

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL DIVISION)**

Criminal Case No. BVIHCR 2023//0009

BETWEEN:

THE KING

VS

CATHYOLIVA RICHARDS

Prisoner

Appearances: Ms. Tracey Vidale, Principal Crown Counsel
Mr. Stephen Daniels, Counsel for the Accused

2026: January 16th

SENTENCING

PRELIMINARIES

- [1] **TEELUCKSINGH J.:** On 12th June, 2025, the Director of Public Prosecutions of the British Virgin Islands filed an indictment in which prisoner, Ms. Cathyoliva Richards, was charged with the offence of Uttering Forged Documents contrary to section 257(1) of the **Criminal Code** 2013 (as amended) of the Laws of the Virgin Islands. The particulars of that offence were that the prisoner, on 7th day of June, 2021 at Road Town in the Island of Tortola, in the Territory of the Virgin Islands, knowingly and with intent to deceive or defraud the Department of Labour and Workforce Development, uttered a forged document, purporting to be a Certificate of Earnings issued by the Social Security Board.
- [2] On 17th June, 2025, a jury was empaneled and a trial commenced. On 15th July, 2025 the prisoner was found guilty by the jury. The prisoner was granted bail pending sentence. A Social Inquiry

Report was ordered by the Court to be filed on or before 16th September, 2025. The matter was subsequently adjourned to 26th September, 2025 for plea in mitigation and sentencing submissions.

- [3] A Social Inquiry Report was prepared and dated 16th September, 2025.
- [4] On 26th September, 2025, Principal Crown Counsel Ms. Tracey Vidale appeared. Defence Counsel Mr. Stephen Daniels appeared. The prisoner was present. Mr. Daniels indicated that he wished to file his submissions relative to the plea in mitigation and sentencing. It was ordered that the Crown will file submissions in writing on or before 10th October, 2025. Defence Counsel will file submissions on or before 16th October, 2025. The matter was thereafter adjourned any further sentencing submission.
- [5] On 10th October, 2025, Crown Counsel filed sentencing submissions.
- [6] On 24th October, 2025, Defence Counsel Mr. Stephen Daniels appeared. Principal Crown Counsel Ms. Tracey Vidale appeared. The Prisoner appeared. Defence Counsel requested further time to file written submissions and stated that he will be able to do so on 27th October, 2025. The matter was adjourned to 28th October, 2025.
- [7] On 27th October, 2025, Defence Counsel filed written submissions relative to the plea in mitigation and sentencing.
- [8] On 28th October, 2025, Principal Crown Counsel Ms. Tracey Vidale appeared. Defence Counsel Mr. Stephen Daniels and the Prisoner appeared via zoom. Oral submissions were made by the attorneys relative to the plea in mitigation and sentencing. Defence Counsel indicated to the Court that he wished to address on the issue that the prisoner was not employed after July, 2025. The prisoner also made oral statements on record indicating her remorse. Defence Counsel was ordered to file any affidavit of Mr. Kelvin Titley by 31st October, 2025. The matter was adjourned to 14th November, 2025 at 10:30am for any further submissions.

- [9] On 14th November, 2025, Principal Crown Counsel Ms. Tracey Vidale appeared. Defence Counsel Mr. Stephen Daniels appeared. The prisoner did not appear but was allowed to appear through her Attorney. Defence Counsel requested further time to file the affidavit of employer, Kelvin Tittley. The matter was adjourned to 8th December, 2025.
- [10] On 8th December, 2025, Principal Crown Counsel Ms. Tracey Vidale appeared. Defence Counsel Mr. Stephen Daniels appeared. The prisoner appeared. Defence Counsel indicated to the Court that he wished to make further submissions on the **Criminal Justice Alternative Sentencing** Act- in particular on Section 38 and would file the affidavit of Mr. Titley on 9th December, 2025. The Crown would respond on or before 12th December, 2025. The matter was subsequently adjourned to 12th December, 2025.
- [11] On 12th December, 2025, Defence Counsel Mr. Stephen Daniels filed supplemental submissions on section 38 of **the Criminal Justice (Alternative Sentencing)** Act. The Affidavit of Mr. Kelvin Tittley was also filed. On that date, Principal Crown Counsel Ms. Tracey Vidale appeared. Defence Counsel Mr. Daniels also appeared. The prisoner appeared. The affidavit of Mr. Titley was filed in the morning so Crown requested an opportunity to peruse the said document and that Mr. Titley appear on the next occasion. The matter was adjourned to 16th December, 2025.
- [12] On 16th December, 2025, Crown Counsel Ms. Tracey Vidale appeared. Mr. Stephen Daniels appeared for the prisoner. The prisoner appeared. Mr. Kelvin Tittley appeared and was cross examined by Crown Counsel. Further oral submissions were made by Crown and Defence attorneys. The matter was subsequently adjourned to 16th January, 2026 for sentencing.

SUMMARY OF FACTS

- [13] On 13th July, 2020 there was a change in the renewal requirements for a work permit in the British Virgin Islands in that persons applying to renew their work permit were required to submit to the Department of Labour and Workforce Development. certain documents inclusive of a Certificate of Earnings from Social Security Board and National Health Insurance. Additionally, the applicant had to submit to the said Department of Labour, a Certificate of Good Standing or a payment plan issued

by Social Security Board and National Health Insurance. The aforementioned documents had to be obtained from the employer.

- [14] The prisoner is a senior journalist employed at JTV, a media company in the British Virgin Islands. Evidence was adduced by the Crown that the owner of that company, Mr. Kelvin Tittley, was unable to pay the relevant contributions for the company's employees, which resulted in there being an outstanding debt to the Social Security Board. It was upon this basis, JTV was not eligible to receive a Certificate of Good Standing from the Social Security Board. There was in effect a payment plan between the employer of the prisoner/ applicant and the Social Security Board commencing from January 29th 2021 until November 30th 2022 to liquidate the debt that was owed.
- [15] On 12th May, 2021, the prisoner applied for a Certificate of Earnings from the Social Security Board and one was issued to her on 17th May, 2021. The Crown led evidence that on 16th June, 2021, this Certificate was collected by the prisoner from the Social Security Board. In 2021, Senior Labour Officer Althea Guishard was employed at the Department of Labour and Workforce Development. Ms. Guishard testified that on 7th June 2021, the Department received the prisoner's application for a renewal of her work permit and included among the documents was a forged Certificate of Earnings (tendered as AG2 in the trial) purportedly issued by the Social Security Board. Ms. Guishard subsequently reported the matter to Detective Fraser of the Royal Virgin Islands Police Force.
- [16] In the trial, Mrs. Lisa McIntosh-Bobb, the Contributions Manager of the Social Security Board testified that on 22nd September, 2021, she was visited by Detective Fraser who showed her a Certificate of Earnings (AG2) issued to the Prisoner. Mrs. McIntosh-Bobb identified several discrepancies on the document including the spelling of the word "certificate," the font was different and based on Social Security's contribution maximum at the time, the figure noted appeared to be higher than the Board's maximum contribution. Furthermore, the format had changed and Social Security Board was no longer recording insurable earnings in 2021 on the said Certificate. Mrs. McIntosh-Bobb further testified that the signature appearing on that document was not hers and explained that she did not "close the loop" in her signature because when "she signs she usually lifts the pen."

- [17] Detective Fraser continued his investigations in the matter and on 20th October, 2021, he and other police officers visited Japhix Entertainment (also owned by Mr. Kelvin Titley). Detective Fraser identified himself as a police officer to the prisoner, told her of the report and cautioned her to which she replied “**seriously.**” Furthermore, after having a meeting with Social Security, Ms. Guishard also spoke to persons at National insurance and then to the prisoner. The prisoner stated that “**she submitted what she got from Social Security.**” According to Ms. Guishard, the prisoner was shown the document from Social Security and “**she said that they were not authentic she said that is what she got.**”
- [18] At trial, the prisoner did not testify and relied on her audio visual interview to the police (tendered in the trial as CF2). The prisoner’s case was that she did not know that the Certificate of Earnings (tendered on the trial as AG2) purportedly issued by Social Security Board was forged and that she honestly albeit mistakenly, believed the said document to be genuine when she submitted same to the Labour Department and therefore did not intend to deceive or defraud the Department. In her interview, the prisoner stated inter alia that she has been living in the British Virgin Islands for over 10 years. Since 2016 she worked at Japhix Multimedia Integrated JTV as a senior journalist. She explained that she had a work permit which was issued in April 2020 with the said company but that same had expired in April 2021.
- [19] In the interview with the police, the prisoner stated that she was unable to assist Labour Department as to their receipt of a false document as part of her application for a work permit renewal in which she realized that ‘**all of her information was inaccurate**’ with the exception of the spelling of her name. Sometime in May to early June that year, the prisoner explained to the police that she had applied for the Certificates of Earnings from National Health Insurance and Social Security Board. On a subsequent date, the prisoner received another call from the said institutions and collected her Certificates and that of another employee of the Japhix Entertainment. It was in those circumstances that the prisoner submitted the aforementioned Certificates together with other documents to Labour Department. She indicated that when she received the Certificates, she only paid attention to the spelling of her name which was often incorrectly spelt. The prisoner indicated to the police that she obtained Certificates of Good Standing from the company, Japhix. She could not recall exactly from whom she received the Certificates and suggested it was from one of three persons- the owner of

the company, from one Andrea or from one Cheryl, a person who assisted with accounting. During the interview, the prisoner was shown certain documents by DS Fraser including her application for renewal of the work permit, a certificate of earnings from Social Security Board with her name on it and a figure on the bottom and the date 17th May 2021. When asked if she received the document from Social Security, she stated she could not say “100%” but it appeared that that she did.

[20] In the interview with the police, the prisoner was shown another document with some inaccurate information, in that, the card issued was dated 16th June, 2006. The prisoner stated she was not in the British Virgin Islands at that time. The prisoner also observed other discrepancies on the document in that, the amount of the gross earnings was inaccurate as it was above her annual pay that is, her gross income. Furthermore, the word “Certificate” was also incorrectly spelt.

[21] The prisoner was shown another document by Detective Fraser “Certificate of earnings, from NHI’ and when asked if she had received same from the institution, the prisoner stated “could possibly be “and that she was not “absolutely 100 % sure.” When asked how she was able to obtain the documents that she submitted to the Labour department, the prisoner explained that she collected them from the kiosk which was located outside the Social Security Board. The prisoner further stated in her interview that all the documents she collected from Social Security, she submitted same to the Labour Department. The prisoner admitted that she knew that her employer at Japhix was not in good standing with National Health Insurance and Social Security. The prisoner told the police that she was aware that the Certificates of Good standing were stored in the filing Cabinet of JAPHIX.

[22] The Prisoner denied being in contact with anyone from Social Security or National Health Insurance to get the Certificates of Earnings and denied that she paid anyone to produce these Certificates.

[23] Detective Fraser continued enquiries and the Prisoner was charged with the offence of uttering forged document.

THE LAW

[24] Section 257 of the **Criminal Code** of the Laws of the Virgin Islands (as amended):

- (1) ***“Any person who knowingly with intent to deceive or defraud, utters any forged document...commits an offence and is liable on conviction to the same punishment as if he had himself forged the document...”***
- (2) ***A person utters a forged document... who, knowing the same to be forged, and with either of the intents necessary to contribute the offence of forging the document... in question uses, offers, publishes, delivers, disposes of, tenders in payment or in exchange, exposes for sake or exchange, exchanges, tenders in evidence, or puts off the said forged document....***
- (3) ***A person may be convicted in the Territory of an offence under subsection (1) whether the document... was forged within the Territory or elsewhere, if it was uttered in the Territory.”***

[25] Section 251(3) of the **Criminal Code** 2013 of the laws of the Virgin Islands (as amended) “A person who with intent to defraud or deceive, forges any of the following documents, commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.

- (f) ***a document made or issued by the head of the department of Government or by the Attorney General or any other legal officer in the public service, or any document which, by law or usage in force at the time, a court of justice or public officer might act;”***

SUBMISSIONS

[26] This Court has given due consideration to the written and oral submissions of the Crown and Defence Attorneys and the authorities and testimonials attached. This Court has also considered the affidavit evidence and oral testimony of Mr. Kelvin Titley, and the contents of the Social Inquiry Report.

ANALYSIS AND FINDINGS

[27] In considering the Sentencing Guidelines of the Eastern Caribbean Supreme Court – Offences of Dishonesty – Fraud – republished as updated on 6th January, 2025, the Crown submitted that the First Stage – Consequence is in the range of Category 2 – Medium as there is a significant

undermining of the proper functioning of the public services. Crown Counsel contended that the use of the forged Certificate of Earning was intended to obtain the renewal of a work permit which may be utilized in the Virgin Islands to permit the prisoner to reside and obtain employment and thus financial gain. The prisoner uttered this document to the Department of Labour and Workforce Development and it was a forged document purported to have been issued by the Social Security Board thereby involving two government institutions.

[28] This Court agrees with the Crown's arguments and finds that the Prisoner's actions in uttering a forged Certificate of Earning with a forged signature of a senior official of the Social Security Board (a government agency) with the intent to deceive or defraud another government institution, namely, the Department of Labour and Workforce of the BVI, with the hope of acquiring the benefit a renewal of a work permit, such actions significantly eroded the integrity and the effective functioning of the processes of these two public institutions. The facts of this case and the implications of the prisoner's actions in uttering this forged Certificate of Earnings to obtain a renewal of a work permit from a public government institution would place this case in a **Consequence Category 2 – Medium**. This Court therefore does not respectfully share the view of the Defence that the more appropriate category as per the Sentencing Guidelines is a Consequence- Category 3 – Lesser.

[29] In considering the case of **The Queen v Gary Stephen**¹, Defence Counsel in the case before me, argued that the prisoner's actions albeit irresponsible, did not reach the threshold of a breach of national security. This Court shares Defence's view on that issue in that the prisoner's actions, in uttering the forged Certificate of Earnings to the Department of Labour did not amount to a breach of national security. Indeed such a breach of national security would be a serious undermining of the proper function of local, national government, business or public services to place same in a Consequence- Category 1 – High.

[30] This Court is of the view that such actions may be a national security concern if additional factors are present, such as systemic or organized abuse with for example, large-scale forgery rings, corruption within government departments and coordinated efforts to bypass border controls. Indeed such actions can seriously undermine the integrity of state systems if, for example, the forged work

¹ GDAHCR 2017/0038

permit allows someone to access classified or strategic sites and enter defense, energy, or security sectors. It is in these circumstances, then the uttering of the forged document can transcend into national security threat.

[31] In this case however, these additional factors are not present, so that there is no national security concern. This Court finds that while the prisoner's actions while they significantly undermined the proper functioning of national government and/or public institutions, they, however, did not reach the threshold of seriously undermining these institutions – so that the appropriate category in this case as previously mentioned is a **Consequence- Category 2 – Medium**.

[32] In examining the **Second stage** of the Sentencing Guidelines, one must consider Seriousness by assessing the culpability of the offender. Both Crown and Defence Counsel agreed that the level is determined to be a **Seriousness Level B – Medium** as there is evidence that the prisoner was motivated by personal gain. This Court agrees with both Crown and Defence.

[33] In examining the **Fourth Stage** of the Sentencing, the non-exhaustive list of aggravating and mitigating factors of the offence will now be considered. Crown Counsel submitted that an **aggravating factor of the offence** in this case is **the impact on public confidence**. Defence however disagreed that such factor should be considered on the basis that the evidence adduced on the Crown's case is that the policy in issue requiring a Certificate of Earning to be submitted to obtain a renewal of a work permit, was not continued by the Department of Labour, and therefore there was no erosion of the public confidence.

[34] In the Court's view, the relevant consideration is not the fact that the work-permit requirements were later changed, but the broader effect of the Prisoner's actions in uttering a forged Certificate of Earnings to a government institution, namely the Department of Labour. This was not a case of a deception involving an individual or a private body. Uttering forged Document to the Labour Department undermined and compromised the Department of Labour's ability to function properly as it would issue work permits on the basis of genuine documents that were submitted. This has the domino effect of eroding or destroying public confidence and trust in the fairness and effectiveness

in the decision-making processes by the Department of Labour on whether or not to issue work renewal permits.

[35] Defence Counsel argued that a **mitigating factor of the offence** was that the non economic loss was marginal. This Court agrees with this mitigating factor because shortly after the prisoner uttered the forged Certificate of Earnings to the Labour Department, Ms. Guishard detected the discrepancies on the said document, did not renew the work permit of the prisoner and then contacted the police.

[36] In examining **Step 2 of the Sentencing Guidelines**, Crown Counsel submitted that an aggravating factor of the offender was that the prisoner continued to work in the British Virgin Islands in the absence of a valid work permit. In response, Defence Counsel relied upon an affidavit sworn on 12 December 2025 and the oral testimony of Mr. Kelvin Titley, the owner of JTV and Japhix.

[37] In his affidavit, particularly at paragraphs 7 to 10, Mr. Titley deposed inter alia that following the prisoner's conviction she rendered services to his station on a voluntary and unpaid basis. He further stated on oath that he has provided financial assistance to support the Prisoner's medically challenged daughters. Additionally, at paragraph 3 of the affidavit, Mr. Titley averred that he assumed responsibility for the payment of the prisoner's rent, making such payments directly to her landlord.

[38] Under cross examination, Mr. Titley stated he did not have a copy of the contract of employment for the prisoner who was employed with his company Japhix. as a journalist and Senior Editor. He explained that due to the passage of time and after Hurricane Irma, several records were destroyed at Fish Bay. He recalled that at some point, he signed an agreement with the prisoner. Although Mr. Titley testified that he would not exactly characterize his relationship with the prisoner as "bosom buddies," he did agree that he was her bailor throughout the process even during post conviction.

"Q- so you have a very good relationship with Miss Richards?"

A- I have a very good relationship with everybody who works with me."

Mr. Titley thereafter agreed that specifically with Ms. Richards that he had a “very good relationship.”

Mr. Titley also stated “**anything Ms. Richards does for JTV is on a volunteer basis**”

It was also asked under cross examination that:

“Q- **the only employee you have is Cathy Oliva Richards?**

A- **not currently employed.**”

[39] Under cross examination, Mr. Titley was asked whether or not Ms. Richards had a work permit to work in the BVI between June 2021 to the 15th of July 2025 to which he initially answered “no” but then subsequently stated “**I want to clarify something what I was aware from June 2021 in June 2021 what Cathy Oliva Richards had was a renewal for a work permit, it was a work permit which was existing.**”

[40] Mr. Titley agreed that during the period of June 2021 to July 2025, the prisoner received a salary of about \$2500. There was also evidence that the prisoner received the additional benefit of a subsidized apartment at Fort Hill, Tortola and that subsidy amounted to \$500 per month. Annexed to the affidavit of Mr. Titley, there was a copy of the rental agreement for the apartment. Where Mr. Titley agreed that since July 2025, he had been paying for that apartment.

[41] It was asked under cross examination by Crown Counsel if the prisoner continued to report for JTV, to which he answered, “**she volunteers her service. I don't tell her what to do.**”

[42] Mr. Titley also testified “**I am the boss of JTV but I don't give Cathy instructions... As I said in my affidavit Cathy is not currently working or employed with JTV so if Cathy chooses to do a story that's on her, that is not something that we are doing at the moment because of the circumstances...**”

[43] Mr. Titley also agreed under cross that while the Prisoner would use her own phone, she “**...uses the JTV equipment on some occasions but again whatever she does is on a voluntary basis.**”

“...Q- and when she is using the JTV equipment she always attaches the JTV logo to the recording

A- yes

Q- after she attaches the JTV logo she uploads that recording on the JTV platform?

A- yes

Q- Ms. Cathy Oliva Richards is not specifically paid either for her work with JTV?

A- Cathy is currently volunteering...”

[44] When asked about how much money was given to the prisoner from July 2025 from the JAPHIX account, Mr. Titley replied that said he was unable to say the amount as it **“*depended on the circumstances.*”** He further explained as well that “when somebody volunteers they don't have to be paid that he would contribute to what the circumstances were. He also **“*I have my discretion as to assist with some aspect of their life.*”**

[45] In re-examination, Mr. Titley testified that after July 2025, the prisoner was not an employee with JTV and that she was a volunteer as “she did not want to be home’ Mr. Titley also testified that the prisoner was not paid a salary from his company, JTV.

[46] This Court has carefully considered all evidence of Mr. Kelvin Titley, both written and oral. The Court recalls that during her police interview, the prisoner described Mr. Titley as a **“*bosom buddy.*”** The Court is also mindful that Mr. Titley presented himself as a surety for the prisoner. There is further documentary evidence of an agreement pursuant to which Mr. Titley initially undertook to pay a portion of the prisoner’s rent, and the evidence establishes that he has continued to provide financial assistance since her conviction.

[47] Having regard to this particular undisputed close personal relationship between Mr. Titley and the prisoner, and his prior history of financial support particularly relative to her rent, in the absence of any positive evidence to the contrary, the Court accepts the evidence of Mr. Titley that the prisoner’s involvement with Japhix was in the nature of unpaid, voluntary work. In the circumstances, the Court finds that no adjustment to the sentence is warranted.

- [48] In assessing the mitigating factors of the offender with respect to factor of remorse, I note the testimonial provided by Bishop John I. Cline, who stated: ***“I have provided counselling support to Ms. Richards over the past several months, during which she has expressed genuine regret. She is broken and contrite while continuing to maintain her innocence. Nonetheless, she respects the Court and is determined to rebuild her standing and restore trust within the community as she moves forward.”***
- [49] In court, Ms. Richards initially indicated via Zoom that she wished to apologize to the Court, stating that it was ***“not her intention”*** and expressing remorse for ***“any inconvenience caused.”*** She further stated that the matter was ***“truly not a reflection”*** of her character. When questioned by the Court as to what she meant by saying it was not her intention, Ms. Richards responded: ***“I am so sorry. I take full responsibility. I should have been more careful on my part and did not pay attention.”*** Ms. Richards was then questioned as to whether her statements were more consistent with her defence rather than that of remorse, her defence being — namely, that she did not possess the requisite intent to deceive or defraud the Department of Labour — and whether this position undermined a finding of genuine remorse. In response, she clarified: ***“I am sorry about every single aspect.”***
- [50] This Court will in these circumstances, consider remorse as a mitigating factor of the offender and is of the view that there are other mitigating factors of the offender, namely, that the prisoner is a suitable candidate for rehabilitation, and is of good character, having no prior convictions. This Court further considers the several glowing testimonials attesting the prisoner’s positive qualities, hard work, dedication involvement in church outreach programmes, participation in charitable organizations such as WIN BVI – Women In Need, BVI Cancer Society, Rotary Club, Jalel Cameron Foundation. The Court considered that the prisoner has been the recipient of service awards from The Rotary, 2024 and 2025 Nominee for the Virgin Islands Icon awards Category: Media Producers.

PRINCIPLES OF SENTENCING

- [51] In the case of Court of Appeal **Desmond Baptiste v The Queen** Criminal Appeal No. 8 of 2003, Byron CJ enunciated the following principles of sentencing-

- (a) To punish the offender to an extent and in a manner which is just in all the circumstances; or
- (b) To deter the offender or other offenders from committing offences of the same or similar character; or
- (c) To establish conditions within which it is considered by the Court that the rehabilitation of the offender may be facilitated; or
- (d) To manifest a denunciation by the Court of the Type of conduct in which the offender is engaged or
- (e) To protect the community from the offender or
- (f) A combination of two or more of those purposes.”

ECSC SENTENCING GUIDELINES FOR DISHONEST OFFENCES

[52] These Guidelines applies to dishonest offences which include fraud at page 53 while it does not specifically mention uttering a forged document. It was stated that “for the purposes of (the) guideline, the word ‘fraud’ will be used generically to cover all types, and whether as conspiracy, a substantive offence, or an attempt”. it is applicable in light of the provision of section 251(3) of the Criminal Code 2013 of the Laws of Virgin Islands (as amended) to this particular case. It is only permissible to depart from the guidelines in exceptional circumstances, where such departure can be justified.

STEP1

FIRST STAGE – Consequence- the first stage is to consider the consequence by assessing the harm caused by the offence. As indicated previously, This Court finds that:

Consequence – Category 2 – Medium – there is a significant undermining of the proper functioning of the government and/ or public services.

SECOND STAGE – Seriousness – This level is determined to be **a Level B – Medium** in that the evidence indicated that on the part of the Prisoner, her actions in uttering the forged Certificate of Earnings to the Department of Labour were motivated by personal gain.

THIRD STAGE – Having determined the Consequence-Category 2 - Medium and Level of Seriousness - Level B - Medium, after consulting the grid, the starting point 40 percent of 7 years = 2.8 years.

FOURTH STAGE – having determined the starting point, consider the following non exhaustive list of aggravating and mitigating factors of the offence and adjust upwards and downwards.

AGGRAVATING FACTOR OF THE OFFENCE

- Impact on public confidence

This will result in the upward movement of the sentence by 1 year (3.8 years)

MITIGATING FACTOR OF THE OFFENCE

- Economic loss was minimal

This will result in the downward movement of the sentence by .8 years or 8 months (3 years)

STEP 2 - Adjust the figure within the range for aggravating and mitigating factors affecting the offender

AGGRAVATING FACTORS OF THE OFFENDER

- NONE

There is no adjustment of the sentence- either upwards or downwards

MITIGATING FACTORS OF THE OFFENDER

- Good prospect for rehabilitation- as per Social Inquiry Report – long standing career in journalism, stability in both professional and personal life, commitment to positive community engagement and service oriented initiatives (reduce by 4 months)
- Good character- no previous convictions, testimonials and awards for service (reduce by 5 months)

- Remorseful (reduce by 3 months)

The sentence will be decreased by 1 year (so far it is calculated at 2 years)

STEP 3 – No guilty plea- the Prisoner was found guilty after trial

STEP 4 – Adjust the figure on assessing totality of sentencing for more than one offence- not applicable as there is only one count.

STEP 5 – While Credit must always be given for time spent on remand for the relevant offence, to calculate with precision, this case, the Prisoner did not spend any time in custody and was on bail pending sentence

STEP 6 – Finally, consider ancillary and restraining orders, confiscation, compensation etc. (if applicable)- not applicable to the instant proceedings.

ALTERNATIVE SENTENCING

[53] Defence Counsel argued that notwithstanding the construct of the sentence as per the Sentencing Guidelines of the ECSC which may result in a custodial sentence, in the interests of justice, the Court should consider a non custodial sentence pursuant to section 40 of the **Alternative Sentencing** Act or a sentence pursuant to section 29 of the **Criminal Code** of the Virgin Islands.

[54] Section 40 of the **Criminal Justice (Alternative Sentencing)** Act 2005 states:-

“Where, on convicting an offender, the Court thinks that good reason exists for departing from the penalty provided by any Act, the Court may sentence the offender as follows-

(a) Where the Act prescribes a sentence of imprisonment only for the offence, the Court may instead impose

- (i) A fine;**
- (ii) A youth custody and training centre order;**
- (iii) A community service order; or**
- (iv) A fine and a youth custody and training centre order; or**

(v) A fine and a community service order.....”

[55] **Criminal Code** 2013 of the laws of the Virgin Islands – deals with Punishment.

[56] Section 22 of the **Criminal Code** “subject to the provisions of this Code and of any other law in force relating to the jurisdiction of particular courts the following kinds of punishment may be imposed by a court on person's convicted of offenses under this code.”

(a) Imprisonment

(b) Fine

(c) payment of compensation to injured party

(d) suspended sentence

(e) finding security to keep the peace and be have good behavior or to come up for judgment

(f) probation under the probation of offenders act

(g) forfeiture of articles involved in an offence

(h) any other punishment expressly provided for by law for the time being in force

[57] Section 23:

(1) a person liable to imprisonment for life or any other period may be sentenced to a shorter term except in the case of a sentence passed in pursuance of section 163:

(2) subject to the provisions of this Code or any other law in person liable to imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment

Section 24 provides for the imposition of a fine

Section 25 provides for imprisonment in lieu of fine

Section 26 provides for forfeiture of proceeds of offences

Section 27 provides for orders of compensation,

Section 29 provides for suspended sentences of imprisonment

Suspended sentence of imprisonment

[58] Section 29 of the Criminal Code:

- (1) Subject to subsection (2), where a court passes a sentence of imprisonment for a term of not more than 2 years for an offence, it may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than 2 years from the date of the order, the offender commits in the Territory another offence punishable with imprisonment.
- (2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion that—
 - (a) the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and
 - (b) the exercise of that power can be justified by the exceptional circumstances of the case.
- (3) A court which passes a suspended sentence on any person for an offence—
 - (a) shall consider whether the circumstances of the case are such as to warrant, in addition, the imposition of a fine or the making of a compensation order; and
 - (b) shall not make a probation order in his or her case in respect of another offence of which he or she is convicted by or before the court or for which he or she is dealt with by the court.
- (4) Where an offender is convicted of an offence punishable with imprisonment committed during the period of a suspended sentence, then, unless the sentence has already taken effect, the court shall consider his or her case and deal with him or her by one of the following methods
 - (a) the court may order that the suspended sentence shall take effect with the original term unaltered;
 - (b) the court may order that the sentence shall take effect with the substitution of a lesser term for the original term;

(c) the court may by order vary the original order under subsection (1) by substituting for the period specified therein a period expiring not later than 2 years from the date of the variation; (d) the court may make no order with respect to the suspended sentence.

(5) Where the court orders that a suspended sentence shall take effect, with or without any variation of the original term, it may order that the sentence shall take effect immediately, or that the term thereof shall commence on the expiration of another term of imprisonment passed on the offender by that or another court

(6) In proceedings for dealing with an offender in respect of a suspended sentence, any question whether the offender has been convicted of an offence punishable with imprisonment committed during the period of the suspended sentence is one of law to be determined by the court and not by the verdict of a jury.”

[59] This Court also refers in particular to the **following Eastern Caribbean Supreme Court (Sentencing Guidelines) Rules 2019 and Practice Direction 8 C No. 3 of 2019.**

[60] This Court in considering the non exhaustive list of factors (Practice Direction 8 C No. 3 of 2019 in exercising its discretion whether or not to suspend a sentence.

[61] Para. 3 of the aforementioned Practice Direction states - The court may consider the following non exhaustive list of factors in exercising its discretion whether to suspend a sentence -

- a. **Can appropriate punishment be achieved by immediate custody?**
- b. **Does the offender present a risk or danger to the public or victim?**
- c. **Has there been a history of poor compliance with orders?**
- d. **Is there a realistic prospect of rehabilitation?**
- e. **If sentencing a person under 21, is there a realistic prospect that incarceration will so affect an offender as to turn that person more towards criminality and less toward rehabilitation?**
- f. **Is there a strong personal mitigation**

g. What will be the impact custodial sentence on dependent relatives, employees and the community?

[62] I am of the view after examining the facts of this case, particular circumstances of the prisoner, and the factors outlined in aforementioned **Practice Direction No. 8 C No. 3**, that the appropriate punishment in this case will not be achieved by an immediate custodial sentence and the prisoner does not impose a risk or danger to the public. There is a realistic prospect of rehabilitation and a strong personal mitigation in favour of the prisoner. Further Defence submitted on behalf of the prisoner that she is financially responsible for two minor children with significant medical issues. In this case, the circumstances are such that justify the sentence will be suspended - pursuant to section 29 of the **Criminal Code** 2013.

FINAL SENTENCE

[63] The prisoner is sentenced to a term of 2 years imprisonment. The sentence is suspended for a period of two years on the condition that the prisoner does not commit any criminal offence. If the prisoner commits any offence punishable by imprisonment, she will immediately serve the term of imprisonment for this offence, namely 2 years imprisonment.

SHOULD THERE BE A RECORDING OF THE CONVICTION OF THE PRISONER?

[64] Defence also relied on **Section 38** of the **Criminal Justice Alternative Sentencing** Act which states “where a Court finds a person guilty of an offence for which it proposes to impose a fine, a sentence of community service or both and the Court is of the opinion that good reason exists for not recording a conviction having regard to –

- (a) the character, antecedents, age or physical or mental condition of the offender
- (b) the fact that the offence was trifling or
- (c) any other extenuating circumstances, the Court may impose a penalty without recording a conviction.”

- [65] On 12th December 2025, Defence Counsel filed supplemental submissions in which he contended that section 10 of the **Crimes (Sentencing Procedure)** Act 1999 of New South Wales, Australia, is analogous to section 38 of the **Alternative Sentencing** Act of the British Virgin Islands, and relied upon several judicial authorities from New South Wales, in support of that contention. Defence Counsel urged at paragraph 13 of his further submissions that the recording of a conviction has the consequences of the prisoner's work permit not being renewed, there is no likelihood of being re engaged by the employer and the prisoner may have to leave the territory, whether voluntary or as a candidate, by the immigration administrative process or by the governor's deportation. Defence notes that the prisoner is a candidate to apply for residency status having resided in the territory for more than 10 years.
- [66] In examining the authorities from New South Wales relative to there being no recording of a conviction, this Court finds the following cases to be particularly instructive: (i) In the case of **R v AB**² - the respondent was a victim of childhood sexual abuse. He pled guilty to sexual offences against a 14 year old boy. He was sentenced without a conviction being recorded.
- [67] The judge in that case, considered that the respondent had battled severe and continued abuse, social isolation and had significant mental issues as a result. The judge found that he had ***"offended in the extenuating circumstances described"*** and he had been ***'punished almost all of his life'*** as he was a victim of childhood sexual abuse and there was little need for further punishment.
- [68] The judge also found that the community had nothing to fear from him, there was a need encourage the offender to continue on with his progress in his studies and that ***"the fact of the conviction would do little to support the respondent not to offend in the future or protect the community."*** The judge further found that the imposition strict conditions of a two year bond would perform the same function and ***"the recording of the conviction had the potential to operate in his disadvantage in view of his professional aspirations."***

² (2022) NSWCCA 3

[69] The Crown appealed against sentence on the basis that the sentence was unreasonable in that did not reflect the objective seriousness of offending, the need for general deterrence, denunciation and recognition of harm to the victim.

[70] Paragraph 39 of that judgment dealt with 'The recording of a conviction.'

"39. The recording of a conviction is a formal and solemn act marking the court's and society's disapproval of a defendant's wrongdoing. (R v Mc Inerney³ at 124)

[71] In paragraph 40 of that judgment, the Supreme Court continued "in Cobiacy Liddy⁴, Windeyer J of forming part of a majority which affirmed the exercise of a magistrate's statutory discretion not to proceed to conviction in respect of drink driving offenses observed -

"the whole history of criminal justice has shewn that severity of punishment begets the need of a capacity for mercy. The more strict a rule is made., the more serious become the consequences of breaking it, the less likely it may be that Parliament would intend to close all avenues of exception. Especially when penalties are made rigid, not to be reduced or mitigated. It might seem improbable that Parliament would not retain a means of escaping the imposition of a penalty which must follow upon conviction., that it would abolish it., but by a side wind. This is not because mercy, in Portia's sense, should season justice. It is that a capacity in special circumstances to avoid the rigidity of inexorable law is of the very essence of justice."

[72] Further in paragraph 41 of the judgment in AB (supra), the Supreme Court stated "***With reference to these observations in R v Ingrassia⁵ Gleeson CJ (with whom McInerney and Ireland JJ agreed) said in relation to the predecessor to Sentencing Procedure Act s. 10.***

"...The essence of Section 556 A is that it empowers a court which considers that a charge has been approved in certain circumstances., to take certain steps.' without proceeding to conviction.' The legal and social consequences of being convicted of an offence often extend beyond any penalty imposed by a court...."

³ (1986) 42 SASR 111, (1986)28ACrim R 318 at 329 (Cox J)

⁴ (1969) HCA26, (1969) 119 CLR 257 at 269, (1969) HCA26

⁵ (1997) 41 NSWLR447 at 449

[73] The Spureme Court of New South Wales in **AB** (supra) indicated in its judgment “**As Sofronoff P of the Queensland Court of Appeal stated in R v ZB⁶ referring to the Queensland statutory equivalent to Sentencing Procedure Acts 10(3)**”:

“While the most immediate result of recording an offender's conviction is to make the fact of conviction known to those who have a legitimate interest in knowing about it, that cannot be the only purpose of recording a conviction. Section 12(2)(a) of the Penalties and Sentences Act makes the 'nature of the offence' a factor to which a sentencing judge must have regard. In so doing, the legislature has reflected a nutshell that in some cases, the offence is so grave that it is right that the offender's crime be noted officially as part of the community's denunciation of the commission of the offence. Such a denunciation is a balancing reaction to the effect of the offence as an insult to the common good. It acts as a vindication of the Community's trust in order according to law. For this reason, there are cases in which it would be unconscionable for a court to allow an offender to affect that he or she has not been convicted when the truth of the matter is that the offender has, as a matter of fact, been found guilty by a court of a very serious crime.” (my emphasis)

[74] In that case of **AB** (supra), the Supreme Court of New South Wales found that the sentencing judge considered the uniqueness of the respondent's case ‘**makes it one for which general deterrence is not a particularly important matter**’.... and ‘**renders it almost ineffective as a tool for general deterrence.**’

[75] The Crown on the other hand was of the view that the overall penalty imposed, which did not include a recording of convictions, did not take into account of a need (though reduced) for general deterrence and denunciation., particularly in cases of child abuse.

[76] The sentencing judge considered that the complainant was a victim in the case and it was well known that “**even young people who think they're making their own informed choices about sexual activity go on later in life to struggle with those decisions and to see them in a different light and to suffer.**”

[77] Paragraph 53 of the case of **AB** (supra), the Supreme Court noted – “**in weighing that consideration, the sentencing Judge determined that the “non recording of a conviction... far**

⁶ (2021) QCA 9 at (6) (2021) QCA 9, (2021) 287A Crim R 517

outweighs a requirement of punishment, position or deterrence" and the said Court was of the view that ***"such assessment was open on the evidence."***

[78] In the case of **R v Mauger**⁷, the Supreme Court of New South Wales stated ***"in my opinion, the prospect that a conviction for this offense could have possibly detrimental consequences for the respondent's employment was definitively something that Her Honor was entitled to take into account and that was proper for the court to consider pursuant to section 10 (3 d) of the Act, when deciding whether or not to make an order pursuant to Section 10(1) of the Act. "***

[79] The Supreme Court further stated at paragraph 37 ***"...It is wrong, in my view, to assume that the decision to not record a conviction is automatically or necessarily coextensive with the imposition of an inadequate or even a particularly, lenient sentence..."***

[80] The Court also stated at paragraph 38 ***"...There seems to be little doubt that there is no strong need in this case for special deterrence. The respondent is uncontroversially regarded as a person with a very low risk of reoffending. Furthermore, this is also not one of those cases where general deterrence might be regarded as particularly important because of the notoriety of the respondent. This can be contrasted with a well publicized case of R v Wilhelm⁸ in which Howie J said at [30]:***

"[30] deterrence is an important part of sentencing., particularly when the sentence of the offender will probably receive a degree of media interest. Therefore., he is a suitable case for general deterrence because so very frequently the Court imposes deterrent sentences upon people where that deterrence is of a theoretical nature rather than of a real effect."

[81] In the case of **R v Paris**⁹, The supreme Court made reference to Section 10 of the **Sentencing Procedure** Act.

Section 10 of the **Sentencing Procedure** Act

"10. Dismissal of charges and conditional discharge of offender.

⁷ (2012) NSWCCA 51 at paragraph 28

⁸ (2010) NSWSC378

⁹ (2001) NSWCCA 83

- (1) without proceeding to conviction., a court that finds a person guilty of an offence may make either of the following orders:
 - (a) an order directing at a relevant charge be dismissed.
 - (b) an order discharging the person on condition that a person enter into a good behavior bond for a term not exceeding 2 years.
- (2) An order referred to in subsection (1) (b) may be made if the court is satisfied:
 - (a) that it is inexpedient to inflict any punishment (other than nominal punishment.) on the person or
 - (b) that it is expedient to release the person on a good behavior bond.
- (3) in deciding whether to make an order referred to in subsection (1) the Court is to have regard to the following factors.
 - (a) the person's character, antecedents, age, health, and mental condition.
 - (b) the trivial nature of the offense.
 - (c) the extenuating circumstances in which the offence was committed.
 - (d) any other matter that the court thinks proper to consider."

[82] In that case in paragraph 42, the Court stated "*...It is not necessary to the application of Section 10 that the offence be characterized as trivial; the four factors mentioned in subsection 3 are, in my view, intended to be disjunctive and non exhaustive.*"

[83] This Court considered the submissions of both Attorneys on the issue of whether a conviction should be recorded and the persuasive authorities cited from New South Wales Court. This Court agrees with the Defence that a distinguishable feature of the New South Wales legislation is that section 10(3) (d) of the Sentencing Procedure Act addresses '*any other matter that the Court thinks proper to consider*' and that section is wider than that of Section 38 of the Alternative Sentencing Act. (BVI) This Court agrees with both attorneys that the New South Wales Courts decided each individual case on its own particular facts and took into account the subjective circumstances of the particular offender such as his youth and mental disability which clouded his judgment and contributed to the particular offending conduct.

- [84] This Court is satisfied that, having regard to the circumstances of the present matter and the nature of the offence, neither the imposition of a fine nor an order for community service would be appropriate. As previously indicated, a suspended sentence is more appropriate to be imposed. Accordingly, section 38 of the **Criminal Justice Act** (Alternative Sentencing Act) does not apply. The facts of this case do not warrant the exercise of the Court's discretion to refrain from recording a conviction. Although the Court acknowledges that the offender has no prior convictions and has tendered several testimonials in mitigation, it is material that at the time of the offence she was not a minor but an adult, and further, as a senior journalist employed by a reputable media organisation known for reporting on matters of national importance, including crime, indeed "*to whom much is given, much is expected*" and a higher standard of behaviour is expected of the prisoner. The offence of uttering a forged Certificate of Earnings from the Social Security Board to the Labour and Workforce Department cannot properly be characterised as trifling nor are there any extenuating circumstances present that would justify the non-recording of a conviction.
- [85] I wish to thank both Crown and Defence attorneys for their extensive submissions and assistance in this matter.

Angelica Teelucksingh
High Court Judge



By the Court


Registrar