not to impose a custodial sentence;
- (iii) His family life and the high regard that his friends and family seem to hold him in;
- (iv) The fact that the weapon not discharged.

24. I found the following aggravating factors:

- (i) The nature and seriousness of the offence;
- (ii) The Convict was armed with an offensive instrument – a handgun;
- (iii) The offence committed in the presence of a minor child (aged 9).

25. It is expected that an individual being approached with a handgun would experience some level fear at the thought of losing their life. Therefore, this Court must acknowledge the importance of sentencing with the purpose of deterrence. So that the offender, will refrain from committing crimes in the future and also as a message for those like-minded individuals to commit this or any other offence punishable by law.

26. I am of the view that the Convict, Marcus Ward is capable of rehabilitation. He is still relatively young and can turn his life around to become a contributing member to our society.

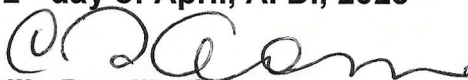
27. In the Probation Report his friends and family described as a charismatic, helpful, calm and articulate. His mother described him as giving, friendly, loving and trustworthy.

28. Although as I already indicated, a custodial sentence is most appropriate given the circumstances of this matter, however, this Court is hopeful that the Convict will learn a lesson from this experience in his life.

The sentence

29. Having regard to the maximum sentence possible of life imprisonment, which would be reserved for repeat prolific offenders with aggravating features, and a low end of a non-custodial sentence, which I have already indicated is not an appropriate sentence given the evidence in this matter and the personal circumstances of the offender, I find that an appropriate sentence for **MARCUS WARD** is **EIGHT (8) YEARS**. The sentence is to run from the date of conviction, on 14th July, 2022. The Convict's time served on remand must be deducted from the sentence imposed.

Dated this 12th day of April, A. D., 2023


Camille Darville Gomez
Justice