

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 SCA #: 28/2020 (Case #02844/2020) (*Failure to comply with Reg. 3*
5 *of the Control of Covid-19 Regulations*)
6 SCA #: 29/2020 (Case #02845/2020) (*ibid*)
7

8
9 REGINA

10
11 v.
12

13 SKYLAR ANN MACK
14 VANJAE RASHAM RAMJEET
15
16



17
18 **Appearances:**

19 Mr. Patrick Moran, DPP for the
20 Appellant/Crown

21 Mr. Jonathon Hughes of Samson Law for
22 the Respondents
23

24 **Before:**

Justice Roger Chapple (Actg.)

25 **Heard:**

26 14th December 2020
27

28 **HEADNOTE**

29 *Criminal Law – Appeals (against Sentence) from the Summary Court to the*
30 *Grand Court – Failure to comply with Regulation 3 of the Control of Covid-19*
31 *Regulations.*
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33

34 **JUDGMENT**

35 **ON APPEALS BY THE CROWN AGAINST SENTENCE**
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1 1. In the short time available to me, I have been able to reach a decision. My
2 deliberations as to the determination of this appeal have not been rushed. I am in a
3 position to give a full judgment.

4
5 2. On the 4th of December this year, the Respondents appeared before the Summary
6 Court to answer a charge of failure to comply with *Regulation 3 of the Control of*
7 *Covid-19 Regulations 2020.*

8
9 3. The First Respondent, Miss Skylar Ann Mack, was charged as the principal
10 offender. The Second Respondent, Mr. Vanjae Rasham Ramjeet, was charged with
11 aiding and abetting the commission of that offence.

12
13 4. The charge against Miss Mack alleged that on the 29th of November of this year at
14 South Sound, Grand Cayman, being a tourist visitor managed by the medical
15 officer of health at a place specified by the medical officer of health; namely 139
16 Meadowlark Road, Newlands, failed to comply with the directions of the medical
17 officer of health by leaving those premises during the mandatory period of
18 quarantine or isolation.

19
20 5. Both Respondents pleaded guilty at their first appearance in the Summary Court.
21 Having heard the prosecution's summary of the facts and all mitigation, Magistrate
22 Hernandez sentenced both Respondents to perform 40 hours of community service
23 and made compensation orders against each of the Respondents in the sum of
24 \$2600. In addition, in the case of the Second Respondent, she made a curfew order
25 for two months, to commence as soon as he had completed quarantine.



1 6. Pursuant to s.165 of the *Criminal Procedure Code* (2019 Revision), the Crown
2 now appeals to this Court, the sentences imposed, contending that they were
3 unduly lenient. In all the circumstances of this case, the Appellants submit that the
4 only appropriate sentence in the case of both Respondents is a sentence of
5 immediate imprisonment.

6
7 7. The First Respondent, Miss Mack, 18 years of age, is a citizen of the United States
8 and a medical student at the University of Georgia. She arrived in the Cayman
9 Islands on a flight from Miami on Friday, the 27th of November. She had been
10 granted permission to travel to the Cayman Islands to visit her boyfriend, the
11 Second Respondent, under the Cayman Islands Government and Health Services
12 Authority "Phased Opening of our Borders Programme".

13
14 8. The day before she travelled, the First Respondent had signed a monitoring
15 technology participant agreement to terms and conditions. The form concluded:

16 *"By signing this form, you signify your agreement to these terms and*
17 *conditions of participants".*
18

19
20 9. On arrival at Owen Roberts International Airport she was fitted with a smart wrist
21 band and supplied with a monitoring device. She had been given permission to
22 quarantine at a private accommodation in Bodden Town. Having been transported
23 there from the airport, she was required, as a condition of her admission to the
24 programme, to remain inside that property for a minimum of 14 days and,
25 thereafter, until she provided a negative Covid test, and had been given permission
26 to end her quarantine. She had also agreed as a condition of the programme not to
27 tamper with or remove her wrist band.
28



1 16. The First Respondent does not argue with the Second Respondent's version of
2 events.

3
4 17. It follows that the Respondents were on the beach and at the event together for
5 some seven (7) hours or so.

6
7 18. After initially lying to the police, suggesting that she had been on island for two
8 weeks - it is right that I note that her lies were short lived - she admitted the truth,
9 accepting that she had only been on island for two days, that she had been
10 interacting with others at the beach, including with a young child and, of course,
11 with the Second Respondent who was himself interacting with others.

12
13 19. The First Respondent was arrested and taken to the premises at which she was
14 supposed to be quarantined. There, officers found her wrist band intact next to the
15 monitoring device. She was taken to a mandatory quarantine facility at the
16 Holiday Inn, George Town, where she remained until yesterday.

17
18 20. The Second Respondent also quarantined there separately from the First
19 Respondent. The cost of that quarantine is \$2,600 per Respondent.

20
21 21. Section 165(1) of the **Criminal Procedure Code** (2019 Revision) reads as follows:

22 "*Any person who is dissatisfied with any judgment, sentence or order of the*
23 *Summary Court in any criminal case or matter to which he is a party, may*
24 *appeal to the Grand Court against such judgment or sentence".*
25
26

27
28 22. Unlike the **Court of Appeal Law**, the **Criminal Procedure Code** is silent on the test
29 to be applied when considering whether to interfere with a sentence imposed by the
30 Summary Court.

31



1 23. I'm grateful to Mr. Hughes for reminding me of the case of *R v Guardiola*¹ in
2 which it was held that the test in the Cayman Islands, when dealing with an appeal
3 by the Crown, is whether the sentence is wrong in principle or manifestly lenient or
4 inadequate.

5
6 24. Mr. Hughes, representing both Respondents, submitted that there is no meaningful
7 difference between the terms "manifestly lenient or inadequate" or "unduly
8 lenient"; the test applied by the Court of Appeal in England and Wales on a
9 prosecution's appeal against sentence and I agree with him in that regard.

10
11 25. The court should not interfere with a sentence of the Summary Court simply
12 because, had it come before the Grand Court at first instance, rather than on appeal,
13 a different sentence might have been imposed. This court should only interfere
14 with the sentence of the lower court if it falls outside the range of appropriate and
15 permissible sentences, if it is unreasonably lenient, or wrong in principle.

16
17 26. I have helpfully been referred by both Mr. Hughes and by Mr. Moran on behalf of
18 the Appellants to the provisions of the *Alternative Sentencing Law* (2008
19 Revision) which I have found helpful. Section 4 of the *Alternative Sentencing Law*
20 goes back to basics, as it might be, and serves as a reminder of the aims and
21 objectives of sentencing. I quote:

22 *"A court shall, in imposing a punishment under this law, take into account the*
23 *following principles: A. That the fundamental purpose of punishment is to*
24 *contribute along with crime-prevention initiatives, to respect for the law, and*
25 *the maintenance of a just, peaceful and safe society by imposing just sanctions*
26 *which have one or more of the following objectives".*
27
28
29

¹ 1994-95 CILR N-20



1 27. Various objectives are then set out, but I need only in this case look at the first two
2 of those which are:

3
4 "1. To denounce unlawful conduct; and,
5 2. To deter the convicted person and other persons from committing an
6 offence".
7

8
9 28. These are, it seems to me, the most obviously relevant considerations in this case
10 but, of course, as subsection B of section 4 indicates, a punishment must be
11 proportionate to the gravity of the offence and the degree of responsibility of the
12 convicted person.

13
14 29. I remind myself particularly of the provisions of sections 4 F and G.



15
16 "F. A convicted person shall not be deprived of liberty if less restrictive
17 sanctions may be appropriate in the circumstances; and,
18 G. All available sanctions other than imprisonment that are reasonable in the
19 circumstances of each case should be considered for all convicted persons".
20
21

22 All of those principles this court bears very well in mind.

23

24 30. There are no offence specific guidelines here, although I have been referred to
25 guidelines issued by the Chief Justice on the 11th of May of this year dealing with
26 breach of curfew offences prosecuted under s.49(7) of the *Police Law* (2017
27 Revision). If these guidelines were to be applied to this case, there is no dispute
28 that this is, for both Respondents, a level 1 offence; that is to say, greater harm and
29 higher culpability, resulting, if those guidelines were applied, in a starting point
30 sentence of six months' custody with a sentencing range from three months to one
31 year's custody. The maximum penalty under that legislation is a fine of \$3000
32 and/or one year's imprisonment. The maximum penalty for an offence contrary to
33 *Regulation 3 of the Control of Covid-19 Regulations 2020* - the offence under
34 consideration here - is a fine of \$10,000 and/or two years' imprisonment.

1 31. The hard curfews, part of the Government's measures to combat the Covid
2 pandemic imposed under powers provided by the *Police Law* were in force, I was
3 told, for a period of about three months; from March to June this year. Offences
4 were also created by the *Public Health Prevention, Control and Suppression of*
5 *Covid-19 Regulations 2020*.

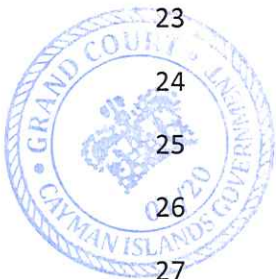
6
7 32. The offence with which this appeal is concerned initially provided a maximum
8 penalty of \$1,000 and/or six months' imprisonment. The maximum penalty was
9 increased by the Control of Covid-19 number 3 regulations 2020 to \$10,000 and/or
10 two years' imprisonment, with effect from the 26th of November.

11
12 33. This was as clear and unambiguous an indication as there could be from the
13 Legislature that it had revised its view as to the seriousness with which such
14 offences should be viewed. This was a five-fold increase in the maximum
15 financial penalty and a quadrupling of the maximum custodial sentence.

16
17 34. Regulation 3 bears a heading: "Restrictions on arrival of all persons to the islands
18 to control the spread of the virus".

19
20 35. It is important to look at this legislation and the increased penalties in context.

21
22 36. I have only recently been able to return to this jurisdiction. I can take judicial
23 notice and, in any event, there is no dispute, of the response to the Covid pandemic
24 by the Government of the Cayman Islands. The Government's response was swift
25 and decisive. It imposed draconian measures to control the spread of the virus and
26 to protect its people. When describing those measures as "draconian", I do not
27 mean that by way of criticism. Far from it. The results of those measures have
28 paid dividends which are surely the envy of the world. Strict adherence to these



1 measures has created, as the learned Magistrate put it in her helpful reasons for
2 sentence: "a safe bubble" around these islands.

3
4 37. The population of these islands endured a great deal of hardship, loyally complying
5 with the measures taken by the Government in a collaborative and community
6 spirit. The reward was a reduction in Covid transmission, almost to the point of
7 extinction. As I understand it, there is little to no local transmission. Such positive
8 tests as are recorded are from visitors from abroad.

9
10 38. Borders have begun to open but in a phased and careful way. The greatest
11 protection against the transmission of the virus is firm adherence to the obligatory
12 15-day quarantine period, initially only at a Government facility, but now
13 permission can be sought and granted for home quarantine.

14
15 39. The risk of a visitor from a country where Covid infection rates are high is so
16 obvious as not to require emphasis from me, and if infection is introduced into the
17 safe bubble of the Cayman Islands, it risks, firstly, all the hard work and sacrifices
18 that were being made set at naught, and secondly, a further lockdown – which
19 comes with all the hardship and economic damage that would cause as this country
20 begins to take steps towards recovery.

21
22 40. In the view of this court, the sentencing guidelines for breach of curfew are of only
23 limited value in this case. The landscape has changed very considerably since the
24 Chief Justice issued those guidelines. Then, the country was in strict lockdown
25 with its borders closed. The guidelines were then aimed at civil disobedience by
26 the local population. Now, thanks to those measures, the country has been able to
27 return to a relatively normal way of life.

28



1 41. The situation in May was very different from the situation now. The offences to
2 which the Respondents have pleaded guilty are aimed at those who abuse the very
3 considerable privilege of being permitted entry to these islands during a world
4 pandemic. Nevertheless, the approach to an assessment of culpability and harm is
5 helpful.

6
7 42. The actions of these Respondents gave risk to a significant risk of harm to the
8 public health.

9
10 43. The First Respondent had arrived from the USA where Covid infection rates are
11 alarming. She remained at South Sound for seven hours or more at a crowded
12 water sports event. I was told that four households were required to self-isolate as
13 a result of her presence on the beach.

14
15 44. The first Respondent's actions were entirely deliberate and planned, as is
16 demonstrated by her contriving to have a looser wrist band fitted in order to
17 facilitate her intended escape from quarantine. It cannot for a moment be said that
18 she did not appreciate her duties and responsibilities. This was as flagrant a breach
19 as could be imagined; borne of selfishness and arrogance.

20
21 45. The Second Respondent's behaviour endorsed and facilitated this offence. Of
22 course he should have refused to help. Had he done so, the chances are that the
23 First Respondent would not have been at the event at all and, of course, I note that
24 he has lived through the restrictions imposed and should have realised the enormity
25 of his actions.

26
27 46. The learned Magistrate properly noted the essential mitigating features in this case.
28 Three features in particular are powerful mitigating factors - they are, of course,
29 firstly the ages of these Respondents, particularly the First Respondent. She is only



1 18 years old. The Second Respondent is 24 years old. He is old enough to know a
2 great deal better but still relatively youthful.

3
4 47. Secondly, both Respondents are of previous good character and deserve substantial
5 credit for that.

6
7 48. Thirdly, both Respondents pleaded guilty at their first appearance. The First
8 Respondent admitted, after initial prevarication, what she had done. Both are
9 plainly now remorseful for their actions.

10
11 49. Returning to the *Alternative Sentencing Law*, the Court must decide what are the
12 main objectives of sentencing in this case. It is worth repeating the words of s.4:



13
14 *"The fundamental purpose of punishment is to contribute, along with*
15 *crime-prevention initiatives, to respect for the law, and the maintenance of a*
16 *just, peaceful and safe society".*

17
18 And, of course, one underlines here the word "safe". In these troubling global
19 times, the word "safe" assumes enhanced significance.
20

21
22 50. The first two stated objectives of s.4, as I have already noted, are of prime
23 importance; those objectives being to denounce unlawful conduct, and to deter the
24 convicted person and other persons from committing offences.

25
26 51. These courts have a clear duty to implement the will of the Legislature. And as I
27 have said, their message is abundantly plain.

28
29 52. It should not be forgotten that these courts pass sentence on behalf of the public. It
30 is of fundamental importance that the public have faith in the courts. The anger,
31 frustration and fury of the public at selfish behaviour such as this, which could
32 bring Covid-19 back to these islands after all the sacrifices and progress that has

1 been made, is a feeling which is palpable and should properly be reflected in the
2 sentence of the court.

3
4 53. As to deterrence: Of course these Respondents do not themselves need to be
5 deterred from behaving in this way again. As I have said, their remorse and
6 contrition are clearly genuine. But these courts must send a deterrent message; a
7 message to deter others who may be tempted to behave in a similar manner -
8 putting themselves before the safety of the country.

9
10 54. Whilst no court relishes the prospect of imposing sentences of imprisonment,
11 particularly on young people of good character, there is, in some cases, particularly
12 where public feeling is high, sometimes no alternative.

13
14 55. The learned Magistrate observed at paragraph 7 of her reasons, and I quote her:

15 *"This is a difficult exercise, especially as we navigate through the pandemic*
16 *and the protection of our society. There is a delicate balancing act of*
17 *immediate custody to send a clear message and to deter others from such*
18 *breaches, whilst at the same time noting the defendant's particular*
19 *circumstances and how else punishment could be met".*
20

21
22
23 56. It is certainly difficult, in the sense that imposing custodial sentences on young
24 people of good character is always difficult. However, this court disagrees that the
25 balancing act was a delicate one.

26
27 57. It is perhaps of relevance that the Magistrate did not dwell, in her careful reasons
28 for sentence, upon the need to reflect the public's disapproval and proper concern
29 for the admitted behaviour of these Respondents.

30
31
32



1 58. The learned Magistrate did place some emphasis on the fact that the First
2 Defendant was booked on a flight back to the USA on the 21st of December. She
3 explained at paragraph 8 of her sentencing reasons that 40 hours of community
4 service was:

5 *"...the maximum amount of community service which would have been possible*
6 *within that one week window"*
7
8

9 This is a reference to the window between her release from quarantine and her
10 flight to Miami.

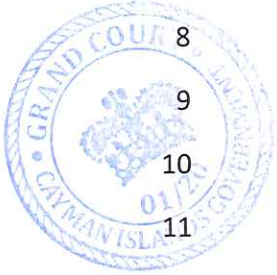
11
12 59. The implication is that more hours of community service would have been imposed
13 had her return flight been booked for a date in, say, January.

14
15 60. As Mr. Moran rightly submitted, the fact that she had a return flight booked should
16 not have weighed in the sentencing process, given the predominant aims of
17 sentencing in this case.

18
19 61. This court concludes that the sentence of the lower court was unduly lenient and
20 wrong in principle. There was, in all the circumstances, no proper alternative to an
21 immediate custodial sentence.

22
23 62. I have in mind the principle in a prosecutor's appeal against a sentence of double
24 jeopardy. Quarantine is not a pleasant experience at the best of times. The
25 Respondents are now at an end of this quarantine, which I am sure has been made
26 considerably worse and considerably more stressful by the knowledge and worry of
27 this appeal and the prospect of imprisonment. That principle does not dissuade this
28 court from substituting custodial sentences, but it has served to decrease the length
29 of those sentences.
30





1 63. For a case of this gravity involving a deliberate, planned, sustained and
2 inexplicably selfish breach; being present at a crowded event for many hours, a
3 starting point of 15 months' imprisonment, or thereabouts, in the view of this court
4 is appropriate.

5
6 64. In the case of the First Respondent, a substantial reduction is appropriate to reflect
7 her age, her good character and her obvious remorse. A reduction of six months is
8 appropriate on that account, bringing the sentence down to nine months'
9 imprisonment. The sentence should then be reduced further by one-third to reflect
10 her guilty plea at the first opportunity; reducing the sentence to one of six months'
11 imprisonment. A still further reduction of two months is appropriate to reflect the
12 double-jeopardy principle, leaving a sentence of four months' imprisonment.

13
14 65. Given all that I have said above, it would not be appropriate to suspend that
15 sentence.

16
17 66. Whilst there are differences between the two Respondents, particularly that the
18 Second Respondent is older, and having experienced the Cayman lockdown at first
19 hand, should, as I have said, known a lot better. This court sees no powerful
20 reason for not treating both Respondents equally.

21
22 67. Accordingly, this appeal is allowed and for the sentences imposed by the lower
23 court, I substitute sentences of four months' imprisonment in respect of both
24 Respondents.

25
26 68. The orders for compensation remain undisturbed. It is obviously right that the
27 Respondents should pay for the mandatory quarantine they brought upon
28 themselves by their actions. That order has already been satisfied by the First
29 Respondent.

1
2 69. I adjust the learned Magistrate's compensation order against the Second
3 Respondent, only by adding a term of imprisonment, in default of payment, of six
4 months. The Magistrate gave the Second Respondent six months to pay that
5 penalty. I do not disturb that order.

6
7 70. I endorse and leave undisturbed the Magistrate's recommendation that the First
8 Respondent not be allowed to visit these islands again while the borders remain
9 closed or restricted.

10
11
12
13 **Dated this the 15th December 2020**

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17 

18 **Justice Roger Chapple**
19 **Acting Judge of the Grand Court**

