

IN THE HIGH COURT OF BELIZE, A.D. 2022

CRIMINAL JURISDICTION

Central District

Indictment No C60/2016

THE KING

v.

JUSTIN FABER

BEFORE: **The Honourable Justice Susan Lamb**

APPEARANCES: **Ms. Romey Wade for the Crown**
Accused self-represented

DATES: **4 April 2022, 11 April 2022, 26 September 2022, 25 November 2022, 28 November 2022 and 7 December 2022**

SENTENCING

i. Introduction and procedural history

1. On 25 November 2022, Justin Faber entered a plea of guilty to the offence of robbery, contrary to Section 147(1) of the Belize Criminal Code.¹
2. The agreed facts are that on Wednesday 8 January 2014, sometime around 7:00 p.m., 45-year-old Randolph Herbert was walking home alone in the New Site Area, Hattieville

¹ Section 147(1), Belize Criminal Code, Chapter 101 of the Substantive Laws of Belize (Revised Edition) 2020 (“Criminal Code”).

Village, Belize District. He noticed a male person come out of some bushes and walk towards him. He recognized this person to be Justin Faber. Justin Faber grabbed Mr. Herbert around the neck and a struggle ensued. Mr. Herbert was dragged into some nearby bushes. While Mr. Herbert was struggling with Justin Faber, he saw another male person approach them who had a firearm in his hand, causing Mr. Herbert to fear for his life. Whilst holding the gun in his left hand, the second male person searched Mr. Herbert's pants pockets with his other hand and took out his wallet. Meanwhile, Justin Faber was holding Mr. Herbert. Afterwards, Mr. Herbert's wallet was thrown into the bushes, and the men left. Randolph Herbert then retrieved his wallet and realized that his Atlantic Bank ATM card was no longer in his wallet and that it had been stolen by Justin Faber and the other male person.

3. In November 2022, Mr. Faber's trial was listed for trial by jury for Monday 28 November 2022. On 25 November 2022, a Sentencing Indication Hearing took place, following which Mr. Faber entered a plea of guilty to this offence. A Sentencing Hearing, in relation to both victim impact and mitigation, was held on 28 November 2022.

ii. Legal Framework

4. Section 147(1) of the Criminal Code provides that “[a] person is guilty of robbery if he steals, and immediately before or at the time of doing so and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force.”
5. Section 147(2)(a) of the Criminal Code provides that on conviction on indictment for robbery, the penalty “shall not be less than fifteen years but which may extend to life imprisonment”, provided that “the court may, in the case of a first time offender who has no previous conviction for any offence involving dishonesty or violence, refrain from imposing this minimum mandatory sentence if there are special extenuating circumstances, which the court shall record in writing.” In these circumstances, the court may pass any other sentence, whether custodial or non-custodial, as it considers just, having regard to the prevalence of the crime and other relevant factors.
6. There are few decided cases interpreting this proviso. However, in *R. v. Jordan Pitt*, which concerned an Accused convicted of a robbery using a firearm and followed a guilty plea, the court imposed upon a four-year sentence, which was suspended on the condition that he not be convicted for any other indictable offence within the following three years.² I find that the Accused's guilty plea, the significant time that has elapsed since the commission of this offence, and the favourable progress made by Mr. Faber since then in terms of rehabilitation, amount to special extenuating circumstances within the meaning of this proviso and thus warrant deviation from the mandatory minimum sentence contained in Section 147(2) of the Criminal Code.

² *R. v. Jordan Pitt*, C86/2015 (2019) per Colin Williams J (unreported).

7. Section 168 of the Indictable Procedure Act also confers a general discretion upon the court, when a person is convicted of any crime, to issue orders for the payment of a sum of compensation to any person injured by the crime in question.

iii. Determination of sentence

8. Having regard to the above sentencing framework and my duty to arrive at an individualized sentence which reflects the circumstances of the case, I have considered the impact of this offence on the Virtual Complainant, as well as a number of factors in mitigation.
9. Mr. Herbert testified during the Sentencing Hearing regarding the impact of this offence. He described it as causing him to “feel bad”, which he explained as fearing that he could have lost his life. The Crown submits that aggravating factors of this offence include the involvement of a deadly instrument in its commission, and the fact that the Virtual Complainant was subjected to force and overpowered by two assailants. Mitigating factors include Mr. Faber’s plea of guilty which, whilst not early, nonetheless saves the court time and resources. Mr. Faber’s Defendant History shows one prior conviction for burglary in 2010 and an apparently undischarged fine from that date.
10. Additional mitigating factors are the Accused’s remorse, and the genuine efforts made by Mr. Faber since the commission of this offence, in 2014, to become a productive and law-abiding member of society.
11. Mr. Faber called three witnesses in mitigation: his mother, Ms. Patricia Adkins; his common law spouse, Ms. Christina Baldwin, and mother-in-law, Ms. Delvorine Dominguez. His mother testified that Mr. Faber has, in the years since the commission of this offence, “really turned a corner” and has become a responsible citizen. He is a good father to his children, who rely upon him considerably, and who look up to him. She stated that Mr. Faber has “changed significantly” since this time, describing him now as an upstanding citizen; a positive trajectory which she views as likely to continue. His common-law spouse, who has known Mr. Faber for the past six years, describes him as a caring and hard-working person, committed to his children, and as someone who always tries his best. Ms. Baldwin further describes Mr. Faber as an excellent father and while he is not employed at present, a good provider. He has shared with her information regarding his past offending, which occurred when he was young. She considers that he has since tried, successfully, to change. Ms. Dominguez, who has also known her son-in-law for the past six or seven years, similarly describes him as of good character, a good father and spouse, and hard-working. She also opined that Mr. Faber has, in the years since the commission of this offence, “definitely changed”, and that he no longer has any propensity to commit crimes.
12. Mr. Faber also made a statement on his own behalf, in which he apologized to the Virtual Complainant, explaining that this offence occurred when he was significantly younger, lacking in good guidance, and, by his own admission, on a bad path. As an individual

who has since been through hardship and with a better understanding of life, he has since tried to change his circumstances. He seeks a chance to be there for his children, and to contribute to society as a productive person. His children look up to him and depend upon him for help, and he wishes to guide them and to ensure they avoid making the same mistakes that he himself made in his earlier years.

13. Mr. Faber is 30 years of age and of modest means. Although he receives occasional financial help from a relative in the United States, he lives largely hand-to-mouth, selling small items online and through occasional work (and ongoing training) as a technician. He has five children, including two under the age of five, both of whom live with him and his common law spouse.
14. Considerable time has elapsed since the commission of this offence. Delays of this magnitude not only frustrate the expectations of victims of crimes of timely justice, but also complicate the task of a sentencing judge, as this example shows. In view of Mr. Faber's positive comportment since 2014 and remorse for his much earlier offending, I find that incarceration at this juncture could only jeopardize the considerable rehabilitative progress that Mr. Faber has since made. I further consider that the goals of punishment and deterrence, which are also important animating principles of sentencing, can be met in this case through other means.

iv. Disposition

15. In light of the above, I consider the following sentence to be appropriate in all the circumstances:
 1. A term of imprisonment of four (4) years, which is suspended provided that Mr. Faber is not convicted of any other indictable offence within three (3) years of the date of this judgment; and
 2. A sum of compensation of \$500.00, payable within twelve (12) months of the date of this judgment, to the Virtual Complainant, Mr. Randolph Herbert.

Dated this 7th day of December 2022

Susan Lamb
Justice of the High Court