

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(Family and Children Division)  
CHILDREN COURT**

**Case No. C-SOUTH-CR-2137-2019-1**

**BETWEEN**

**NAZRUDEEN MEIGHOO PC NO. 18766**

COMPLAINANT

**AND**

**NH**

CHILD

Before the Honourable Madame Justice Gonzales  
Dated February 17, 2020

APPEARANCES: Ms. Le Ben for the prosecution  
Ms Cummings for the Child  
Ms Habib *amicus curiae* for the mother of the Child

**REASONS FOR DECISION**

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1 The Child was charged with housebreaking and larceny. The charge was laid on an information and the Child was given the option of summary trial pursuant to Section 99 of the Summary Courts Act. The Child elected summary trial and entered a plea of guilty.

2 Although the Child admitted committing the offence he denied the quantum of money stolen. Counsel for the Child then requested a Newton hearing. Having regard to the big disparity between the sum allegedly stolen and the sum the Child admitted to stealing I was of the view that a Newton hearing was appropriate in the circumstances. In disposing of the matter I also considered whether the parent of the Child should be responsible to pay a fine, damages or costs under Section 56 or 57 of the Children Act 2012.

## **THE FACTS**

3 On Monday 29<sup>th</sup> July 2019 Mr Moonan, who is the employer of the Child's mother, secured the sum of \$40,300 in cash in the bedroom of his home. The following Saturday he discovered that the money was missing, as well as, a quantity of jewellery valued \$60,000. Mr. Moonan observed that the window had been tampered with. He made a report to the police.

4 The following Monday based on his investigation and information he had received, PC Meighoo obtained and executed a search warrant at the home of the Child. The Child upon being cautioned admitted to breaking and entering Mr Moonan's house and taking the money and jewellery. He also told PC Meighoo that he taken the jewellery to a jewel shop. In the presence of the Child's mother, several household items, including furniture and electronics, allegedly purchased with the proceeds of the cash were recovered at the home of the Child, as well as the sum of \$3100. PC Meighoo went to where the child said he had left the jewellery and all was recovered. The child was arrested and charged for the offence.

## **THE NEWTON HEARING**

5 A Newton hearing is held when a child or any other defendant pleads guilty but disputes the case put forward by the prosecution and the dispute would make a difference to the sentence.<sup>1</sup> In such a case the judge can resolve the difference by hearing the evidence and satisfying himself of the fact in issue beyond a reasonable doubt.

6 In this case the Child was alleging that he had stolen \$16,500 in cash and not \$40,500 as the Mr. Moonan had alleged. The prosecution called Mr Moonan who contended that he had placed a total of \$40,500 over the course of a week which represented sales from his business. This sum included four envelopes, each containing \$1000, which represented a stipend paid to him by

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<sup>1</sup> Supplement 1 Blackstone's Criminal Practice 2020 para 5.18

his wife. Mr Moonan while not discredited in cross examination provided no proof of the quantum beyond his word.

7 The Child admitted that it was not once but twice he had entered Mr. Moonan's premises and taken money. The first occasion was a Monday when he went to return a drill. He went into a room and helped himself to two envelopes containing cash. When he left he counted the money and it amounted to \$2000., the two envelopes each contained \$1000. He spent that money on snacks.

8 On the second occasion, the same day that the theft was discovered, his mother was present at Mr. Moonan's house. On that day he grabbed fistfuls of money which he placed in a bag he was carrying, that money he said amounted to \$14,500. With the second set of cash he bought some of the items as alleged by the prosecution. The other items that the police claimed that he had bought were purchased long before the break-in of July 2019 and he provided receipts for same. He also provided receipts for construction material which he bought with some of the money that he had taken from Mr Moonan. These items were not seized by the police.

9 The Child was not discredited. The Child's version on this issue provided a reasonable account for most of what he admitted he took. On the prosecution's version almost \$25,000 was unaccounted for. While that is not fatal to the case for the prosecution, the evidence of the Child did not paint him in a flattering light and I formed the view that the Child would only give such unfavourable evidence, and in such detail if it were true. The Child was able to raise in my mind a reasonable doubt as to whether the sum stolen was really \$40,300. In other words, the prosecution did not satisfy me to the extent that I felt sure that the sum in question was \$40,300. I therefore accepted that Child's evidence and for the purpose of sentencing proceeded on the basis that the sum stolen was \$16,500.

## **REPRESENTATIONS REPORTS AND RECOMMENDATIONS**

10 In her plea in mitigation counsel for the Child advanced that the child was 14 years old at the time of the offence. He attends Princes Town Secondary. He is normally a good child and presents no behavioural challenges. She asked that if I considered a custodial sentence that I should give the child a discount for his guilty plea. She contends that the Child is remorseful asked for a non-custodial sentence.

11 From the Probation Officers Report it is clear that the Child has a strong attachment to his mother. His attendance at school is poor and his behaviour at least in the first year of school left a lot of room for improvement, with allegations of fighting and inappropriate touching of females. Despite his poor academic showing his mother plays an active role in his school life and appears very interested in his welfare. Apart from that he is not known to cause trouble in his community and is normally seen in the company of his mother. He has a reputation of being quiet and easy going. The probation officer is recommending that the Child be referred to psychotherapy, that he be enrolled in one of the Courts auxiliary programs and that he be placed on probation.

## **DETERMINATION OF SANCTION**

12 I took into account the contents of the probation officers report and the representations made by counsel for the Child. I am satisfied that this being the Child's first offence, his immediate guilty plea and his forthrightness it is not in his best interest to impose a custodial sentence. I also determined that given the nature of the offence, his age, his previous good character and reputation in the community no conviction should be recorded against him. I was also of the view that his rehabilitation could be achieved by psychotherapy without out the need for probation. This is however a matter where a person has been deprived of substantial amount of money and justice requires acknowledgement of that. I was of the view that restitution was just and appropriate in this case. Having regard to the fact that furniture and

electronics which are not easy to conceal, were found in the home, I considered whether the mother of the Child should be made to pay any compensation that I may order, instead of the Child.

#### **PARENTAL RESPONSIBILITY UNDER SECTION 56 OF THE CHILDREN ACT**

15 Section 56 empowers the Court to make a parent, guardian or person with responsibility for a child to pay a fine, damages or costs instead of the child. Under section 57 the parent or guardian or person with responsibility for the child can be called upon to show cause why he should not be held liable in addition to whatever penalty or sanction imposed on the child. I proceeded under section 56 as I was more concerned with making restitution to the victim as opposed to holding the parent accountable. The issue was whether the Child's mother could be made to pay the compensation instead of the Child.

16 Section 56 as far as is relevant provides:

*(1) Where a child is charged with an offence, the commission of which attracts a fine, damages or costs and is brought before a Court and the Court is of the opinion that the case would be best met by the imposition of a fine, damages, or costs whether with or without any other punishment, the Court may, in any case, where the offender is a child, order the parent, guardian or person with responsibility for the child to pay the fine, damages or costs, awarded unless the Court is satisfied that-*

*(a) the parent guardian or person with responsibility cannot be found  
or*

*(b) the parent guardian or person with responsibility of the child has not contributed to the commission of the offence by neglecting to exercise due care of the child.*

*(2) -----*

*(3) -----*

*(4) An order under this section may be made against a parent or guardian or person with responsibility for the child who, having been required to*

*attend, has failed to do so, but, save as aforesaid, no such order shall be made without giving the parent or person with responsibility for the child an opportunity to be heard.*

17 The parent, guardian or person with responsibility for the child can be made to pay the fine damage or costs instead of the child where it is proven that the parent, guardian or person with responsibility for the child contributed to the commission of the offence due to their failure to exercise due care for the child. This is a matter of evidence and cannot be adduced from the probation officers report, more so, if there is an objection to the contents of the report **R V SHEFFIELD CROWN COURT**<sup>2</sup>.

18 Mere commission of an offence is not enough to make a parent, guardian or person with responsibility for the child, liable **SOMMERSET COUNTY COUNCIL V KINGSCOTT**<sup>3</sup>. There must be some default on the part of the parent, guardian or person with responsibility for the child. The parent, guardian or person with responsibility with the child, must be given an opportunity to be heard unless they were duly notified and failed to attend.

19 In the instant case the uncontroverted evidence of the mother was that she provided adequately for the Child and had no reason to suspect that he would have behaved in this manner. She appeared shocked, disappointed and embarrassed at his conduct. There was no evidence that there was a failure on her part that contributed directly or indirectly to the Child's commission of the offence. While her parenting style may be considered somewhat, it cannot be said that she did not exercise due care. There was no way she could have known or prevented or foresee that the child would breach the trust she reposed in him. She trusted the Child and from all appearances had every reason to do so.

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<sup>2</sup> (1986)8 Cr App Rep R (S)454

<sup>3</sup> 1975 1All ER 326

20 Her response upon discovering that the Child had in fact committed the offence was not in keeping with what would be expected of a responsible parent. Surely she was aware that items were in her house but did not make the time to enquire what were in the boxes. This even though the Child had admitted his deeds to her, the said day the items were discovered missing. She also admitted that she was aware that the amount of money she normally gave him, was not sufficient to purchase the items she met in the house. It may well be that part of the reason she did not enquire of the items was that she already knew where they came from by the Child's admission. Is knowledge after the fact and failing to act after the commission of the offence enough to ground liability under section 56. I think not. The section must be strictly complied with and it specifically states that the failure on the part of the parent must have contributed to the commission of the offence. If the failure on the part of the parent occurred after the fact, it could not have contributed to the commission of the offence. In this case, what I consider to be the mother's gross failure, took place after the offence was completed. There is no evidence that there were prior incidents of this nature from which the Court could find that her indulgence contributed to the Child committing this act. On that basis I am not satisfied that the mother failed to exercise due care for the child resulting in his committing the offence. For this reason, even though I examined the mother on her means I decline to make an order under section 56.

#### **THE COURTS POWER UNDER 59(2)(o)**

21 Under section 59 (2) (o) The Court has power to make any other order it deems fit. The mother of the Child upon being examined on her means, indicated her willingness to repay the sums stolen by her son. I considered the mother's income which she estimated to be about \$7100 per month in addition to what she made from doing massages. She claimed her expenses were just about \$700 for food and another \$500 for an Island Finance Loan. She pays half the utilities with her brother although she did not state how much that was. I also considered that the mother has borrowed \$11000 from Island Finance to secure his bail. This sum would be available to her at the end

of this matter. She offered to pay the sum of \$500 per week, a total of \$2000 per month. I therefore will exercise my discretion under section 59(2)(o) and with the mother's approval order her to repay the sum stolen by way of compensation. The Court found that the sum stolen was \$16,500 of which \$3,100 was recovered leaving \$13,400 outstanding.

## **DISPOSITION**

22 It is ordered that the Child NH born on the 8<sup>th</sup> October 2004 having pleaded guilty to the offence of housebreaking and larceny, no conviction be recorded against him.

It is further ordered that

1. The Child shall attend counselling with the Psychotherapist attached to the Children Court Fyzabad with a view to redirecting his behaviour.
2. The Child be enrolled in the Imani Healing Program facilitated by the Social Services Unit of the Children Court Fyzabad.
3. With consent, the mother of the Child PN pay compensation to Mr Moonan in the sum of \$13,400 by 8 monthly instalments of \$1500 and one final instalment of \$1400 in default the mother shall serve 4 weeks simple imprisonment.
4. The sums shall be paid into Court and the first payment to be made on or before the 28<sup>th</sup> of February 2020 and thereafter the 28<sup>th</sup> of every month until the total sum is paid.
5. The mother of the Child PN be enrolled in the Parent Support Program facilitated by the Social Services Unit of the Children Court Fyzabad.
6. The Child will not be required to attend Monitoring hearings unless notified by the Court.

G.Gonzales  
Judge