



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **SCA 1 OF 2022**
5 **CHARGES BC0024 OF 2021**
6
7
8

9 **ORLANDO KNIGHT**

10
11 **V.**
12

13 **R**
14

15 **Appearances:** **Mr. John Furniss for the Appellant**
16 **Mr. Kenneth Ferguson, Crown Counsel, Office of the Director of**
17 **Public Prosecutions for the Respondent**
18

19 **Before:** **The Hon. Justice Cheryll Richards QC**

20 **Heard:** **26th August 2022**

21 **Oral Decision:** **26th August 2022**
22
23
24

25 **REASONS FOR DECISION**
26



- 1 1. On the 26th August 2022, I heard this appeal and gave an oral decision and short reasons.
2 I indicated then that fuller reasons would follow. These are the full reasons for that
3 decision.
4
- 5 2. The Appellant appeals a sentence of 40 months imprisonment imposed by the Summary
6 Court on the 16th December 2021 in respect of two charges of Burglary contrary to
7 s.243(1) (b) of the *Penal Code* (2019 Revision).
8
- 9 3. The particulars of Charge BC 0024/2021 – (1) are that he on or about the 1st day of
10 October 2020, entered a dwelling namely #16 Warbler Road, Cayman Brac as a trespasser
11 and stole therein.
12
- 13 4. The particulars of Charge BC 0024/2021 – (2) are that he on or about the 1st day of
14 October 2020, entered a dwelling namely #26 Warbler Road, Cayman Brac as a trespasser
15 and stole therein.
16
- 17 5. On the 28th October 2021 the Appellant entered pleas of guilty to the two offences.
18
- 19 6. There was no dispute as to the facts. The premises are adjoining residential properties
20 which are owned by the victim and her husband. It is their usual practice to reside a part
21 of the year overseas and part in Cayman Brac. They were both off the Island at the
22 material time. The defendant was resident across the road from the properties and was
23 their neighbour. He knew that that they were away from home. Forty-seven items were
24 taken from the properties, mostly of low value. The most expensive item was a GPS
25 device valued at \$500.00. A number of the items were of sentimental value, for example
26 a quilt with the photographs of the victim’s family members on it. After the victim
27 returned to the Island, sometime in December 2020, she saw the Appellant with an item
28 which she recognised as belonging to her. As a result, a search warrant was executed on
29 his house and some of the stolen items were recovered.



- 1 7. In sentencing the learned Magistrate (“the Magistrate”) considered the Victim Impact
2 Report, (“VIR”) dated the 9th December 2021. The victim is eighty years old. An excerpt
3 from the VIR is included in the sentencing reasons. The victim stated that what was taken
4 was extensive and that she did not realise that some of the items were missing until she
5 was ready to use them. After the Appellant vacated the premises next door, the victim,
6 with the permission of the owner went to the premises and found the cord for her pancake
7 griddle which had been stolen. When she was leaving the premises, she realised that she
8 was walking on a rug which belonged to her. The Magistrate concluded that the burglary
9 had an emotional impact on the victim and her husband and that there was lasting trauma
10 from the incident as they continued to feel anxious and distressed¹.
11
- 12 8. A Social Inquiry Report (“SIR”) in respect of the defendant was also reviewed. The
13 Magistrate noted that the Appellant was nearly forty-seven years old and that he has
14 thirty-nine previous convictions. The majority of these are for dishonesty and theft
15 offences. The most recent convictions are in 2011 for similar offences for which he was
16 sentenced to a total of 2 years imprisonment.
17
- 18 9. The antecedent history provided in the course of the hearing of this appeal lists eighteen
19 previous convictions for Burglary and six convictions for Theft.
20
- 21 10. The Appellant was assessed by the Probation Officer in the SIR as being at a very high
22 risk of re-offending given what was said to be his “compulsion to steal”. He has in the
23 past been afforded multiple opportunities for rehabilitation but does not follow through
24 on these.
25
- 26 11. It was agreed by Counsel at the sentence hearing that the offending falls into Culpability
27 A of the *Cayman Islands Sentencing Guidelines* for the offence of Burglary. The

¹ Paragraphs 7 and 9 of the Sentence Reasons



1 Appellant admitted that he knew that the victim was not at home and was off Island and
2 that he had deliberately targeted the properties.

3
4 12. The Magistrate assessed the level of harm as being between Category 1 and 2 because
5 although the items taken were of relatively low value, they included items of sentimental
6 value. The Magistrate concluded that the appropriate starting point was 5 years custody
7 which is the starting point for offending of Culpability B, Category 1 Harm.

8
9 13. From that starting point, the Magistrate declined to treat the victim's age and possible
10 vulnerability as an aggravating factor. The Magistrate also declined to treat the
11 Appellants' antecedents as an aggravating factor. This was on the basis of the issues
12 outlined in the SIR which included a traumatic childhood, mental health challenges and
13 a permanent disability which affected the Appellant's ability to work.

14
15 14. The Appellant was afforded full credit for his guilty plea thus reducing the sentence on
16 each charge from 5 years or 60 months to one of 3 years and 4 months or 40 months
17 custody to run concurrently.

18 19 **THE CAYMAN ISLANDS SENTENCING GUIDELINES**

20
21 15. The *Cayman Islands Sentencing Guidelines* for the offence of Burglary provide as
22 follows: -

23
24 *“Culpability - demonstrated by one or more of the following:-*

25 ***A – Higher culpability***

- 26
- 27 • *Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)*
 - 28 • *A significant degree of planning or organisation*
 - 29 • *Knife or other weapon carried (where not dealt with separately)*



- 1 • *Equipped for burglary (for example, implements carried and/or use of vehicle)*
2 • *Group or gang activity*

3
4 ***B - Lesser Culpability***

- 5 • *Offence committed on impulse with limited intrusion into property*
6 • *Offender exploited by others*

7
8 ***Harm*** – *The court should consider the factors set out below to determine the level of*
9 *harm that has been caused or was intended to be caused to the victim: -*

10
11 ***Category 1***

- 12 • *Theft of/damage to property causing a significant degree of loss to the victim*
13 *(whether economic, sentimental or personal value)*
14 • *Soiling, ransacking or vandalism of property*
15 • *Victim on premises (or returns to premises) while offender present*
16 • *Trauma to the victim, beyond the normal inevitable consequence of intrusion and*
17 *theft*
18 • *Violence used or threatened against victim*
19 • *Context of general public disorder*

20
21 ***Category 2***

- 22 • *Nothing stolen or only property of very low value to the victim (whether economic,*
23 *sentimental or personal)*
24 • *Limited damage or disturbance to property”*



1 **THE APPEAL**
2

3 16. The appeal is brought pursuant to s.165 of the *Criminal Procedure Code* (2021
4 Revision). The powers of this Court on the hearing of appeals are set out in s.181 of the
5 *Code*.

6
7 17. The grounds of appeal are that the total sentence imposed was excessive for the following
8 reasons: -

9
10 i. *“That the starting point chosen by the Magistrate was wrong and too high.*

11
12 (a) *[This] was an opportunist burglary not any planned entry. The premises*
13 *were unoccupied and had been so for some time, on that particular date the*
14 *decision was made to enter the property.*

15
16 (b) *It is submitted that any sentimental value relating to stolen items was at the*
17 *lower end and so should not have resulted in any upgrade.*

18
19 ii. *That [the Appellant’s] history did not merit such a high uplift.*

20
21 iii. *That in any event that the sentence was too high.”*
22

23 **THE SUBMISSIONS**
24

25 18. Counsel for the Appellant’s primary submission is that the Magistrate’s categorisation of
26 the offences was wrong because there was no planning involved in them and the items of
27 sentimental value taken were at the lower end in value and in any event were recovered
28 from the Appellant’s premises.
29



- 1 19. It is submitted that the offending falls into the level of Category 2 of the *Guidelines*
2 because of the low value of the items stolen. Counsel said that while it is accepted that
3 any burglary will naturally cause concern and shock, the sentence imposed in this case
4 was not merited. Counsel noted that the Magistrate's assessment was that the offences
5 likely fell between Category 1 and 2 but that it would be the higher end of Category 2 or
6 the lower end of Category 1.
- 7
8 20. Counsel said that there is no evidence that the offences were planned. The explanation
9 given by the Appellant to the Probation Officer was that the devil caused him to do it and
10 that his girlfriend had been away at the material time. The suggestion is that she keeps
11 him from doing such things. Counsel said that there had been no question of any
12 problems between the Appellant and the victim before the offences. They had a normal
13 relationship as neighbours. Counsel said that all indications are that this was a spur of the
14 moment decision by the Appellant to go into the two properties.
- 15
16 21. Counsel said that he does accept that the defendant was fortunate in that the Magistrate
17 looked at his history and decided not to use it against him but that the defendant had no
18 recent previous conditions. His last one dated back to 2011 and the Magistrate balanced
19 his antecedent history against his personal circumstances in coming to a decision not to
20 move from the identified starting point.
- 21
22 22. It is submitted that the Magistrate should have applied a starting point more towards
23 Category 2, perhaps of 3 years rather than 5 years which was at the top end of that scale.
24 From that starting point of 3 years, the defendant would then have been entitled to a full
25 discount of one third.
- 26
27 23. Counsel for the Respondent submitted that it cannot be said that the sentence imposed
28 was manifestly excessive. There was evidence that items of sentimental value were taken
29 which gave rise to distress. These were two burglaries committed on the same day and in



1 respect of the same owners. There was an admission under caution that the Appellant had
2 deliberately targeted the premises when he knew that the homeowners were away. The
3 Magistrate was correct in her assessment of the categorisation of the offending. The
4 Appellant's extensive criminal history was not taken into account in circumstances where
5 previous custodial sentences imposed upon him were of no deterrent effect.

6
7 **DECISION**

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9 24. Having considered the submissions, it is noted that the Magistrate applied a starting point
10 within the *Guidelines* of 5 years custody. It appears that the finding was that although it
11 was a Category 1 Harm it was of Lesser Culpability. In other words, the Magistrate gave
12 the Appellant the benefit of the doubt by accepting that this may have been an offence
13 committed on impulse.

14
15 25. Counsel's argument is that these were items of low sentimental value, some of which
16 were recovered. Counsel for the Respondent rightly noted that it is difficult to measure
17 such value to a person which would likely vary from individual to individual. What is
18 plain in this case is that at least one of the items, the quilt with the pictures of family
19 members on it was of sentimental attachment to the victim. The fact that it was recovered
20 may go some way to reducing the impact of the offending but would likely do little to
21 reduce the sense of violation and distress which the victim felt and continued to feel as
22 recorded in the VIR. In my view the Magistrate was correct to categorise the offending
23 as being at least a low-level Category 1.

24
25 26. With relation to aggravating factors, the Magistrate noted in paragraph 11 of her Sentence
26 Reasons that while the victim's age could properly have been considered as a factor
27 increasing seriousness, there was disinclination to do so. This was to the benefit of the
28 Appellant. Additionally, while the Appellant's extensive antecedent history of similar
29 offending could have also been considered which could have warranted an uplift in the

1 sentence starting point, the Magistrate declined to do so. This was again to the benefit of
2 the Appellant. In my view although the Appellant's personal circumstances indicated
3 serious difficulties, it would not have been unreasonable to conclude that they did not
4 and could not outweigh the aggravating factor of his antecedent history for similar
5 offending.

6
7 27. Ultimately even if the Magistrate was wrong about the categorisation and thus the starting
8 point, it cannot be said that the final sentence imposed was disproportionate to the
9 offending such that it is manifestly excessive.

10
11 28. I concluded that the sentence imposed is not wrong in principle or manifestly excessive.
12 The appeal against sentence was therefore dismissed and the sentence of 3 years and 4
13 months was affirmed.

14
15 **Dated this the 26th day of August 2022**



16
17 **The Hon. Justice Cheryll Richards QC**
18 **Judge of the Grand Court**