THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CASE NUMBER: ANUHCR2023/0096

BETWEEN:

THE KING

V

ANGEL JAMES

Appearances:

Ms. Rasheeda Jonas for the Prosecution
Mr. Arthur Thomas Jr. for the Defence

2025: January, 23rd

SENTENCING

[1] **BAKRE, J.:** The facts of this case as related by the prosecution is as follows:- The defendant was indicted for the offence of Obtaining Goods by the Unauthorized Use of a Card Number and pled guilty to the one count charge of obtaining goods by the unauthorized use of a card number, on the 6th December, 2024.

[2] According to the fact related, the complainant, Mr. Dale Phillip, went to withdraw money from an ACB Caribbean ATM located at Townhouse and upon reviewing the receipt slip from the ATM, he noticed that his balance was incorrect. Consequently, he rushed to the bank at Thames and St. Mary's Street where he received a printout from the bank representative Ms. Ashley Thomas. Ms. Thomas prepared a dispute form, and an internal investigation was launched by the bank between the 15th and the 18th June, 2021. During this investigation, it was discovered that transactions were made with Shein and Amazon. These items were shipped to a Kess Shipping Agency account registered to Derene Henry.

[3] Ms. Henry was contacted and shown the documents bearing her name. She stated that she had not ordered anything from Amazon within the last three years and had no knowledge of what transpired. Ms. Henry noted that she

permitted her son, who in turn authorized the defendant use of her mailbox from time to time. Mr. Javon Joseph (Ms. Henry's son) confirmed that the defendant did, in fact, use his mother's shipping address and he gave the defendant's email address is peanut3323@gmail.com which was associated with the orders placed via Shein and Amazon, where the goods were obtained. These goods were subsequently retrieved from the defendant's home upon the execution of a search warrant.

[4] The complainant and the defendant worked at the same establishment at the time of the offence where he was her supervisor.

[5] At the time of this offence, the defendant was 25 years old and previously unknown to the court.

[6] In the course of the sentencing trial, counsel to the defendant made a plea in mitigation. He stated that the court should have mercy on the accused being a mother and also consider her pecuniary status and the fact that she is a first offender. He pleaded that the court should consider a non-custodial sentence.

The Law

[7] Obtaining goods by the unauthorized use of a card number is governed by section 15(1) (b) of the Electronic Transfer of Funds Crimes Act, 2007. This section provides for a fine of fifty thousand dollars or to imprisonment for five (5) years or both.

SENTENCING

[8] The Defendant through her counsel on the 17th day of January 2025 stated that she would do away with the request for social impact report which was suggested by the court in the determination of her sentence and would abide by the court's considered position in the circumstance.

[9] The Court is guided by the Eastern Caribbean sentencing guidelines on Dishonesty dated 2019 as amended in January 6th 2025 this would fall under the guideline relating to theft.

[10] There are six steps to be followed in the consideration of the sentence in this regard and the first step is to determine the consequence of the offence and the seriousness and thus find the starting point by consulting the guidelines and the grid.

FIRST STEP

[11] In this instance, the value of the goods is put at $4,121.54 and it thus put the consequences at category 4 (Lesser).

[12] The prosecution counsel has suggested in her sentencing brief that the seriousness of the offence be put at category C (Lesser) as there was little or no planning involved, I refuse to agree with this position. The accused was an opportunist who took advantage of the working relationship between her and her co-worker to commit this offence thus breaching a degree of trust. There was also some plan to commit the offence. I believe that the seriousness will be category B (Medium).

[13] At this stage, the court would consider the grid to determine the appropriate percentage. The percentage presented by the grid for Consequences Category 4 and Seriousness category B is starting point of 5% of 5 years range of non-custodial sentence to 15%. This means 5% of the Maximum Sentence and the court would determine between the range of non- custodial to 15% on the other following factors. Invariably, I put the starting point at (3) three months.

STEP TWO

[14] The next stage is for this court to consider the aggravating and mitigating factors of the offence and the offender to adjust the sentence upwards or downwards.

AGGRAVATING AND MITIGATING FACTORS OF THE OFFENCE

[15] Contrary to the position of the prosecution stating aggravating factors to be that the card was used for twenty one transactions and that the defendant attempted to put the blame on the bank. I do not agree with these propositions as there was no direct evidence before the court that blame was put on the bank by the offender. Also on the number of transactions made on the card, it was not reflected in the facts before the court that the transactions were made several times. It is my view that the defendant criminally took advantage of the use of the card in the only opportunity she got. Consequently, I do not see any aggravating circumstance in this offence.

[16] Also I have considered the factors that would mitigate in the circumstance of the offence based on the facts before the court. I see no particular factor that would mitigate for the offence in this instance and thus the term shall remain three months imprisonment.

AGGRAVATING AND MITIGATING FACTORS OF THE OFFENDER

[17] I do not see any factor that would amount to aggravating factor for the offender in this circumstance rather I would consider the fact that the defendant is a first time offender and her desperate circumstance as a mother as a mitigating factor in the instance and thus reduce the fine by half and thus bring the sentence to (1.1/2) One and half months.

STEP THREE

[18] This step requires that credit would be given to the defendant for a guilty plea as appropriate. A reduction of one third would be given in this case where the defendant entered a plea of guilty at the earliest stage. This invariably brings the term down to one month.

STEP FOUR AND FIVE

[19] These steps would not apply as there is only one offence under consideration here and the defendant was not in custody.

STEP SIX

[20] This step expects the court to consider all ancillary orders including compensation and confiscation etc.

[21] This defendant is hereby ordered that in addition to the sentence of One month imprisonment, the Defendant shall compensate the virtual complainant for the said amount of $4,121.54 deducted from his account. Upon the compensation, the goods would be given to the defendant to avoid double jeopardy.

CONSIDERATION FOR CUSTODIAL OR NON -CUSTODIAL SENTENCE

[22] In the sentencing guidelines the court is required to consider the following matters when deciding on whether to impose a suspended sentence.

a. Can appropriate punishment only be achieved by immediate custody?
b. Does the offender present a risk or danger to the public or to the victim?
c. Has there been a history of poor compliance with court orders?
d. Is there a realistic prospect of rehabilitation?
e. Is there strong personal mitigation?
f. What will be the impact of an immediate custodial sentence on dependent relatives, employees, and the community?

[23] I have considered these matters. This Defendant has no criminal antecedents. She is mother and has shown absolute remorse in this court. I am full convinced

that a custodial sentence would not be appropriate in this instance and thus I shall be considering a fine along with the compensation in lieu of a prison sentence.

SENTENCE

[24] In the Circumstance, the Defendant Angel James is fined the sum of Three Thousand Dollars within the next 60 days or she would serve the one month imprisonment. She would also pay compensation in the sum of $4,121.54 (Four Thousand One Hundred and Twenty One Dollars and Fifty four cents) to the virtual complainant within the next 30 days.

Tunde A. Bakre

High Court Judge

By the Court

Registrar