

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. No.:Cr 53/2006**

**BETWEEN**

**THE STATE**

**V**

**DALE RAMCHARAN**

*Before the Honourable Justice P. Moosai*

**APPEARANCES:**

*Mr. Ravi Rajcoomar and Mr. Ishard Ali for the Accused*  
*Ms. Sabrina Dougdeen for the State*

**RULING**

1. In the instant case the Accused, a police constable, was on June 11, 2009 found guilty of the offence of receiving a green Mitsubishi Galant motor vehicle registration no. PAU1862 on a day unknown between December 20, 2000 and February 27, 2001 knowing same to have been stolen contrary to section 4A (1) (d) of Larceny Act. The maximum sentence authorised by law for such a conviction on indictment is 15 years.

2. In determining what is an appropriate sentence for the said crime of receiving a motor vehicle knowing the same to have been stolen a court ought to have the four

classical principles of sentencing in mind, namely retribution, deterrence, prevention and rehabilitation: *R. v Sarjeant* [1974] 60 Cr App R. 74. A court in applying these four principles will determine where the right balance is to be struck. Everything will depend on the circumstances.

3. It is manifest that the legislature considered larceny and receiving of motor vehicles to be so prevalent as to warrant the imposition of a larger maximum sentence for same (15 years) than for larceny and receiving of other property (10 years). In *Winston Phillips Jr. v The State* Cr. App. No. 23 of 2006 Hamel-Smith JA echoed similar sentiments with respect to the seriousness of the offence of receiving at para. 15:

Car stealing is far too prevalent in this society today and it abounds because there are persons only too willing to take them off the felon's hands for a small price. It is an offence that cannot be tolerated.....

Moreover a motor vehicle is a prized asset, deprivation of which is likely to cause serious disruption to a victim's life or business.

4. In *Trevor Bermudez v The State* Crim App. No. 3 of 1996, the Court of Appeal reduced the sentence imposed on a 16-year-old (who had a previous conviction for larceny) for receiving a radio clock and a gold chain from eight years to five years. The learned Chief Justice de la Bastide identified certain factors relevant to the sentencing exercise in that particular case:

- (1) The seriousness of the offence;
- (2) The value of the goods;
- (3) The age of the accused;
- (4) The previous record and antecedents of the accused;
- (5) The prospects of reform;
- (6) Whether the accused has been incarcerated while awaiting trial.

5. It is common ground that the motor vehicle was valued approximately \$17,500 at the time it was stolen and that the Accused was not incarcerated while awaiting trial but was granted bail.

6. At the time of the commission of the offence in 2001 the Accused was 23 years of age. He was employed as a Police Constable with the Trinidad and Tobago Police Service and is of good character in the sense that he has no previous convictions nor any pending matters. However it must be borne in mind that police officers occupy a unique place in the administration of justice as they are the first port of call for victims of crime. As such they are placed in a position of trust and have to be held to a higher standard. Public confidence in the administration of justice would therefore be severely compromised if police officers were to be viewed with suspicion and mistrust by the citizenry.

7. Ordinarily a conviction on indictment for receiving a motor vehicle knowing same to have been stolen ought to attract a custodial sentence. A court must however consider the appropriate sentence by taking into consideration both the aggravating and mitigating factors.

8. In the instant case the fact that the Accused is of good character and was only 23 years old at the time of the commission of the offence weigh in his favour. I have also considered the personal circumstances of his family in that the Accused is the only breadwinner and, between the time he was charged and convicted, has had two children. His second child was born on May 1, 2008 and was extremely premature at 24 weeks gestation weighing only 450 grams. She remains high risk for developmental problems having regard to her extreme prematurity, her extremely low birth weight and chronic lung disease with prolonged ventilation. Additionally the Accused's father was involved in a motor vehicle accident and received internal injuries. This resulted in the father moving in with the Accused. However the medical reports suggest that the father is at present capable of working.

9. In *Winston Phillips Jnr. v The State* Cr App No. 23 of 2006 the Court of Appeal on February 26, 2008 confirmed the sentence of five years imposed on an accused for receiving a motor vehicle. In *Trevor Bermudez v The State* Cr. App No. 3 of 1996 the Court of Appeal reduced the sentence imposed on a 16-year-old (who had a previous conviction for larceny) for receiving a radio clock and a gold chain from 8 years to 5 years. However the Accused had spent 2 years and 8 months in prison awaiting bail. Both of these appeals were from the High Court.

10. I have also had drawn to my attention several Magisterial appeals dealing with larceny of motor vehicles in which: (i) fines of \$10,000 were imposed in default of which the defendants were to serve terms of imprisonment of 3 years; (ii) sentences of 4 years with hard labour were imposed.

11. It is clear that the legislature has seen it fit to impose identical sentences for the offences of larceny and receiving a motor vehicle. However the legislature also distinguishes between convictions on indictment and summary convictions, the former attracting a maximum of 15 years, the latter 10 years.

12. Having considered the authorities and the relevant principles, it would seem that a sentence in the region of 5 to 8 years would have been appropriate. However when I factor in that the Accused was a young man at the time, 23 years of age, of good character, the crime was not one that involved the infliction of personal violence, and that it was a one-off offence, I would have imposed a sentence of 4 years. The Accused, at the suggestion of the Prosecutor, has now agreed to pay compensation to the victim in the sum of \$17,500. Hopefully this would provide a measure of comfort to the victim as she has been deprived of her vehicle for the past 8 years and the prospects of recovering anything from its sale are inconsequential. In those circumstances I am of the view that he is entitled to a discount for same. I also take into consideration the fact that his one-year-old daughter will need to be monitored closely because of her fragile medical condition. However I still adhere to the view that in the circumstances of this case a custodial sentence is appropriate as a message ought to be sent that people who are

placed in a position of trust and engage in serious criminal activity can expect to receive custodial sentences when they breach the nation's trust.

13. The sentence of the Court is that the prisoner will serve a term of imprisonment of two (2) years with hard labour the sentence to commence from the date of conviction, June 12, 2009. Additionally the prisoner is to pay compensation to the victim in the sum of \$17,500.00. The prisoner has signalled his intention to appeal so that the moneys are to be paid to the Registrar of the Supreme Court to be deposited into an interest bearing account to abide the outcome of the appeal.

**DATED** this 22<sup>nd</sup> day of June, 2009

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**PRAKASH MOOSAI**  
**JUDGE**