IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL DIVISION)

COMMONWEALTH OF DOMINICA

CASE NO: DOMHCR: 2023/0015

BETWEEN:

THE STATE

V

PRISMA JOSEPH

APPEARANCES:

Ms Sherma Dalrymple, DPP, along with Ms Daina Matthew and Ms Marie Louise Pierre-Louis State Counsel for the State

Mr Darius Jones for the Defendant

2024: February 9th, 23rd

SENTENCING

1. **COLIN WILLIAMS J**: The Defendant, Mr Prisma Joseph, on the 9th of February 2023, pleaded guilty to a single count of deception.

2. The offence was: "Contrary to section 16 (1) of the **Theft Act, Chapter 10:33** of the Laws of Dominica, Revised Edition 1990."

3. The **Theft Act** states:

> "A person who by any deception obtains property belonging to another with the intention of permanently depriving the other of it is liable on conviction on indictment to imprisonment for ten years."

4. The particulars of the offence, (as amended), states that the Defendant:

> "…between the 16th day of June 2014 and the 17th day of July 2014 at Roseau in the parish of St. George in the Commonwealth of Dominica in the district aforesaid did dishonestly obtain from Clement Royer the sum of Eighteen Thousand Eastern Caribbean Currency (ECC$18,000.00), with the intention of permanently depriving the said Clement Royer thereof of [sic] deception namely, by falsely representing that you were the owner of a piece of land located at Union Estate, Point Michel. The said ECC$18,000.00 being a deposit on the purchase of the said land at Union Estate, Point Michel."

5. Mr Joseph was indicted by the Learned Director of Public Prosecutions on the 26th of January 2024 for the offence which took place almost ten years ago.

The Facts

6. According to the agreed facts, the virtual complainant, Mr Clement Royer, a businessman, was in Roseau, in the Commonwealth of Dominica, on the 16th of June 2014, when the Defendant inquired of Mr Royer whether he was interested in purchasing some land at Point Michel. Mr Royer indicated that he was interested in doing so. That same day, Mr Royer and the Defendant went to visit the location in Point Michel. Mr Royer was shown the boundaries of the land by the Defendant. Mr Royer inquired of the Defendant about a Certificate of Title for the land. The Defendant informed Mr Royer that "the title is in process". The Defendant requested a deposit of $7,500.00 to give to the attorney who was preparing the title.

7. Following the site visit to the land, on four separate occasions, Mr Royer journeyed to Scotia Bank, withdrew cash and on each occasion handed over an envelope with the money to the Defendant who was seated in Mr Royer's vehicle, waiting to receive the funds. These sums were paid by Mr Royer with the intention of eventually getting the land. On no occasion was Mr Royer presented with any written documentation or receipt.

8. On the 20th of June 2014, the Defendant requested the payment of $4,000.00 to pay to the attorney to start the process of getting the title to the land. This was the first payment that was made following the request from Mr Joseph for a deposit. The Defendant informed Mr Royer that the title would be ready in three weeks.

9. One week later, on the 27th of June 2014, the Defendant received another payment of $4,000.00 from Mr Royer. It was on this occasion that Mr Joseph informed Mr Royer that the land was valued at $25,000.00.

10. On the 3rd of July 2014, the Defendant informed Mr Royer that the attorney had to travel because of an emergency, but a further payment of $5,000.00 was required. The sum was paid to Mr Joseph.

11. Then on the 17th of July 2014, the Defendant informed Mr Royer that the title to the land was ready, but he needed a further payment of $5,000.00, following which the Defendant could go for the title and come back to Mr Royer.

12. Mr Royer paid the Defendant a total of $18,000.00. After Mr Joseph received the payment on the 17th of July 2014 from Mr Royer, he left but never returned.

13. Mr Royer made several unsuccessful efforts over the next two weeks to contact the Defendant.

14. Two years later, on the 11th of August 2016, the matter was reported to the police.

15. Mr Joseph was arrested and charged with deception in relation to this matter on the 22nd of November 2016 and he was remanded into custody. He obtained bail on the 23rd of December 2016.

Mitigation

16. Counsel, Mr Darius Jones, in mitigation on behalf of the Defendant, noted that Mr Joseph entered an early guilty plea.

17. Counsel submitted that his client was extremely remorseful. He said that Mr Joseph felt that he let down himself, his family and more particularly his mother.

18. Mr Jones suggested that a non-custodial sentence be imposed. He asked that Mr Joseph be given an opportunity "to make amends and compensate the virtual complainant." Mr Jones noted that "it would be useful and helpful if the Defendant is given an opportunity to repay [the sum to Mr Royer]."

19. Counsel noted that if Mr Joseph was imprisoned, the Defendant will not be able to fulfill any obligation to make restitution to Mr Royer.

Victim Impact

20. The State adduced victim impact evidence from Mr Royer.

21. Mr Royer stated that at the time, (in 2014) his business was affected by the Defendant's actions. This was because money was taken from the business to pay Mr Joseph.

22. Mr Royer indicated that he had no real interest at this time in recovering the sum from Mr Joseph.

23. Mr Royer during cross examination by Counsel Jones, pointed out that the Defendant was given several opportunities to repay the money, but that Mr Joseph never kept any of his promises to repay.

Case History

24. The offence, as indicated earlier, occurred in 2014. And the matter was not reported until August 2016.

25. Mr Jones was arrested and charged in November 2016 - roughly two years and four months after the he received the last payment from Mr Royer.

26. There were only two witnesses in this matter: the virtual complainant, Mr Royer, and the investigating officer.

27. The Preliminary Inquiry commenced on the 24th of June 2022. It continued on the 2nd of August 2022. It ended almost one year and four months later, on the 24th of November 2023. Then, the matter was committed to the High Court on the 4th of December 2023, nine and a half years after the incident.

28. Following the filing of the indictment on the 26th of January 2023, Mr Joseph first appeared at the High Court to be arraigned on the 1st of February 2024. On that occasion he asked for time to instruct a named lawyer.

29. Mr Joseph returned to Court on the 5th of February 2024 and indicated that the original lawyer he named was unable to represent him. The Defendant stated that he had contacted another lawyer to represent him and that lawyer was present in the precincts of the Court. The matter was accordingly adjourned to the following day.

30. On the 6th of February 2024, the Defendant failed to appear at Court. Counsel, Mr Jones, reported that the Defendant was at the hospital. According to Counsel, he was in the company of the Defendant walking to Court about 15 minutes before the scheduled commencement of the matter and when he looked back, he saw the Defendant on the ground surrounded by persons. The ambulance was summoned and Mr Joseph was taken away.

31. The following morning, the 7th of February 2024, the Defendant's mother appeared at Court. The Defendant's mother indicated that her son was at home sick. She presented a sick leave certificate that had a name bearing a resemblance to the Defendant's. The sick leave certificate stated that the named person on the sick leave certificate was suffering with vertigo. The certificate also stated that (1) the person examined was a female, and (2) the person was employed with the Solid Waste unit; neither of the two descriptions applied to the Defendant – who was a male and not employed.

32. The matter was stood down on the 7th of February 2024 for the Defendant to appear. The Defendant appeared at Court within an hour and he entered a plea of not guilty. The matter proceeded to case management and the trial was set for the 9th of February 2024.

33. On Friday the 9th of February 2024, Counsel Jones requested that the indictment be read again to the Defendant. Mr Joseph entered a plea of guilty. The facts were read and Mr Joseph accepted the facts. He was accordingly convicted of the offence as charged. After the allocutus was put to the Defendant, Mr Jones made an oral submission in mitigation on the Defendant's behalf and the State adduced evidence from Mr Royer.

Sentence starting point

34. The Eastern Caribbean Supreme Court Sentencing Guidelines for fraud, which was re-issued on the 12th of April 2021, governs the procedure to be applied in matters such as the current case before the Court. There was no reason to depart from the guidelines.

35. The first step in constructing a sentence is to establish the appropriate starting point. This involves an assessment on the one hand of the seriousness of the offence by looking at the Defendant's culpability; and on the other hand an evaluation of the consequences of the offence by reference to the harm caused.

36. Of the four consequence levels identified in the Sentencing Guidelines, this offence fits in to Category 3 – Lesser. This is because the amount of $18,000.00 which is the sum received by Mr Joseph from Mr Royer, falls into the band of $10,000.00 up to $50,000.00 which is stipulated in this category.

37. With regard to the three seriousness levels provided for in the Guidelines, this offence falls into Level B – Medium. This level is applicable because there was some degree of planning involved. The Defendant took Mr Royer to see a parcel of land and on four separate occasions over a four-week period, the Defendant collected sums of money from Mr Royer. The Defendant also provided updates to the virtual complainant explaining why each of the payments was needed.

38. At the intersection of consequence Category 3 and seriousness Level B on the sentencing grid there is a possible starting point of 20% of the maximum sentence, in the range of 10% to 30% of the maximum (which is ten years).

39. Accordingly, a starting point of two years (that is, 20% of the maximum sentence of 10 years), is used as the starting point.

Other sentencing considerations

40. There are no aggravating factors with regard to the offence. Neither are there any mitigating factors of the offence.

41. The next step is to adjust the starting point within the established range for the aggravating and mitigating factors affecting the offender.

42. Mr Joseph has an established record of deception offences. He acknowledged and accepted his previous convictions for deception:

    - On the 26th April 1991, he was fined $500.00 by a Magistrate and ordered to repay $700.00 or serve six months hard labour;

    - On the 24th of March 1993, he had two separate charges for which the Magistrate fined Mr Joseph $250.00 or two months hard labour on each charge;

    - On the 3rd of February 1994, he was fined $1,000.00 by a Magistrate and ordered to pay compensation of $2,500.00 or 12 months in jail;

    - On the 8th of December 2020 he was sentenced by a Judge to time served and ordered to pay compensation in the sum of $10,800.00 at a rate of 5% per annum dating back to the 8th of June 2016.

43. Apart from the deception offences, Mr Joseph has convictions dating between the 6th of October 1993 and the 19th of November 2001 for battery on police, malicious damage, wounding and conspiracy.

44. There are no mitigating factors in Mr Joseph's favour. None of the established factors which can be advanced under this head are present. He was not hitherto this offence of good character. He was not young or lacked maturity at the time of offending. In fact, Mr Joseph was 45 years old at the time of the offence. Despite the submission from Counsel Jones that the Defendant is remorseful, there was nothing advanced to support that proposition. Mr Joseph did not provide any assistance to the authorities. There was nothing to suggest that he was a good prospect for rehabilitation. In fact, Mr Joseph has been committing similar type offences for three decades.

45. In the circumstances, with the preponderance of aggravating factors regarding the offender, a further year is added to the starting figure of two years. That would take the figure up to three years.

Early guilty plea

46. The Defendant did not plead guilty on his first appearance. He however undoubtedly entered an early guilty plea. He did so at the very last moment before the trial commenced, prior to the jury being empanelled. His plea on the eve of the commencement of the trial came however after all arrangements were already put in place to have the witnesses present at

court for trial and to have the entire jury pool at court. A discount of eleven months is considered appropriate. That would leave two years and one month.

47. The Defendant spent one month at the prison on remand before he was given bail just prior to Christmas 2016. That time must be accounted for and subtracted from any sentence. That would reduce the sentence to two years.

Accounting for delay

48. Counsel for the Defendant neither submitted that the delay in trying his client was unreasonable; nor that, to proceed with this matter after so many years was an abuse of process.

49. It is clear that the delay in this matter was scandalous and embarrassing. The taking of the evidence from the two witnesses in the committal proceedings in this matter took one year and five months; and then there was another three weeks between the last witness and the actual committal.

50. The time that elapsed from the date of the Defendant's arrest and being charged for the offence to his committal, was roughly seven and a half years.

51. It is also noted that the time between the commission of the offence and when a report was made to the police amounted to a little more than two years.

52. The matter therefore got to the High Court nine-and-a-half years after the incident.

53. Such delays can and do have a deleterious effect on the rule of law.

54. The **Needham's Point Declaration** on *Criminal Justice Reform: Achieving A Modern Criminal Justice System* (in the Caribbean) adopted by the participants at the conference of the Caribbean Court of Justice Academy for Law, on the 20th of October 2023, provides a worthy aspirational benchmark for all persons connected to the justice system:

> "19. That as a rule, trials should be held within one (1) year of the accused being charged (for indictable offences) and six (6) months (for summary offences). During the necessary transitional stage to this ideal, trials should be held within two (2) to three (3) years of the accused being charged (for indictable offences) and twelve (12) months (for summary offences)."

55. The delay between Mr Joseph's arrest and getting the matter to trial, on the basis of what is disclosed in the deposition, appears to be solely attributable to functionaries of the State.

56. State functionaries have an obligation to ensure that there is a fair trial within a reasonable time. To do nothing about this unbecoming and undesirable practice of delay would be to give silent approval to the transgression.

57. The detailed headings of the Sentencing Guidelines do not seem to contemplate delays by the State.

58. A Defendant ought to be entitled to some remedy when the State has been tardy in prosecuting a matter. In the present situation, the appropriate remedy is a one-eighth reduction of the sentence. Three months therefore will be subtracted from the remaining two years.

59. Mr Prisma Joseph, for the offence of deception for which you pleaded guilty to obtaining $18,000.00, the property of Mr Clement Royer, with the intention of permanently depriving Mr Royer of his property, you are sentenced to a term of imprisonment of one year and nine months with effect from the 9th of February 2024.

Colin Williams J

High Court Judge

By the Court

Registrar