

IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS
CRIMINAL

BETWEEN

REGINA

And

SHADIKA GREEN



BEFORE THE CHIEF JUSTICE,
the Hon Mme Justice Margaret Ramsay-Hale
Ms Shatelia Hall, Senior Public Prosecutor for the Crown,
Mr Clayton Greene for the Defendant
Heard on 18 July, 6 August 2019

NOTE OF *EX TEMPORE* SENTENCE

1. The Crown elected to proceed in this matter by charging the Defendant with uttering forged documents at common law. Included in the Information, but dismissed at trial, were counts relating to using criminal property, a money laundering offence. After conviction, the Crown made an application under the **Proceeds of Crime Ordinance** for a Confiscation Order to be made. The court initially rejected the application noting that it would prefer the course of making orders to compensate the victims of the Defendant's fraud. These victims were migrant workers from Haiti and the Dominican Republic who, if not fleeing poverty or particular hardship in their home countries, were certainly here wishing to earn enough money to support themselves and their families. Persons, in other words, who came to the TCI seeking opportunity. Persons who, for that reason, were in the court's view, vulnerable to exploitation.
2. As the Defendant was not convicted of any acquisitive offences, such as obtaining property by deception - which is an offence with which she could have and should have been charged - the court has no power to order that compensation be paid to the 13 victims of her scheme. The Court's power to order compensation only arises where an individual's loss is the subject of a specific charge. As a result, the court invited the Crown to revisit the confiscation proceedings as the government would have a discretion whether to pay any sums recovered in confiscation proceedings to the victims, rather than retain the funds confiscated.
3. Investigations by the police have turned up no evidence of any monies stashed away by the Defendant and in her defence statement, she denies having any resources. The recent sum of \$1,153.72 which was restrained by this court on application appeared to have been, as Mr Greene says is borne out by her bank statement, appear to be monies paid to her by the government owed to the date of her conviction.

4. The value of the benefit of her criminal offending would be \$36,150.00. The only realizable amount is the sum of \$1,153.72. In the circumstances of this case, I make an order confiscating that amount. The offences were committed of the course of 2 years, June 2015 being the first allegation and ending in April 2017. The sums were probably frittered away in the course of ordinary living. There is no evidence of a lifestyle that would reflect that these monies had been used in any way to acquire luxury goods or anything else the Crown could now seize.
5. I move to sentencing and away from confiscation. There is no maximum penalty for these 13 offences of uttering which are charged at common law. The sentence is entirely in the discretion of the court. In considering the appropriate starting point for the sentence in the case at Bar, I take into account that this an offence of dishonesty which involved cheating 13 persons of over \$36,000 in a scheme that could only be described as a breach of trust because the Defendant was employed to the Immigration Department and abused her position within the department to carry out her fraudulent scheme. The cases that I will refer to in due course are cases of theft involving breach of trust but I think many of the observations of the courts in those cases are apt.
6. In considering what the appropriate starting point is, I have considered Mr. Greene's suggestion that this was a scheme operated by several persons within Immigration, which he says is demonstrated by the fact that many of the documents which were forged had visibly different handwriting. Even if the Defendant were part of a scheme being operated within the Immigration Department, it appears from the evidence that, certainly in respect of the 13 matters for which she has been convicted, she played the leading role. It was she who approached divers persons offering to get work permits for them.
7. Her conduct was, as I said, an abuse of her position within the Immigration Department which is an aggravating feature. It was activity which was conducted over a substantial period of time. There were a significant number of victims and those victims, because of their socio-economic status as migrants from less well-off countries, were vulnerable to exploitation. Her culpability is high.
8. The loss caused to the direct victims of her fraud was over \$36,000. Given their financial positions – migrant workers in the lower socio - economic class – her actions had a serious detrimental effect on them and put them at risk of arrest for themselves uttering to Immigration, and other persons in authority, forged documents and put them at risk of prosecution for working without work permits.
9. Her conduct also embarrassed the Immigration Department and must have had an effect on public confidence in that agency. I also consider that the scheme was intended to divert funds, which would have been paid into Immigration, into her hands.
10. There is no doubt in my mind that this offence has crossed the custody threshold. The case law I will refer to doesn't speak to uttering of forged documents specifically but to offences of theft involving breach of trust but I think it is relevant because this uttering involved a breach of trust and this uttering caused persons to lose money, although no charges have been brought in respect of those persons. In *R v Barrick* (1985) 81 Cr App Rep 78, (1985) 149 JP 705, a well-known case of breach of trust by an employee who had stolen from his employer, the Court observed that,

“the type of case with which we are concerned is where a person in a position of trust, for example, an accountant, solicitor, bank employee or postman, has used that privileged and trusted position to defraud his partners or clients or the general public or sizeable sums of money.”

11. That is the kind of case we have here. Although she has not been accused of stealing from her employer, she used her position to defraud members of the general public of sizeable sums of money. For that reason, as was observed by the Court in *R v Clark* (1998) 2 Cr App R 137,

“In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. ... Cases involving sums of between about £10,000 and £50,000 will merit a term of about two to three years’ imprisonment.”

In the UK where there is a 10 year maximum for this offence of theft in breach of trust, the cases suggests that the term of imprisonment would be 2 to 3 years. I consider that the starting point for this offence should be 2 to 3 years.

12. In his submissions on behalf of the Defendant in mitigation, Mr. Greene asked the Court to consider the following matters which reflect personal mitigation for the Defendant. There are no mitigating features of the offences themselves, by which I mean, it wasn't a one off, that took no planning nor was she coerced by others. What he has asked me to take into account is certain personal mitigation and to consider imposing a non-custodial sentence. He has submitted that she is of former good character. He reminded me that she was described by one of the managers in the Immigration Department who gave evidence, as being a 'beautiful' person, beautiful in temperament, someone who is always willing to assist. He also asked me to consider that she has a medical condition which requires long term treatment and that she is the sole carer for a child of 11 years who she adopted as infant.

13. The problem with Ms. Green's good character is that her good character contributed to the Immigration Department's failure to adequately control access to the work permit cards and other matters which the Defendant used to perpetrate her crimes. As the court in *Barrick* noted, in this type of case,

“[the Defendant] will usually...be a person of hitherto impeccable character. It is practically certain, again as in this case that he will never again and, in the nature of things, he will never again in his life be able to secure similar employment with all that that means in the shape of disgrace for himself and hardship for himself and also his family.”

For that reason, I do not place as much weight on her good character in moving to sentence as I might do in another type of case. Indeed, the offence may be said to be aggravated by the degree of trust reposed in her. Were it not for that trust, she could never have committed these offences because she would not have had access to the work permit cards that she used in her scheme.

14. The medical condition is a matter which, though I take it into account, I do not give much weight because she ignored it herself for 2 years. By doing so, she allowed this condition - a disease of the eye - to progress to the point where she is now legally blind. Frequent visits now to the doctor will not restore her sight. I understand that the condition continues to be treated with medication

and I am confident that the prison can make such arrangements as necessary in the event that a custodial sentence is imposed by the court.

15. I do consider the fact that she is the sole carer for a child and I am very well aware of the impact of a mother's incarceration can have on the well-being of children. So I do take it into account. But I say that her conduct put the livelihood of 13 other persons and their families at risk. The fact that she is the sole carer for a child is not a matter that, looked at in the round and considering the harm that she has caused, causes me to consider that a non-custodial sentence should be imposed or that any sentence of imprisonment imposed by this court should be suspended.
16. I am satisfied that a term of immediate imprisonment is indicated and that there are no exceptional circumstances or any other compelling circumstances that should call for some other sentence to be imposed. Neither her illness nor the costs of caring for her child have been put before the Court as motivating factors for the offence. Neither weighed much on her mind, apparently. There is no expression of remorse in the Social Enquiry Report and no possibility of an *ex gratia* payment to her victims *qua* compensation.
17. I have said the starting point of the sentence should be between 2 and 3 years considering the amount of money she obtained through this uttering – this particular fraudulent scheme. I reject any invitation to impose a non-custodial sentence and any invitation to suspend any sentence of imprisonment. Here, there is only one option, which is to suspend the whole sentence. There is no provision in our law for a partially suspended sentence and I wouldn't suspend any part of it in any event.
18. Given the personal mitigation advanced, I will set the sentence at the lower number of 2 years, although 3 would have been quite appropriate given the amount of money that was involved and given the fact that she engaged in this conduct over a period of nearly 2 years.
19. Defendant is sentenced to 2 years' imprisonment.

DATED THIS 6TH DAY OF AUGUST 2019

Aleca

CHIEF JUSTICE

