IN THE GRAND COURT OF THE CAYMAN ISLANDS
CRIMINAL SIDE

INDICTMENT NO: 10/2019

THE QUEEN

v.

DANIEL EZRA MEEKS

Appearances:	**Mrs. Candia James-Malcolm for the Crown**
	Mrs. Margeta Facey-Clarke for the Defendant
Before:	**Dame Linda Dobbs (Acting Judge)**
Judge Alone trial:	**10th – 13th December 2019**
Delivery of Verdict Decision:	**11th February 2020**
Sentence Hearing:	**30th April 2020**

HEADNOTE

Criminal Law – Misconduct in Public Office contrary to Common Law – *Sentence - No guidelines for this offence both in the Cayman Islands and in the UK - Abuse of public trust.*

SENTENCE JUDGMENT

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INTRODUCTION

1. Having elected to be tried by judge alone, the Defendant, Daniel Meeks, was convicted of a single count of misconduct in public office contrary to common law. The particulars of the offence were:

> *"Daniel Ezra Meeks, between the 9th day of November 2017 and the 28th day of November 2017, within the jurisdiction of the Cayman Islands, being a public officer, namely a Police Constable of the Royal Cayman Islands Police Service, without reasonable justification and excuse wilfully misconducted himself in office to such a degree as to amount to an abuse of the public's trust, by using his position as a police constable to convince Vernice Johnson[1] to execute a transfer of land belonging to her into his name, and subsequently registered that land to his name."*

THE EVIDENCE

2. The evidence is rehearsed in the court's judgment, but by way of reminder, I set out a summary.

3. The case arises out of an incident on 10th November 2017 when the Defendant, together with another police officer, attended the home of the 73 year-old complainant, Miss Venice Johnson, having received a report of a domestic disturbance. As a result of the visit, the Complainant's daughter was arrested.

4. A day or so later, the Defendant returned to the Complainant's home and said that he would like her to help him purchase a house. Miss Johnson declined, but the Defendant was persistent – visiting Miss Johnson over a number of days until eventually Miss

[1] The Complainant: Ms. Vernice Maria Johnson Carter

Johnson, because she was scared of the Defendant, agreed to attend on a Notary Public where she signed some documents which were notarised.

5. Miss Johnson can barely read or write – having left school at the age of 9. She was not sure what she was signing. She was in a particularly poor state of mind, given the struggle to live on her small pension, problems with her daughter and the responsibility for her autistic grandson. She told the court that sometimes she did not have food to eat.

6. The documents had the effect of transferring Miss Johnson's sole Title to the property to the Defendant and herself jointly. On the same day the documents were notarised, the Defendant submitted the documents to the Lands and Survey Department for registration. The transfer was processed, and stamp duty was assessed at CI$20,635. Subject to the payment of stamp duty, the Defendant would become co-owner of the property. On 26th November, a complaint was made to the police by both the Complainant's daughter and the Complainant. The following day, the Defendant signed a letter withdrawing from the transaction.

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7. What impact did this have on Miss Johnson?

8. It was clear during her evidence that the whole episode had caused her, not only distress, but also embarrassment and shame at having been tricked by the Defendant. She had sleepless nights; she was still uncertain as to exactly what she had signed and felt betrayed by a police officer having conducted himself in such a way.

9. The court also has a Victim Impact Report on Miss Johnson. In that report Miss Johnson again re-iterates that she was scared of Mr. Meeks and observed that he played on her known vulnerabilities. When she is alone, she goes to the window at the

slightest noise. As a result of the experience she doesn't sleep very well. Despite having some insight as to how the Defendant has exploited her, Miss Johnson said that she holds no resentment towards him and does not wish him ill. However, she would not want to see him again.

THE DEFENDANT'S BACKGROUND

10. A Social Inquiry Report (SIR) has been prepared for the court. Mr Meeks is a 35-year-old married man with three young children. His parents live in Jamaica. He is the youngest of 16 children. His three children now live with their grandparents in Jamaica, no doubt because Mr Meeks' wife is currently in prison.

11. Mr Meeks experienced a very strict upbringing, being subjected to regular physical violence from his alcoholic father. He completed his education and joined the Jamaica Constabulary Force in 2004. In 2011 he joined the Royal Cayman Police Service (RCIPS). His RCIPS contract was not renewed in 2017 following the events which are the subject matter of this hearing. He has been unemployed since.

12. The Probation Officer spoke to two pastors from Mr Meeks' church. They have known him since 2017. They speak highly of him and confirm that Mr Meeks has been very active in the church, including being a mentor on the youth programme. They advocate for a non-custodial sentence so that Mr Meeks can do work in the community. They have each also written a letter to the court in support of Mr Meeks. The Court also has a Certificate of Recognition from the church, which came in just before the hearing. It is dated 2019 but it is unsigned and is unspecific about the contribution of Mr Meeks.

13. Mr David Meeks also speaks well of his brother, confirming their tough upbringing and pointing to his brother's qualities. He also advocates for a non-custodial sentence.

14. Mr Meeks, whilst respecting the verdict of the court, still maintains his innocence. This is repeated in the defence submissions. The SIR concludes that there is little remorse shown. His risk of re-offending is assessed as low. The Court also received, minutes before the hearing, an email from the Defendant intended for Miss Johnson dated 29th April 2020 apologising for his misunderstanding. Mr Meeks also addressed the court and apologised to Miss Johnson and the court for the misunderstanding and he reminded the court that he was a family man with sole access to his children.

SUBMISSIONS ON SENTENCE

The Crown's submissions

15. Miss Candia James-Malcolm for the Crown drew the court's attention to the case of ***AG's Ref No. 30 of 2010***[2] which set out the principles to be applied in misconduct in public office cases involving police officers. A number of other UK cases were drawn to the court's attention set out in ***Blackstone 2020 Edition*** Para 15.31, (none of which bore any factual similarities) to show the types of cases which would merit a custodial sentence, which the Crown submitted, in this case, was deserved because the offence was motivated by financial benefit and the victim was particularly vulnerable.

16. The case of ***Edlin Myles***[3] was also drawn to the court's attention both at first instance and appeal. This was a case involving deception by an insurance salesman using his position on the Board of a Trust to sell insurance for his personal gain.

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[2] [2010] EWCA Crim 2261; [2011] 2 Cr. App. R (S) 106
[3] CACRO21/2014

17. Finally the section on theft involving a breach of trust in the ***Chief Justice's Sentencing Guidelines of 2002***[4] was highlighted where it was indicated that thefts involving a breach of trust in the context of a relationship of employment would attract an immediate sentence of one to four years' imprisonment for a first offence, higher depending on the seriousness of the offence.

18. The Crown submits that the Defendant's conduct amounted to a serious abuse of trust aggravated by the following factors:

i. The Complainant in this matter was a vulnerable victim. She is elderly, of limited education and was under tremendous stress at the time of her dealings with the Defendant. She was, at the material time, the victim of violence in a domestic setting and thereby a witness in the matter being investigated by this Defendant.

ii. The Complainant's daughter was also a potential victim of this Defendant as she stood to be disinherited if the Defendant's plan succeeded. The evidence established that she too was a vulnerable victim having been suffering from mental illness.

iii. The Defendant's actions were motived exclusively by a desire for financial gain. He persisted in his efforts even after the transaction had been reversed. Had he been successful, he would have acquired property valued at KYD$250,000.

19. The Crown contends that there are very few, if any, mitigating factors.

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[4] ***Statement on Tariffs and Guidelines for Sentencing for Certain Offences (2002)***

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Defence submissions

20. The court has a lengthy document from Miss Facey-Clarke on behalf of the Defendant, some of which includes, in effect, a repeat of some of her defence submissions on the evidence, despite the findings of fact of the court.

21. The submissions can be condensed to the following points in mitigation:

i. The defendant's age, character and antecedents – in particular that he has no previous convictions;

ii. Cooperation with the police: It is submitted that Mr Meeks should receive credit for providing a duty report to the PSU when asked;

iii. The delay between the offence and trial, it being over one year before the case came before the Summary Court and two years before trial which affected the Defendant's memory for detail;

iv. No loss incurred;

v. The period over which the offence was committed – namely the his cancellation of the transfer 11 days after hearing that Miss Johnson had changed her mind;

vi. The impact on the Defendant - loss of job, reputation and subsequent unemployment;

vii. Remorse: The Defendant apologises for the misunderstanding that took place between himself and Miss Johnson, a misunderstanding which arose out of his desire to help Miss Johnson protect her grandson. He has now learned his lesson;

viii. No harm or prejudice suffered by the victim as the transaction was not completed. Criticism is made of the portrayal of the transaction by the Crown as being a transfer of property whereas it is submitted that the Defendant was added to the property;

ix. The separation between the Defendant and his children who now live in Jamaica;

x. The Defendant's fear of being a police officer in prison as he may be subject to threats.

22. Miss Facey-Clarke submits that a Community Service Order (CSO) or a suspended sentence should be imposed.

23. Whilst defence counsel recognises that no two case can be the same, she relies on the cases of:

i. ***R v Nazir***[5] where a police officer tried to have a penalty notice issued to a friend cancelled and the Court of Appeal of England and Wales reduced the 3-month sentence to 1 month;

ii. ***R v W(M)***[6] where the police officer who used a work Amex card for his personal use to the tune of £12,500, received a suspended sentence. This was not tested on appeal as the appeal against conviction was overturned;

iii. ***R v Webster***[7] where Quin J who sentenced a female police officer to 9 months' imprisonment suspended for 12 months for unauthorised searches of the police database. Particular reliance is placed on this the case because the court found that

[5] 2003 2 Cr App R (S) 114
[6] 2010 E1 Cr App R 28
[7] 2013 (2) CILR 72

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the offending was the lower end of the scale, that there was no criminal intent or financial reward, that the Defendant had naively done a favour for a friend, that the defendant was of good character and had entered an early plea of guilty. Defence counsel submits that there are parallels with this case.

24. Miss Facey- Clarke submits that the Crown's reliance on the cases cited in ***Blackstone*** is misplaced.

25. Defence counsel also submits that the local cases ***Edlin MacArthur Miles***[8], ***Elvis Ebanks***[9] and ***R v Keith Guthrie***[10] should also not be considered because, in short, they relate to either different conduct, different offences or can be distinguished because in some of the cases the officer benefitted.

GUIDANCE ON SENTENCING

26. Being a common law offence, the penalty is imprisonment and/or a fine at the court's discretion. There are no guidelines for this offence both in the Cayman Islands and in the UK. The wide variety of conduct under such offences means that there is little guidance by way of factual similarity.

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[8] CACRO21/2014/ Ind. 70 of 2012

[9] CACRO15/2014/Judgment of Quin J dated 24th July 2014 – Ind. 105 of 2012

[10] At the time of the hearing no reference given for ***Guthrie (Indictment 37 of 2007)*** and a copy not made available to the court. Nonetheless, for completeness this court herein notes: In this case, a sentence of 18 months' imprisonment was imposed by Acting Justice Algernon Smith in April 2007 and was upheld by the Cayman Islands Court of Appeal in December 2007. Guthrie was a police officer who pleaded guilty to one count of Official Corruption – admitting to receiving $500 from a man whom he had stopped for traffic violations. At the time of the offence Guthrie had been an RCIPS officer for four years. The Crown's case was that, after initially telling the driver that he would receive a Summons to court, later the same day Guthrie phoned the driver and told him he faced fines of three thousand dollars ($3000) and the loss of his licence for two years. The driver agreed to pay Guthrie half the amount - $1500. Five days later Guthrie again phoned the driver and told him that "the 15" was for his partner and said he thought there would be something for him. As a result the driver reported the matter to the police and agreed to wear a recording device and participate in a surveillance operation. After meeting the driver and receiving five photocopied one hundred dollar notes and then driving away, Guthrie was stopped by police. A charge relating to the $1500 was left on file.)

27. Some principles can be gleaned from the ***AG's Ref No.30 of 2010***[11], in which it was said:

> *"First punishment and deterrence are always important elements in these cases; not only must police officers be deterred from misconduct, but also the public must see that condign punishment will be visited on police officers who betray the trust reposed in them and do not live up to the high standards of the police service. Secondly, an incentive... inevitably increases the seriousness of the offence. Thirdly, misconduct which encourages or permits criminals to behave in the belief that they will be kept informed of areas to avoid in connection with their criminal activities, or of those who might be informing on the police also increases the gravity... Fourth, any misconduct which impacts on police operations moves the offence into a different category of gravity..."*

28. This Court, in its research, looked at a number of local cases including the case of ***Elvis Ebanks***[12], which, whilst dealing with different offences – bribery and breach of trust - is useful, in that Quin J, in passing sentence in the Grand Court, considered a number of cases decided in both the Cayman Islands and in England & Wales. In his sentencing remarks he referred to the vulnerability of the victim, the damage caused by such offending to the reputation of the Cayman Islands, and to cases indicating that abuse of position by police officers for gain should attract severe custodial sentences. The Defendant was sentenced to a total of 3 years' imprisonment – upheld by the Cayman Islands Court of Appeal (CICA).

29. The guidance on sentencing, both in the Cayman Islands and in the UK, states that the court has to assess the seriousness of the offence and set a starting point. This, of course, is much more difficult where there are no guidelines and where there are so many different situations in which the offence can be committed.

30. I start from the premise that misconduct in public office involves a breach of trust by the person in the public office. That makes it serious in itself and *prima facie* deserving of a custodial sentence. The position of the public officer, and the level of trust placed

[11] [2010] EWCA Crim 2261, [2011] 2 Cr. App. R
[12] CACRO15/2014//Judgment of Quin J dated 24th July 2014 – Ind. 105 of 2012

in him or her, will also affect the seriousness of the offence. The public put great faith in the police to protect them, keep them safe and to uphold the law. Any act done to undermine that trust will merit an immediate custodial sentence in my judgment. There is no need for reliance on the Theft Breach of Trust guidelines to reach that conclusion.

31. I pause to observe that this case is in an entirely different bracket from ***Webster*** in which it was quite clear that the sentence of imprisonment was suspended because the defendant was the sole carer of the two young children.

32. There are two main aggravating features in this case namely:

i. That the offence was for personal gain – whether to act as collateral for a mortgage or ultimately to benefit from a half share of the value of the property – the Defendant stood to gain significantly;

ii. That the offence was committed against a very vulnerable victim. The Defendant knew how vulnerable Miss Johnson was and played on her vulnerability to achieve his aims. To exploit the weak and vulnerable who put such trust in you is inexcusable and merits condign punishment.

33. For the avoidance of doubt, the court rejects the submissions about misjudgement on the part of the defendant.

34. I now deal with the points raised in mitigation.

i. The Defendant is a person of previous good character: That is inherent in the job he had, which he abused.

ii. It is submitted that there has been no loss: Whilst true, that is only so because the Defendant was found out.

iii. Reliance on the Defendant providing a report to the PSU is misguided as the Defendant would have to submit such a report by virtue of his job.

iv. Adverse inferences were not drawn during the trial from the Defendant's inability to remember dates and precise details.

v. The length of time between offence and appearance at court is not such as to merit a reduction in sentence.

vi. The shortness of the offending only occurred because Miss Johnson reported the matter. Even then, the Defendant challenged the validity of the cancellation letter in an email to the Lands and Survey Department dated 9th January 2018. From the evidence the Defendant was made fully aware that he had a problem when contacted by the Lands Transfer Office which led to him writing the letter revoking his interest.

vii. There is no remorse. The Defendant still maintains his innocence.

35. There is little mitigation therefore. However, I give some small credit for the fact that the Defendant has no previous convictions and has done good work in the Church since losing his job, by reducing the figure arrived at by six months.

36. The sentence is therefore one of three (3) years' imprisonment. The 10 days spent on remand will count towards the sentence.

Dated this the 30th day of April 2020

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Dame Linda Dobbs
Acting Judge of the Grand Court