

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
(CRIMINAL DIVISION)**

INFORMATION NO. 180/8/2011

BETWEEN:

REGINA

-v-

DAVID COLLINS

Before: The Hon. Madam Justice Indra H. Charles

Appearances: Mr. Vernal Collie of the Attorney General's Chambers for the Crown
Mr. Geoffrey Farquharson for the Defendant

Hearing Date: 11 January 2018

RULING

(Criminal Law – Receiving - Sentencing – Aggravating factors –Mitigating factors – Appropriate sentence – Four cardinal principles of sentencing – Deterrence – Retribution – Prevention - Rehabilitation)

Charles J

Introduction

[1] On 31 October 2012, after an extremely lengthy trial, the defendants, David Collins and one Jonathan Armbrister were convicted of conspiracy to commit armed robbery and they were both sentenced to twenty years.

[2] For purposes of this exercise, I am only concerned with David Collins (“the defendant”). Besides the conspiracy count, the defendant was also found guilty of receiving. The sentencing on the receiving charge was deferred to await **his** retrial (not Armbrister as the Court of Appeal Judgment delivered on 14 December 2017 reflects) on the armed robbery count for which the jury was

unable to reach a verdict. There was also a hung jury on the causing damage charge.

[3] On 8 January 2018, the Attorney General filed a *nolle prosequi* wherein he discontinued the two charges against the defendant.

[4] The defendant is now before this Court for sentencing on the charge of receiving.

Brief facts

[5] The brief facts of the case which the jury must have accepted are as follows: John Bull is a business establishment (“the store”) on Bay Street in the city of Nassau. On 22 May 2011, two men, armed and masked, entered the store and robbed it of twelve Rolex watches valued at \$385,680. At the time, there were many tourists shopping in the store. Along with the staff, they ran helter-skelter for their safety. Simply put, it was a daring attack in broad daylight.

[6] The defendant, one Jasper Curry and Jonathan Armbrister were arrested and subsequently charged with conspiracy to commit armed robbery, armed robbery, receiving and causing damage, while being concerned together.

[7] After a trial which lasted for approximately six months, Curry was acquitted at the close of the case for the prosecution. Armbrister was convicted of conspiracy to commit armed robbery, not guilty of armed robbery, not guilty of causing damage and there was a hung jury on receiving. As already stated, the defendant was convicted of conspiracy to commit armed robbery and receiving. The jury was unable to reach a verdict on armed robbery and causing damage.

Plea in mitigation

[8] Learned Counsel Mr. Farquharson did not make the conventional plea in mitigation. Instead, he urged the Attorney General to withdraw the charge. He then urged the Court to sentence the Defendant to “time served” – a sentence unknown to the laws of the Bahamas. Mr. Farquharson raised a plethora of other

legal submissions; all fit for an appeal court. That being said, they do not warrant any consideration by this Court.

- [9] However, at the end, I was able to extract from him that the defendant has an unblemished record and is now thirty-eight years old.

The Law

- [10] Learned Counsel for the Crown Mr. Collie helpfully assisted the Court with the law. Section 358 of the Penal Code , Chapter 84 provides:

“Whoever dishonestly receives any property which he knows to have been obtained or appropriated by any offence under this title, shall if the offence was a felony, be guilty of felony, or shall, if the offence was a misdemeanour, be liable to the same punishment as if he had committed the offence.”

- [11] In **David Collins SCCrApp No. 77 of 2012**, the Court of Appeal dealt with the situation where the punishment for a crime declared by the Penal Code or any other statute is not specifically provided for. At paragraph 78, the Court of Appeal said.

“Section 116 of the Penal Code, sets out general rules relating to imprisonment and subsection (1) declares that where a crime declared by the Code, or by any other statute to be a felony, and the punishment for it is not specified, a person convicted thereof shall be liable to imprisonment for seven years. This provision does not apply to the offence of conspiracy to commit armed robbery with a firearm, since section 339 of the Code specifically imposes a maximum sentence of life imprisonment for armed robbery with a firearm, and when read together with section 90, it is clear that the maximum sentence for conspiracy to commit the offence which was in fact committed would be life imprisonment.”

- [12] The defendant is to be sentenced for the offence of receiving. The receiving conviction stems from armed robbery and the punishment for armed robbery is imprisonment for life. Section 339 (2) of the Penal Code provides:

“Whoever commits robbery, being armed with any offensive instrument, or having made any preparation for using force or causing harm, shall be liable to imprisonment for twenty years:

Provided that whoever commits armed robbery, being armed with any offensive instrument shall where the offensive instrument is a firearm, be liable to imprisonment for life.”

Submissions by the Crown

- [13] Mr. Collie submitted that in determining the appropriate sentence, the Court must take into consideration the mitigating as well as the aggravating factors. In his view, the mitigating factor is that the defendant is a first time offender. He identified the aggravating factors as follows: (i) the defendant showed no remorse and (ii) the watches which are the subject of the receiving conviction were taken by the use of firearms.
- [14] Mr. Collie next submitted, and quite correctly, that the defendant must be sentenced pursuant to section 339 (2) of the Penal Code which carries a maximum sentence of life imprisonment. He suggested that a sentence in the range of 15 to 25 years is appropriate in the circumstances.

Court's considerations

- [15] Punishment is always a matter for the Court's discretion having regard to the particular circumstances of the case. Undoubtedly, the main objective of a criminal sanction is for the protection of the public. But, deeply rooted in this overarching purpose, are the concepts of deterrence, retribution, prevention and rehabilitation.
- [16] Pursuant to section 339(2) of the Penal Code, the maximum sentence which this Court can impose on the defendant is life imprisonment.
- [17] Undoubtedly, receiving is a serious offence and under normal circumstances, would attract a custodial sentence. In addition, the length of sentence is heavily dependent on the aggravating and mitigating features and, usually to a lesser extent, the personal circumstances of the offender. The aggravating and mitigating features of this case have already been identified. However, I do not agree with Mr. Collie that, because the watches were taken by the use of firearms, I should consider that to be an aggravating factor. The jury was unable

to return a verdict on the armed robbery charge against the defendant so the presumption of innocence operates in his favour. To top it all, the Attorney General has discontinued the armed robbery charge against the defendant. He is to be sentenced for receiving and not armed robbery. In my considered opinion, there is one mitigating factor and one aggravating factor.

[18] Reference is made to the case of **R v Newry** [2002] BHS J. No 25. In that case, the appellant was convicted of receiving a motor car and was sentenced to 10 years imprisonment. He appealed his conviction and sentence to the Court of Appeal. In affirming the sentence of 10 years, the Court of Appeal, at paragraph 32, stated as follows:

“There was also an appeal against sentence, but having regard to the circumstances of the case and having regard to the fact that this was a matter which the law provided for a term of imprisonment of 14 years and having regard to the fact that no circumstances have been placed before us in mitigation of sentence in order for us to interfere with the order made by the trial judge, we would dismiss this ground of appeal and affirm the sentence imposed. The conviction and sentence are affirmed.”

[19] As Mr. Collie stated, it is important to note that a sentence of 10 years imprisonment was imposed on Newry when the law provided for a term of imprisonment of 14 years. The sentence of 10 years is beyond the mid- range of 14 years. But each case must turn on its own facts and circumstances bearing in mind also, the four cardinal principles of sentencing.

[20] The defendant has an unblemished criminal record. I agree that he has shown no remorse so the sole mitigating factor offsets the aggravating factor.

[21] I have also taken into consideration that violent and serious crimes are plaguing this once peaceful nation. Society continues to show its revulsion for these crimes.

[22] The Court has to send out the strong message that criminality has no place in this society. I believe that the only way it can do so is by the sentences which are passed which are aimed at ensuring that the wrongdoer does not repeat the

offence and that potential criminals get the message that society will not countenance such criminality.

The appropriate sentence

[23] Having considered all the circumstances of the case, paying particular regard to the mitigating and aggravating circumstances, the circumstances in which the offence was committed together with the defendant's culpability, I am constrained to impose a custodial sentence of twelve years.

[24] I hereby sentence you, **DAVID COLLINS** to **TWELVE YEARS** imprisonment from the date of conviction; 31 October 2012. The defendant was on remand from 27 May 2011 so time on remand of 18 months is deducted from the sentence.

[25] For the avoidance of any doubt, the defendant is sentenced to 10 ½ years imprisonment from the date of conviction i.e. 31 October 2012.

[26] The defendant has a right to appeal within twenty-one (21) days hereof and his personal circumstances including the cutting of his hair and his diet should be observed during this time.

Dated this 19th day of January, A.D. 2018

**Indra H. Charles
Justice**