

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

SCA #: 3-9/2016

DONALD CALVIN HOOKER

V.

THE QUEEN



Appearances:

Mr. John Furniss for the Appellant

Ms. Nicole Petit for the Crown/Respondent

Before:

Justice Michael Mettyear (Actg.)

Heard:

2nd September 2016

JUDGMENT

1. This is an appeal against sentences imposed by Magistrate Philippa McFarlane on the 22nd April 2016. The learned Magistrate was dealing with the Appellant for a number of different offences which he committed over the years from 2012 to 2015. He pleaded guilty to all the offences and was given maximum discount by the Magistrate.
2. I will give a brief account of the offences – dealing with them in the order used in the sentencing process.

3. **Case #2430/15:** This was a dwelling house burglary committed on the 15th January 2013. No one was in the house at the time and the offence was not sophisticated. Amongst other things, items of sentimental value were taken. Rooms were ransacked. The Appellant was on bail at the time of the offence. The sentence imposed was 34 months' imprisonment. The learned Magistrate in this and other instances rightly regarded the offence as being aggravated by the Appellant's appalling criminal record.
4. **Case #2431/15:** This was a dwelling house burglary committed on the 4th or 5th of November 2014 in which items of relatively high value were taken. The house was not occupied and was being renovated at the time. There was some planning, but no ransacking. The sentence imposed was 22 months' imprisonment to be served consecutively to case #2430/15.
5. **Case #4630/15:** This was the theft on the 15th February 2015 of the contents of a Red Cross collection box. There was no evidence concerning the contents of the box, but it was clearly a mean offence. The sentence imposed was 12 months' imprisonment, to be served consecutively to the other sentences.
6. **Case #5949/15:** This was an offence of criminal trespass - committed on the 21st August 2015. The Appellant knocked on the door of the home address. The sentence imposed was 8 (or 9 according to Furniss) months' imprisonment to be served consecutively to the other sentences.



7. *Case #2432/15*: This charge is composed of offences of theft of and criminal damage to a motor vehicle, committed on the 30th December 2012. The value of the property was low. The sentence imposed was 6 months' imprisonment for the theft and one month for the criminal damage. Those offences were ordered to be served concurrently with each other, but consecutively to the other sentences.
8. *Cases #4703/15 and #00793/16*: These were a variety of road traffic offences. I do not propose to deal with them individually in the body of this judgment. It is sufficient for present purposes to record that a total of two months' imprisonment were added consecutively to the sentences I have already mentioned. Ancillary orders were made.
9. There was also a bail offence for which no separate penalty was imposed.
10. The total prison sentence was therefore 84 months' in custody.
11. In her sentencing remarks the learned Magistrate produced two helpful charts at paragraphs 46 and 47 which give details of her sentences including details of how she reached the figure imposed as far as most of the offences are concerned. The learned Magistrate's charts are below:



Offence(s)	Starting Point	Aggravating Factor(s)	¹ / ₃ Reduction	Sentence
02430/2015	36 months	+15 months	-17 months	34 months
02431/2015	24 months	+9months	-11 months	22 months
04630/2015	12 months	+6 months	-6 months	12 months
05949/2015	9 months	+3 months	-4 months	8 months
02432/2015 (1)	6 months	+3 months	-3 months	6 months
02432/2015 (2)	N/A	N/A	N/A	1 month [concurrent]
				82 months

04703/2015				
(1)				15 days
(2)				1 month
(3)				15 days
(4)				7 days
(5)				L.O.F.
00793/2016				
(1)				1 month
(2)				21 days
(3)				2 months
(4)				21 days



12. The Appellant, who was born on the 31st March 1975, had the benefit of a S.I.R. which I have read in full. He is a long-term drug addict whose addiction regularly brings him into conflict with the authorities. As I've said already, he has an appalling record of offending. He has been to prison many times.

13. At the sentencing hearing Mr Furniss, Counsel for the Appellant here, and at the Summary Court, tried to persuade the court to impose a non-custodial sentence. The learned Magistrate was right to reject this. She said at para 43 of her Ruling:

"Quite frankly (and at this stage), it is only when this Defendant accepts and genuinely wants to make permanent changes to his life and get[s] to grips with his addiction, including the choices made about the company he keeps, [that] there will be a lasting and sustainable turnaround. It is for this reason that I decline to impose any period of probation as an alternative to part of the custodial sentences handed down."

14. The learned Magistrate was right to conclude that only custody could be justified and right when she said at para 44 of her sentence ruling:

"Sadly, it does not appear that previous sentences have had much or any lasting effect in respect of rehabilitation or deterrence, and I take the view that this Defendant has reached a stage where he plainly requires a significant period where he must be separated from Caymanian society."

15. Mr Furniss wisely changed his tack for this hearing. Firstly, he argued, in his written submissions, that it was wrong to add, to a string of sentences, an additional period for each offence to reflect the Appellant's previous convictions. This is an interesting and novel point which I instinctively think is wrong, but I have not had to resolve it because of the second point taken by Mr Furniss – that concerns the principle of totality.



16. At paragraph 48 of her Sentence Ruling the learned Magistrate said:

“Notwithstanding the Defendant’s total sentence of 7 years in custody, I have kept at the forefront of my mind the totality principle.”

17. Whilst, of course, I accept that the learned Magistrate did consider totality, it is difficult to see how she applied it. Her careful sentencing remarks on the individual offences show her selecting and announcing what she believed were the appropriate sentences for each of those offences. She then added those sentences together and produced the total of seven (7) years. Nowhere is there any sign of her taking the usual steps necessary, when applying the principle. If she were applying it, one would expect to see reference along the way to her imposing concurrent sentences, which should otherwise be consecutive, or, deliberately reducing the length of a sentence to accommodate the principle. These are routine and conventional ways to illustrate the application of the principle, but they are absent in the present case.

18. Had she stood back from the sentences which she first felt to be appropriate, and applied the principle, then she should, in my judgment, have concluded that an overall sentence of seven years imprisonment was too long. I see nothing wrong with her individual sentences, although some of them are at the top end of the acceptable bracket; but the total is manifestly excessive.

19. Looked at broadly, these are non-violent, non-sexual offences committed by a hopeless addict. I accept that some of the offences are serious, distressing or mean. They deserved a total sentence which was substantial, but in my judgment the appropriate sentences are as follows:



- a. 2430/15 - 34 months;
 - b. 2431/15 - 22 months' consecutive;
 - c. 4630/15 - 5 months' consecutive;
 - d. 5949/15 - 5 months' consecutive.
20. All other sentences and orders are to remain as they were, but ordered to be concurrent with the sentences already mentioned. That produces a total of 66 months' imprisonment (or five and a half (5 ½) years) rather than 84 months' imprisonment (or seven years). Time spent on remand will count towards the sentence.
21. To that extent, the appeal is allowed. The table below is created to summarise the results of this SCA.



SC#	Magistrate's Sentence	SCA Ruling
2430/15	34 months	34 months
2431/15	22 months consecutive	22 months consecutive
4630/15	12 months consecutive	5 months consecutive
5949/15	9 months consecutive	5 months consecutive
2432/15 theft	6 months and 1 month respectively to be served concurrent with each other but consecutive to previous sentences	6 months and 1 month respectively to be served concurrent with each other and CONCURRENT to previous sentences
2432/15 crim. damage		
4703/15	Total of 2 months imprisonment consecutive to previous sentences	Total of 2 months imprisonment CONCURRENT to previous sentences
793/16		
Total	84 months = 7 years	66 months = 5 ½ years (TIC to be deducted)

Dated this the 2nd September 2016

Michael Mettyear

Mr. Justice Michael Mettyear (Actg.)
Acting Judge of the Grand Court

