



IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL DIVISION

INDICTMENT NO. 73 OF 2018

REGINA

-V-

RICKY JONNY ALVARADO

Appearances: Scott Wainwright for the Crown
 Oliver Grimwood for the Defendant
 Spanish interpreter in attendance to assist Defendant

Before: The Hon. Mr. Justice Patrick Brooks (Ag)
Hearing: 4th June 2019
Ruling: 12 June 2019

RULING

1. Mr Ricky Jonny Alvarado, on the first day of his trial on indictment for four counts of burglary, pleaded guilty to two of the counts. The offences are contrary to the provisions of section 243(1)(b) of the Penal Code (2018 Revision). The prosecution accepted the pleas and asked that the remaining two counts lie on file. The issue of sentence, in respect of the counts for which the guilty pleas were entered, is now for the court's consideration.
2. The essence of the prosecution's case against Mr Alvarado is that, less than a month of having been employed to the Humane Society, situated at North Sound Road, in George

Town, Grand Cayman, Mr Alvarado burgled the Society's premises twice. The first occasion was on 20 July 2018. The second break-in was on 24 July 2018.

3. On the first occasion, Mr Alvarado damaged a door to the premises and stole \$2,100.00, having also damaged the cash drawer where the money was kept. On the second occasion, he is said to have taken some money, but the amount has not been quantified; it is unlikely to have been more than minimal. The loss was small on that occasion, only because there was not much to be taken.
4. His actions on each occasion were captured by closed circuit television cameras that were in operation inside the premises. After the first burglary, he did not return to his employment.
5. Mr Alvarado does not contest the prosecution's case. He, however, asks this court to say that the harm to the Humane Society is such that a sentence, which does not require immediate custody, may properly be considered. Through his counsel, Mr Grimwood, he asks that the court finds that such a sentence would be appropriate.
6. In considering the question of sentence, the court is guided by the Cayman Islands Sentencing Guidelines (2015). The Sentencing Guidelines requires the court to follow the steps, which are set out below. The court should:
 - (a) determine the category of the offence by ascertaining:
 - (i) The level of culpability; and
 - (ii) The level of harm
 - (b) determine the range of sentences for that category and the starting point within that range;



- (c) consider aggravating and mitigating circumstances in respect of both the offence itself and the offender; and
- (d) make allowance for time spent in custody on remand.

These steps does reduce, somewhat, the difficulty that faces a court when considering sentence. The court is required to put its reasons in writing to explain its approach. It now does so.

The level of culpability

7. There was no dispute between Mr Wainwright for the Crown and Mr Grimwood in respect of the level of culpability to be ascribed to these offences. Both counsel agreed that Mr Alvarado had abused his position as an employee of the Humane Society and, therefore, the culpability level was high.

8. Counsel cannot be faulted in that assessment. The “High Culpability” band includes the heading “Abuse of position”. That is the only category in the Sentencing Guidelines that would accommodate the fact that Mr Alvarado did commit a breach of trust. His actions, however, do not fit in the genre of culpability that that band considers. The items in that band are:

- Production and use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- Sophisticated organised nature of offence/significant planning
- A leading role where offending is part of a group activity
- Abuse of position



It is difficult to conceive that Mr Alvarado's "abuse" of his position was contemplated by that band. It seems to more properly belong in the band of "Medium Culpability" where "Other cases where characteristics [of High and Lesser culpability] categories are not present".

9. Support for that view is found in United Kingdom's Sentencing Council's publication "Theft Offences Definitive Guideline" (the SGC Guidelines). Whereas it is accepted that the SGC Guidelines are not applicable in this jurisdiction without adaptation (see **R v Robert Aspinall** (CICA 16/2016, judgment delivered on 7 November 2016), they do provide a distinction for breaches of a high degree of trust as opposed to a lesser degree. According to the SGC Guidelines, the former would fall into high culpability while the latter would fall into medium culpability.

The level of harm

10. Learned counsel did not agree in respect of the level of harm that Mr Alvarado's actions inflicted on the Humane Society. Mr Wainwright was of the view that there was some detrimental harm caused as is evidenced by the amount of money taken and the fact that repairs to the door and cash drawer cost the Humane Society \$700.00. On his assessment, the level of harm fell into the second category of harm. Learned counsel stressed the fact that this is a charitable organisation and the loss and expense would have a greater impact than on a regular commercial entity.
11. Mr Grimwood sought to downplay the financial effect that Mr Alvarado's actions would have had on the Humane Society. He produced a copy of its record of earnings for 2017, and showed that it had revenue totalling \$605,969.30 for that year. The loss caused by Mr Alvarado's actions, he submitted, should be considered in that context.



12. There is support for Mr Grimwood's approach. It is noted that the items in the second category of harm suggest a greater level of impact. They are:

- Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence
- Some detrimental effect on business
- **High or medium value goods or sums** (Emphasis supplied)

13. A loss of \$2,800.00 (\$2,100.00 + \$700.00), in this context, cannot be said to amount to medium value. It is unlikely to have caused more than a ripple in the Humane Society's financial pool.

14. Based on that assessment the offences should fall in the third category of harm. The category of the offence should, therefore, be said to be B3.

The range of sentences and the appropriate starting point

15. The range of sentences for category B3 starts from a low of a Community Based Sentence and rises to a high of three years' imprisonment. The starting point is one year's imprisonment.

Aggravating and mitigating circumstances in respect of both the offence itself and the offender

16. It is important not to "double-count" the fact that Mr Alvarado was employed to the Humane Society when he broke into its premises. What is, however, aggravating of his offences is that he committed them so soon after he was employed. The Humane Society gave him employment just after he had arrived in this country; they offered him a helping hand and he "bit" it.



17. The mitigating factors include the fact that Mr Alvarado has expressed remorse that he not only let down his employer but also his family, especially his mother, who had helped him to get the job with the Humane Society. Also important is the fact that he pleaded guilty, albeit at the time of the trial. The discount that he would secure from that late plea, is a tenth of the usual starting point. Although normally falling under a separate category, it is appropriate, at this stage, to take into account the fact that Mr Alvarado has spent just over seven months on remand.
18. When all those factors are assessed, it is compelling that although a custodial sentence is contemplated by category B3, it should not be an immediate one in Mr Alvarado's case.
19. He should, however, have a motivation to avoid unlawful behaviour. A sentence hanging over his head would help to achieve that end. It is noted that the Social Inquiry Report assesses his risk of re-offending as being "medium". A period of eighteen months should be sufficient to get him accustomed to a socially acceptable lifestyle.
20. It is also necessary that he should be guided as to the discipline of work and the responsibility of being a member of regularly organised society. To achieve these aims, it is considered that a suspended sentence combined with a community based sentence is appropriate. Supporting that position is the fact that Mr Alvarado does have a family in this country, in the form of his mother and his sister, and they are prepared to assist him.

Compensation order

21. Mr Wainwright urged that if the court is minded to consider a suspended sentence that will afford Mr Alvarado an opportunity to work, then a compensation order should be made. The request is not unreasonable, although it is plain from the prosecution's case that Mr Alvarado was seemingly driven by need. An obligation to repay the Humane



Society would, nonetheless, assist in building a sense of taking responsibility for his actions.

Conclusion

22. Based on all the factors mentioned above, it is considered that Mr Alvarado's offences do not warrant an immediate custodial sentence. A suspended sentence along with a community based sentence should satisfy the requirements of the Sentencing Guidelines. Mr Alvarado should also repay the Humane Society to compensate for its losses that are due to his unlawful actions.

Order

1. The Defendant Ricky Jonny Alvarado is sentenced as follows:

Count 1:

- (i) 18 months imprisonment
- (ii) Community Service Order (CSO):
 - Defendant to serve 100 hours of community service as assigned by the Department of Community Rehabilitation (DCR).

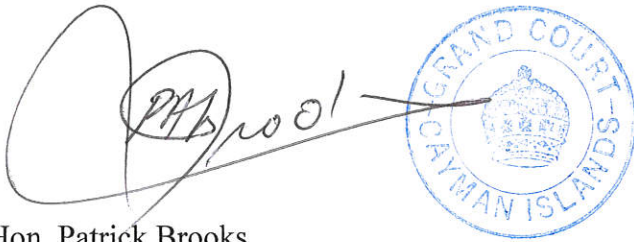
Count 2:

18 months imprisonment, to run concurrently with the sentence for count 1

- 2. The sentences shall be suspended for two years
- 3. Suspended Sentence Supervision Order (SSSO)
 - (i) The Defendant is for 18 months from today's date, subject to a Suspended Sentence Supervision Order (SSSO).
 - (ii) For the duration of this SSSO, the Defendant is to obey all instructions of the DCR.



4. Should the Defendant commit any further offence(s) during the next 18 months:
- (i) The Defendant stands to serve these 18 months sentences in custody;
 - (ii) The Defendant's time spent in custody on remand is to be deducted from the custodial sentence imposed.
5. Compensation
- (i) The Defendant shall, within 18 months, pay in full the sum of CI\$2,800.00 to the Court Funds Office (CFO), which the CFO will pay to the Humane Society.
 - (ii) In default of payment of this sum the Defendant shall serve six month's imprisonment.

The block contains a handwritten signature in black ink, which appears to read 'P. Brooks', written over a blue circular official seal. The seal features a crown in the center and the words 'GRAND COURT' at the top and 'CAYMAN ISLANDS' at the bottom.

Hon. Patrick Brooks
Judge of the Grand Court (Ag.)