

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division

CRI/VBI NO.321/12/2022 &
CRI/VBI NO. 322/12/2022

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

AND

EMERSON HARDING

BEFORE:

The Honourable Mr. Justice Andrew Forbes

APPEARANCES:

Mr. Sean Smith on behalf of the Director of Public Prosecutions

Mr. K. Brian Hanna on behalf of Mr. Harding

HEARING DATE:

16th September, 2024

SENTENCING DATE:

19th November, 2024

SENTENCING

FORBES, J

BACKGROUND

[1.] On the 22nd July, 2024 the Convict appeared before the Court and entered a guilty plea to the charge of Robbery with Violence and Causing Harm with respect to Information Numbers 321/12/2022 and 322/12/2022. The facts were read and accepted by the Defendant who was represented by Attorney K. Brian Hanna. The Plea was accepted and the Convict was subsequently, convicted on the 22 July, 2024 for the Offences of Robbery with Violence contrary to section 339(1) and Causing Harm contrary to section 135(1) of the Penal Code respective to Information No. 321/12/2022 and in respect to Information No. 322/12/2022 he, likewise, pleaded guilty to Robbery with Violence contrary to section 339(1) and Causing Harm contrary to section 266 of the Penal Code respectively.

[2.] The Court recommended that a Probation Report be provided to aid in sentencing. A Probation Report was, in fact, prepared by Chief Probation Officer Ms. Wynelle Goodridge and Mr. Laish Boyd Jr. as a Trainee Probation Officer and dated the 11th September 2024.

[3.] The report sourced information from the Convict, his mother Ms. Christine Knowles, his paternal grandmother Mrs. Priscilla Knowles, his cousin Mr. Derek Gordon, his paternal aunt Ms. Shelly Harding, Special Projects Officer and Mrs. Leanette Bright Trainee Probation Officer at the Department of Rehabilitative and Welfare Services Ms. Antoinette King. The Probation Report also sought to rely upon the Criminal Records Office. Counsel for the DPP, Mr. Sean Smith made recommendations for an appropriate sentence and Counsel for Mr. K. Brian Hanna made pleas in mitigation.

FACTS

[4.] The brief facts were extracted from the statements of the Officers conducting the investigations as well as the statements made by the Convict to the Police when questioned. According to Detective Corporal 3801 Trinad Rolle, on the 19th January, 2022 he received certain information and as a result of the information he headed to the area of Commonwealth Bank and spoke with Ms. Stubbs who gave him further information. That later that day he received information in reference to the convict who was in custody. That he would have attended an abandoned building in the area of Mall Drive where he recovered a black handbag and several Government issued documents bearing the name of the virtual complainant. That on the 21st January 2022 that he interviewed the Convict under caution who recounted that he was hungry and he saw a female walking in the area of Commonwealth Bank that he then punched her and stole her black handbag. That he searched and discovered One Hundred and Twenty Dollars (\$120.00) which he took. The Convict then signed the Record of Interview.

[5.] Also on the 17th January 2022, Detective Sargent 3448 Daryl Rolle while on duty received information regarding a female with injuries to the head reporting that she was robbed. That he attended the Rand Memorial Hospital and spoke to the Virtual Complainant, Ms. McKenzie, who reported being struck in the head and robbed. That he received additional information and arrived at #76 Esher Court and was shown a brown handbag where a search of the handbag revealed One Hundred Dollars (\$100.00) cash and several other Bahamian Issued documents bearing the name of the Virtual Complainant. That he received video surveillance and was informed that the Convict was in custody. That on the 22nd January 2022 he conducted a Record of Interview under caution in which the Convict indicated he observed a woman walking in the area of Mayfield Park that he punched her and stole her handbag. He indicated he stole Fifty Dollars (\$50.00). He was shown a video of a male running away from the area wearing a gray hoodie and responded that was him. That he then signed the Record of Interview.

[6.] According to the information supplied in the Probation Report, the Convict was the child born to Ms. Christine Knowles and Mr. Emerson Harding Sr. in New Providence. That he was enrolled at Ridgeland Primary School where he completed grades one (1) through four (4)..His family then relocated to Miami, Florida where he was enrolled in Watkins Elementary School located in Pembroke Park, Florida where he completed grade 5. He then attended Attuck Middle School in Hollywood, Florida where he completed Grade 6 through Grade 8. That he then transferred to Piper High School, Sunrise Florida where he completed Grades 9 and 10 after which relocated to New Providence where he completed enrolled R.M. Bailey High School and completed Grades 10 and 11. The Convict, once more, relocated to the Island of Eleuthera but was denied enrollment at Rock Sound All Age School due to his failure to remove a gold tooth.

[7.] He returned to New Providence and discontinued his education. He was then employed as a general Worker with Mr. Rogers as a self-employed Contractor. He then became employed at Munroe's Landscaping as a general worker. The Convict then relocated to Grand Bahama where he worked as a general worker and painter and was later employed at Solomon's. The Convict then secured employment at the Freeport Container Port until the company downsized and he was terminated and the Convict has been unemployed since that time.

[8.] That According to the Convict, he was diagnosed with mental illness and was prescribed medication sometime in 2010. However, he discontinued the medication due to its side effects. He indicates that the medication made him drowsy and anxious and unable to think clearly. He admits to smoking marijuana and taking illicit drugs and consuming alcoholic beverages. The Convict describes himself as a hardworking individual with a sense of humor, but reports he is short-tempered at times and seeks assistance for his substance abuse and anger issues. He reports a strained relationship with his mother, that he did not have a relationship with his father and that he has difficulty at time coming to terms with the untimely death of his brother who was murdered.

[9.] The mother of the Convict, Ms. Christine Knowles, described her son as loving, caring and good natured. She is disheartened by the current situation and notes that when he fails to take his

medication he is easily provoked and has the propensity to make irrational decisions. She would like to see him become a functioning member of society again and requested leniency.

[10.] The Convict's grandmother, Ms. Priscilla Knowles, described him as helpful, genuine, hardworking and loving. She also states that when the Convict doesn't take his medication it creates a barrier when he attempts to communicate with others as he becomes incoherent, but is calm and rational once he takes them. Mrs. Knowles noted she had made provisions for him to stay at her residence once he was released from prison in 2021. According to Mrs. Knowles, the Convict assisted her by running errands for her and assisting at the Straw Market. Further, he would run errands for the other person working in the market. She indicates she is willing to ensure he continues his out-patient care once he is released. She indicated that it has been difficult for him to overcome his brother's murder and he was convicted of Attempted Murder for attacking the individual he thought had killed his brother. She expressed shock when she learned of the allegations. She is of the view he would benefit from drug counseling and treatment.

[11.] Mr. Derek Gordon, the cousin of the Convict, describes him as generous, and hard-working man who loved to laugh. That when the Convict worked at the Container Port, he was focused and responsible. However, he believes his downfall was associating with the wrong individuals. He further believes that these individuals laced the marijuana the Convict was smoking and he has never been the same. Moreover, the loss of his employment resulted in his being homeless and Mr. Gordon believes drugs and alcohol lead to the Convict's current situation. He does believe that the Convict has redeemable qualities and hopes that the Court directs his cousin into drug treatment.

[12.] The Probation Report refers to the maternal aunt, Ms. Harding, who described her nephew as considerate, friendly, affectionate young man who loves music and has an excellent work ethic. She feels empathy as she knows his father and grandfather struggled with addiction. She was shocked to learn of his current situation and petitioned the Court to offer the Convict drug and mental health treatment.

[13.] The Probation report then referenced Mrs. Janet Brown, the maternal aunt of the Convict, and she too described him as a nice child who was raised in church with Christian values. That he had a positive relationship with her husband. She knows him as someone who loves his family and was always working.

[14.] The Probation Department in its summation noted that the Convict was raised in a traditional home environment and was afforded the basic education. That he has been employed continuously. That family members are shocked of the allegations involving the Convict. That sometime in 2010 it is reported that the Convict was diagnosed with a mental disorder and placed on medication. Although it is hoped that this incident will allow the Convict to improve himself and strengthen his resolve. Further given a second opportunity and provided with mental health counseling and drug treatment while incarnated the Convict may improve. The Court would note that neither of the Virtual Complainants were interviewed nor were their views communicated and

although much has been expressed regarding the mental health diagnose of the Convict, no actual evidence or material was provided to the Court for a true assessment. Therefore, the Court is unclear what if any mental health disorder the Convict was diagnose with and what if any medication if any were prescribed.

LAW

[15.] The Penal Code prescribes as follows:

“339. (1) Whoever commits robbery shall be liable to imprisonment for fourteen years. (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 within the range of fifteen to twenty-five years:...”

[16.] In deciding the appropriate sentence consideration must be given to the general principles of sentencing Halbury’s Laws Third ed. Vol 11(2) at paragraphs 1188 notes:

“The aims of sentencing are now considered to be retribution, deterrence and protection and modern sentencing policy reflects a combination of several of all of these aims. The retributive elements is intended to show a public revulsion of the offence and to punish the offender for his wrong conduct. Deterrent sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by growing emphasis laid upon it by much of modern legislation. However, the protection of society is often overriding consideration. In addition reparation is becoming an important objective in sentencing.”

Each case must depend on its own circumstances and various factors must be considered by the court in deciding which of the principles should predominate.

[17.] In the Court of Appeal case of **Prince Hepburn v. Regina SCCrApp. No. 79 of 2013**,

Adderley JA (Retired) offered the following guidelines as to sentencing where he said at paragraph 36:- *“In exercising his sentencing function judicially the sentencing Judge must individualize the crime to the particular victim so that he can, in accordance with his legal mandate identify and take steps into consideration the aggravating as well as mitigating factors applicable to the particular perpetrator in the particular case. This includes but 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 he has 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.”*

SUBMISSIONS

[18.] Mr. K. Brian Hanna on behalf of the Convict suggested that the Convict is a relatively young man, still redeemable and pleaded guilty at the earliest opportunity. That the Convict’s actions, although premeditated, he didn’t used the weapon to harm anyone. He notes that the Convict has expressed remorse and that the Court should not engage in any punitive sentences towards the Convict.

[19.] Mr. Sean Smith on behalf of the Director of Public Prosecutions notes that the Convict has a previous convictions in this jurisdiction for Attempted Murder. That he would have used

violence to perpetrate both robberies. It might be a fair assumption to make given the nature of the crimes but given no interview was taken from either complainant to share their perspective everything is conjecture and speculation. The Crown presents several cases for consideration namely **Anton Bastian v. The Queen SCCrApp. No. 146 of 2016** another case from court of first Instance **R v. Jamal Dorfviel VBI No. 179/8/2013** and the final case from the British Virgin Island of **R v. Tim Daley 2014/0005 BVI High Court** these cases ranged from 11 years at the high end to 6 years at the lower end. The crown then recommends that the Court sentences the convict to a range of between 8 to 12 years for Robbery with Violence and 6 months and 1 year respectively for Causing Harm to run concurrently including treatment for drug and mental health.

ANALYSIS & DISCUSSION

[20.] In individualizing this case to the present Convict, Mr. Emerson Harding appeared to have cooperated with the investigation. He did participate in both Records of Interview and gave a full statement while also taking Officers to various locations. He also elected to plead guilty at the very earliest of opportunity. These certainly all inure to his credit. The Court recognizes the comments made by President of the Court of Appeal, *Sir Michael Barnett* in **The Attorney General v. Claude Lawson Gray SCCrApp. No. 115 of 2018**, and citing the Judgement from the Eastern Caribbean Court of Appeal of **Kenneth Samuel v. The Queen Criminal Appeal No. 7 of 2005** where in that case the question of reduction of sentence for manslaughter was being reviewed. It is accepted that this present case is not a case dealing with Manslaughter and that is accepted, however, the comments made are relevant and in Samuels case cited by the Court of Appeal and specifically the comments of *Barrow JA* this portion of his comments are relevant as there are no guidelines related to these offences,:

“[18] In the application of these sentencing, principle guidelines have been developed that assist a sentencing judge in arriving at a sentence that is deserved, which is to say a sentence that is fair both to the convicted person and to the community, including the family and friends of the victim. A principal guideline is that there must be consistency in sentences. Where the facts of offences are comparable, sentences ought to be comparable, if rationality is to be served. The objective of consistency has led to the emergence of ranges of sentences. In England, for example, it is established that the range of sentences for manslaughter committed after provocation is between three and seven years imprisonment. The particular facts of a case will determine where in the range the sentence will come down; thus, an offender who had some time to regain self-control after provocation will attract a heavier sentence than the offender who had no time to regain self-control. An offender who delivers one blow in response will deserve a lesser sentence than one who delivers multiple blows. The weapon used and how likely it was to be lethal may be another factor in determining degrees of culpability and therefore severity of punishment. Similarly, an offender who has a criminal record will not get as much of a reduction from the starting sentence as one who has no criminal record and is widely regarded in his community as a good and caring person. These examples are illustrative and not exhaustive.”

[21.] Also of assistance are the comments of the authors of Blackstone Criminal Practice 2004 edition at paragraph B4.50 at page 298 where they said the following:

“The combination of violence and theft makes robbery the most serious of the common offences of dishonesty. The great majority of offenders convicted of robbery receive custodial sentences. The guideline cases are Turner (1975) 61 Cr. App. R. 67, Daly (1981) 2 Cr. App. R (S) 340 & Gould

(1983) 5 Cr. App. R. (S) 72..... In Gould Lane CJ confirmed; "that the Turner guidelines remained the basis for sentencing in armed robbery offences. He also added: "Some of the features likely to mitigate an offence are a plea of guilty, the youth of the offender, a previously clean record, the fact that the defendant had no companion when committing the offence and the fact that no one was injured. On the other hand the fact that a real rather than imitation weapon was used, that it was discharged.... These considerations are of course not exhaustive and are not intended so to be." For robberies in the first division which are the subject of the guideline cases of Turner, Daly and Gould, the normal starting point is 15 years...the Court of Appeal dealt with four separate references and increased custodial sentences on seven offenders involved in robberies of small shops, off licenses and similar premises, in each case to sentences between three and a half and six years. A third category of robbery is street robbery or mugging. The Court of Appeal's approved tariff seems to be from two to five years, through a total of six years for the robbery of two elderly ladies... Where victims are attacked in their own homes, sentences vary according to the degree of violence used and the property taken.... A case towards the lower end of the scale of seriousness.... A sentence of six months detention in a youth offender institution was upheld... Notwithstanding the guilty, and the offender's good record, it was held that this offense of robbery was so serious that a non-custodial sentence could not be justified."

[22.] The Crown for its part has laid over three (3) cases where the sentences range from Twelve (12) years to Six (6) years. In the case Anton Bastian, this appellant was convicted and sentenced for Murder and Armed Robbery and sentenced, however, upon appeal to the Privy Council the conviction for Murder and Armed Robbery was quashed and remitted to the Court of Appeal for resentencing on Manslaughter and Robbery. The Crown did not wish to proceed on the Manslaughter as the appellant had already served much of the sentence and securing witnesses for a potential retrial as for the robbery the Appellant was sentenced to eleven years 2 months and 13 days. It is fair to assert that the case isn't entirely helpful and the other cases provided didn't offer much assistance.

[23.] The Court notes the comments of the Court of Appeal in **Jeremy Kemp v. Regina SCCrApp. No. 201 of 2012** a case in which the Appellant was convicted for Attempted Armed Robbery and sentence to nineteen years (19) on Appeal the conviction was affirmed and sentence varied to nine (9) years and The Court of Appeal said the following:

"There is, however, a distinction between applying principles and over straining them. A sentence recognizing the preventative principle is punitive. It also act as deterrent to others. Such a sentence however, must be balanced against the age of the offender and in this case his mental condition. It is true that he has previous conviction for a firearm offence but nevertheless, he should be given an opportunity to prove to society that he is capable of making something of himself. The sentence meted out to the appellant is too severe..."

[24.] In the cases cited by the Crown they all proceeded to trial whereas the convict in this case plead at the earliest. That will inure to his benefit and during the process the convict has express remorse and regret for his conduct. The Court notes however the use of Violence was utilized against both virtual complainant. The convict is 40 years old, unmarried and without any children and appears to have been raised in stable home environment nonetheless, was easily influenced if one accepts the statements made by the convict's cousin. The court accepts the convicts sincerity and honesty as to his participation and his frankness when he cooperated with law enforcement.

One would have hoped that a forty (40) old adult would be making more sound decisions and wouldn't be so gullible or feckless although if one accepts that the convict has mental challenges although unsubstantiated it would explain some of his behavior. The challenge for the Court is that the convict voluntarily removed himself from the medication if accepted the correct and perhaps practical approach would have been to return to the prescribing doctor to perhaps modify the dosages to ensure functionality.

[25.] The Crown proposes a range of eight (8) to twelve (12) on each of the Robbery with Violence offences and Six (6) months and One (1) year respectively on the Causing Harm offenses. Five (5) Years commencing from 10th June 2024 accounting for the convicts time pretrial detention and pre-sentencing detention. The Court notes that the lowest sentence for such an offence which in fact involved a firearm was seven (7) years and that courts accepts that is in keeping within an acceptable range. Clearly the convict appears contrite and remorseful, has accepted responsibility, but what should never be overlooked that the convict as an adult made a decision to on two separate occasion to punch unsuspecting women and relieve them of their pocketbook. So although the court accepts the mitigating factors it must balance them against the reality if what transpired.

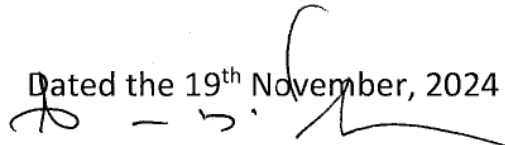
DISPOSITION

[26.] The Court hereby convicts Mr. Emerson Harding of Robbery with Violence with respect to VBI Nos. 321/12/2022 and 322/12/2022 contrary to section 339(1) of the Penal Code of the Statute Laws of the Bahamas and imposes a Seven (7) year sentence commencing from the 10th June 2024. The Court, further, convicts Mr. Emerson Harding of Causing Harm contrary to section 135(1) and section 166 of the Penal Code with respect to VBI. Nos. 321 & 322/12/2022 and sentence to six (6) months and twelve (12) months, respectively, on each count. All Counts are to run concurrently.

[27.] The Convict clearly requires some skill trade that will benefit him upon his release and the Court invites the Convict to enroll in any available trade classes to be able to provide for himself upon his release. It is perhaps also necessary that the Convict be enrolled in anger management classes if available and substance abuse classes also if available. There are some indications that the convict has a mental illness, therefore, it is recommended that the Convict is evaluated by Sandilands Rehabilitation and a determination made of his mental status and any appropriate medication if necessary be administered. It would require complete cooperation from the Convict to be consistent and compliant.

[28.] The Convict may appeal the sentence of this Court to the Court of Appeal within the statutory time.

Dated the 19th November, 2024



Andrew Forbes
Justice of the Supreme Court