

**IN THE SUPREME COURT OF BELIZE A.D. 2017**

**INFERIOR APPEAL NO. 14 of 2015**

**ELTON COBA**

**APPELLANT**

**AND**

**P.C. #874 JOSE JIMENEZ**

**RESPONDENT**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearing

26.4.2017

Written Submissions

Appellant – 10.5.2017

Respondent – 18.5.2017

Decision

27.6.2017

Ms. Stevanni Duncan for the Appellant.

Ms. Sheiniza Smith, Senior Crown Counsel for the Respondent.

**Keywords: Appeal Against Sentence – Theft – Minimum Mandatory Sentence – Unconstitutional – Unduly Severe – Circumstances Considered – Criminal Code Cap. 101, Belize Constitution Cap. 4 (The Constitution)**

**JUDGMENT**

1. This is an Inferior Court appeal against sentence. The Appellant had pleaded guilty to burglary and was sentenced to the mandatory minimum of seven years imprisonment. He appeals that sentence, citing firstly that the

Inferior Court had exceeded its jurisdiction when it took into consideration a non-existent previous conviction of theft. This ground was subsequently abandoned when counsel for the Appellant accepted that Mr. Coba had not only a previous conviction for theft for which he was fined, but also another for wounding where he was imprisoned.

2. His second ground of appeal (which subsists) is that the sentence of seven (7) years was unduly severe and in contravention of his constitutional right to protection from inhuman treatment as set out in section 7 of The Constitution.

**The Issue:**

3. The sole issue to be determined is whether the sentence imposed offends against section 7 of The Constitution.

**The Law:**

4. Section 148(4)(b) of the Criminal Code as amended by Act 29 of 2010 provides:

*“A person guilty of burglary shall be punished as follows ...  
(b) on summary conviction to a term of imprisonment which shall not be less than seven years but which may extend to ten years.”*

5. Section 4 of The Constitution reads:  
*“2: No person shall be subjected to torture or to inhuman or degrading punishment or other punishment.”*
6. Both parties relied heavily on the recent Court of Appeal decision of ***Edwin Bowen v P.C. 440 George Ferguson Criminal Appeal No. 6 of 2015***. Here the court considered the proportionality of a sentence of three years imprisonment and a fine of \$10,000 for possession of 1.3 grams of crack cocaine with intent to supply. The court, having traversed a number of

decisions, determined that a sentence ought not to be grossly disproportionate to what an offender deserves. Such a disproportionate sentence must be so excessive that it outrages standards of decency. Both parties quoted Blackman JA, therein, when he referred to the *State v Vries (CR 32/96) [1996] NAHC 53* and commented at paragraph 25:

*“One must look at the facts and circumstances of the case and determine what a proper sentence would have been and measure that sentence against the statutory minimum and if it induces a sense of shock, then the constitution has been infringed.”*

7. Counsel for the Appellant also relied on the *Eastern Caribbean Supreme Court Criminal Case No. 5 of 2009 (British Virgin Islands) The Queen v Sean Troy Hamley et al* where Hairprashad Charles J offered general guidance in sentencing for aggravated burglary. However, counsel offered nothing by way of comparable sentences in this jurisdiction.

**Consideration and Findings:**

8. In the present case this accused pleaded guilty at his first opportunity. Additionally, he had a previous conviction for a dishonest crime and also a previous conviction for a violent crime.
9. He entered the virtual complainant’s home within two hours of her having left it unoccupied. I agree with counsel for the Respondent that it could be inferred that he had done some surveillance. The items (value unknown) were all recovered on the person of the Appellant shortly after the offence and were returned to the virtual complainant. This had more to do with the investigator’s prowess rather than the accused’s contrition. There was no violence used in perpetrating the offence but there was the invasion of privacy which is, in and of itself, repulsive.

10. The Magistrate was constrained to sentence in accordance with the statute. But it is clear that she did take the mitigating and aggravating circumstances soundly into consideration, as she sentenced him at the lowest end of the spectrum. Had this been his first dishonesty offence, the Appellant could have prayed in aid the proviso to section 148(4), which gives the court a discretion to sentence otherwise than the mandatory minimum. He has lost the right to benefit thereby.
  
11. This court having considered all of the circumstances, can find no reason whatsoever to be outraged or shocked by the imposition of the mandatory minimum sentence. Having so found, it becomes apparent that there can be no finding that his constitutional right has been infringed so as to satisfy a need for the court's intervention. There is, therefore, no reason to disturb the sentence of the Magistrate which is found to be just and proper.

**IT IS ORDERED:**

1. The appeal is dismissed.
2. The sentence of the court below is confirmed.

**SONYA YOUNG  
JUDGE OF THE SUPREME COURT**