THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NO.: ANUHCR2023/0058

BETWEEN:

THE KING

-And-

KERRY WALKER

Appearances:

Mr. Paulo Williams for the Crown
Mr. Wendel Alexander for the Accused

2025: January 20th
27th

SENTENCING JUDGMENT

[1] **BAKRE, J.:** The prosecution sent a brief in respect of this sentencing. The fact as related by the prosecution in the brief is that the convict was charged on an indictment containing 6 counts which related to 3 different victims. Counts 1, 3 and 5 were for the offence of Fraudulent Conversion and Counts 2, 4 and 6 were alternative counts of Larceny.

[2] On October 22, 2024, the convict having pleaded not guilty on all 6 counts, the trial commenced and after the first victim gave his evidence in chief, the matter was adjourned to continue the following day for cross examination.

[3] The following day, October 23, 2024, the crown entered a nolle prosequi bringing counts 1 and 2 to an end. Subsequent to this, the accused requested to take her plea again. When the remaining counts were put to her, she pleaded guilty to counts 4 and 6, which the crown accepted on the understanding that she would compensate the victims, Mr. Marvin Burton and Ms. Alisia Brooks in addition to the court's position on sentencing.

[4] The facts as it relates to Counts 3 and 4 are that the convict was an employee of the Saint John's Co-operative Credit Union at the material time and she knew the first victim, Alisia Brooks, very well.

[5] In July 2018 Ms. Brooks applied for a loan at the St. John's Cooperative Credit Union. Knowing that the convict worked there, she solicited her help with completing and submitting the loan application. The convict assisted her and was ultimately one of the persons who processed and approved the loan. The loan was approved in August 2018 in the sum of $15,000.00. Ms. Brooks began repaying the loan by giving the convict, on a monthly basis, $570.00 which she was supposed to pay into her account. That money was either handed to the convict by Ms. Brooks or her spouse.

[6] A total of 17 payments of $570.00 were given to the convict between September 2018 and March 2020, a total amount of $9690.00. Ms. Brooks indicated that initially she had no reason to suspect that the convict was not paying the money into her account despite not receiving a receipt from her. However, her suspicion arose on January 26, 2021, when she asked the convict for the balance on the loan and she told her $11,154.99. She knew that that figure could not be correct and as such she requested the receipts but the convict was unable to provide her with them and kept telling her she will give them to her soon. The convict being unable to produce the receipts, Ms. Brooks made a report to the police on January 30, 2021.

[7] On February 1, 2021, Ms. Brooks went into the Credit Union and upon request she was given a print out of her loan repayment schedule. The schedule revealed that on some occasions the convict did not pay the money into the account and on others, she paid only some of the money into the account. When the missing funds were calculated, it amounted to a total of $2,804.61. Invariably, the convict stole $2,804.61 from Ms. Brooks.

[8] The facts as it relates to Counts 5 and 6 were given in evidence by Mr. Marvin Burton. He gave in his testimony as summarized below:-

[9] The convict was also well known by this victim. On June 30, 2017, he took out a mortgage of $400,000.00 from the St. John's Cooperative Credit Union with a monthly repayment of $3,200.00. He commenced repayment in July 2017 and made payments personally until he started to give the money to an employee of the credit union to make the payment on his behalf as he thought it inconvenient and unsafe for him to stand in the line. That particular employee went on leave in May 2018 and as such he approached the convict to make the payments on his behalf.

[10] The procedure was that he would go by the Credit Union and the convict would take the money from him and have it paid into his account. The first payment was given to her in June 2018, he gave her $3,200 cash but she did not give him a receipt. Up to the end of July he gave her a total of $22,000.00 which was paid over into his accounts by her, though she also did not give him a receipt.

[11] Between August 2018 and March 2019, he gave her $3200.00 monthly, totaling $25,600.00 to pay his mortgage. In April 2019 he took out another loan from the Credit Union of $20,000.00 with a monthly repayment of $500.00. This brought his total monthly repayment to $3,700.00. Between August 2019 and February 2020, he gave the convict a monthly amount of $3,700.00 totaling $25,900.00 with a grand total of $51,500.00. Whenever he asked for the receipts the accused kept telling him they were in her desk and he is not to worry.

[12] On January 22, 2021, he went into the credit union and his loans officer gave him a print out of his repayment schedule. The Schedule revealed that on some occasions the convict did not pay the money into the account and that on others she paid only some of the money given to her. When the missing funds were calculated, it amounted to a total of $46, 154.00. That is, the convict stole $46,154.00 from Mr. Burton.

[13] Counts 3 and 4 are in the alternative, while counts 5 and 6 are also in the alternative. The convict thus pleaded to larceny in counts 4 and 6. With respect to these two allegations, she would be sentenced accordingly.

[14] This court is in receipt of a Social Inquiry Report dated the 17th day of January 2025 wherein the family members and church members of the convict gave a good account of her.

[15] On the 20th day January 2025, Mr. Alexander represented the convict and made a passionate plea in mitigation on behalf of the convict for a non-custodial sentence.

[16] Mr. Alexander asked the court to consider a non- custodial sentence for the convict on the ground that she has already lost her job, that she is remorseful and full of regrets for her actions.

The Law

[17] The convict was charged pursuant to section 4 of the larceny Act Cap 241 of the Laws of Antigua and Barbuda. The section imposes a term of imprisonment which should not exceed three years on the offence.

Sentencing

[18] The court is guided by the Eastern Caribbean Supreme Court Sentencing Guidelines 2019, for Offences of Dishonesty Re-Issued 6th January 2025.

[19] There are six stages to be considered in the process of sentencing in this regard. The first step is to determine the seriousness of the offence and its consequences by reference to the harm caused. In the instant case, category 3 would be the most appropriate. This is because the maximum amount stolen from a single victim was $46, 154.00. The Court will also consider the harm done to the victims. Both victims were emotionally distressed as when their balances fell into arrears.

[20] The court would now consider the seriousness of the offence by assessing the culpability of the offender. In this instance, the seriousness is put at level B medium as there was a degree of planning and the act amounted to a breach of trust.

[21] At this stage the actual starting point is determined by the interplay of the two stages above. This case falls into Category 3 of stage one and Level B of stage two, the starting point would be 20% of 3 years within a range of 10% to 30%; three years being the maximum sentence for larceny. This would amount to about (7) seven months and (6) six days.

[22] At the next step, the court would consider the aggravating and mitigating factors of the offence and the offender.

[23] With respect to the aggravating factor for the offence, this court holds that the fact that the offence was committed over a long period of time and there was an attempt to blame it on the tellers in the bank would amount to an aggravating factor which would increase the sentence. However, I also consider the inappropriate degree of trust or responsibility put on the convict by the victims by giving cash to the convict rather than making their payments directly to their accounts as appropriate as a mitigating factor of the offence. These will cancel out each other and the sentence of (7) seven months and (6) six days would remain the same.

[24] On aggravating and mitigating factors for the offender, the court sees no aggravating factor with respect to the offender, while I will consider that she is a first offender and has shown considerable remorse as seen in the social inquiry report as a mitigating factor. I will therefore review the sentence down to six months.

[25] The court would also consider the fact that until being confronted with the testimony of the virtual complainant, the convict did not decided to plead guilty. She had been coming to court several times prior to that. She was arraigned

and case management conducted. By virtue of the practice direction with respect to early guilty plea, she forfeited the one third benefit but would be entitled to only one quarter benefit for pleading immediately after the first witness thus bringing the term down to four and half months Imprisonment.

[26] This sentence is in respect to two separate offences and I would hereby adjust the figure upward to Six months in totality and since the convict did not spend any time in remand, there would not any credit in that regard.

[27] The convict is thus sentenced to six months imprisonment for the two offences (not for each offence). The convict shall also compensate the two virtual complainants fully for the amount taken from them in addition to the sentence passed.

[28] In consideration of the social inquiry report and also the plea in mitigation, the court considers the practice directions of January 2025 with respect to when a non-custodial sentence may be given. This court thus wishes to depart from the guidelines and hereby award a fine of three thousand dollars in lieu of the said six months imprisonment. This is set for each of the offences thus the convict shall pay the sum of Six thousand dollars within the next thirty days or be remanded for six months.

[29] In the circumstance, Kerry Walker, you are hereby fined the sum of six thousand dollars to be paid within thirty days or spend six months in prison. In addition you shall compensate the virtual complainants Mr. Mervin Burton in the sum of $46,154.00 (Forty Six Thousand, One Hundred and Fifty Four Dollars) within twelve months and Alisia Brooks the sum of $2,804.61 (Two Thousand Eight hundred and Four Dollars and Sixty One Cents).

Tunde A Bakre

High Court Judge

By the Court

Registrar