BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Criminal Appeal No. 4 of 2016

BETWEEN:

VERIL GLENROY HAREWOOD **Appellant**

AND

THE QUEEN **Respondent**

Before: The Hon. Sir Marston C. D. Gibson, KA, Chief Justice, The Hon. Kaye C. Goodridge, Justice of Appeal and The Hon. William J. Chandler, Justice of Appeal, (Acting)

2018: November 7, 22

2019: March 12

The Appellant in person

Mr. Neville Watson for the Respondent

DECISION

GOODRIDGE JA:

INTRODUCTION

[1] This is an appeal against sentence. On 7 December 2015, the appellant, Mr. Veril Harewood, appeared before **Reifer J** charged with the following offences:

(i) Robbery, contrary to **section 8 (1)** of the **Theft Act**, **Cap. 155**; and

(ii) Assault occasioning actual bodily harm, contrary to **section 26** of the **Offences Against the Person Act**, **Cap. 141**.

The appellant pleaded guilty to the first offence and entered a not guilty plea to the second. The prosecution accepted the guilty plea as tendered and offered no evidence with respect to the second offence.

[2] On 18 March 2016, the appellant was sentenced by **Reifer J** to 7 years imprisonment.

[3] The appellant now contends that his sentence is excessive.

THE FACTS

[4] The facts are that on 3 November 2012, the virtual complainant, Mr. Daniel Ambrahamovitch, arrived in the island with the intention of remaining here for one month. He rented a motor vehicle, registration number H1522 to assist him in travelling around the island.

[5] On 30 November 2012, the complainant decided to go into Bridgetown to engage in a game of pool. He arrived in the city sometime after 5.00 pm, parked the vehicle on the roadway and went into an establishment. However, no pool was being played there on that particular evening, so he remained in Bridgetown for a while.

[6] The complainant returned to his car later in the evening. He opened the door, put the key in the ignition and was about to turn the key when he was approached by the appellant who asked him for some money. The complainant refused to give the appellant any money, whereupon the

appellant snatched the key from the ignition and ran to the rear of the vehicle. The complainant got out of the vehicle and ran behind the appellant. A struggle ensued. The appellant overpowered the complainant, got into the vehicle and drove away from the scene.

[7] The matter was reported to the police who commenced investigations into that report.

[8] On 2 December 2012, the appellant was interviewed by police officers in connection with the matter. The appellant indicated to the officers that he had no knowledge of the incident.

[9] On 3 December 2012, the complainant was invited to the District "A" police station. An identification parade was conducted, during which the appellant was identified by the complainant as the person with whom he had struggled and who had taken away his motor vehicle.

[10] The police officers continued their investigations. The car was subsequently recovered from a bushy area somewhere in Dodds, St Philip. The officers found that the vehicle had damage to the left side and to the rear.

[11] The appellant was again interviewed. He was later arrested and charged with the offences.

THE APPEAL

The Grounds of Appeal

[12] The appellant filed a notice of appeal in which he has challenged his sentence on two grounds:

(1) That the sentence is excessive; and

(2) That his sentence should start from the day that he was remanded to prison.

Ground One

[13] On this ground, the appellant contended that, since no weapon was used in the commission of the offence, and no life threatening injuries were inflicted on the complainant, a lesser sentence should have been imposed. He referred to two cases in which defendants who had pleaded guilty to similar offences in the magistrate's courts received sentences of 2 years.

[14] In response, Mr. Neville Watson, counsel for the respondent, submitted that the sentence of 7 years was not manifestly excessive. Counsel stressed that when regard is had to all the circumstances of this case, the sentence imposed by the judge was proportionate to the offence.

DISCUSSION

[15] This Court has reiterated on many occasions that it will only interfere with a sentence where that sentence is manifestly excessive or grossly disproportionate, is wrong in principle or where some statutory or procedural requirement has not been complied with.

[16] Our review of the judge's sentencing remarks reveal the following. The judge took into account the circumstances surrounding the commission of the offence. She stated that the offence not only impacted the Barbadian community, but it impacted the economic health of Barbados which depended on tourism for its lifeblood. The judge formed the opinion that the offence was so serious that only a custodial sentence would suffice. She then selected a starting point of 15 years.

[17] In seeking to arrive at a sentence which was proportionate to the offence, the judge considered the aggravating and mitigating factors, the submissions of the appellant in mitigation and those of prosecuting counsel. With the appellant's consent, the judge did not order a pre-sentencing report. Instead, the judge used a previous report dated 15 November 2011, which was ordered by the judge in respect of another offence. **Reifer J** then took into account the appellant's early guilty plea and imposed a sentence of 7 years.

[18] In our opinion, the judge properly applied the relevant provisions of the **Penal System Reform Act, Cap. 139A** and took into account all relevant factors in determining the sentence. In our judgment, the sentence imposed was proportionate to the seriousness of the offence. It was not excessive. There is therefore no basis on which we should interfere with the sentence.

Ground two

[19] On ground 2, the appellant submitted that he was on remand for this offence from 4 December 2012, and even though he had pleaded guilty to other matters for which he received a sentence of 2 years during his period of remand, he should have been credited with the entire period.

[20] In response to this argument, Mr. Watson submitted that the judge complied with the direction of the **CCJ** in **Romeo Hall v The Queen, [2011] CCJ 6 (AJ)** (**Romeo Hall**) in dealing with the time spent on remand.

DISCUSSION

[21] According to the decision in **Romeo Hall**, in relation to time spent on remand, the primary rule is that a sentencing judge should give full credit for time spent in custody prior to sentencing. However, at **para [18]** the **CCJ** recognised that a sentencing judge has a discretion not to apply the primary rule in the following cases:

(i) Where the defendant has deliberately contrived to enlarge the amount of time spent on remand;

(ii) Where the defendant is or was on remand for some other offence unconnected with the one for which he is being sentenced;

(iii) Where the period of pre-sentence custody is less than a day or the post-conviction sentence is less than 2 or 3 days;

(iv) Where the defendant was serving a sentence of imprisonment during the whole or part of the period spent on remand; and

(v) Generally, where the same period of remand in custody would be credited to more than one offence.

[22] According to the record, Mr. Junior Parris, Prison Officer II, gave evidence that the appellant was admitted to prison on 6 December 2012 for the present offence. On 10 December 2012, he was sentenced to 2 years for theft of a motor car. On 13 December 2012, he was sentenced to 2 years for unlawfully and maliciously wounding Andrew Harney. These sentences were to run concurrently. Those sentences expired on 12 June 2014.

[23] In our view, the judge was entitled to exercise her discretion to exclude the period during which the appellant was serving the sentences as this was not remand time or, to put it another way, this was not time spent in custody awaiting trial.

[24] Accordingly, we find no merit in this ground.

[25] There is one final matter which needs to be addressed. The judge, after imposing the sentence, indicated that the appellant would be given credit for the 780 days spent on remand. From the exchange which followed between the judge, the prosecutor and the appellant, it appears that there was some uncertainty as to whether the remand time had been taken into account. We reproduce the relevant part of the record below:

"THE COURT: The law requires me to sentence him and I have sentenced him to 7 years' imprisonment and I have said that he is to be credited with all of the time that he had spent on remand.

MR. BLACKMAN: Yes, ma'am. I hear you said that, but I was just wondering if you have given a figure in the end. It's okay.

THE COURT: No. I have not.

MR. BLACMAN: Okay. Thank you.

THE COURT: That seems to cause problems, because if my calculation is out by a day it apparently creates problems. So my- the law requires me to sentence him; one, which I have done.

MR. BLACKMAN: Yes, ma'am.

THE COURT: And it also subsequent to the decision in Romeo Hall requires that I credit him with the time spent on remand, and I have done those two things.

MR. BLACMAN: I am with you, ma'am. Thank you.

THE CONVICTED MAN: Ma'am, may I ask a question, ma'am.

THE COURT: Yes, Mr. Harewood.

THE CONVICTED MAN: After you said you sentence me from today I've been doing 780 days.

THE COURT: I'm sorry. Repeat that please.

THE CONVICTED MAN: You stated that my sentence from today would be seven hundred-

THE COURT: No. I didn't say that. I said I sentence you to 7 years imprisonment.

THE CONVICTED MAN: Right, ma'am.

THE COURT: You recall that.

THE CONVICTED MAN: And—

THE COURT: But as of today's date, you have already been on remand for 780 days, so the effect of that is that 780 days would be subtracted from 7 years imprisonment. Is that clear Mr. Harewood?

THE CONVICTED MAN: Yes, ma'am. Thank you, ma'am."

[26] We consider that the uncertainty which occurred in this case could be obviated in future if the direction given in **para [26]** of **Romeo Hall** is followed. There, the **CCJ** pointed out that the judge should "state with emphasis and clarity what he or she considers to be the appropriate sentence taking into account the gravity of the offence and all the mitigating factors, that being the sentence he would have passed but for the time spent by the prisoner on remand."

[27] Further, at **para [9]** of **Romeo Hall**, the **CCJ** endorsed the approach of the Privy Council in **Callachand & Another v The State [2008] UKPC 49**, where the Board stated:

> "…..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."

[28] In this case, after deduction of the 780 days spent on remand from the 7 years imprisonment which the judge considered as the appropriate sentence, the judge should have stated that the sentence to be served by the appellant would be 4 years and 315 days.

[29] We are of the opinion that a judge, after stating what he or she considers would be the appropriate sentence but for the time spent on remand, must then proceed to deduct the remand time before pronouncing the sentence which the defendant should serve.

DISPOSAL

[30] The appeal is dismissed and the sentence affirmed. The appellant shall serve the sentence of 4 years and 315 days from 16 March 2016.

Chief Justice

Justice of Appeal

Justice of Appeal (Acting)