THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCRAP2022/0011

BETWEEN:

KENISHA WHYTE-CHALLENGER

Appellant

and

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:

The Hon. Mr. Trevor M. Ward	Justice of Appeal
The Hon. Mde. Esco L. Henry	Justice of Appeal
The Hon. Mde. Paula Gilford	Justice of Appeal [Ag.]

Appearances:

Mr. Lawrence Daniels for the Appellant
Ms. Rashida Jonas for the Respondent

2025: June 5.

Criminal appeal – Appeal against sentence – Aggravated robbery – Sentencing guidelines – Whether sentence excessive in the circumstances– First time offender – Whether the sentence was too severe for a first-time offender - Failure to deduct time spent on remand arithmetically – Error in principle – Judicial duty of explanation – Section 63A of the Criminal Procedure (Amendment) Act

The appellant began her employment as a domestic helper with the complainant on 1st May 2018 but was dismissed shortly thereafter following an incident on 18th May 2018. Approximately one year later, on 11th May 2019 at about 2:00 pm, the appellant and the two co-accused Mr. Jevon Lloyd and Mr. Kerriano Thomas, returned to the residence of the complainant. The appellant and Mr. Jevon Lloyd approached the new domestic helper to the complainant, Ms. Alicia Pierre-Louis and claimed they were there to collect an item. Upon discovering the absence of the complainant and her husband, they returned to the vehicle. Ms. Pierre-Louis subsequently noticed the vehicle moved further down the driveway. Ms. Pierre-Louis then noticed Mr. Lloyd exiting the vehicle and observed him pointing a firearm in her direction. She locked herself in a bathroom and called the police who arrived on the scene half an hour later. The complainant's husband later confirmed that items included jewellery, including family heirlooms, valued at $645,394.00 were stolen.

In an interview with the appellant on 8th June 2019, the appellant admitted her role in planning the robbery. She was arrested and charged on 11th June 2019, and remanded. She pleaded guilty and was convicted on 8th March 2022 for the offence of aggravated robbery contrary to section 33(1)(a) of the Larceny Act of Antigua and Barbuda and was sentenced to 14 years imprisonment.

Dissatisfied with the sentence imposed by the learned judge, the appellant appealed on a number of grounds. The two principal grounds were that: a.) the sentence of 14 years imprisonment was grossly excessive in all the circumstances; and b.) the sentence of 14 years was too severe for a first-time offender. The appellant also contended that the learned judge erred in failing to credit the appellant for time spent on remand.

Held: allowing the appeal in part, dismissing grounds 1 and 2 of the notice of appeal, and varying the sentence by deducting the 819 days spent on remand by the appellant, yielding a final sentence of 11 years, 9 months and 6 days, that:

1. An appellate court will not interfere with a sentence unless it is manifestly excessive or wrong in principle. A sentence is deemed excessive if it is manifestly disproportionate to the seriousness of the offence or the circumstances of the offender and goes beyond what the law and justice require. Manifest excess must however be more than a mere disagreement with the learned judge's discretion. It must reflect a sentence that no reasonable judge could have imposed.

   R v Kenneth John Ball (1951) 35 Cr App Rep 164 applied; **DeAndre Henry v The King** ANUHCRAP2022/0004 (delivered 28th February 2025, unreported) applied; **The Queen v Pham** [2015] HCA 39 considered; **Adams v R** [2024] EWCA Crim 108 applied; **Halsbury's Laws of England** 4th edn, Vol. 11 applied.

2. While the learned judge did not expressly set out the reasoning by which the starting point was determined, both counsel for the appellant and the respondent accepted that a starting point of 21 years was in fact applied. This starting point corresponds to a Category 2 Level A classification and falls within the Sentencing Guideline range of 45% to 75% of the maximum penalty, or 15 years and 9 months to 26 years and 3 months. The sentence of 14 years' imprisonment reflects a proper and proportionate reduction for the appellant's guilty plea and personal mitigating factors identified by the learned judge. Although the Sentencing Guidelines were not applied in a strictly structured or sequential manner, the ultimate sentence imposed was within the applicable guideline range and was reasonably open to the learned judge on the facts of the case. When assessed against established authority, the sentence cannot be said to be manifestly excessive.

   Desmond Baptiste v The Queen Crim Appeal No. 8 of 2003 (delivered 6th December 2004, unreported) applied; **R v Sargeant** (1974) 60 Cr. App. R. 74 applied; **R v Kenneth John Ball** (1951) 35 Cr App Rep 164 applied; **Tarik Aaron v The Commissioner of Police** BVIMCRAP2022/0003 (delivered 25th

July 2024, unreported) applied; **DeAndre Henry v The King** ANUHCRAP2022/0004 (delivered 28th February 2025, unreported) applied.

3. The importance of the personal circumstance of a first-time offender should be left to the discretion of the sentencing judge as a matter to be taken into account with all other circumstances of the offence. However, the more serious the offence, the less relevance would this circumstance have. The record demonstrates that the learned judge considered the appellant's prior clean record as part of her overall assessment. However, the learned judge was entitled to determine that this mitigating factor carried less weight than the gravity of the offence and the significant aggravating factors, namely the deliberate planning involved, the considerable financial and emotional harm caused, and the permanent loss of items of deep sentimental value. This evaluative decision reflects a proper exercise of the learned judge's discretion and reveals no error in principle. The sentence of 14 years reflects a balanced and principled application of law, proportionate to the seriousness of the offence. Accordingly, the submission that the sentence of 14 years' imprisonment was excessive because the appellant was a first-time offender is without merit. It falls within the range reasonably open to the learned judge.

   Turner v The Queen (1975) 61 Crim App. Rep. 67 applied; **Desmond Baptiste v The Queen** Crim Appeal No. 8 of 2003 (delivered 6th December 2004, unreported) applied; **Aguilera et al v The State** TT Crim App. Nos. 5,6,7,8 of 2015 (delivered 9th June 2016, unreported) considered; **The Queen v Kathy-Ann Isaac** ANUHCR2019/0083 (delivered 20th April 2021, unreported) distinguished.

4. Section 63A of the Criminal Procedure (Amendment) Act makes it mandatory that where an offender has been remanded in custody for an offence, or a related offence, before trial, the period of such remand must be considered as part of the sentence imposed by the court upon conviction. The apparent inconsistency between judicial authority and the Sentencing Guidelines, which emphasise a judicial obligation to make an explicit arithmetical deduction for time spent on remand on the one hand and section 63A which assigns the administrative crediting function to the Superintendent of Prisons, is resolved by recognising that the two regimes perform different but complementary functions. This clarifies that the sentencing judge retains a procedural and explanatory duty, even if Section 63A shifts the mechanical application of the credit to the prison authorities. Moreover, the statutory provision does not relieve the sentencing judge of their duty to explain how remand time was treated transparently during sentencing.

   Section 63A of the **Criminal Procedure (Amendment) Act**, 2014 applied; **Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules** 2019 Practice Direction 8A No. 1 of 2019 applied; **Callachand & Anor v State of Mauritius** [2008] UKPC 49 applied; **DeAndre Henry v The King** ANUHCRAP2022/0004 (delivered 28th February 2025, unreported) applied.

REASONS FOR DECISION

[1] **GILFORD JA [AG]**: This is an appeal against sentence only, brought by the appellant, Kenisha Whyte Challenger, following her conviction for the offence of aggravated robbery contrary to section 33(1)(a) of the **Larceny Act (as amended in 2017)**. The appellant was indicted along with her two co-accused, Mr. Jevon Lloyd and Mr. Kerriano Thomas. She pleaded guilty and was sentenced to 14 years' imprisonment by the learned judge in the High Court of Antigua and Barbuda.

[2] Dissatisfied with the sentence imposed, the appellant filed her Notice of Appeal on 16th June 2022, relying on the following two principal grounds:

(1) that the sentence of 14 years imprisonment was grossly excessive in all the circumstances; and

(2) that the sentence of 14 years was too severe for a first-time offender.

[3] Additionally, the appellant contends that the learned judge erred by failing to credit the appellant for the time spent on remand.

[4] The appellant was granted leave to appeal on 26th July 2022 and seeks to have this Honourable Court vary the sentence, ensuring that the time spent on remand is deducted arithmetically from any substituted sentence. Initially, she proposed a reduced sentence of 7 years; subsequently, she prayed for a final sentence of 6 years and 1 month, after deducting time spent on remand.

Background

[5] The appellant began her employment as a domestic helper for the complainant, Mrs. Teresa-Ann Michael, on 1st May 2018. On 18th May 2018, Mrs. Michael discovered that a sum of money was missing from her and her husband's passport holders. As a result of this incident, the appellant was dismissed from her employment.

[6] Approximately one year later, on 11th May 2019 at about 2:00 p.m., the appellant and her two co-accused returned to the residence of the complainant. The appellant and co-accused Mr. Jevon Lloyd approached Ms. Alicia Pierre-Louis, the new domestic helper to Mrs. Michael, claiming they were there to collect an item. Upon learning that the complainant and her husband were absent, they returned to their vehicle. Ms. Pierre-Louis then went inside the house to retrieve her phone in order to take a photograph of the vehicle and its license plate. Upon her return, she noticed that the vehicle had moved further down the driveway. Mr. Lloyd subsequently exited the vehicle, at which point, Ms. Pierre-Louis observed him pointing a firearm in her direction.

[7] Ms. Pierre-Louis locked herself in the bathroom and called the police. She heard the perpetrators pounding on the door.

[8] The police arrived at the scene half an hour later. The complainant's husband later confirmed that approximately 90% of the jewellery stored in a safe at the residence was missing. The stolen items included an iPad valued at XCD$1,350.00, cash amounting to XCD$5,400.00, and jewellery valued at XCD$645,394.00, totalling XCD$652,144.00. The jewellery included heirlooms from Morocco, Italy, and Lebanon.

[9] The victim impact statement of the complainant, Mrs. Michael, outlined the overwhelming and enduring effects the offence has had on her family and Ms. Pierre-Louis. Her husband was so distressed that he employed 24-hour security and was unable to sleep in their home for weeks. The complainant also experienced flashbacks, difficulty sleeping, and panic attacks, leading her to seek psychotherapy to cope with the trauma. Additionally, Ms. Pierre-Louis was so traumatised that she ultimately relocated from Antigua.

[10] The appellant admitted that she and her co-accused divided the stolen items. She sold her share to Venezuelans and pawned smaller pieces locally, receiving $4,950.00. This money, along with her share of the stolen cash, was used for personal expenses. Only XCD$22,950.00 worth of items were recovered.

[11] The appellant was subsequently interviewed by the police on 16th and 17th May 2019, during which she initially denied involvement. However, in a third interview on 8th June 2019, she admitted her role in planning the robbery. She was arrested and charged on 11th June 2019, and remanded. She pleaded guilty and was convicted on 8th March 2022.

Appeal

The Appellant's Submissions

[12] Learned counsel for the appellant, Mr. Lawrence Daniels, contended that the 14-year sentence imposed by the learned judge was unduly severe and violated the principle against double punishment. He relied on The **Director of Public Prosecutions v Stewart**[1] in support. He argued that the appellant had already received 8 months for a related firearm offence, and imposing a further 14 years was excessive. Learned counsel later abandoned this argument.

[13] Citing **Desmond Baptiste v The Queen**[2] and **R v Sargeant**[3]**,** Mr. Daniels emphasised that, when sentencing, the court should balance rehabilitation, deterrence, prevention and retribution. He further argued, while acknowledging that custodial sentences are appropriate for violent offences, the appellant, a 23-year-old first-time offender at the date of the offence, deserved greater leniency due to her youth, parental responsibilities, and academic progress at the University of the West Indies.

[14] He emphasised that the role of the appellant was limited to that of a driver, not a direct participant. He further argued that the time spent in pre-sentencing custody must be fully deducted from the final sentence. This principle was established in **Callachand & Anor v State of Mauritius**[4], which mandates such a deduction 'not simply by means of a form of words but by means of an arithmetical deduction'. He submitted that the learned judge's statement, 'the prison will take off that in any event,' is insufficient.

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[1] (1982) 35 WIR 296.
[2] Crim Appeal No. 8 of 2003 (delivered 6th December 2004, unreported).
[3] (1974) 60 Cr. App. R. 74, at p. 77.
[4] [2008] UKPC 49.

[15] Finally, he argued that the 14-year sentence constitutes an abuse of judicial discretion. The appellant drew a comparative analysis from the case of **The Queen v Kathy-Ann Isaac**[5]**,** which established a starting point of seven years for conspiracy to commit aggravated robbery. The appellant also relied on the case of **The Director of Public Prosecution v Shaunlee Fahie**[6], which affirmed a seven-year sentence for aggravated robbery as appropriate.

[16] Based on these submissions, the appellant initially sought the substitution of a more appropriate sentence of 7 years, with a full arithmetical deduction for 3 years spent on remand.

The Respondent's Submissions

[17] In response, learned counsel for the respondent, Ms. Rashida Jonas, argued that the sentence was neither manifestly excessive nor wrong in principle, citing **R v Kenneth John Ball**[7], and emphasising that an appellate court should intervene only if a sentence errs in principle or is so excessive or inadequate as to indicate a failure to apply the correct principles.

[18] Ms. Jonas asserted that the learned judge applied the Eastern Caribbean Supreme Court Sentencing Guidelines 2019, using a starting point of 21 years (60% of the 35-year maximum under the **Larceny (Amendment) Act 2017**, based on a finding of Category 2 harm and Level A seriousness, though the offence should instead have been classified as a Category 1, Level A offence with a starting point of 75% of the 35-year maximum, due to the planning involved, psychological trauma caused, and limited recovery of stolen items.

[19] The respondent argued that first-time offender status carries significantly less weight in serious crimes, citing **Desmond Baptiste v The Queen** and **Turner v The Queen**[8]**.** The respondent also referred to **Tarik Aaron v The**

[5] ANUHCR2019/0083 (delivered 20th April 2021, unreported).
[6] BVIHCRAP2008/0003 (delivered 11th January 2010, unreported).
[7] (1951) 35 Cr. App. Rep. 164.
[8] (1975) 61 Crim. App. Rep. 67.

Commissioner of Police[9], which reaffirms that age and first-time status, while discretionary, become less relevant in more serious cases. As such, she submitted that the learned sentencing judge exercised her discretion properly when assessing all relevant aggravating and mitigating factors of the offender and the offence as a whole, before automatically applying a substantial discount on the sole basis that the appellant was a first-time offender[10]. The respondent distinguished **The Queen v Kathy-Ann Isaac,** relied upon by the appellant, as involving conspiracy, not aggravated robbery, as in the instant matter.

[20] While acknowledging the appellant's rehabilitative efforts, the respondent submitted that 'while the judiciary remains cognizant of the general undesirability of incarcerating young offenders, it is well settled that the more egregious the offence, the less personal mitigation carries.'

[21] Citing the principles laid out in **Winston Joseph v The Queen**[11], Ms. Jonas also drew parallels to **Roger Naitram et al v The Queen**[12] in which a 19-year-old first-time offender was sentenced to eight years for aggravated burglary. She submitted that the learned judge gave due weight to remorse, motherhood, and education, as evidenced by the sentence being reduced to 21 years.

[22] The respondent conceded there was a calculation error. The learned judge applied the one-third guilty plea discount to 22 years rather than 21 years, resulting in a sentence of 14 years instead of 13 years and 6 months, a minor error that does not render the sentence unsafe. Ms. Jonas argued that this did not render the sentence unsafe or excessive when all the circumstances of the case were considered, including the learned judge's leniency towards the appellant.

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[9] BVIMCRAP2022/0003 (delivered 25th July 2024, unreported).
[10] Aguillera et al v The State TT Crim. App. Nos. 5,6,7,8 of 2015 (delivered 9th June 2016, unreported) at [30].
[11] Saint Lucia Criminal Appeal No. 4 of 2000 (delivered 17th September 2001, reissued 31st October 2021, unreported).
[12] Antigua and Barbuda Criminal Appeal No. 5 of 2006 (delivered 15th December 2010, unreported).

[23] Ms. Jonas conceded that the judge erred in failing to deduct time on remand and agreed that the 819 days that the appellant spent on remand should be arithmetically deducted if the court varies the sentence.

The Appellant's Submissions in Reply

[24] The appellant disputed that the harm should be classified as Category 1. Mr. Daniels argued that the victim did not suffer any physical harm, nor did she have direct contact with either the appellant or her co-defendants during the course of the robbery. Furthermore, while acknowledging that the stolen jewellery had sentimental value, the appellant submitted that concluding that her actions resulted in severe psychological harm was an unfair assessment, as per the principles laid out in **R v Forbes**[13]. In support of this stance, Mr. Daniels referenced **The King v Jamie Tittle**[14], where a high level of inconvenience and emotional distress was assessed as Category 2 (Medium) harm, despite a larger number of stolen items and business impact.

[25] Secondly, the appellant accepted that the offending fell within Level A seriousness but argued that the starting point should fall in Category 2A (60% to 75% of the maximum sentence) rather than 1A (60% to 90%), proposing a provisional starting point of 15 years and 9 months. Mr. Daniels conceded one aggravating factor (the disposal of evidence) but argued for a 3-month reduction based on the partial recovery of stolen items, resulting in a provisional sentence of 17 years and 6 months.

[26] Mr. Daniels further submitted that the six-month reduction for education was insufficient, citing the appellant's completion of studies at the University of the West Indies with a 94% average and her graduation as valedictorian. He argued that the appellant should have received at least one year off instead of the six months' reduction. He argued for a two-year credit for her role as a primary caregiver, reducing the sentence to 13 years and 6 months.

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[13] [2016] EWCA Crim 1388.
[14] ANUHCR2023/0001 (delivered 18th April 2024, unreported).

[27] Of significance, the appellant argued that the learned judge erred in failing to grant any credit for her age (23 years) and her immaturity at the time of the offence. Citing section 47 of the **Criminal Procedure Act 1873** (United Kingdom), she argued that this Court should recognise UK criminal law where Antiguan law does not provide specific guidance. Consequently, Mr. Daniels relied on paragraphs 1.2-1.8 of section 1 of the UK's Sentencing Council Guidelines, England and Wales, 'Sentencing Children and Young People: Definitive Guideline', which advocates an individualistic approach focused on rehabilitation for young offenders. The appellant stressed that her actions were out of character, attributable to her impressionability and lack of proper guidance, and sought a 1-year deduction for this factor (bringing the provisional sentence to 12 years and 6 months).

[28] Finally, while acknowledging and accepting the one-third reduction for her guilty plea, which would reduce her proposed provisional sentence to 8 years and 3 months, the appellant reiterated the learned judge's error in handling time spent on remand as per **Callachand & Anor v State of Mauritius (Mauritius)**[15]. They subsequently agreed with the respondent's submission that she spent 819 days (equivalent to 2 years and 1 month) on remand and argued that this deduction would reduce her sentence to 6 years and 1 month.

[29] The appellant also revisited the sentencing purposes set out in **The Queen v Sargeant** and argued that retribution and prevention are inappropriate for her case, considering she did not commit a serious crime such as murder and is unlikely to reoffend. Instead, they advocated for a sentence focused on deterrence and rehabilitation. Resultantly, the appellant submits that the 14-year sentence, or even the 13-year sentence suggested by the respondent, is grossly excessive and prays for a further reduced sentence of 6 years and 1 month.

The Law

[30] The Court now turns to the applicable legal principles. Section 39 of the **Criminal Procedure Act** permits an appeal against sentence. It states:

[15] [2008] UKPC 49.

> "A person convicted on indictment may appeal under this Act to the Court of Appeal -
>
> (c) with the leave of the Court of Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law"[16].

Sentencing Considerations

[31] In **R v Sargeant** Lawton LJ articulated the four classical objectives of sentencing: retribution, deterrence, prevention, and rehabilitation. While all four principles are relevant, the court must assess which objective is most appropriate in the context of each case. For young offenders, rehabilitation often takes precedence, unless the individual poses a persistent and serious threat to the public[17]. Lawton LJ observed -

> "…there are some offenders for whom neither deterrence nor rehabilitation works. They will continue committing crimes as long as they are able to do so. In those cases, the only protection which the public has is that such persons should be locked up for a long period."[18]

This statement reflects the delicate balance courts must strike between protecting the public and affording offenders an opportunity for reform. It demonstrates that sentencing is not only punitive but must also consider the protection of society and the prospects of rehabilitation.

[32] In **R v Ball**, Justice Hilbery emphasised that sentencing must ultimately serve the public interest, not only by deterring criminal behaviour but also by fostering the rehabilitation of offenders. He acknowledged that while the law sets the maximum penalties, it entrusts the court with the discretion to determine the appropriate sentence based on the individual circumstances of each case. This discretion is particularly vital when sentencing young offenders, whose potential for reform is often significant. Justice Hilbery stated:

> "…. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living…, the Court has the right and the duty to decide whether to be lenient or severe."

[16] CAP. 143 of the Laws of Antigua and Barbuda.
[17] (1974) 60 Cr. App. R. 74 at p. 77.
[18] Ibid.

[33] In **Desmond Baptiste v the Queen,** this Court reaffirmed the importance of consistency and proportionality in sentencing. It emphasised that the main objectives of retribution, deterrence, prevention, and rehabilitation must guide sentencing decisions. The court was urged to consider a range of relevant factors, including the nature of the offence, impact on the victim, offender's criminal history, and mitigating/aggravating circumstances. The Court stressed that sentencing must be individualised, reflecting the unique facts of each case, but also anchored in precedent and statutory limits to ensure fairness and uniformity across the justice system. In this context, the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 provide critical guidance.

[34] In **R v Bissonnette**[19], it was stressed that:

> "The relative importance of each of the sentencing objectives varies with the nature of the crime and the characteristics of the offender (R. v. Lyons, [1987] 2 S.C.R. 309, at p. 329). There is no mathematical formula for determining what constitutes a just and appropriate sentence. That is why this Court has described sentencing as a 'delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community'" (M. (C.A.), at para. 91.[20]

[35] These authorities highlight the dual responsibility of the court to protect society and encourage offenders to reintegrate as law-abiding citizens. Sentencing is therefore a nuanced exercise, requiring a careful balance between punishment, deterrence, and the possibility of rehabilitation.

How the Court of Appeal Approaches an Appeal of Sentence

[36] In **Ball**, Justice Hilbery stated at page 165 of the judgment:

> "In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence. The trial Judge has seen the prisoner and heard his history and any witnesses to character he may have chosen to call. It is only when a sentence appears to err in principle that this Court will alter it. If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene."

[19] [2022] 1 S.C.R. 597.
[20] Ibid [49].

[37] The **Halsbury's Laws of England**[21] reinforces this approach:

> "The Court will not interfere with a sentence unless it is manifestly excessive or wrong in principle. Nor is it relevant for members of the appellate court to reflect on the penalty they would have imposed if they were trying the matter. The reason for this is obvious. Questions as to the appropriateness of a sentence are essentially questions of judgment and discretion, which involve latitude of individual choice. It is conceded that here the exercise of the discretion is a matter of prudence rather than of law, but the area of discretion is hardly ever invaded in any case by an appellate tribunal save where its exercise is manifestly wrong and a miscarriage of justice results …"[22]

[38] **Paul McGorrery and Matthew Weatherson**[23] summarise the test for appellate intervention -

> "if an offender believes the sentence they received exceeded those bounds, they can appeal[24]. When that appeal is from the County or Supreme Court, the offender must make good one of two arguments to succeed. First, that the judge made a specific and apparent error. Or second, that while it is not apparent that the judge made a specific error, the sentence imposed is so far beyond the permissible range of sentences within which reasonable minds may differ that the judge must clearly not have given proper weight to all the various considerations in the case[25], with the end result that the sentence is manifestly excessive."[26]

[39] The authorities' position is that the appellate court exercises judicial restraint when reviewing sentences imposed by sentencing courts. The role of the Court is not to substitute its own view of what the sentence should be, but to ensure that the sentence is lawful, principled, and proportionate. The appellate court respects the sentencing judge's unique position to evaluate the offender and their circumstances first-hand. As stated in **Ball**[27] and **Halsbury's Laws of England**, the Court will not interfere unless the sentence is manifestly excessive or wrong in principle.

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[21] 4th edn, Vol. 11.
[22] Ibid at para. 664.
[23] Sentencing Advisory Council Judicial College of Victoria, When A Sentence is Manifestly Excessive?
[24] About 3% of sentences imposed in the higher courts are successfully appealed: Sentencing Advisory Council, Sentence Appeals in Victoria: Second Statistical Research Report (2018) 13.
[25] DPP v Karazisis & Ots [2010] VSCA 350, [127]; Clarkson v The Queen [2011] VSCA 157, [89].
[26] When A Sentence is Manifestly Excessive? p.1
[27] (1951) 35 Cr. App. Rep. 164.

[40] This approach was reiterated by this Court in **DeAndre Henry v The King**[28], where Ventose JA reiterated the dicta in **Simon Marius v The King**[29], emphasising that appellate intervention is only warranted when the learned judge's sentencing decision reflects a clear error in principle, not merely a difference in opinion.

[41] Ultimately, the appellate court must balance the need for consistency in sentencing with the imperative of fairness in individual cases**.**

Sentencing in the Court Below

[42] Mr. Curtis Cornelius, learned counsel for the Crown, clarified that the offence of aggravated robbery involving a firearm, contrary to section 33(1)(a) of the Larceny Act, carries a maximum penalty of 35 years under the 2017 amendment. In deciding the appropriate sentence, the learned judge did address her mind to the Sentencing Guidelines.

[43] The examination of the sentencing process reveals that, although the learned judge purported to apply the Sentencing Guidelines, the methodology by which the starting point was reached was not made sufficiently explicit on the record.

[44] In crafting the sentence, the learned judge referred to the appellant's intimate knowledge of Mrs. Michael's home, where the money and jewellery were, and to the recruiting of others to assist in the commission of the crime. Thereafter, the learned judge adopted a starting point of 21 years.

[45] Mr. Daniels correctly submitted before this Court that the learned judge did not explain how that starting point was derived within the structured framework of the Sentencing Guidelines. There was no express identification of the harm caused, no articulated assessment of the level of seriousness, and no direct reference to the sentencing grid as required by Step 1, Stages 1, 2 and 3 of the Guidelines, respectively.

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[28] ANUHCRAP2022/0004 (delivered 28th February 2025, unreported).
[29] SLUHCRAP2008/0007 (delivered 16th January 2025, unreported).

[46] The first stage of Step 1 requires the sentencing judge to assess the consequence or harm caused by the offence by referring to the non-exhaustive factors identified in the Guidelines. Having assessed the relevant factors, the sentencing judge is required to place the offence within one of three consequence categories: Category 1 (High), Category 2 (Medium), or Category 3 (Lesser).

[47] In the case under consideration, the record contained detailed evidence of the impact the crime had on the victims. Mrs. Michael testified to the severe psychological impact, which included persistent fear and anxiety, the installation of 24-hour security, inability to sleep in the home, engagement in psychotherapy, and the relocation of the domestic helper from Antigua. These matters were plainly material to the assessment of consequence.

[48] Despite the evidence, the learned judge did not explicitly identify which indicators she accepted as present. This omission is significant, given that the Guidelines require the sentencing judge to explicitly identify the level of harm, which must be grounded in certainty and transparency.

[49] The second stage of Step 1 requires the sentencing court to assess the offender's culpability, classified as Level A (High), Level B (Medium), or Level C (Lesser). This assessment must be conducted with reference to the non-exhaustive factors identified in the Guidelines. The learned judge did not expressly identify the seriousness level nor specify which culpability factors placed the offending within a particular category.

[50] On the facts, the offence plainly fell within Level A seriousness, having regard to the degree of planning involved, the appellant's leadership role, the breach of trust, and the production of a firearm by a co-offender. This conclusion, however, was reached only by inference from the sentencing remarks, rather than by explicit application of the Guidelines, as required.

[51] At the third stage of Step 1, the learned judge did not refer to the grid. The learned judge simply stated that the 'starting point is 21 years, and that will go upwards to take into account the aggravating factors,'[30] without identifying the maximum or the minimum sentencing range as required, nor the statutory maximum used in the calculation of the starting point.

[52] The starting point of 21 years represents 60% of the statutory maximum sentence, consistent with a Category 2 consequence and a Level A seriousness classification under the Guidelines. This starting point represented a rejection of the submission of the Crown before the learned judge that the offence fell within Category 1 consequence, which would have resulted in a starting point of 75% of the statutory maximum, given the Level A seriousness.

[53] Although the learned judge did not expressly identify the consequence category or seriousness level, this Court is satisfied, on an independent application of the Sentencing Guidelines, that the offence properly falls within Category 2 consequence and Level A seriousness. This conclusion is reached having regard to the significant psychological impact on the victims, the high value of the property stolen, the breach of trust, and the presence of a firearm, while noting that no physical injury was inflicted.

[54] Although the resulting starting point was favourable to the appellant, the crafting of the sentence by the learned judge was inconsistent with the methodology required by the Guidelines. There is no indication why Category 2 was adopted over Category 1, nor how the grid was used in selecting the starting point. The sentencing judge engaged in the sentencing process must adhere to the guidelines to ensure efficacy and consistency. While the methodological deficiencies identified are material and should not be minimised, they do not undermine the substantive correctness of the categorisation ultimately adopted by the learned judge, which was favourable to the appellant.

[30] Record of proceedings, page 46, line 10-11.

[55] Having determined the starting point, the learned judge stated:

> "having heard from Ms. Michael the jewelry [sic] was of sentimental value and she said it was handed down from generation to generation, and they sold it to a third party and very little has been recovered. So that is another aggravating factor. So that will -- I will just bring that to 23 -- bring it up to 23 years."[31]

[56] At the fourth stage of Step 1, the sentencing court is obligated to address the aggravating and mitigating factors of the offence. The sentencing court is also urged to avoid double-counting by not considering factors that were considered at stages 1 and 2. Before increasing the starting point following the observations, there was no reference to whether there were mitigating factors relative to the offence, or that there was no double-counting by considering the monetary value as an aggravating factor rather than a consequence.

[57] The Court is satisfied that, although the monetary value of the stolen items informed the assessment of harm at an earlier stage, the learned judge's reference to the disposal of the jewellery was directed to the permanence of the loss and the deliberate frustration of recovery. While the sentencing remarks would have benefited from clearer articulation, the Court does not consider that impermissible double-counting materially occurred.

[58] Step 2 requires a separate consideration of the aggravating and mitigating factors personal to the offender. Despite the learned judge acknowledging the appellant's remorse, her being a mother of a minor child, before adjusting the starting point downward, the learned judge failed to address whether there were aggravating factors relating to the appellant and should have dealt with the issue of prior conviction at this Step.

[59] The Record demonstrates the following exchange before the learned judge began sentencing of the appellant:

> "MR. DANIELS: My Lady, I tell you why we need to start at 17, My Lady. My Lady, with the prospect, My Lady, that the accused is only 27 we recognize that there was a breach of trust; we recognize, My Lady, that

[31] Record of proceedings, page 48, line 1-7.

> she has pled guilty at the earliest opportunity; and more importantly she has cooperated with the police.
>
> THE COURT: Yeah. All of those factors have been taken into account." [32]

[60] Furthermore, a perusal of the record indicates that the aggravating and mitigating factors of the offence and the appellant were not addressed in a structured manner, nor was there an explanation of how these factors affected the sentence quantitatively, to ensure clarity in relation to the sentencing process.

[61] The learned judge correctly, at the third step, applied a one-third discount to the starting point in recognition of her guilty plea, resulting in a revised term of 14 years and 6 months[33] after some uncertainty, and following confirmation that the credit was to apply to 22 years rather than 21 years. However, the learned judge incorrectly addressed 'the fact that she is enrolled at the University of the West Indies'[34] at this stage, when it should have been considered at the personal factor relating to the appellant.

[62] Again, this is why a systematic application of the Guidelines is important to avoid vacillation and ensure clarity in sentencing.

[63] While the learned judge noted that the prison authorities would credit time spent on remand, the learned judge failed to deduct that time, which is a clear departure from the Guidelines and the authorities.

[64] In summary, the sentencing process was affected by several procedural deficiencies. These deficiencies affected the clarity and transparency of the sentencing process.

[65] The Court urges sentencing judges to explicitly identify the applicable guideline used in the sentencing process. There should be strict adherence to the relevant

[32] Record of proceedings, page 44, line 11-18.
[33] Record of proceedings, page 48, line 15-23.
[34] Record of proceedings, page 49, line 3-9.

steps to ensure a clear understanding of how the sentencing judge arrived at the sentence. It therefore means identifying the harm and seriousness of the offence and then determining the appropriate starting point by consulting the sentencing grid at stage 3 of step 1 in the sentencing guidelines. The aggravating and mitigating factors of the offence should be addressed when completing Step 1, Stage 4. The aggravating and mitigating factors relating to the offender should be considered in Step 2. When necessary, the applicable discount should be applied at Step 3 for a guilty plea, and Step 4 should be considered accordingly. Time spent in remand should be accurately calculated and precisely deducted at Step 5. Step 6 should be reviewed if required; thereafter, the sentence should be pronounced[35].

[66] The Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 prescribe a mandatory and structured framework for the imposition of criminal sentences. Their object is to promote consistency, transparency, and fairness. The Guidelines are intended to be applied sequentially and with clarity. Although a failure to follow every step mechanistically will not, of itself, render a sentence unlawful, a sentencing judge must demonstrate on the record that the essential analytical process has been undertaken.

[67] Notwithstanding these shortcomings, the sentence imposed fell within the range reasonably open to the learned judge. In the interest of fairness and consistency, it is important that the sentencing judge explains how the offence was categorised, the starting point was selected, and any adjustments were made in keeping with the requirements of the sentencing guidelines.

Ground 1: The sentence of fourteen years' imprisonment was grossly excessive in all the circumstances

What Constitutes an Excessive Sentence

[68] Before addressing this ground, the Court adopts and incorporates its earlier analysis above, concerning the sentencing process in the court below, the

[35] Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, Practice Direction 8B No. 2 of 2019.

application of the Eastern Caribbean Supreme Court (Sentencing Guidelines) Rule 2019, and the identification of the procedural shortcomings in the sentencing exercise. The present ground is therefore considered in the light of these findings.

[69] A sentence is deemed excessive if it is manifestly disproportionate to the seriousness of the offence or the circumstances of the offender. This principle is foundational in sentencing and is consistently reflected in appellate decisions.

[70] In **The Queen v Pham**[36] the Australian High Court held that a sentence is manifestly excessive if it falls outside the permissible range of the sentences that could reasonably be imposed, even in the absence of a specific error. The Court stated:

> "It is only if the sentence is found to be 'unreasonable or plainly unjust' that the challenge of manifest excess succeeds. Manifest excess is a conclusion, relevantly in the context of sentencing for this offence, that the sentence is manifestly too long. To observe that a sentence is 'very heavy' when compared with other sentences is not, without more, to conclude that it exceeded the bounds of the sentencer's discretion."[37]

[71] Similarly, in **Adams v R**[38] (England and Wales), the Court confirmed that a sentence may be excessive if it fails to properly weigh aggravating and mitigating factors or departs unjustifiably from sentencing guidelines. The Court, dismissing the appeal on excessive sentence, stated:

> "The extent of such an increase is very much a matter for the discretionary judgment of the sentencer on the facts of an individual case. In the absence of any error of principle this court is unlikely to interfere unless it is satisfied that the judge's ultimate conclusion falls outside the range which was reasonably open to him. We have anxiously considered whether the judgment of this judge on these facts can be said to have resulted in a manifestly excessive sentence. We accept that the sentence was in a range that could be described as severe, but we have concluded that it is not properly characterised as manifestly excessive."[39]

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[36] [2015] HCA 39.
[37] Ibid [47].
[38] [2024] EWCA Crim 108.
[39] Ibid [23].

[72] A sentence may be considered excessive when it goes beyond what the law and justice require. This occurs, for example, if the sentence exceeds the maximum penalty prescribed by statute[40] or the punishment imposed is significantly harsher than warranted by the nature of the offence[41]. It may also be excessive when the court fails to apply fundamental principles, such as proportionality, totality, or parity, or when the sentence infringes constitutional rights, including the protection against cruel and unusual punishment. A sentence may also be excessive where it is grossly disproportionate to the seriousness of the offence or based on a misapplied sentencing principle[42]. Similarly, reliance on aggravating factors without evidentiary support[43], or a violation of constitutional safeguards, such as the right to be free from inhuman treatment, can render a sentence manifestly excessive.

[73] It must be emphasised that manifest excess must be more than a mere disagreement with the learned judge's discretion. It must reflect a sentence that no reasonable judge could have imposed.

[74] In such cases, the appellate court has a duty to intervene to correct the error and uphold the integrity of the justice system.

[75] The Record establishes that the learned judge grounded the sentencing exercise in the Eastern Caribbean Supreme Court Sentencing Guidelines. During exchanges with learned Crown Counsel, Mr. Cornelius, the learned judge made clear that the ranges being advanced were derived from the

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[40] Lovett v Wigan Metropolitan Borough Council [2022] EWCA Civ 1631, [2023] 1 WLR 1443; R v Howells [2023] EWCA Crim 1077, the court reduced the sentence to align with the statutory maximum penalties applicable at the time of the offences.
[41] R (on the application of James) v HM Prison Birmingham and others [2015] EWCA Civ 58, the Court of Appeal found that the sentencing judge had placed the offences in the wrong category under the Sentencing Guidelines, leading to a manifestly excessive sentence. The court adjusted the sentence to reflect the correct category and the offender's age at the time of the offences.
[42] In R (on the application of James) v HM Prison Birmingham and others [2015] EWCA Civ 58 the court reduced the sentence after finding it grossly disproportionate to the seriousness of the offences, particularly given the offender's age and the misapplication of sentencing categories R v XWF.
[43] R v Freeth [2023] EWCA Crim 1754; In Sandwell Borough Council v Preece [2007] EWCA Civ 1009, the applicant successfully argued that certain aggravating factors, such as intoxication, were improperly considered as they lacked evidentiary support. This highlights the necessity for courts to base aggravating factors on clear evidence.

Guidelines and that all other considerations had been accommodated within that framework. The Sentencing Guideline, therefore, governed her approach.

[76] Mr. Cornelius submitted to the sentencing judge that the offence should be classified as Category 1, Level A, relying on the high value of the stolen items, which exceeded $600,000.00, the home invasion aspect, and the use of a firearm. On that basis, the Crown proposed a starting point of 75% of the statutory maximum of 35 years, which equates to 26 years within a sentencing range of 60% to 90%.

[77] As previously noted and addressed earlier in this judgment, the learned judge did not expressly set out the reasoning by which the starting point was determined. Nonetheless, both counsel before this Court accepted that a starting point of 21 years was in fact applied. This starting point corresponds to a Category 2 Level A classification, as advanced by the appellant, and falls within the sentencing guideline range of 45% to 75% of the maximum penalty, or 15 years and 9 months to 26 years and 3 months.

[78] While the learned judge should have explicitly articulated the analytical steps leading to that conclusion, the factors identified by the learned judge in the sentencing remarks, subject to this Court's earlier observation, are consistent with such a categorisation. Further, the starting point adopted accords with the very starting point that counsel for the appellant submitted before this Court ought to have been properly applied.

[79] These findings demonstrate that the learned judge rejected the Crown's proposed Category 1 classification, which would have resulted in a considerably higher starting point of 26 years. By categorising the offence as Category 2, Level A, the learned judge placed the appellant in a lower bracket of culpability, to her advantage.

[80] The learned judge next considered the aggravating factors of the offence and, on that basis, adjusted the starting point upward to 23 years, without first determining whether any offence-based mitigating factors were present, before

proceeding to the personal circumstances of the appellant. Although the Record reflects that the learned judge took matters of personal mitigation into account, the sentencing remarks do not disclose a distinct consideration of aggravating factors personal to the appellant, as required by the structured sentencing approach discussed earlier in this judgment. Notwithstanding these omissions, the ultimate result was a starting point of 22 years,[44] which remained within the applicable guideline range.

[81] It was argued on appeal by Mr. Daniels for the appellant that insufficient weight was given to the appellant's youth and prospects for rehabilitation, and that, at 23 years of age, her immaturity should have significantly reduced her culpability. It was also submitted that the limited reduction granted for her university enrolment rendered the sentence excessive.

[82] Under specific sentencing guidelines, particularly when dealing with young adult offenders, courts must consider how immaturity and developmental factors may reduce culpability[45]. Youthful offenders may lack a full understanding of the consequences of their actions, be more vulnerable to peer pressure or coercion, and possess underdeveloped decision-making and impulse control. These factors warrant special consideration in sentencing.

[83] The authorities do not support the contention that this materially reduces sentences in serious, planned offending. It is well established that the mitigating relevance of age diminishes as the seriousness of the offence increases, particularly where the offending conduct involves planning and deliberate decision-making. In **Baptiste** this principle was affirmed, and in **Tarik Aaron v The Commissioner of Police** this Court upheld the limited weight accorded to age where the appellant played a pivotal role in a serious and deliberate offence.

[44] Record of proceedings, page 48.

[45] The Eastern Caribbean Supreme Court Sentencing Guidelines 2019 (reissued November 2021) for dishonesty govern sentencing for the offence of aggravated robbery and encourage courts, when sentencing, to consider whether "Youth and/or lack of maturity where it explains offending."

[84] In the present case, the Record confirms that the learned judge did consider the appellant's age and personal circumstances. During sentencing submissions, she expressly acknowledged that the factors advanced by Mr. Daniels, including age and cooperation with the police, had all been considered. While youth may mitigate the extent to which offending is driven by impulsivity or immaturity, the facts of the case show that the offence involved planning and coordination. Although the appellant did not physically enter the complainant's home and the evidence established that she planned the offence, her conduct reflected premeditation and a leadership role in the commission of the offence, thereby limiting the mitigating force of age.

[85] The learned judge then applied a one-third reduction to the adjusted sentence of 22 years for the guilty plea, in accordance with the Guidelines, reducing the sentence to 14 years and 6 months. A further reduction of 6 months was granted in recognition of the appellant's enrolment at university, resulting in a sentence of 14 years. The learned judge also acknowledged that time spent on remand would be credited administratively.

[86] The sentence of 14 years' imprisonment reflects a proper and proportionate reduction for the appellant's guilty plea and personal mitigating factors identified by the learned judge. Although the Sentencing Guidelines were not applied in a strictly structured or sequential manner, and the Court encourages sentencing courts to adhere to the steps outlined in the guidelines, the ultimate sentence imposed was within the applicable guideline range and was reasonably open to the learned judge on the facts of this case. When assessed against established appellate authority, the sentence cannot properly be characterised as manifestly excessive. It is well settled that appellate intervention is justified only where a sentence is plainly unjust, falls outside the permissible range, or is vitiated by error in principle. No such error is disclosed in respect of the substantive length of the sentence imposed.

[87] The categorisation of the offence as Category 2, Level A, the adoption of a starting point of 21 years, and subsequent adjustments for aggravating and mitigating factors were all consistent with established principles articulated in

Sargeant, **Baptiste**, **Ball** and others. These authorities emphasise that sentencing must balance the classical objectives of retribution, deterrence, prevention, and rehabilitation, while serving the public interest. The learned judge properly considered the appellant's youth and prospects for reform, but, as reaffirmed in **Tarik Aaron** and **Baptiste** the mitigating force of age diminishes where the offence is serious, and as in this case, planned and deliberate.

[88] As alluded to, the 14-year sentence reflects a proper reduction for the guilty plea and personal mitigation, consistent with the Guidelines. The sentence falls within the range that was reasonably open to the learned judge and is not manifestly excessive under established authorities. Appellate intervention is warranted only where a sentence is plainly unjust, outside the permissible range, or based on an error in principle. No such error is demonstrated here.

[89] As affirmed in **Ball** and reaffirmed in **DeAndre Henry**, appellate courts do not substitute their own view of sentence simply because they might have imposed a different sentence. Intervention occurs only where the sentence is wrong in principle or manifestly excessive. Neither threshold has been met.

[90] Accordingly, ground 1 is dismissed.

Ground 2: The Sentence of fourteen years was too severe for a first-time offender

[91] The appellant contended that a custodial sentence of 14 years' imprisonment was too severe because the appellant was a first-time offender.

[92] In **Turner v The Queen**[46], Lord Lane CJ stated,

> "The fact that a man has not much of a criminal record, if any at all, is not a powerful factor to be taken into consideration when the Court is dealing with cases of this gravity. Conversely, the lack of a criminal record would be a powerful mitigating factor where the offence is of an insubstantial nature."[47]

[46] (1975) 61 Crim. App. Rep. 67.
[47] Ibid at p. 91.

[93] This dictum draws a principled distinction between minor offending, where personal mitigation may properly dominate the sentencing exercise, and serious crime, where the emphasis must shift to retribution, deterrence and protection of society.

[94] In **Baptiste,** this Court reaffirmed that youth and lack of prior convictions carry limited weight in serious offences. This Court stated:

> "As to the fact that the offender was committing a crime for the first time, it seems to us that the importance of this circumstance should be left to the discretion of the sentencer as a matter that is to be taken into account with all other circumstances of the offence. It must be stressed, though, that the more serious the offence, the less relevant will be this circumstance."

[95] Of persuasive authority is **Aguilera et al v The State**[48] where the Court of Appeal of Trinidad and Tobago stressed that the sentencing exercise is inherently holistic. That Court held:

> "The sentencing judge does not look at one factor in isolation and out of context but rather has to evaluate the entirety of the circumstances of the offence and the offender. We identify no fault with the sentencing decision of the judge not to sentence Evans Ballai to a lesser term because of his good character."[49]

The Court expressly rejected the proposition that prior good character must necessarily result in a reduced sentence, where the objective seriousness of the offence justifies a substantial custodial term.

[96] This principle was applied in **Fahie** where this Court increased the sentences for the firearm offences to three years and for the aggravated burglary offences to seven years, notwithstanding the respondent's prior good character. The Court held that the learned judge in **Fahie** failed to adequately reflect the gravity of the offending and an appellate intervention was warranted. Crucially, prior good character did not insulate the respondent from a significantly increased sentence.

[48] TT Crim App. Nos. 5,6,7,8 of 2015 (delivered 9th June 2016, unreported).
[49] Ibid [30].

[97] The appellant's reliance on **The Queen v Kathy-Ann Isaac** is misplaced. Although the case involved a seven-year sentence for conspiracy to commit aggravated robbery, meaningful comparison requires more than matching sentence lengths. Conspiracy, while an inchoate offence, is complete upon agreement and may attract substantial penalties depending on the statutory framework. Proper comparison requires consideration of the factual context, aggravating and mitigating factors, and the maximum penalties. Viewed in this light, the Court finds that the factual and legal distinctions between the present case and **Isaac** significantly limit the weight of the authority.

[98] When these principles are applied to the facts of the present case, the appellant's submission cannot succeed. The offence was not spontaneous or impulsive, but deliberate, planned, and executed with inside knowledge of the complainants' home, including the location of the valuables. The appellant acted as the mastermind, recruited two confederates, and orchestrated a serious home invasion that caused significant financial and emotional harm.

[99] Of relevance is the permanent loss of family heirlooms, which were of great sentimental value, passed down through generations. The offending therefore caused harm well beyond monetary loss, and as expressed by the complainant, struck at the dignity, security, and emotional well-being of the victims. These are weighty aggravating factors that significantly elevate the seriousness of the offence. They also diminish the mitigating force of first-time offender status.

[100] The appellant's argument that first-time offender status should substantially mitigate the sentence cannot prevail. Established principles in **Turner**, **Baptiste**, and **Aguilera** confirm that prior good character carries limited weight in cases of serious and harmful offending. To accord decisive weight to first-offender status in such a case would undermine the principles of proportionality, deterrence, and denunciation that properly guide the sentencing of serious violent and acquisitive crime.

[101] The record demonstrates that the learned judge considered the appellant's prior clean record as part of her overall assessment. However, the learned judge was

entitled to determine that this mitigating factor carried less weight than the gravity of the offence and the significant aggravating factors, namely the deliberate planning involved, the considerable financial and emotional harm caused, and the permanent loss of items of deep sentimental value. This evaluative decision reflects a proper exercise of the learned judge's discretion and reveals no error in principle.

[102] The sentence of 14 years reflects a balanced and principled application of law, proportionate to the seriousness of the offence. Accordingly, the submission that the sentence of 14 years' imprisonment was excessive because the appellant was a first-time offender is without merit. It falls within the range reasonably open to the learned judge.

[103] Accordingly, ground 2 is therefore dismissed.

Failing to Deduct Time Spent on Remand Arithmetically

[104] The appellant spent 819 days on remand. The learned judge stated that, 'the prison will take off that in any event,' but failed to apply an arithmetical deduction. This failure constitutes an error in principle.

[105] Section 63A[50] makes it mandatory that time spent on remand counts toward the sentence. It provides -

> "(1) Where a person has been remanded in custody in connection with an offence or a related offence for which he is charged, the number of days for which the person was remanded in custody in connection with the offence or related offence shall count as time served by the person as part of the sentence imposed by a Court.
>
> (2) The number of days for which the person was remanded in custody in connection with an offence or a related offence shall be credited by the Superintendent of Prisons as time served by him as part of the sentence imposed by a Court.
>
> (3) For the purposes of this section, it is immaterial whether, for all or part of the time during which the person was remanded in custody, the person was also remanded in custody in connection with other offences.

[50] The Criminal Procedure (Amendment) Act, 2014.

> (4) If, on any day on which the person was remanded in custody, the person was also detained in connection with any other matter, that day is not to count as time served.
>
> (5) This section shall apply to any person who has been serving a sentence which commenced after the 31st January 2003, where a Court had not ordered that the time spent in custody on remand should count as time served"

[106] Section 63A makes it mandatory that where an offender has been remanded in custody for an offence, or a related offence, before trial, the period of such remand must be considered as part of the sentence imposed by the court upon conviction. The Superintendent of Prisons has the statutory obligation to credit those days as time served.

[107] In **Callachand v State of Mauritius**[51], the Board categorically stated:

> "In principle it seems to be clear that where a person is suspected of having committed an offence, is taken into custody and is subsequently convicted, the sentence imposed should be the sentence which is appropriate for the offence. It seems to be clear too that any time spent in custody prior to sentencing should be taken fully into account, not simply by means of a form of words but by means of an arithmetical deduction when assessing the length of the sentence that is to be served from the date of sentencing."

[108] The **Sentencing Guidelines**[52] echo this same requirement. It provides that,

> "All offenders are entitled to credit for the time they have spent in custody on remand for the offence. The court shall state the precise number of days to be credited..."[53]

[109] The Caribbean Court of Justice, in **Romeo Da Costa Hall v The Queen**[54], endorsed the approach taken by the Privy Council in **Callachand**.

[110] Section 63A does not replicate the position in **Callachand** insofar as sentencing, as it places the mechanical duty of crediting time on remand on the

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51 [2008] UKPC 49.
52 Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019, Practice Direction 8A No. 1 of 2019 General Sentencing Principles.
53 Ibid [6].
54 [2011] CCJ 6 (AJ).

Superintendent of Prisons rather than the sentencing judge. However, Section 63A pursues the same underlying objective identified by the Board in **Callachand** and the Sentencing Guidelines, that time spent on remand must be fully accounted for.

[111] The apparent inconsistency between **Callachand** and **Da Costa Hall**, and the Sentencing Guidelines, which emphasise a judicial obligation to make an explicit arithmetical deduction for the time spent on remand, on the one hand, and Section 63A, which assigns the administrative crediting function to the Superintendent of Prisons, is resolved by recognising that the two regimes perform different but complementary functions. This clarifies that the sentencing judge retains a procedural and explanatory duty, even if Section 63A shifts the mechanical application of the credit to the prison authorities.

[112] A thorough review of the law is clear that time spent on remand should be fully taken into consideration. Section 63A limits the exception to cases where an offender is serving a sentence for an unrelated offence or legal matter. None of these exceptions applies here.

[113] The Sentencing Guidelines state that credit for time served on remand should be considered at Step 5 before passing the sentence. This Court has previously made it clear that the statutory provision does not relieve the sentencing judge of their duty to explain how remand time was treated transparently during sentencing. This was the position explained by this Court in **Omari Phillip v The King**[55] and restated in **DeAndre Henry v The King:**

> "[86] I am not unmindful that in Antigua and Barbuda, Section 63A of the Criminal Procedure Act provides that where a person has been remanded in custody in connection with an offence or a related offence for which he is charged, the number of days for which the person was remanded in custody in connection with the offence or related offence shall count as time served by the person as part of the sentence imposed by a Court, and such time shall be credited by the Superintendent of Prison as time served by him as part of the sentence imposed by a Court. However, this does not absolve the judge of his or her own responsibility to transparently explain during the sentencing

[55] ANUHCRAP2016/0008 (dated 13th November 2024, unreported).

exercise how they have treated with time in custody, consistent with the authorities cited above."

[114] It is essential to reiterate the importance of judges clearly articulating the basis for their sentencing decisions, including how they derive starting points and apply adjustments. Sentencing judges must also transparently explain how remand time is treated. At step 5 of the sentencing exercise, the sentencing judge should identify the precise period during which the offender was on remand. The sentencing judge should then indicate which part of the custodial term the Superintendent of Prisons is statutorily required to credit under Section 63A.

[115] Once the credit is identified, the sentencing judge should still state, in open court, the remaining period the offender is required to serve. This serves to ensure that the procedural effect of the sentence is transparent and removes any ambiguity regarding the actual time to be served.

[116] The Court makes it clear that its conclusion that the sentence imposed was not manifestly excessive pertains to the substantive custodial term determined by the learned judge. The variation ordered by this Court does not reflect a reassessment of proportionality or culpability but arises solely from the discrete acknowledgement of error in failing to arithmetically deduct the time spent by the appellant on remand, as required by the law and the Sentencing Guidelines.

[117] In this way, the judicial duty of explanation mandated by **Callachand** and the Sentencing Guidelines is preserved while Section 63A governs the administrative implementation of the remand credit. The two are therefore not inconsistent; they operate together to ensure that the sentencing process is transparent while avoiding ambiguity.

Disposition

[118] It is hereby ordered that the appeal is allowed in part. Grounds 1 and 2 are dismissed. The sentence is varied by arithmetically deducting the 819 days

spent on remand by the appellant, yielding a final sentence of 11 years, 9 months and 6 days.

[119] The Court is grateful for the assistance of learned counsel.

I concur.
Trevor M. Ward
Justice of Appeal

I concur.
Esco L. Henry
Justice of Appeal

By the Court

Chief Registrar