

COMMONWEALTH OF THE BAHAMAS

CRI/VBI NO.189/06/2023

IN THE SUPREME COURT

Criminal Division

B E T W E E N

DIRECTOR OF PUBLIC PROSECUTIONS

AND

**ANTHONY MARCUS FORBES, FRANKIE SEYMOUR
& DEMETRIUS BARLETT**

Before: The Honourable Justice Andrew Forbes

Appearances: Mrs. Ashely Carroll & Mr. Sean Novell Smith on behalf of the Director of Public Prosecutions

Mr. Kendal Knowles on behalf of Mr. Bartlett

Hearing Dates: 11th December 2023, 8th March 2024 & 12th April, 2024

Sentencing Date: 12th April 2024

SENTENCING

BACKGROUND

[1.] On the 11th December, 2023 the Convict appeared to Court and entered a guilty plea to the charge of Armed Robbery contrary to section 339(2) of the Penal Code. The facts were read and accepted by the Convict who was unrepresented at the time. The Court accepted the Plea and subsequently convicted the Convict of the offence.

[2.] The Court recommended that Counsel be assigned to aid the Convict during sentencing. Counsel Mr. Kendal Knowles was assigned to represent the Convict. 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 4th March 2024 which only became available to the Court on the 7th March 2024.

FACTS

[3.] 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 are as follows:

- i. According to Officer Inspector Edison McSweeney on the 23rd July 2023 he received certain information and as a result he spoke to the Convict who was in Police custody.
- ii. That Officer Stubbs cautioned the Convict and he was asked if he wished to assist the Police. He elected to ride along with Officers and took them to an establishment named Zero Degrees Liquor Store. The Convict reported that while there he picked up two male individuals that he knew.
- iii. According to Officer Stubbs, the Convict admitted that he along with others made a plan. Subsequent to that discussion, he then entered the establishment, retrieved some items and approached the cashier.
- iv. While at the cashier, he produced a firearm, pointed it at the cashier and demanded the money. He then went around the counter to the register and took

the cash and ran out. That when he ran out he didn't see the car but ran down a street where he then met the others and he gave them the money which they later shared.

- v. The Officers also spoke with Mr. Adderley who indicated he was the owner of the establishment and One Thousand Thirty Nine Dollars and Fifty One Cents (\$1,039.51) was stolen. Officers also spoke to Ms. Saunders who indicated she was the cashier when the robbery occurred and gave a general description of the individual who robbed the establishment that day.

[4.] That during the investigation the Officers also retrieved surveillance footage and spoke to several individuals and received information. That as a result they elected to charge the Convict with Armed Robbery.

[5.] The report sourced information from the Convict, his father - Mr. Davie Bartlett, his sister - Ms. Dayanis Bartlett and Mr. Tyrone Adderley the owner of Joe's Food Mart. The report also sought to rely upon the Criminal Records Office. Counsel for the DPP made recommendations as to an appropriate sentence and Counsel for the convict Mr. Kendal Knowles made pleas in mitigation.

[6.] According to the information supplied in the Probation report the convict was the third of seven paternal siblings and born in Freeport, Grand Bahama. That he was enrolled at Bartlett Hill Primary School where he completed his Elementary studies. He advanced to Eight Mile Rock High School for Grade Seven (7) and Jack Hayward Junior High School for Grade Eight(8). The Convict then attended the Ruthnell Technical Institute for two (2) years, where he focused on welding. The Convict discontinued his education at sixteen years (16).

[7.] Upon leaving school, the Convict entered the employment arena in 2009 as a Warehouse helper at Kelly's. That he was then employed with heavy equipment company cleaning oil tanks. In 2012, he was employed at the Grand Bahama Yacht Club in its Accounts Department as well as a dock staff. He began working with Mr. Pennerman loading containers, and also worked for Accomplish Goals Recycling as a helper. The Convict was arrested in the United States of American for allegedly being involved in Human Trafficking. Here the Court would note that no

documentation was provided to substantiate this; however, this appeared to be information supplied by the Convict to the Probation Officer.

[8.] The father of the Convict Mr. Davie Bartlett, described his relationship with his son as beautiful. He described his son as a skilled young man with an excellent work ethic. He noted that his son was always respectful and mannerly as a child and maintained that demeanor as an adult. Mr. Bartlett noted he observed a strong relationship with his son and his siblings. That he occasionally administer corporal punishment as discipline. Mr. Bartlett that he observed that his son was starting to hang out with two (2) men with whom he was unfamiliar and didn't like their appearance and warned his son not to associate with them.

[9.] That he expressed shock when he learned of the allegations. That he encouraged his son to return to Grand Bahama and turn himself into the Police. Mr. Bartlett is shocked at his son's poor decision and attributes the lack of judgement to his son's employment status.

[10.] The Probation report then referenced Ms. Dayanis Bartlett, the older sister of the Convict and she too described her brother as mannerly and respectful and voiced the opinion that if he was employed he would be fine however, if idle there would possibly be a problem.

[11.] The Court notes that in the Probation report cites the Mr. Tyrone Adderley the owner of the Food Mart which was robbed. He noted he was not present at the time of the robbery, but stated that the cashier was pregnant at the time and was traumatized by the incident.

[12.] That the Convict is single and without any children. That the Convict acknowledged that he found a firearm and was having conversations with other gentlemen regarding potentially using the firearm to earn some money. That eventually he settled upon the idea of robbing the Food Mart. That after committing the Robbery he left the store and then he and the other shared the money. That he decided to fly to Abaco.

[13.] That after speaking with his brother and a Police Inspector he returned to Grand Bahama. That he regrets his actions and would rather sweat for his money and wishes to express apologies' to the cashier he pointed the gun at and the owner of the store. The Convict considers himself straightforward, hardworking and honest person who grew up in the St. Stephen Anglican Church. The Convict indicates that he does smoke cigarettes daily, and marijuana on a regular basis and occasionally consumes alcoholic beverages. That he indicates that he has a healthy relationship with both parents and credits his father for teaching him a great deal of skills.

LAW

[14.] 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: 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.

(3) In subsection (2) “firearm” means any barreled weapon of any description capable of inflicting injury from which any shot, bullet or other missile can be discharged and includes anything which has the appearance of being a firearm notwithstanding that it is not loaded or is otherwise incapable of discharging any shot, bullet or other missile.”

[15.] 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.

[16.] 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 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

[17.] Mr. Knowles, on behalf of the Convict, suggest that he is a relatively young man and still redeemable. That the Convict plead guilty at the earliest opportunity. That the Convict’s actions although premeditated that he didn’t used the weapon to harm anyone and in fact discarded by throwing into the ocean. He notes that the Convict has expressed remorse and that the Court should not engage in any punitive sentences towards the convict. In this regard to the court balancing both aggravating and mitigating factors, Mr. Knowles laid over the case of **Prince Hepburn v Regina** SCCrApp. No. 79 of 2013. He further invited the court to consider that the Convict had no relevant previous convictions, the prospect of employment upon completing his Prison term, the desperate state of the Convict and the behavior of the Convict before and after the crime.

[18.] Further he suggested a sentence of 4 years for Armed Robbery with the effective date of August 2023.

[19.] Mrs. Ashley Carroll on behalf of the Director of Public Prosecutions notes that the Convict has one (1) previous conviction in this jurisdiction for Grievous Harm in May 2010 where the Convict was ordered to pay One Thousand Five Hundred Dollars (\$1,500.00) or One (1) month in Prison. And also does point out that the Convict acknowledges convictions in another jurisdiction. They were alluded to by the Probation Officer, however, as the court noted there is no documented evidence to confirm the comments made by the Convict. Skelton Arguments were laid over by Mrs. Ashley Carroll on behalf of the DPP. The Court notes that at the sentencing Mrs. Carroll made a recommendation of 6 years for Armed Robbery.

ANYALSIS & DISCUSSION

[20.] In individualizing this case to the present convict, Mr. Demetrius Bartlett, appeared to have cooperated with the investigation. He did participate in the Record 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. However, to his detriment, are

the use of a deadly weapon, specifically a firearm, to threaten a pregnant woman in order to carry out the offence. Which in this Courts view is not near the lower end of the scale of seriousness. 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 principles 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 sentencer 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 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

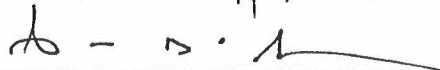
the basis for sentencing in armed robbery offences. He also added: "Some of the features likely to mitigate an offence are a plea of guilty, the youth of the offender, a previously clean record, the fact that the defendant had no companion when committing the offence and the fact that no one was injured. 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."

DISPOSITION

[22.] The Court hereby convicts Mr. Demetrius Bartlett of Armed Robbery contrary to section 339(2) of the Penal Code of the Statute Laws of the Bahamas and imposes a six (6) year sentence commencing from the 2nd August 2023. The Convict has expressed interest in attending Carpentry and Welding while at BDOCs if classes are available it is recommended that the Convict is so enrolled. It is perhaps also necessary that the Convict be also enrolled in Anger Management classes if available and substance abuse classes.

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

Dated the 16th April, 2024



Andrew Forbes
Justice of the Supreme Court