

IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE

CR20230091C-COURT BOOK NOS. 2727 /23, 2728/23, 2729/23, AND 2730/23

BETWEEN

DC #1982 CARLTON ANDERSON

And

ALEJANDRO JAIR GONZALEZ VASQUEZ

CARLOS FRANCISCO MORALES JARA

Prisoners

Before:

The Honourable Mr. Justice Nigel Pilgrim

Appearances:

Ms. Cheryl-Lynn Vidal, S.C., Director of Public Prosecutions for the Crown.

Mr. Lynden Jones for the Prisoners.

2023: December 13th and 19th.

2024: February 1st and 23rd.

THEFT- ABETMENT OF THEFT- SENTENCE

[1] **PILGRIM J.:** Alejandro Jair Gonzalez Vasquez and Carlos Francisco Morales Jara (“prisoner #1 and prisoner #2 respectively”) were each individually charged for the offence of theft, one each for the taking of a Kia Sorrento 2020 (“the Sorrento”) valued at \$60,000.00 (sixty thousand dollars) and a Chevrolet Equinox 2021 (“the Equinox”)

valued at \$60,000.00 (sixty thousand dollars), respectively, contrary to section 139(1) read along with section 146 of the **Criminal Code**¹ (“the Code”) in July 2023. They are also charged for abetment of theft contrary to section 20 read along with section 146 of the Code. The allegation in each charge is that prisoners #1 and #2 each purposely aided the other in their theft of the motor vehicles for which they were charged in the substantive theft count.

[2] The two prisoners were arraigned in Magistrate's Court on 11th October 2023. The four charges were read to them. On 13th November 2023 the learned Magistrate sought to have the matter heard summarily with the consent of the prisoners, which was given in the presence of defence counsel. When called upon to plead both prisoners pleaded guilty to both charges against them. The summary of facts was read, and both prisoners accepted those facts. The learned Magistrate then accepted those guilty pleas. The learned Magistrate, in her considered view, thought that owing to certain aggravating factors that the appropriate sentence to be imposed was outside of her legal sentencing limit. Consequently, in exercise of her discretion under section 80(2) of the **Summary Jurisdiction Procedure Act**² (“SJPA”) she committed both prisoners for sentence to the High Court.

[3] The matter was called before this Court on 19th December 2023 when both parties asked for time to prepare for the mitigation hearing, which was granted. A full mitigation hearing was completed on 1st February 2024 with submissions made on both sides. The Court heard from witnesses on behalf of the prisoners and a victim impact statement from the managing director of the company that owned the stolen vehicles.

The Legal Framework

[4] Section 80 of the SJPA provides, where relevant, as follows:

¹ Chapter 101 of the Substantive Laws of Belize, Revised Edition 2020.

² Chapter 99 of the Substantive Laws of Belize, Revised Edition 2020.

*“(2) Where under the provisions of section 49 or 50 of the Summary Jurisdiction (Offences) Act, Cap. 98, any person is tried summarily by a court of summary jurisdiction for a crime and **is convicted by that court of that crime, then if in all the circumstances of the case, including the prevalence of the crime for which the accused has been convicted and the character and antecedents of the accused, the court is of opinion that greater punishment should be inflicted in respect of the crime than that court has power to inflict, the court may, in lieu of dealing with him, commit him in custody to the Supreme Court for sentence.***

(3) Where any person has been committed for sentence under the powers conferred by this section, the magistrate shall within fourteen days or as soon as is practicable thereafter, transmit the record of the case to the Registrar, together with a copy thereof for the Director of Public Prosecutions, and the Registrar shall as soon as practicable after receiving the same deliver them to the Chief Justice and the Director of Public Prosecutions.

(4) The Chief Justice shall, as soon as conveniently may be after receiving such record, issue an order to the keeper of the prison wherein the prisoner is confined to bring the prisoner before the court at the time and place fixed therein and the Registrar shall notify the Director of Public Prosecutions and the prisoner accordingly.

*(5) **A person so committed shall be liable to be dealt with and punished in the same manner as if he were convicted in the Supreme Court³ for that crime by the verdict of a jury.**” (emphasis added)*

[5] The record of this case was transmitted to the High Court by the learned Magistrate within the statutory time period and this Court has assumed jurisdiction to hear this case pursuant to section 80(5) of the SJPA.

[6] Theft is defined in the Code, and the maximum penalty is, as follows:

³ This is now a reference to the High Court, by virtue of section 4(1) of the Senior Courts Act 2022.

“139.-(1) A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it; and “thief” and “steal” shall be construed accordingly.

...

146. A person guilty of theft shall on conviction on indictment be liable to imprisonment for a term not exceeding ten years.”

[7] The ingredients of the offence were outlined by Chief Justice Conteh in the local High Court decision of **Musa v Magistrate Jones**⁴:

“The ingredients of the offence of theft... are:

- a) Dishonesty by the accused*
- b) Appropriation of*
- c) Property belonging to another*
- d) With the intention of permanently depriving the owner of it.”*

[8] The elements of abetment, and its sentence, are dealt with at section 20 of the Code which reads, where relevant:

“20.-(1) Every person who—

...

(b) does any act for the purpose of aiding, facilitating, encouraging or promoting the commission of a crime by any other person, whether known or unknown, certain or uncertain, shall be guilty of abetting that crime and of abetting the other person in respect of that crime.

...

(2) Every person who abets a crime shall, if the crime be actually committed in pursuance or during the continuance of the abetment, be deemed guilty of that crime.”

⁴ Claim No. 155 of 2009 at p 21.

[9] The issue of abetment was considered by our local Court of Appeal in DPP v Delita Chavez⁵ where Mottley P opined:

“14. Under section 20 (1)(b) the offence requires an act to be done by a person for the purpose of aiding, facilitating, encouraging or promoting another person to commit a crime. It is an essential ingredient of the offence under section 20 (1)(b) that another person be aided in the commission of a crime.

15. ...Under 20 1(b) the offence require that another person be aided or facilitated etc. Further the offence required that it must be an act done for the purpose of aiding etc...

16. In *Cecile Gordon, Michael Gordon, William Field v. R. Criminal Appeals Nos. 3, 4, 5 of 1980 (unreported 1980)* this Court said of section 17(1) of the Code (now section 20(1)):

“In our opinion the above provisions clearly contemplate that to be an abettor, the person in question must know that the crime is to be committed or is being committed. The aid he gives has to be given purposely, and any act which he does must be done for the purpose of aiding the commission of the crimes.” (emphasis added)

[10] The Court interprets section 20(2) of the Code as making an abettor, when the crime abetted is actually committed, punishable and liable to the maximum sentence of the crime abetted.

The agreed facts

[11] On 21st July 2023, at about 6:20 p.m., both prisoners, Mexican nationals aged 28 and 37 years old respectively, entered Budget Auto Rental (“BAR”) located at the Philip

⁵ Criminal Appeal No. 34 of 2004.

Goldson International Airport to rent a vehicle. Prisoner #1 presented his driver's license which was copied and kept on file. Prisoner #1 rented the Sorento valued at \$60,000.00 (sixty thousand dollars) for the period of five days from the 21st-25th July 2023 and paid with his credit card a total amount of \$1,010.26 (one thousand and ten dollars and twenty-six cents).

[12] On 22nd July 2023, at about 9:00 p.m., prisoner #1 returned to BAR along with prisoner #2. Prisoner #2 produced his driver's licence which was copied and placed on file. He rented the Equinox which was valued at \$60,000.00 (sixty thousand dollars) for the period of three days from the 22nd - 24th July 2023. Prisoner #1 paid for the rental of the vehicle for prisoner #2 with his credit card a total amount of \$465.76 (four hundred and sixty-five dollars and seventy-six cents).

[13] On 24th July 2023 and 25th July 2023 Mrs. Catherine Murillo, office administrator at BAR, made several attempts to contact prisoner #1 with the number on file but he did not answer nor return either vehicle to BAR.

[14] On Monday 9th October 2023 about 12:50 p.m. Mrs. Murillo was at a BAR office in Belize City when she observed prisoner #1 walking in the office and immediately identified him to be the same male person who rented the two vehicles on the 21st and 22nd July, 2023 at the International Airport office. Prisoner #1 then came out of the compound and Mrs. Murillo chased behind him and saw him entering a grey in colour car with a Mexican license plate and drove towards the direction of Haulover Bridge. Mrs. Murillo then contacted the police who intercepted the said car shortly after with prisoner #2 inside. She identified prisoner #2 as one of the persons that went to rent the two vehicles and never returned them. Mrs. Murillo then took the police to Crystal Auto Rental on the Phillip Goldson Highway where she pointed out prisoner #1 to police as the person that rented the two vehicles from BAR and did not return, also with him was another Mexican national. Both prisoners were detained by police.

[15] Cpl. Javier Guerra informed both prisoners of the reason of their detention which was for the crime of theft, cautioned them in a language they understood and informed them

of their constitutional rights. They were escorted to the police station where they were issued with an acknowledgement form. On Tuesday 10th October 2023 an interview was conducted with prisoner #1 where he admitted taking the Sorento. On the same date an interview was conducted with prisoner #2 where he admitted assisting prisoner #1 in taking the Equinox. Both prisoners were charged later that day, cautioned and remained silent. The vehicles were never recovered.

[16] The facts in the Court's view make out the elements of the offences of both theft and abetment of theft for both prisoners. Both prisoners dishonestly each took a vehicle, the property of BAR, with the intention to permanently deprive BAR of them as a principal. Prisoner #1 purposely assisted in the theft of the Equinox by paying the rental fee for the vehicle which made it easier for prisoner #2 to steal it. Prisoner #2 purposely encouraged prisoner #1 by his presence to take the Sorento which would have made it easier for the latter to commit the crime. In this regard the guidance of the editors of **Blackstone's Criminal Practice 2024**⁶ is instructive.

Sentencing principles

[17] In determining the propriety or otherwise of a custodial sentence on these facts the Court must have regard to the provisions of the **Penal System Reform (Alternative Sentences) Act**⁷, (hereinafter the "PSRASA") which read, where relevant:

*"28.-(1) This section applies where a person is convicted of an offence punishable with a custodial sentence **other than one fixed by law.***

*(2) ...**the court shall not pass a custodial sentence on the offender unless it is of the opinion.***

*(a) **that the offence was so serious that only such a sentence can be justified for the offence.***

...

31.-(1) ... a court in sentencing an offender convicted by or before the court shall observe the general guidelines set forth in this section.

⁶ Para A4-21.

⁷ Chapter 102:01 of the Substantive Laws of Belize, Revised Edition 2020, see section 25.

(2) The guidelines referred to in subsection (1) of this section are as follows,

1. The rehabilitation of the offender is one of the aims of sentencing, except where the penalty is death.
2. **The gravity of a punishment must be commensurate with the gravity of the offence....**” (emphasis added)

[18] The offence of theft is not one with a fixed minimum custodial sentence.

[19] The Court now looks to the guidance of our apex court, the Caribbean Court of Justice (“CCJ”) in the Barbadian case of **Teerath Persaud v R**⁸ on the issue or the formulation of a just sentence, per Anderson JCCJ:

“[46] Fixing the starting point is not a mathematical exercise; it is rather an exercise aimed at seeking consistency in sentencing and avoidance of the imposition of arbitrary sentences. Arbitrary sentences undermine the integrity of the justice system. In striving for consistency, there is much merit in determining the starting point with reference to the particular offence which is under consideration, bearing in mind the comparison with other types of offending, taking into account the mitigating and aggravating factors that are relevant to the offence but excluding the mitigating and aggravating factors that relate to the offender. Instead of considering all possible aggravating and mitigating factors only those concerned with the objective seriousness and characteristics of the offence are factored into calculating the starting point. Once the starting point has been so identified the principle of individualized sentencing and proportionality as reflected in the Penal System Reform Act is upheld by taking into account the aggravating and mitigating circumstances particular (or peculiar) to the offender and the appropriate adjustment upwards or downwards can thus be made to the starting point. Where appropriate there should then be a discount for a guilty plea. In accordance with the decision of this court in R v da Costa Hall full credit for the period spent in pre-trial custody is then to be made and the resulting sentence imposed.” (emphasis added)

[20] The Court is also guided by the decision of the CCJ in **Calvin Ramcharran v DPP**⁹ on this issue, per Barrow JCCJ:

⁸ (2018) 93 WIR 132.

⁹ [2022] CCJ 4 (AJ) GY.

[15] In affirming the deference an appellate court must give to sentencing judges, Jamadar JCCJ observed that **sentencing is quintessentially contextual, geographic, cultural, empirical, and pragmatic. Caribbean courts should therefore be wary about importing sentencing outcomes from other jurisdictions whose socio-legal and penal systems and cultures are quite distinct and differently developed and organised from those in the Caribbean.**

[16] Jamadar JCCJ noted that in 2014 this Court explained the multiple ideological aims of sentencing. **These objectives may be summarised as being: (i) the public interest, in not only punishing, but also in preventing crime ('as first and foremost' and as overarching), (ii) the retributive or denunciatory (punitive), (iii) the deterrent, in relation to both potential offenders and the particular offender being sentenced, (iv) the preventative, aimed at the particular offender, and (v) the rehabilitative, aimed at rehabilitation of the particular offender with a view to re-integration as a law abiding member of society.**

[18]... **to find the appropriate starting point in the sentencing exercise one needed to look to the body of relevant precedents, and to any guideline cases** (usually from the territorial court of appeal).” (emphasis added)

Analysis

Prisoner #1

[21] Belize does not yet have sentencing guidelines, however the Court found great assistance from the Eastern Caribbean Supreme Court’s, “**A Compendium Sentencing Guideline of The Eastern Caribbean Supreme Court Offences of Dishonesty**”¹⁰ (“the ECSG”). The Court considers the ECSG in its sentencing process in reliance of the dicta of the CCJ in **Linton Pompey v DPP**¹¹ per Jamadar JCCJ:

“[111] Thus, in so far as one may wish to look to other jurisdictions for trends in sentencing, one should first look to relatively comparable jurisdictions, such as those in this region....As I have already alluded to, a truly Caribbean jurisprudence must be born and grounded in the

¹⁰ Re-Issue, 12th April 2021.

¹¹ [2020] CCJ 7 (AJ) GY.

sitz im leben of Caribbean peoples and Caribbean spaces.” (emphasis added)

[22] However, the Court notes that guidelines are not a straitjacket, and that judicial discretion must remain at the heart of the sentencing process, as noted by the CCJ in the Barbadian case of **Burton et al v R**¹².

Theft and abetment of theft

[23] The Court would consider the two offences together because as was indicated above abetment of theft is to be punished as if it were theft.

[24] The harm caused by this offending would be regarded as Category 1 highest on the ECSG scale as though the depreciated value of the vehicles was over \$80,000.00 (eighty thousand dollars) the loss of earnings from the vehicles combined with that value was over \$250,000.00 (two hundred and fifty thousand dollars). This figure was not contested in the mitigation hearing. The vehicles were not insured so that there is no mitigation of the company’s loss. This offending also caused substantial harm to the victim company in the form of fear caused by the crime. Mr. Alan Auil, the managing director of BAR, in his victim impact statement indicated that the theft of the vehicles has not only caused financial hurt but psychological in terms of how the company engages with future customers as it has severely undercut their ability to trust them.

[25] The seriousness of this offending would be regarded as medium on the ECSG scale in that there was some degree of planning involved.

[26] The Court finds that an appropriate starting point for this offending is the ECSG suggested 60% of the maximum sentence which would be a term of 6 years imprisonment.

¹² 84 WIR 84 at para. 13.

[27] The other generalized aggravating factors in relation to the offence are as follows:

- i. This is a prevalent offence.
- ii. This offending was done over a sustained period, namely over two days.
- iii. This offence was committed with another person.

[28] This would cause the Court to uplift the sentence by 2 years to make a sentence of 8 years imprisonment.

[29] There are no mitigating features of the offending.

[30] The Court would now individualize the sentence by looking at the circumstances of the offender.

[31] There are no aggravating factors in relation to the offender.

[32] In terms of mitigating factors in relation to the offender there are the following:

- i. Prisoner #1 is a person of good character in the sense that he has no previous convictions. Prisoner #1 has led evidence from relatives as to his personal character. They describe him as hardworking, kind, caring and hitherto an honest person. They travelled in person from Mexico to speak in person on his behalf.
- ii. The Prisoner has shown genuine remorse. The Court accepts his earnest apology as heartfelt and a clear sign that he is rehabilitating.

[33] The Court would reduce the sentence due to the mitigating factors by 3 years, leaving a sentence of 5 years imprisonment.

[34] The Court would give prisoner #1 the full 1/3 discount, for his early guilty plea. This would leave a sentence of 3 years and 4 months imprisonment.

[35] Counsel for prisoner #1 has asked for the Court to suspend the sentence of the prisoner referring to the Court's decision in a previous case of **June Belisle**. In that case the prisoner was given a suspended sentence of 2 years for a \$90,000.00 theft. The harm caused by the offending in the instant case is almost 3 times that value. Also, there were mitigating factors present in that case absent in this one and as the CCJ opined in *Burton* discretion is at the heart of sentencing as sentencing must be individualised. The CCJ noted that sentencing is more art than science¹³. In this regard the Court does not believe that a suspended sentence is appropriate on these facts owing to the seriousness of the offending in this case. The Court is firmly of the view that a custodial sentence is commensurate with this offending.

[36] The sentence for both the theft and abetment of theft would be served concurrently as they arose out of the same course of offending.

[37] Pursuant to the Court's powers under section 162 of the **Indictable Procedure Act**¹⁴, as considered in **R v Pedro Moran**¹⁵, orders that that sentence runs from 11th October 2023 when prisoner #1 was first remanded.

[38] The Court, pursuant to section 168(1)(b)¹⁶ of the IPA also orders the payment of compensation by prisoner #1 to JMA Rentals Ltd. in the sum of \$46,580.00 (forty six thousand, five hundred and eighty dollars), the depreciated value of the Equinox, payable on or before 1st December 2024. Nonpayment of that amount will be enforceable as a judgment debt by operation of section 168(2)¹⁷ of the IPA.

¹³ Para 14.

¹⁴ Chapter 96 of the Substantive Laws of Belize, Revised Edition 2020. "162. Every sentence of imprisonment pronounced by the court shall take effect from the first day of the sitting at which it was passed, unless otherwise ordered."

¹⁵ Criminal Application No. 1 of 2017 at para. 38.

¹⁶ "168.-(1) The court, when a person is convicted of any crime, may at its discretion **make either or both** of the following orders against him in addition to any other punishment, namely-

...

(b) an order for the payment by him of a sum to be fixed by the court by way of compensation to any person, or to the representative of any person injured in respect of his person, character or property by the crime for which the sentence is passed." (emphasis added)

¹⁷ "168(2) The court shall specify the person to whom any sum in respect of costs or compensation under this section is to be paid and payment thereof may be enforced in the same manner as if the amount thereof were a judgment debt due to that person, or in such other manner as the law for the time being directs."

DISPOSITION

[39] The Court orders that Alejandro Jair Gonzalez Vasquez be sentenced to a term of 3 years and 4 months imprisonment on the charge of theft as well as a term of 3 years and 4 months imprisonment on the charge of abetment of theft. Those sentences are to be served concurrently and are to run from 11th October 2023.

[40] The Court also orders that prisoner #1 compensate JMA Rentals Ltd. in the sum of \$46,580.00 (forty-six thousand, five hundred and eighty dollars) payable on or before 1st December 2024.

Prisoner #2

[41] The Court finds that the aggravating and mitigating factors of the offending are the same for prisoner #2 with the same harm and seriousness and starting point as in the case of prisoner #1. The Court would then use a sentence of 8 years imprisonment before the sentence is individualized to consider the aggravating and mitigating factors with regard to the offender. The Court finds that prisoner #2 has no aggravating factors and the same mitigating factors in relation to the offender as prisoner #1. They were both described in similar ways by their witnesses in mitigation. The same deduction would be made as in the case of prisoner #1 leaving a sentence of 5 years imprisonment. Prisoner #2 would be entitled to the same 1/3 discount as prisoner #1 leaving a final sentence of 3 years and 4 months. The Court would similarly order that the sentence for theft and abetment of theft to be served concurrently. The Court will also order compensation be paid to JMA Rentals Ltd. in the sum of \$47,774.00, (forty-seven thousand seven hundred and seventy-four dollars), the depreciated value of the Sorento payable on or before 1st December 2024.

DISPOSITION

[42] The Court orders that Carlos Francisco Morales Jara be sentenced to a term of 3 years and 4 months imprisonment on the charge of theft as well as a term of 3 years and 4 months imprisonment on the charge of abetment of theft. Those sentences are to be served concurrently and are to run from 11th October 2023.

[43] The Court also orders that prisoner #2 compensate JMA Rentals Ltd. in the sum of \$47,774.00, (forty-seven thousand seven hundred and seventy-four dollars) payable on or before 1st December 2024.

Nigel Pilgrim

High Court Judge

Dated 23rd February 2024