

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

CRI/VBI/58/2/2024

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

AND

P.V.

BEFORE: The Honourable Madam Justice Guillimina Archer-Minns

APPEARANCES: Mr. Uel Johnson with Ms. Tennielle Bain for the Office of the Director of Public Prosecutions

Mr. Calvin Seymour for the Convict

HEARING DATE: 19 February 2025

SENTENCING RULING

Criminal Law – Sentencing – Armed Robbery – Aggravating factors – Mitigating factors – Section 339(2) of the Penal Code, Chapter 84 – Sections 6 and 185 of the Criminal Procedure Code, Chapter 91 – What is the appropriate sentence to be handed down upon the Convict having regard to the circumstances of the case.

ARCHER-MINNS J:

INTRODUCTION

[1.] P.V., the Convict named herein, is a 41-year-old Bahamian national who was charged, tried and convicted of the offence of armed robbery contrary to section 339(2) of the Penal Code, Chapter 84.

[2.] A nine-member jury was empanelled on 19 August 2024 with a view to commencing the trial. The trial commenced on 22 August 2024 and concluded on 29 August 2024. Following deliberations, the jury, by a 7 to 2 majority verdict, found the Convict guilty of the offence of armed robbery contrary to section 339(2) of the Penal Code, Chapter 84.

[3.] The Convict was thereafter convicted and remanded to The Bahamas Department of Correctional Services (“BDOCS”) pending the sentencing phase of the trial.

[4.] Counsel for the Convict, Mr. Calvin Seymour, requested that a probation report be prepared relative to the Convict for use at the sentencing phase.

[5.] The Court, of its own motion, also requested that a psychological evaluation report be prepared relative to the Convict for use at the sentencing phase.

[6.] A probation report dated 6 December 2024 was prepared relative to the Convict by Ms. Deborah Duncombe, Chief Probation Officer at The Bahamas Department of Rehabilitative/ Welfare Services within the Ministry of Social Services, Information and Broadcasting.

[7.] A psychological evaluation report dated 20 January 2025 was prepared relative to the Convict by Dr. Sean Leonardo Knowles, Psychiatric Medical Officer attached at BDOCS; and Dr. Delano Rolle, Clinical & Military Psychologist attached at BDOCS.

[8.] Both reports were received by the Court and have been useful aids in helping the Court to derive at an appropriate sentence for the Convict.

FACTUAL BACKGROUND

[9.] The factual background of this case that was marshalled by the Prosecution and undoubtedly accepted by the jury is succinct, straightforward and may be summarized as follows

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On Thursday 30 November 2023 at some time around 5:30 am, the Convict, while armed with a firearm, did rob L.P., the Virtual Complainant named herein, of a black handbag with the writing PINK Love Pink bearing the colours pink, aqua, and green being her property while she was stationed at

a public bus stop located in the area of Spikenard Road and Cowpen Road. Two male bystanders then successfully pursued the Convict, subdued him on Carmichael Road in the vicinity of Lazaretta Road, and held him until the arrival of the police.

Upon arrival on the scene, police officers observed the two male bystanders in a struggle with the Convict, who was clad in a red, blue and black jacket and grey short pants. The Virtual Complainant, who was also on the scene, identified the Convict as the male who had earlier robbed her of her handbag while brandishing a small black firearm and clad with a pinkish and black mask pulled over his face. The Convict was then arrested and cautioned.

Police officers were able to retrieve a small black imitation firearm, i.e., a glue gun, from nearby bushes, which was pointed out to them by one of the male bystanders and said to be thrown there by the Convict. Police officers were also able to retrieve a pink and black coloured mask, which was also pointed out to them by one of the bystanders as the mask the Convict wore during the armed robbery. The two male bystanders positively identified both items at the Carmichael Road Police Station.

ISSUE

[10.] The single issue that the Court must now determine is the appropriate sentence to be handed down upon the Convict having regard to the circumstances of the case.

SUBMISSIONS

[11.] Counsel for the Office of the Director of Public Prosecutions, Mr. Uel Johnson, laid over written submissions dated 22 January 2025 and also made oral submissions. Counsel for the Convict, Mr. Calvin Seymour, made oral submissions for and on behalf of the Convict. Whilst those submissions have not been reproduced in detail, they have been fully considered.

The Office of the Director of Public Prosecutions' Submissions on Sentencing

[12.] Counsel for the Office of the Director of Public Prosecutions ("ODPP"), Mr. Uel Johnson, highlighted that the Court, in deciding the appropriate sentence for the Convict and relative to the armed robbery offence, must be guided by the principles of sentencing and proportionality. Mr. Johnson drew the Court's attention to the four cardinal principles of sentencing, namely, retribution, deterrence, prevention, and rehabilitation. Counsel relied on the following authorities, namely, **Prince Hepburn v Regina SCCrApp No. 79 of 2013**, **Jermaine Ramdeen v Commissioner of Police BS 2018 CA 114** and **Benjamin v Regina (1964) 7 WIR 459**, to ground the ODPP's position.

[13.] Counsel posited that the Court, in deciding the appropriate sentence for the Convict and relative to the armed robbery offence, must also be guided by the aggravating and mitigating factors in this case. Counsel submitted that there are no mitigating circumstances in respect to the Convict. Contrariwise, Counsel submitted that there are five aggravating factors in respect to the Convicts, namely, (1) the Convict committed the offence while armed with a firearm, (2) the Convict refused to work and become a contributing member of society, (3) the Convict has not expressed any remorse, the victim was put through the trauma of testifying, and reliving the offence that transpired, and (5) the Convict's antecedent shows he was persistently offending prior to being before the Court. In the event the Court is persuaded that mitigating factors exist in this case, Mr. Johnson advanced that the aggravating factors of this case far outweigh any mitigating factors that are being advanced in this case.

[14.] Counsel ultimately submitted that in applying the principles of sentencing, along with balancing the mitigating (if any) and aggravating factors of this case and taking into consideration the circumstances in which the armed robbery was committed (the Virtual Complainant was defenceless and robbed in public with, albeit, an imitation firearm in the early hours of the morning), the appropriate sentence for the Convict should be thirteen years' imprisonment. Counsel contended that the Convict's conduct during and after the armed robbery was callous and demonstrates that the society must be protected from him. Counsel drew the Court's attention to several authorities to support his proposal, namely, **Deangelo Adderley v Regina SCCrApp No. 105 of 2020**, **Patrick Knowles v Regina SCCrApp No. 222 of 2016**, **Dudley Seide v Regina SCCrimApp No. 287 of 2014**, and **Vincent Nairn v The Director of Public Prosecutions SCCrApp No. 56 of 2021**.

The Convict's Submissions on Sentencing

[15.] Counsel for the Convict, Mr. Calvin Seymour, conceded that the appropriate punishment for the Convict relative to the armed robbery offence ought to be a custodial sentence, albeit a minimal custodial sentence coupled with probation. This is particularly so given the nature and seriousness of the armed robbery offence. However, Mr. Seymour submitted that the Court, in deciding the appropriate minimal custodial sentence for the Convict, must have regard to the principles of sentencing and proportionality, and the mitigating and aggravating factors in this case. Mr. Seymour did not provide the Court with a numerical estimation of what he considered an appropriate minimal custodial sentence for the Convict and left it entirely up to the Court to determine the appropriate sentence for the Convict.

[16.] Mr. Seymour identified several mitigating and aggravating factors relative to the Convict and contended that the identified mitigating factors outweigh the aggravating factors. Relative to the mitigating factors, Mr. Seymour identified: (1) the Convict was recently diagnosed with a retroviral condition and has to take medication for the condition as prescribed by a Department of Public Health physician, (2) the Convict has also been diagnosed with a mental health condition inclusive of paranoid delusions (with thoughts of suicide) and has been prescribed mental health medications which he will have to remain on for the rest of his life, (3) the inhuman and degrading

conditions at the BDOCS make it uncondusive for the Convict and his medical conditions, (4) a prolonged incarceration will limit the Convict's access to medical treatment and access to medication for his medical conditions, (5) while the Convict is a person who is not of good character, he is capable of being rehabilitated, and (6) the Convict will cause no harm to the public. Relative to the aggravating factors, Mr. Seymour identified that the offence of armed robbery is a serious offence. However, Mr. Seymour contended that the Convict's denial of the commission of the armed robbery should not be viewed as his lack of contrition or remorse. Moreover, nor should the Convict's denial of the commission of the armed robbery be viewed as an aggravating factor in this case.

LAW AND DISCUSSION

[17.] The **Criminal Procedure Code Act, Chapter 91** (the "**CPC**"), that is, the principal legislation governing the procedure to be followed in criminal proceedings and matters incidental thereto, permits the Court to pass any sentence authorised by law in respect of the offence for which it is to be imposed. **Section 6 of the CPC** provides –

“6. The Supreme Court may pass any sentence authorised by law to be inflicted in respect of the offence for which it is imposed.”

[18.] Sentencing has always been and continues to be an important role for the Court when exercising its discretion, having regard to all the circumstances of the case. It is undisputed that sentencing is not an art or science, nor is there an arithmetic formula for it. In the absence of any expressed or compiled guidelines on sentencing in The Bahamas (which is undoubtedly needed), judicial guidance on sentencing may be drawn from The Bahamas Court of Appeal in **Prince Hepburn v Regina SCCrApp No. 79 of 2013**, wherein *Adderley JA*, in *obiter dictum* at paragraph 36, provided the following observation –

“36. 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.] As espoused by *Charles J (as she then was)* in **Regina v Collins [2018] 1 BHS J. No. 7**, the overriding objective of a criminal sanction is rooted on the grounds of public policy and public interest; the public must be protected from the criminal element at all times. However, the Court, in exercising its discretion during sentencing, must ensure that the punishment handed down to the convicted person is just and proportionate; the punishment must fit the crime.

[20.] The proportionality principle was endorsed by the Bahamian Court of Appeal in **Jermaine Ramdeen v The Commissioner of Police MCCrApp No. 64 of 2018**. In that decision, *Evans JA (Actg.) (as he then was)* at paragraphs 8 and 9 enunciated –

“8. Proportionality in sentencing is concerned with the relationship between the seriousness of the offence committed and the sentence imposed. At the same time, proportionality is about the sentencing process, not only its result. Properly understood, proportionality in sentencing entitles an offender ‘to a process directed at crafting a just sentence’ and ‘a sentencing judge is prohibited from arriving at sentences contingent on factors unrelated to the determination of a fit sentence’.

9. The principle of proportionality was discussed by MacMenamin J in the Irish High Court in the case of *Gilligan v Ireland and others* [2013] IESC 45. The learned judge opined that modern authorities make it clear the fact that the judiciary is entrusted with the task of applying the principle of proportionality in sentencing and that the origin of this principle can be found in the very nature of the judicial task. He then had these instructive observations:

“34. One of the hallmarks of the exercise of judicial discretion in sentencing is the application of the overriding principle of proportionality...

35. By now, it is well established that the distributive principle of punishment under our law requires that, in general, every sentence must be proportionate to the gravity of the offence, and take into account the personal circumstances of the offender (*see Deaton; Osmanovic; and Lynch and Whelan v Minister of Justice*). Here, the term “proportionality” is used in the sense of the judicial task of striking a balance between the particular circumstances of the commission of the offence, and the circumstances of the offender to be sentenced.

36. In sentencing, proportionality only arises when the judge is exercising a judicial discretion as to sentence, within the parameters laid down by law. Obviously, the principle

does not arise in the case of mandatory penalties. The test of proportionality does, however, apply in every case where the offence, on conviction, carries a maximum penalty as opposed to a mandatory sentence. Thus, it arises in any situation where the trial court has a discretion as to the particular penalty to be imposed, within the statutory maximum sentence.”

[21.] Undoubtedly, in addition to the proportionality principle, are the well-known principles of sentencing, namely, deterrence, retribution, prevention and rehabilitation. It is recognized that in some cases, one of the principles of sentencing will be predominant, whereas in other cases, predominance may be given particularly to two or more of them. In **Desmond Bannister v The Queen (Criminal Appeal No. 8 of 2003 – Saint Vincent and The Grenadines)**, *Sir Dennis Byron CJ (as he then was)* adeptly provided context to the meaning to each of the principles of sentencing, stating as follows –

- “Retribution – at first glance tends to reflect the Old Testament biblical concept of an eye for an eye, which is no longer tenable in law. It is rather a reflection of society’s intolerance for criminal conduct ...
- Deterrence – deterrence is general as well as specific in nature. The former is intended to be a restraint against potential criminal activity by others, whereas the latter is a restraint against the particular criminal relapsing into recidivist behaviour ...
- Prevention – the goal here is to protect society from those who persist in high rates of criminality ...
- Rehabilitation – here, the objective is to engage the prisoner in activities that would assist him with reintegration into society after prison. However, the success of this aspect of sentencing is influenced by executive policy. Furthermore, rehabilitation has, in the past, borne mixed results. Of course, sentencing ought not to be influenced by executive policy, such as the availability of structured activities to facilitate reform.”

[22.] Armed robbery offences and the punishments relative thereto are governed by **section 339(2) of the Penal Code, Chapter 84**. It provides –

“339. ...

- (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 years to twenty-five 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.

(Emphasis added)

[23.] The Convict was convicted of and is being sentenced for armed robbery where the offensive instrument used in the commission of the offence was a firearm, albeit an imitation firearm, i.e., a glue gun. The punishment for an offence of this kind carries a maximum sentence of imprisonment for life as opposed to a minimum or mandatory sentence. Therefore, the Court has an unfettered discretion as to the particular sentence to be imposed within the statutory maximum.

[24.] The Court, in determining the appropriate sentence to be handed down upon the Convict, has drawn assistance from sentences passed or affirmed for similar armed robbery offences. However, the Court, while recognizing that such practice is customary, also recognizes that the sentences passed or affirmed for similar armed robbery offences provide persuasive assistance to the Court in considering the proportionality of a sentence for the Convict; however, they do not in any way bind the Court. The latter is because in considering such sentences passed or affirmed, the Court is not seized with all the facts and circumstances of the offence or the offender which were before the particular sentencing judge at the time the particular sentence was passed or affirmed. More fundamentally, the Court is cognizant that each case stands on its own peculiar facts.

[25.] In **Ellison Smith v Regina SCCrApp & CAIS No. 156 of 2010**, the appellant and others were convicted for the offences of murder, armed robbery and kidnapping in July 1997. They were sentenced to death, life imprisonment and ten years, respectively. Their appeal against conviction was dismissed in March 2000. The appellants sought special leave to the Privy Council to appeal their convictions, which was also dismissed. Special leave against the sentences for murder were granted. The sentences were quashed, and the cases were remitted to the Supreme Court for re-sentencing. After a re-sentencing hearing in 2010, a sentence of imprisonment for life was imposed upon the appellant, commencing from 10 July 1999. The appellant appealed against that sentence. His Counsel also urged the Court of Appeal, principally on the ground of proportionality, to set aside the sentence of imprisonment of life for the armed robbery offence and to impose a determinate sentence. Both appeals were allowed, and sentences of forty-five years and twenty-five years were substituted for the murder and armed robbery offences, respectively.

[26.] In **Dudley Seide v Regina SCCrimApp No. 287 of 2014**, the appellant and another were convicted of armed robbery where they had approached a businessman and, while armed with firearms, deprived him of a chain and black pouch containing \$700 - \$900. The appellant was

sentenced to twenty-five years' imprisonment. On appeal, the conviction and sentence were affirmed.

[27.] In **Patrick Knowles v Regina SCCrApp No. 222 of 2016**, the intended appellant entered a convenience store armed with a firearm and held up the customers therein. As the intended appellant was exiting the store, he was shot by an armed police officer and fell just outside the store. Following hospitalization, the intended appellant was charged with the offences of armed robbery, possession of an unlicensed firearm and possession of ammunition. At his trial, the intended appellant did not present evidence, and his case was based on a denial of the charges. The intended appellant was found guilty and sentenced to eighteen years' imprisonment for the armed robbery offence and twelve years' imprisonment for the firearm offence. He filed an appeal five weeks after the time limit. The application for an extension of time was dismissed, and the convictions and sentences were affirmed.

[28.] In **Vincent E. Nairn v The Director of Public Prosecutions SCCrApp No. 56 of 2021**, the intended appellant, while armed with a firearm and wearing a mask, held up a web shop café located on Fire Trail Road. The intended appellant assaulted the cashier, hitting her in the head with a gun, and took \$200 from the cash register and \$216 from the cashier's purse, her cellphone, her watch and three bracelets. The intended appellant also took the security guard's cellphone and \$40 and left the scene. Following a police investigation of the scene, three latent fingerprints were lifted from the underside of the cashier's tray and sent for processing. One of the fingerprints was identified to be that of the intended appellant, and he was arrested and arraigned in the Supreme Court on three counts of armed robbery. The appellant was convicted on three counts of armed robbery and sentenced to thirteen years' imprisonment on each of the counts, with consideration given to the two years he spent on remand. The intended appellant sought to appeal his convictions and sentences through an application for an extension of time. The application for an extension of time was refused, and the convictions and sentences were affirmed.

[29.] In **Javon Roberts v Regina SCCrApp No. 245 of 2015**, the appellant, while armed with a firearm, held up a 15A jitney bus on Balliou Hill Road. The appellant robbed the jitney bus driver and between thirteen to thirty passengers of their personal property. The appellant made good his escape and was captured by the police the following day. The appellant was identified by the jitney bus driver and a fellow female passenger as the armed robber who robbed them of their personal property. The jitney bus driver testified that he knew the appellant as "Little Hopper" and knew him for some eight years. The appellant was also wearing an ankle monitoring device, which placed him in the vicinity of the armed robbery. The appellant was subsequently charged and convicted of two counts of armed robbery. He was sentenced to fifteen years' imprisonment on each count. On appeal, his appeal against conviction was dismissed; convictions and sentences were affirmed.

[30.] Moreover, the Court, in determining the appropriate sentence to be handed down upon the Convict, also considered the probation report and psychiatric report that were prepared for and on

behalf of the Convict. These reports were ordered and received by the Court in the exercise of its discretion as outlined in **section 185 of the CPC**, which provides as follows –

“185. (1) The court may, before handing down a sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be handed down and may receive any relevant representation from the victim or otherwise hear counsel for the defence and the prosecution on any mitigating or aggravating circumstances that may be relevant.

(2) For the purposes of this section, victim in relation to the offence means

(a) the person to whom harm is done or who suffers physical or emotional loss as a result of the commission of the offence;

(b) the spouse or any relative of that person in paragraph (a) or the guardian of that person where, as the case may be, he is dead or otherwise incapable of making a statement referred to in subsection (1).”

[31.] The probation report provided, in summary, as follows –

“The [Convict] resided with his mother and siblings in a community where he felt challenged, due to its negative activities, for most of his life. He described his health as poor and was reportedly hospitalized on three (3) occasions for matters not related to his “health”. He has fathered three (3) children from three (3) separate relationships and was reportedly engaged at one point. However, he has not maintained interaction with his children, fortunately, his father provides for the last child and his second child visits with his family occasionally.

The [Convict] obtained his education via the public school system but discontinued the same while in the tenth (10th) grade to pursue employment. He claimed to have worked in the Restaurant, Hotel, and Construction Trades.

The [Convict] reportedly attended divine worship at Jesus Christ of the Latter Day Saints Church, which led him to becoming a Christian and consequently, discontinuing using illegal drugs. He admitted that he wanted to become respectable and described himself as easygoing.

From the sentiments of most of the persons interviewed for this report, the [Convict] did not listen to their counsel and consequently is responsible for his present predicament. One of them noted that he may have “a mental problem”, and his brother believes that he needs professional help to enable him to change his negative behaviour.

The [Virtual Complainant] in this matter noted that the Police arrested the [Convict] at the scene of the Armed Robbery for which he was convicted. Yet, he claimed to be innocent.

From all of the information obtained for this report, it appears that the [Convict] may have a psychological problem that needs to be assessed. It is therefore respectfully recommended that all of the above-mentioned be taken into consideration when passing sentence.”

[32.] Attached also to the probation report was the Convict’s Royal Bahamas Police Force Criminal Records Antecedent Form, which revealed that the Convict had lived a life of criminality before his conviction for the armed robbery offence. The Convict’s previous convictions include possession of dangerous drugs, vagrancy, threats of death, assault with a dangerous weapon, unlawful possession, causing grievous harm, causing damage, robbery, attempted stealing, shop breaking, and stealing.

[33.] Judicial notice is taken that the Convict has several previous convictions for crimes of dishonesty. The armed robbery offence is the Convict’s most recent conviction for a crime of dishonesty. Thus indicating not only the Convict’s propensity to engage in crimes of dishonesty but also the escalation of his involvement in such crimes.

[34.] The Court, in ordering the psychological evaluation report relative to the Convict, was guided by the Bahamian Court of Appeal in **Ellison Smith (supra)**. In that case, *Conteh JA* expressed that the necessity of a psychiatric report in the sentencing exercise for an offence, for example, murder, where the death penalty is not on the table, is strictly a matter of discretion for the judge.

[35.] The Court, having regard to the recommendation made by the probation officer in the probation report, ordered the psychological evaluation report relative to the Convict. This is so the Court would be properly and adequately informed on the physical and mental state of the Convict before handing down a sentence. The latter is notwithstanding that the Convict did not advance in his defence during the trial that he was suffering from a mental disorder or health condition before or after the commission of the armed robbery. The Convict outright denied committing the armed robbery and asserted that the actual perpetrator of the armed robbery was an individual who goes by the alias “Dirty”. The Convict alleged that he knew “Dirty” from a previous employment where they both worked years ago.

[36.] Relevant portions of the psychological evaluation report reads as follows –

“When the [Convict] was seen on **December 27** for the first time, he stated that he was not sleeping well (with approximately 2 to 3 hours of sleep nightly), and we appreciated **a remarkable mental status examination**:

- **Appearance:** unkempt, dishevelled
- **Affect:** depressed, constricted
- **Thought process:** hyperactive thoughts, disorganized
- **Thought content:** paranoid delusions (“I feel like people want to hurt me) with thoughts of suicide.

At the time of this initial assessment at the MHU, **he was not on any psychiatric medication**. To this end, the psychiatric medical officer prescribed the following medication:

...

At his **January 17th assessment**, we appreciated **a significantly improved mental status examination**. His affect was more euthymic, his sleep had improved, and he was no longer having paranoid delusions. While he still acknowledges “overthinking” (primarily because of his incarceration and the uncertainty of his future), his thoughts were more organized.

[The Convict] is deemed fit to plea and appear before you. However, the BDCS MHU **recommends the following**:

1. He should **remain on his current mental health medications with monthly follow-ups by a psychiatric team** over a minimum of twelve months. He will have to stay on the medication for his medical condition for life.
2. If he is released to the island community, he should be **considered for remand to the SRC’s detox programme for a minimum of six weeks**, where he can continue the detoxification process while **attaining addiction education on substance use and its effect on the brain and behaviours**. Dr. Kirk Christie serves as the Consultant Psychiatrist for this unit. [The Convict] acknowledges that he has a substance use problem, and at

the time of our second follow-up, he wanted to make the necessary changes to improve his life.”

[37.] The Court, having considered the mitigating factors (or lack thereof) advanced by Counsel for the ODP and Convict, is satisfied that there are no mitigating factors relative to the Convict. Alternatively, the Court is satisfied that the aggravating factors relative to the Convict are as follows –

- i. the Convict committed the armed robbery while armed with a firearm, albeit an imitation firearm, e.g., a glue gun;
- ii. the Convict committed the armed robbery during the early hours of the morning at a public bus stop frequented by members of the public;
- iii. the armed robbery was inflicted upon a member of a vulnerable group in society, e.g., women;
- iv. the Convict has expressed no remorse or contrition for his commission in the armed robbery; and
- v. the Convict, through his Royal Bahamas Police Force Criminal Records Antecedent Form, has demonstrated his inability to curb his involvement in criminal activity, particularly crimes of dishonesty, and has steadily progressed to more serious offences.

[38.] For any avoidance of doubt, the Court wishes to express that the mitigating factors advanced by Counsel for the Convict relative to the Convict’s retroviral condition, mental health condition and the treatment relative to the conditions are untenable. Counsel for the Convict has not produced any cogent evidence that the Convict’s incarceration at the BDOCS would in any way hinder his treatment for said conditions and/or quality of life. Bare or naked advancements without more cannot suffice. The Court takes judicial notice that inmates serving custodial sentences at the BDOCS with similar diagnoses are able to receive the necessary treatment and medication for their conditions. Those inmates are able to live relatively normal and healthy lives, given their circumstances and incarceration. In any event, the Court is armed with specific powers to ensure that the Convict receive the necessary treatment and medication for his mental health condition and retroviral condition while incarcerated at the BDOCS.

[39.] Moreover, it is evident from the psychological evaluation report that the Convict, while incarcerated at the BDOCS, has shown significant improvement in his mental health. This is because he has been receiving the necessary treatment and medication for his mental health condition. It is also gleaned from the psychological evaluation report that the Convict has been receiving the necessary medication and treatment for his retroviral condition, albeit whilst in the

remand section of the BODCS, and which ought to continue no matter his placement following sentencing. In the absence of any cogent evidence to the contrary, the Court is sufficiently satisfied that the Convict will not be hindered in his access to the necessary treatment and medication for his mental health condition and retroviral condition if he is to receive more than a minimal sentence at the BDOCS.

[40.] In reference to the Counsel for the Convict's advancement regarding the conditions at the BDOCS, the Court is satisfied that such advancement is premature and may best be preserved for a certain application, which is not before the Court.

[41.] It is evident from the reading of **section 339(2) of the Penal Code, Chapter 84**, which creates the offence and punishment for armed robbery, that Parliament intends for armed robbery, mainly, where a firearm is used, to carry a custodial sentence that reflects, through the Parliament, the Bahamian society's abhorrence not only to armed robbery but armed robbery that is carried out with the use and abuse of a firearm. This is particularly so given the notorious fact that the gravity of a firearm crime cannot be exaggerated. Firearms not only seek to kill or hurt individuals but also terrorize and intimidate them. Therefore, not only creating a long-lasting and devastating effect on the well-being of the individual victims but the Bahamian society as a whole.

[42.] Armed robbery is a profoundly serious offence that must be met with the strongest condemnation by the courts in The Bahamas. The Court has an overriding duty to protect members of the public from such level of criminality, and a strong message must be sent that such level of criminality will not be tolerated. This is particularly so given what may only be described as an escalation of armed robbery offences in The Bahamas, particularly, with the use of firearms, which occurs almost weekly and involves offenders young and old.

[43.] It is inconsequential that the firearm used by the Convict in the armed robbery was subsequently determined to be an imitation firearm. The subsequent determination in no way lessened the seriousness of the armed robbery committed by the Convict.

[44.] The Court, while considering the four principles of sentencing, is satisfied that deterrence, retribution, and prevention are most paramount and determinative with respect to the case. The appropriate sentence to be handed down upon the Convict regarding the circumstances of the case must be one that not only deters the Convict from repeating a similar offence upon his release but also deters members of the public from committing similar offences.

[45.] The Court, having regard to the circumstances of the case, is not satisfied that a minimal custodial sentence is appropriate, even if coupled with probation.

CONCLUSION

[46.] Having regard to the foregoing reasons and all the circumstances of the case, the Court is satisfied that the appropriate sentence to be handed upon the Convict is seventeen years imprisonment.

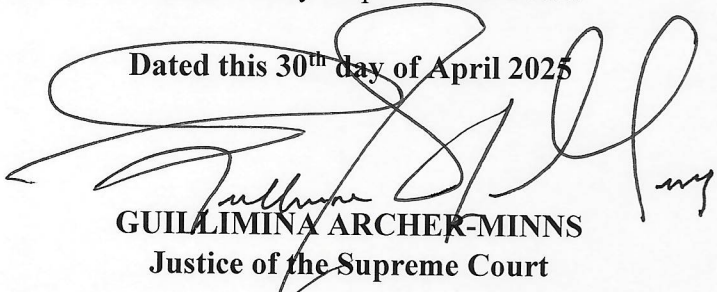
[47.] The Convict is hereby sentenced to seventeen years' imprisonment to run from the date of his conviction on 29 August 2024. The Convict was on remand from 5 December 2023, so time on remand of one year, four months, and twenty-six days is to be deducted from the sentence.

[48.] For an abundance of caution, it is hereby ordered that while the Convict is incarcerated at the BDOCS, he receives the necessary treatment and medication for his mental health and retroviral conditions.

[49.] Additionally, while the Convict has not expressed any interest in enrolling in any of the programmes and/or classes at the BDOCS, should the Convict so wish to do so in the future and the opportunity and availability permit, it is recommended that the Convict be so enrolled.

[50.] Lastly, the Court wishes to express gratitude to Counsel for the ODDP for their erudite written submissions, which were undoubtedly helpful to the Court.

Dated this 30th day of April 2025



GUILLIMINA ARCHER-MINNS
Justice of the Supreme Court