



**IN THE SUPRME COURT OF BERMUDA**

**APPELLATE JURISDICTION**

**2017: No 009**

**BETWEEN:**

**CALVIN WILSON**

**Appellant**

**V**

**THE QUEEN**

**Respondent**

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**REASONS (IN COURT)<sup>1</sup>**

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Date of Hearing: 16 October 2017

Date of Reasons: 23 October 2017

**Appeal against sentence of corrective training – Appellant 18 years old at time of sentencing – Unlawful sentence – Whether probation order appropriate sentence**

Mr Arion Mapp of Christopher's for the Appellant

Mr Alan Richards of the Attorney General's Chambers for the Respondent

**Introduction**

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<sup>1</sup> The Judgment was circulated without a formal hearing for handing down.

1. The Appellant appeals against a sentence of 2 years Corrective Training imposed by the Worshipful Archibald Warner on the 26th January 2017 in respect of 3 charges in 2 separate information's.
2. Information 16CR00068 charged the Appellant as follows:  
**Count 1.** That on the 16<sup>th</sup> February 2016, in Devonshire Parish in a public place, Berry Hill Road, without good reason or lawful authority, had with you a bladed/sharply pointed article a folding knife contrary to Section 315(C) of the Criminal code.  
**Count 2.** That on the 16<sup>th</sup> February 2016, in Devonshire Parish without the consent of the owner or other lawful authority, took a conveyance namely a motorcycle registered number AZ300, a black T-Rex, for the use of yourself or another contrary to Section 342(1) of the Criminal code.
3. Information 16CR00400 charged the Appellant with one **Count** that on the 3<sup>rd</sup> day of September 2016, in Pembroke Parish, robbed Terai Wilson of a 28-inch gold rope chain, with a pendant, a 22 inch 10kt gold box link chain and a 10kt gold 'W' pendant all to the value of \$1,061.00, and at the same time of doing so and in order to do so used force on Terai Wilson contrary to Section 338 of the Criminal code.
4. Following a hearing on the 16<sup>th</sup> October 2017, I allowed the appeal against sentence by quashing the sentence of 2 years Corrective Training imposed by the court of summary jurisdiction and imposed a sentence of 12 months' probation. I now give reasons for that decision.

### **The sentencing decision**

5. The following remarks made by the learned Magistrate set out the basis upon which he imposed the sentence:

*"It cannot be escaped that the robbery offence set out in 16CR00400 was committed while the Defendant was on bail awaiting trial on 16CR00068."*

*"notwithstanding his age, the public must be protected from this Defendant I agree with Mr Mapp that he needs help, that he needs supervision but where was that help and supervision before... it wasn't there, Mr Mapp has submitted that the Social Inquiry Report indicates that he is how you put it, how's it put " he is a suitable candidate for rehabilitation."*

*"... In all the circumstances as I am bound to consider and assess and there is no doubt, as I've said, I repeat myself, that he needs rehabilitation, however, in all the circumstances, I am of the view that this Defendant can only properly ... in all the circumstances the proper way of dealing with him is imposing a period of Corrective Training whereby he will be given all the rehabilitative programs..."*

6. I have every sympathy with the learned Magistrate. He was concerned not only with the nature of the offences the Appellant is charged with but the fact that the serious offence of robbery was committed while the Appellant was on bail. That being said, I must assess the legality of the sentence imposed, which formed the Appellants primary challenge to the learned Magistrate's decision.

### **Unlawfulness of corrective training sentence**

7. On the 7<sup>th</sup> February 2017, the Appellant filed a Notice of appeal against the sentence of 2 years Corrective Training containing 7 grounds of appeal. The grounds of appeal allege the learned Magistrate erred in law when he imposed a sentence of Corrective Training and in various ways claim the sentence failed to take into account the Appellant's age at the time of sentencing and the statutory obligations the Court must follow when sentencing 18-year-old offenders.

8. At the commencement of this hearing Mr Mapp and Mr Richards, both agreed that the sentence imposed by the learned Magistrate was unlawful and could not be upheld. Counsel referred me to sections 2 and 43 (1) of the Young Offenders Act 1950 which read as follows:

Section 2(1)

*“young person” means a person who has attained the age of sixteen years but is under the age of eighteen years.”*

Section 43(1)

*“Where a young person is convicted of an offence punishable with imprisonment, the court may sentence him to undergo corrective training.”*

9. Mr Richards produced a helpful chart which demonstrated that at the time the offences charged in Information 16CR00068 were committed, the Appellant was 17 years of age. The Appellant became 18 on the 28<sup>th</sup> May 2016. All other material events took place when the Appellant was 18 years old. On the 3<sup>rd</sup> September 2016, the Appellant was charged with the offence of robbery contained in Information 16CR00400, on the 5<sup>th</sup> December 2016, the Appellant pleaded guilty to the robbery charge, and on the 26<sup>th</sup> January 2017 the Appellant pleaded guilty to possession of the bladed weapon and taking the motorcycle. As previously stated, the Appellant was sentenced on the 26<sup>th</sup> January 2017.
10. The simple point both counsel rightly make is that at the time the Appellant was sentenced, he was not a young person as defined by section 2 of the Young Offenders Act 1950. Both counsel also correctly point out that section 43 (1) of the Young Offenders Act suggests that the operative date for determining if an accused person is a young offender is at the time of conviction. In this case, the Appellant was 18 years old when he pleaded guilty to the charges for which he was sentenced.

## **Disposal of the Appeal**

11. This appeal against sentence is brought under section 3 of the Criminal Appeal Act 1952. Having determined that the sentence of 2 years Corrective Training is unlawful, I now turn to consider what sentence should be imposed in accordance with section 18(3) of the Criminal Appeal Act 1952.
  
12. Mr Mapp reminded me of my obligation under section 55 of the Criminal Code Act 1907 to take into account Mr Wilson's age and that I am only to impose a sentence of imprisonment after consideration of suitable alternatives. My attention was also drawn to the Social Inquiry Report produced by Probation Officer Mia Black dated 23<sup>rd</sup> January 2017. This report was before the sentencing Magistrate. Mr Mapp highlighted the fact that in her conclusions and recommendations, Ms Black stated the Appellants risk of re-offending could be reduced if he were to complete his high school education, obtain employment and improve his peer associations. I accepted the first two propositions but was not convinced the Appellant would be free of negative peer associations without assistance. Miss Black concluded that the Department of Court Services is of the opinion that the Appellant is suitable for and could benefit from a community-based sentence with supervision on but not limited to the following conditions: abstain from the use of illicit substances, submit to urinalysis screening at the discretion of the department of court services and be assessed for suitability for any programmes as deemed necessary by the Department of Court Services.
  
13. Mr Mapp also informed me that the Appellant served 10 months on remand from 6<sup>th</sup> September 2016 until July 2017, as a consequence of committing the offence of robbery while on bail. Having been granted bail on the 6<sup>th</sup> September 2016, the Appellant could not secure the requisite surety. A further condition of the grant of bail was that the Appellant wear an electronic monitoring device. Unfortunately, a working device could not be found until July 2017.

14. During the hearing the Appellant stood before the court and expressed a desire to complete his education by securing a GED. He stated he had received 4 offers of employment on condition he finishes his high school education. He also stated his father had compensated the victim of the robbery from whom he snatched the 2 gold chains.
15. Mr Richards acknowledged that at the sentencing hearing in the Magistrates Court the Crown did not seek a custodial sentence. He submitted that the offences are serious and would typically attract a custodial sentence. However, in light of the length of time which has elapsed between the time of the offences and the hearing of this appeal, and bearing in mind the appellant has served 10 months on remand, he did not think it appropriate to seek a custodial sentence. He submitted that if a non-custodial sentence is imposed, it should be with strict conditions to ensure the Appellant has good prospects for rehabilitation.
16. I must weigh and balance punishment with rehabilitation; I must also have due regard to the Appellant's youth and section 55 (2) (g) (iii) of the Criminal Code Act 1907. I accept the conclusions of the Social Enquiry Report. I am also mindful of the nature of the offences, and the importance of ensuring the public is adequately protected from the Appellant repeating offences of a similar nature. The evidence before me suggests that in the nearly 4 months since the Appellant has been on bail wearing an electronic monitoring device, criminal activity has stopped. I therefore believe that despite the nature of the offences committed, with adequate protections, I can exercise my judgment in favour of a non-custodial sentence and meet the statutory objective where possible of encouraging the rehabilitation of young offenders.
17. In my judgment, the appropriate disposition of this appeal is to quash the sentence of Corrective Training and impose a sentence of 12 months' probation under section 70 of the Criminal Code Act 1907. Such a sentence naturally attaches compulsory conditions set out in section 70A of the Criminal Code. I also impose the following optional conditions to the probation order under section 70B of the Criminal Code namely that the

Appellant submit to drug testing as directed by the court; abstain from the consumption of controlled drugs within the meaning of the Misuse of Drugs Act 1972 except in accordance with a medical prescription; complete to the satisfaction of the probation officer any specified course of education or training designed to improve work skills or social skills, or both and wears electronic monitoring equipment that will enable his movements and locations to be monitored.

18. The Probation Officer who appeared in court during the appeal confirmed that probation orders invariably are reviewed by the court after three months. I make that order in this appeal and leave the parties to set the date for the review with the probation office.

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Delroy Duncan  
Assistant Justice