

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

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5 **CASE NUMBERS: #00387/14; #03746/15; #03745/15**

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8
9 **THE QUEEN**

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11 **V**

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13 **OTIS MELBOURNE MYLES**



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17 **Appearances:**

Deputy DPP Mr. Patrick Moran for the Crown

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19 **Ms. Alice Carver of Samson & McGrath for**
20 **the Defendant**

21 **Before:**

Mr. Justice Alastair Malcolm (Actg.)

22 **Submissions heard:**

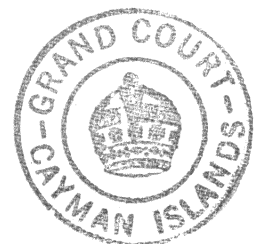
23rd March 2016

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26 ***HEADNOTE***

27 *Criminal Procedure – Sentencing - Application of the Sentencing Guidelines*

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29 **SENTENCE RULING**
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1. In this case I have to sentence the Defendant, Otis Myles, who has been sent to the Grand Court by the Summary Court under the provisions of s.7(2)(a) of the Criminal Procedure Code (2014 Revision). There are three offences, all of Burglary, which he contested but of which he was convicted after three trials.
2. Charge #00387/14 is a Burglary of #47 Trophy Crescent, Prospect, a dwelling house, on 23rd December 2013. To this charge he pleaded not guilty on the 19th February 2014 and was released on conditional bail which included a curfew condition between 7 p.m. and 6 a.m.
3. Charge 3746/15 is a Burglary of Aquatech on Seymour Drive, George Town, commercial premises on 24th May 2015. This burglary was committed whilst he was on the conditional bail.
4. Charge #3745/15 is a Burglary of First Baptist Christian School on 9th June 2015. The alarm at the school was triggered at 4:00 a.m. consequently this burglary was committed whilst he was on the conditional bail and in breach of his curfew.





DWELLING HOME BURGLARY

5. The first burglary is the most serious. #47 Trophy Crescent is a dwelling home.

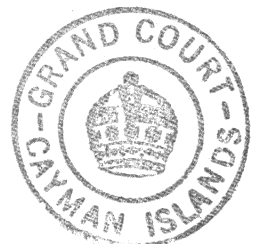
On 18th December 2013 the owners – a husband and wife – left the Cayman Islands for the Christmas holidays. On the evening of the 23rd December 2013 Special Constable Brooks was in the area of Trophy Crescent as a result of a reported car theft. While he was there it was discovered that #47 Trophy Crescent had been burgled. It appeared that the burglary may still have been in progress at the time of the officer's arrival as items from the house were found abandoned nearby. Entry had been gained by forcing open a door leading from the garage into the house itself. Damage was caused to two doors and the house had been "ransacked".

6. The items taken from the house, which were found abandoned, consisted of a television, fishing rods, a laptop and bag, a generator and some diving equipment. Of much greater significance for the homeowners was that a safe had been removed from the property and with it jewellery valued at between US\$125,000 and \$150,000. The jewellery had been collected by the wife over many years, and it held a great deal of sentimental value to her. It was described by the husband as his wife's "*life jewellery collection*". In addition the title deeds, identification papers including a passport and a birth certificate, a Will, 3 watches, a pair of night vision binoculars, and \$150 in cash were stolen.

7. The Defendant's fingerprint was found on a tin in the house and he was arrested and interviewed. He admitted to being in the area at the time of the burglary, but he denied any involvement in the offence. He claimed that he had, however, assisted a male in the area who had been moving some property. Apart from the property found abandoned, nothing has been returned.

BURGLARY OF COMMERCIAL PREMISES

8. The second burglary occurred on Sunday 24th May 2015. A male worker was at his workplace at Aquatech, Seymour Drive, George Town. At about 7:30 a.m. The worker heard the sound of the rear doors of the premises being forced open. He then heard the sound of an intruder outside his office door. He opened the door to find a man holding a roll of fibre-glass cloth belonging to Aquatech. When he challenged the intruder, the intruder dropped the item and fled. The intruder left in a dark hatchback vehicle. CCTV footage was examined and the Defendant's dark Suzuki was seen to travel along Seymour Drive towards Aquatech at 7:29 a.m. The same vehicle was also seen travelling back in the opposite direction at 7:33 a.m. Subsequently marks were seen around the rear door of the premises and there was a screwdriver on the ground. The Defendant's fingerprints were found on both the outside and the inside of the door. No property appears to have been taken in the course of the burglary.





BURGLARY AT CHRISTIAN SCHOOL

9. The third burglary occurred in the early hours of the 1st June 2015 at the First Baptist Christian School on Crewe Road, George Town. A second floor office was entered and some cabinets and drawers were opened. Files and papers were on the floor. Below the office on a rooftop there was a headband. An alarm at the school had been triggered at about 4:00 a.m. No property appears to have been taken in the course of the burglary. C.C.T.V. footage showed that at 3:31a.m., a grey Honda, which the Defendant had the use of, was seen to travel in the direction of the school and, at 4:00am the same vehicle was seen to travel away from the school. D.N.A. on the headband matched that of the Defendant.
10. On the 9th June.2015, the Defendant was arrested on suspicion of the last two burglaries. When interviewed, he gave short prepared statements in which he denied responsibility for the burglaries.

The SIR

11. The Defendant is 29 years old. He first appeared before the Courts in April 2004 and his record shows eight (8) offences of Burglary and five (5) of Handling Stolen Goods.
12. The Social Inquiry Report (SIR) reveals that he has a child aged one (1) and has been in a relationship with the mother, for some four (4) years. Ms. Judy Mobley, the author of the SIR, in her assessment, says of the Defendant:

1 *"He has had some periods in which he has done well... He does appear to*
2 *be somewhat slow maturing but also appears to have more recently been*
3 *making some progress. Mr. Myles appears determined to make something*
4 *of himself, but he somewhat self-sabotages with ganja usage"*.

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6 **SENTENCING PRINCIPLES**

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8 13. Before I move to the sentence, there are two matters of principle that Miss
9 Carver, counsel for the Defendant, has raised on behalf of Mr. Myles.

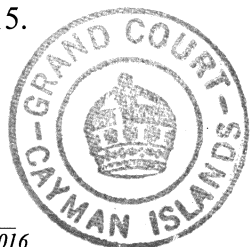
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11 **THE 2015 CAYMAN ISLANDS SENTENCING GUIDELINES**

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13 14. The first matter of principle relates to the 2015 Cayman Islands Sentencing
14 Guidelines.

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16 15. By email dated 29th October 2015 the Court Administrator, Mr. Kevin
17 McCormac said

18 *"A decision was made to introduce these guidelines in stages rather than as*
19 *a complete set, and the first group is now ready to be published and will be*
20 *effective from Monday 2nd November [2015]"*.

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23 16. The first group included Guidelines for Burglary. Miss Carver says, correctly,
24 that all three offences pre-date the introduction of the 2015 Guidelines as do the
25 dates of the three convictions – the last of which was on 14th September 2015.



1 17. The sentence hearing in the Summary Court was due to take place on 21st
2 October 2015 but the SIR was not ready and the matter was adjourned to 18th
3 November 2015. Subsequently these matters were committed to the Grand
4 Court on the 25th November 2015.

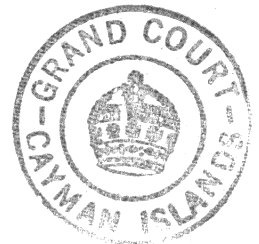
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6 18. Miss Carver submits that I should have no regard to the 2015 Guidelines as
7 they were not in force at the time of the offences, or, at the end of the trials. Ms.
8 Carver also submits that, had there not been some delay during the history of
9 this case, these Guidelines also would not have been in effect at the time when
10 the sentencing would have been expected to take place. Ms. Carver further
11 submits that the only Cayman Islands Sentencing Guideline I should take into
12 account is the learned Chief Justice's Statement on Tariffs and Guidelines for
13 Sentencing of Certain Offences dated 16th January 2002¹.

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15 19. In relation to Burglary the Chief Justice's Guidelines state:

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17 *"For Burglary without aggravating circumstances a second or subsequent*
18 *offence will attract a tariff of 3 to 4 years. It should be emphasised however*
19 *that we consider home invasions whether by night or by day very serious*
20 *offences and any such offence is likely to be discouraged by appropriate*
21 *prison sentences."*
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23
24 20. Miss Carver submits that I should not have regard to the 2015 Guidelines as
25 they set a tariff higher than that set in 2002.
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¹ Although it is intended that there should be guidelines for sexual offences included in the 2015 Cayman Islands Sentencing Guidelines they have yet to be produced.



1 21. In England and Wales this problem has arisen – particularly in historic sex
2 cases where defendants often appear for sentence for offences committed 20 or
3 30 years before. At the time of offending the maximum sentences were lower in
4 many cases and the sentencing regime more lenient. In England and Wales
5 statute demands that a sentencing Judge has regard to the Sentencing Council’s
6 Guidelines and, in a number of cases, the argument has been made that the
7 sentencing judge should not take them into account if the offence pre-dates the
8 issuing of the guideline. The case of *R v Chunxia Bao*² referred to by the
9 Crown is one example. The Court of Appeal in England and Wales has made it
10 clear that as long as the maximum sentence in force at the time of the offence is
11 not exceeded, it is permissible to, and indeed a sentencing judge should, have
12 regard to the current sentencing guidelines.

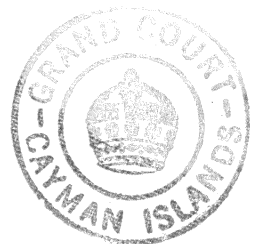
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14 22. Although the early Guidelines produced by the Sentencing Guidelines Council
15 did not have a starting date, those produced now by the Sentencing Council do.

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17 23. As to the starting date: In dismissing the suggestion that a person who was
18 convicted just before the Guidelines came in to effect could claim the benefit of
19 a lower tariff in the new guideline, Mr. Moran has referred to *R v Boakye and*
20 *Others*³ in which it was said “*the reality is that change has to start at some*
21 *point*”.

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² [2008] 2Cr.App. R (S) 10

³ [2013] 1Cr.App.R (S) 2

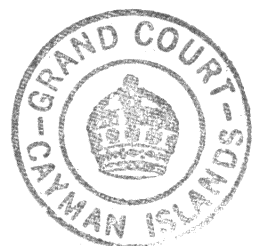


SENTENCE

28. Dwelling house burglaries are serious offences and merit severe sentence even when committed by persons of good character. The feeling that their house has been invaded can often last longer in the mind of the owner than the sense of loss of the items stolen.

29. In this case, the offence was compounded by the fact that the house was ransacked and very valuable and highly cherished jewellery was stolen and has not been recovered. This was not the Defendant's first burglary offence and, despite receiving prison sentences up to 3 years, he has continued to commit burglary. That is an aggravating factor. I must be careful not to take a feature of the case which puts in a particular category and use it as an aggravating factor as well, but, I bear in mind that the items stolen were of both high value and of very high sentimental value. Under the Guidelines the starting point is 6 years but the appropriate sentence in this case is 6 years 9 months' imprisonment.

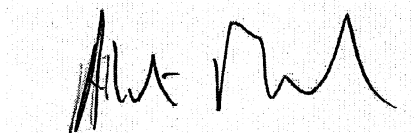
30. The Aquatech burglary was of commercial premises and the Defendant did not steal anything – no doubt because, to his surprise, someone was there. This was committed whilst he was on bail which is the only aggravating factor. The starting point is 12 months but, in view of the fact that nothing was taken, I reduce that to 9 months' imprisonment.



1 31. Although he appeared to have searched the office, the Defendant, again,
2 obtained nothing from the School – no doubt because he was again disturbed,
3 this time, by the alarm. At the time of this offence the Defendant was on bail
4 and in breach of his curfew. This offence has the same starting point as the
5 Aquatech offence and the sentence I impose is 12 months' imprisonment.

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7 32. All three sentences should be consecutive but, with an eye on totality, I make
8 the 12 months and 9 months sentences concurrent, but consecutive to the 6
9 years 9 months. That makes a total sentence of 7 years 9 months'
10 imprisonment. Time spent in custody will be deducted from this term of
11 imprisonment.

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17 Dated this the 24th day of March 2016

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19 Mr. Justice Alastair Malcolm Q.C.
20 Acting Judge of the Grand Court

