

**DPP No 2022/145
1388/2022**

2022

C/S. NO:

**IN THE HIGH COURT OF JUSTICE
CRIMINAL DIVISION
HOLDEN AT FREETOWN**

BETWEEN

THE STATE

VS.

ALHAJI AMADU BAH

SENTENCING REMARKS

MR YI Sesay Esq (State Counsel) for the State

MP Fofanah, M Sesay, for the accused.

Introduction

1. Alhaji Amadu Bah you were convicted on overwhelming evidence in this court by a judgement dated the 13th day of March 2023 of three counts of Robbery contrary to section 23(2) of the Larceny Act 1916 as repealed and replaced by section 2 of the Imperial Statutes (Criminal Law) Adoption (Amendment) Act No 16 of 1971 and one count of Inflicting Grievous bodily harm contrary to section 20 of the Offences Against the Persons Act 1861.
2. When a court is called upon to sentence, the court has to have regard to a number of principles and case authority. I have had regard to statute and the penalty for robbery stipulated therein, previous decisions of the High Court which hare mentioned below and the street robbery guidelines of the sentencing council of England and Wales which I find to be of persuasive authority. These can be loosely defined as follows:
 1. The punishment of offenders.

2. The reduction of crime (including its reduction by deterrence).
 3. The reform and rehabilitation of offenders.
 4. The protection of the public.
 5. The making of reparation by offenders to persons affected by their offences.
3. I shall conduct this sentencing hearing in accordance with these guidelines and in the following manner.
 1. Narration of crime.
 2. Sentencing considerations.
 3. References to victims.
 4. Character description.
 5. Additional remarks.

Narration of crimes

4. On the 12th day of June 2022, you and your associates were on board an unregistered black ford jeep. One Ishmael Suma was the driver of the said jeep. You arrived at Leonco Filling station at Water Street, Freetown on the pretext of buying some fuel. Immediately you arrived at pump two where a female member of staff was counting some money, Buju who by all accounts was under your control told the female staff to get up and in a very rude way he told her in your presence “wuna den raray tin den ya. Way wuna don go raray whole net una dae tire en wuna nor able woke. Bo grap kam sell gee we”.
5. You did nothing to stop your associates from insulting the lady. The evidence shows that after the insult, you were called to come down your vehicle to “interpret” to this female staff what she needed to understand, ie to be taught a lesson. In your presence

the insult continued, and you did nothing. You attacked a defenseless woman for no reason by pushing and took money from where she had placed it. Only you know why you behaved like that as I am satisfied that you have enough access to money to behave in that way. I am satisfied it was just lawlessness on your part.

6. You went on the rampage on that day by punching one male members of staff inflicting injury on him. When you saw a video being taken of the scene, you attacked another female member of staff by the neck and tried to take the phone away, even when she sent the phone to another member of staff, you then attacked that member of staff and again took away monies from him when you had no real reason to take away money from him. You alone attacked four persons on that day in a manner I can only consider to be sheer thuggery.
7. When you were stopped by the police you refused to comply with orders to go to the police station. Your statement that you were going to take the phone to the owner is not credible. By your own admission you were heading to Guinea with a phone that did not belong to you and with monies that also did not belong to you. You made no attempt to return the items that did not belong to you. I am satisfied that had you not been apprehended, you would never have returned the phone and/or the money. A man of your stature should not be seen failing to pay for fuel you had purchased. All of these events I have narrated are part of your desire to be lawless and to act in a manner unbecoming of your status as a well-known artist.

Sentencing Considerations

8. It falls to me to sentence you for these offences. You pleaded not guilty but were convicted by this court after a trial. Your sentence must be considered this court in accordance with the law. You

and everyone else in court should understand the sentencing regime as provided for by law.

9. I set the sentence by reference to the provisions of section 23(2) of the Larceny Act 1916 as repealed and replaced by section 2 of the Imperial Statutes (Criminal Law) Adoption (Amendment) Act No 16 of 1971 and section 3 of the Abolition of the Death Penalty Act 2021 and the schedules thereto which repeals and replaced the provisions of sub section 2 of section 23 with a sentence of the imprisonment for robbery to a term not exceeding 15 years imprisonment.
10. The maximum sentence I can pass for a conviction for these offences is 15 years on each count unless for some reasons I consider consecutive sentences should be imposed. I have no doubt that the appropriate starting point is one of 15 years, that being the starting point set by Parliament in cases where the seriousness of the offence is particularly high such as a robbery. There are significant aggravating features to your offending.
11. In passing sentence the court determines the offence category with reference to the issue of culpability and harm. The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability. Culpability is demonstrated by the following.
 - (a) High culpability
 - (b) Medium culpability
 - (c) Lesser culpability
12. In the area of high culpability, the following are relevant:
 - Use of a weapon to inflict violence.

- Production of a bladed article or firearm or imitation firearm to threaten violence.
- Use of very significant force in the commission of the offence
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

13. In the area of medium culpability, the following are relevant:

- Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence.
- Threat of violence by any weapon (but which is not produced)
- Other cases that fall between categories A or C because:
 1. Factors are present in A and C which balance each other out **and/or**,
 2. The offender's culpability falls between the factors as described in A and C

14. In the area of lesser culpability, the following are relevant:

- Involved through coercion, intimidation or exploitation.
- Threat or use of minimal force.
- Mental disability or learning disability where linked to the commission of the offence.

15. With respect to the harm suffered, the court should consider the following factors to determine the level of harm that has been caused or was intended to be caused to the victim, which includes but not limited to the following categories.

16. These categories can be set out as follows:

1. Category 1, which includes:
 - I. Serious physical and/or psychological harm caused to the victim.
 - II. Serious detrimental effect on the business
2. Category 2, involves other cases where characteristics for categories 1 or 3 are not present

3. Category 3, which includes:

- i. No/minimal physical or psychological harm caused to the victim.
- ii. No/minimal detrimental effect on the business.

17. Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within a particular category range. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features.

18. Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm have been caused. With respect to the various categories of harm, the following range needs to be considered:

19. With respect to culpability in categories A, B and C and harm in categories 1, 2 and 3, the following are relevant:

A	B	C
<p>Category 1: Starting point 8 years' custody Category range 7 - 12 years' custody</p>	<p>Starting point 5 years' custody Category range 4 - 8 years' custody</p>	<p>Starting point 4 years' custody Category range 3 - 6 years' custody</p>
<p>Category 2 Starting point 5 years' custody Category range 4 - 8 years' custody</p>	<p>Starting point 4 years' custody Category range 3 - 6 years' custody</p>	<p>Starting point 2 years' custody Category range 1 - 4 years' custody</p>

Category 3: Starting point 4 years' custody Category range 3 - 6 years' custody	Starting point 2 years' custody Category range 1 - 4 years' custody	Starting point 1 year's custody Category range Unlimited fine - 3 years' custody
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20. Factors increasing seriousness includes Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction, if any.
21. Offence committed whilst on bail.
22. Other aggravating factors include the following:
1. High value goods or sums targeted or obtained (whether economic, personal or sentimental)
 2. Victim is targeted due to a vulnerability (or a perceived vulnerability)
 3. Significant planning
 4. Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution.
 5. Prolonged nature of event.
 6. Restraint, detention or additional degradation of the victim
 7. A leading role where offending is part of a group activity
 8. Involvement of others through coercion, intimidation or exploitation.
 9. Location of the offence (including cases where the location of the offence is the victim's residence)

10. Timing of the offence
 11. Attempt to conceal identity (for example, wearing a balaclava or hood)
 12. Commission of offence whilst under the influence of alcohol or drugs
 13. Attempts to conceal/dispose of evidence.
 14. Established evidence of community/wider impact.
 15. Failure to comply with current court orders.
 16. Offence committed on license.
 17. Offences taken into consideration.
 18. Failure to respond to warnings about behavior.
23. Factors reducing seriousness or reflecting personal mitigation includes:
1. No previous convictions or no relevant/recent convictions
 2. Remorse, particularly where evidenced by voluntary reparation to the victim.
 3. Good character and/or exemplary conduct
 4. Serious medical condition requiring urgent, intensive or long-term treatment
 5. Age and/or lack of maturity
 6. Mental disorder or learning disability (where not linked to the commission of the offence)
 7. Little or no planning
 8. Sole or primary carer for dependent relatives
 9. Determination and/or demonstration of steps taken to address addiction or offending behaviour

24. In determining whether to impose a custodial sentence, the court must have regard to a number of factors and the approach to the imposition of a custodial sentence should be as follows:

- 1) Has the custody threshold been passed?
- 2) Is it unavoidable that a sentence of imprisonment be imposed?
- 3) What is the shortest term commensurate with the seriousness of the offence?

Has the custody threshold been passed?

25. A custodial sentence must not be imposed unless the offence or the combination of the offence was so serious that neither a fine alone nor a discharge is appropriate.

26. There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence-specific guidelines will determine whether an offence is so serious that neither a fine alone nor a discharge can be justified. Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.

27. The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

Is it unavoidable that a sentence of imprisonment be imposed?

28. Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Custody should not be imposed where a fine could constitute sufficient punishment while addressing the rehabilitation of the offender to prevent future crime.

29. For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

What is the shortest term commensurate with the seriousness of the offence?

30. In considering this the court must consider all the circumstances of the case. Whenever the court reaches the provisional view that:
 1. the custody threshold has been passed; and, if so
 2. the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence.
 3. the court should obtain a pre-sentence report, whether verbal or written, **unless** the court considers a report to be unnecessary.

References to victims

31. First, this was a totally unprovoked violent attack on defenceless individuals including females who were engaged in earning their living. Second, the extreme nature of the violence used by you in the course of the attack. Dr Ghandi the doctor who examined the victims set out in the nature of the injuries suffered by the victims, particularly Musa Mansaray who suffered a significant eye injury with a blow to the eye inflicted by you. Thirdly, the nature of your victims two women who were carrying out their lawful duties in a public place where other members of the public were present. You unleashed violence on them of the worst kind. It was an attack which in combination with another similar offence of inflicting grievous bodily harm, for no other reason save for the fact that you felt disrespected by one member of staff and the fact that you were being videoed in a public place.

When called upon to “interpret” what was being said by your associates, you interpreted those words in a violent manner by attacking your victims relentlessly.

Character description

32. I have tried hard to look for mitigation in this case and I find it difficult to do so. The significant aggravating features for outweighs your limited mitigation. I have carefully considered the plea in mitigation and your own statement to me this morning on your own behalf.
33. In mitigation, Mr Fofanah on your behalf has made a plea of mitigation on your behalf, which I have taken fully into account. I have also taken into account your eloquently delivered plea in mitigation on your own behalf. I have noted these in the record of proceedings.
34. In your plea in mitigation, you accepted responsibility for your actions and expressed a strong desire to reform and to be of good behaviour in the future. I have to take into account your personal circumstances, which include the fact that you have three young children. You have also pleaded with the court to temper justice with mercy and to give you another an opportunity to do right.
35. You have shown some remorse for your actions albeit belatedly. That is a factor I have taken fully into account. I have borne in mind your reasons for your actions. However, those reasons do not justify the commission of a very serious offence, including the significant use of force on that day against four persons. Your counsel has admitted that this offence occurred at a time when you were on bail for another offence, and at a time when you were expected to be of good behaviour.
36. Mr YI Sesay in his sentencing remarks had prayed for the court to pronounce a sentence of at least ten years imprisonment to

reflect the gravity of the offence. Society needs protection from the convict who has demonstrated violent tendencies particularly towards women. Society would be unprotected should the courts fail to act in the face of sustained violence against defenceless people. The public have a right to be protected against people like the convict.

SENTENCE OF THE COURT

37. In passing sentence the court has a range of options. The laws of Sierra Leone only makes provision for imprisonment and/or fines upon conviction. Section 231 of the Criminal Procedure Act 1965 which provides:

“231. Where a person is convicted of any felony or misdemeanour or any offence punishable by imprisonment (other than an offence for which the sentence is fixed by law) the Court may, in its discretion, sentence him to a fine in addition to or in lieu of any other punishment to which he is liable.”

38. By virtue of the section 3 of the Abolition of the Death Penalty Act 2021, section 23(2) of the Larceny Act 1916, as amended, is an offence for which the sentence is fixed by law. Consequently, this is an offence which removes the discretion to impose a fine upon conviction for an offence under this section. Consequently, the only sentence the court can pass upon conviction for this offence is one of imprisonment. Section 231 therefore would not allow the court to invoke its discretion to impose a fine however much it wishes to do so.

39. This is a case in which applying the factors stated above, find the offending in this case to be of a category A culpability for the following reasons:

1. There was the use of very significant force in the commission of the offence, which is demonstrated by the assault on four persons.

2. The offending was motivated by, or demonstrated hostility based on characteristics of at least two of the victims being women.
40. Where there is category A culpability, the court must consider the harm caused in determining appropriate sentence. In this case, I find that the harm in this case is a category 1 harm for the following reason:
 - I. Serious physical and/or psychological harm was caused to the victim
41. Where there is a category A culpability and category 1 harm, having regard to the maximum sentence which is 15 years imprisonment, the guidelines require a starting point of 8 years imprisonment with a custody range of between 7 years and 12 years imprisonment, depending on the mitigating circumstances.
42. Quite recently, Chernor Jalloh and Yomie Strasser King were sent to 40 years imprisonment each by the High Court for offences of robbery. One Mustapha Sesay was also sentenced by the High Court to 57 years imprisonment for a conviction for robbery. In another case a twenty five years sentences was handed down for robbery by the High Court. In 2018, the High Court in the case of Alpha Turay, the High Court handed down a sentence of 10 years imprisonment for a conviction for robbery under section 23(2) of the Larceny Act 1916, which is the same offence under which the accused was charged. This was a case in which the accused was charged with only one count of robbery. The sentences handed down in this case show the seriousness with which the courts treat offences of robbery.
43. In this case, the accused is charged with three counts of robbery and one of inflicting grievous bodily harm during the robbery. The courts will fail to protect society if it fails to hand down sentences that will ensure public protection against violent

offenders. The sentences handed down must fit the crime. The accused has not pleaded guilty at the earliest opportunity and in those circumstances, I cannot offer him a reduction in sentence on account of his early guilty plea.

44. I have considered the antecedent history of the convicted person. These reveal the following:

1. On the 27th July 2021, he was charged with an offence of Assault on police, disorderly behaviour, riotous conduct.

45. Alhaji Amadu Bah, stand up. For the offences for which you stand convicted, I sentence you as follows:

1. Count 1: The sentence of this court would be one of nine(9) years imprisonment.
2. Count 2: The sentence would be one of nine (9)years imprisonment.
3. Count 3: The sentence would be one of nine (9) years imprisonment.
4. Count 4: The sentence would be one of three years and six months imprisonment.
5. All sentences to run concurrently less the period of time spent in custody on remand amounting to some 278 days.

46. In addition, pursuant to the provisions of the section 54 of the Criminal Procedure Act 1965, I order that the convicted persons pays compensation to the victims in this case as follows:

1. That the convicted person shall pay the sum of nLe10000.00 as compensation to Francess Wilson, forthwith.
2. That the convicted person shall pay the sum of nLe5000.00 as compensation to Ishmail Kamara, forthwith.

3. That the convicted person shall the sum of nLe5000,00 to Christiana Koroma, as compensation forthwith.
47. In addition, in accordance with the provisions of section 55 of the Criminal Procedure Act 1965, the convicted person shall pay a specified part of the expenses of his prosecution, summarily assessed at nLe20,000.00, forthwith.
48. In accordance with the provisions of section 59(1) of the Criminal Procedure Act 1965, I make an order for the properties recovered during the investigation and tendered as exhibits to be returned by the registrar of this court, to the person who appears to be entitled to the said property. which comprises of the tecno phone and the sum of Le490,000.00.
49. Take him down.

Dated this 17th day of March 2023

The Hon Mr Justice A Fisher J