

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

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

CRIMINAL CASE No. BVIHCR 2019/0029

BETWEEN:

THE QUEEN

and

JERREL PENN

Appearances: Mr. Kael E. London and Ms. Patrice Hickson, Counsel for the Crown
Mr. Israel R. Bruce, Counsel for the Defendant

2021: March 3rd, 12th, 19th

JUDGMENT

- [1] **FLOYD J:** The Defendant was born on 28th July, 1992. He is charged with three counts of Possession of Forged Notes, contrary to **s. 245 of the Criminal Code 1997 of the Virgin Islands**. On 3rd March, 2021, at the request of the Defendant, a Goodyear Indication was provided. On 12th March, 2021, the Defendant was arraigned and entered guilty pleas to all three counts. It was indicated that a Social Inquiry Report would not be necessary and that sentencing could take place on 19th March, 2021.

THE FACTS

- [2] On 3rd December, 2017, uniformed officers of the Royal Virgin Islands Police Force were on mobile patrol in a marked police vehicle when they observed a motor car with heavily tinted glass travelling in the vicinity of the Willard Wheatley Primary School and the East End Police Station. Officers signaled the vehicle to pull over to the roadside. The vehicle stopped, then reversed at a high rate of speed into the Greenland Road. The vehicle came to rest after colliding with a utility

pole and impacting the bumper of the pursuing police vehicle. There were a number of power line workers in the area at the time.

- [3] The driver was instructed to exit the vehicle, however, because of the strong tint on the windows, P/C St. Helen could not see the interior of the vehicle. The window was therefore struck with a police baton, although it did not break, and the driver immediately exited the vehicle. He was arrested for reckless driving and placed in handcuffs. He was identified as the Defendant.
- [4] Upon being searched, the Defendant was found to have \$853.00 in United States Currency (USD) on his person. The Defendant's vehicle was also searched and a further \$9,950.00 in United States Currency (USD) was found both on the right front passenger seat and below it. When the police asked the Defendant about the money, he gave them a dollar figure and confirmed it was his.
- [5] Investigation revealed that the Defendant was not the owner of the motor vehicle he was driving and he did not have a valid driver's license.
- [6] The cash money was seized by the police and turned over to the Financial Crime Unit. The currency was suspected to be counterfeit. A selection of the seized notes was transmitted to the United States Department of Homeland Security for forensic examination. A report was later provided confirming the notes to be counterfeit.
- [7] Under caution, the Defendant told police he did not know the money was counterfeit and that a man had given him the money to start a business.
- [8] The Defendant was charged with three counts of Possession of Forged Notes in varying amounts on the same date based upon what appears to be the three different locations where the money was discovered. The total amount of forged currency was \$9,950.00 made up of fifty-two (52) \$100 bills and ninety-five (95) \$50 bills. The balance of the money found was legal tender.

THE LAW

- [9] Sentencing in criminal cases involves many considerations. In fashioning a sentence appropriate to the facts of the case and the characteristics of the offender, the court must consider the principles set out in cases such as **R v Sargent, 60 Cr. App. R. 74**, referred to with approval by our appellate court in the seminal case of **Desmond Baptiste v The Queen, Saint Vincent and the Grenadines Criminal Appeal No. 8 of 2003**. In the words of Lawton L.J. in the case of **R. v Sargent**, the court endeavours to answer the question, “What ought the proper penalty to be?” Sentencing seeks to promote respect for the law and an orderly society. The sanctions imposed by a sentencing court when fashioning the proper penalty are based upon the classic principles of sentencing. In **R. v Sargent**, those principles include:
- (a) Retribution, the court must reflect society’s abhorrence of particular types of crime through punishment of such unlawful conduct.
 - (b) Deterrence, specific to the offender and generally to likely offenders or persons who may be minded to commit similar offences.
 - (c) Prevention, to protect the public from offenders who persist in committing crimes by separating them from society.
 - (d) Rehabilitation, to engage offenders in activities designed to assist them in their reintegration into society.
- [10] The court in the **Desmond Baptiste** case confirmed at **paragraph 20** that “perhaps the most difficult and controversial area for the sentencer is fitting the punishment to the crime committed.” The court went on to state that the age of the offender and the presence or lack of any criminal record were factors to consider.
- [11] Sentencing considerations go further. Although denunciation may be required, there is also a need to promote a sense of responsibility in the offender and to acknowledge the harm done. To do that, one must return to a weighing of characteristics of the offender with the facts surrounding the offence. The sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender. Has, for example, a guilty plea been entered? All of these considerations play a role in determining a fit sentence.

[12] The offence of Possession of Forged Notes carries a maximum penalty of imprisonment for a term not exceeding fourteen (14) years. Although this offence is not one enumerated in the Compendium of Sentencing Guidelines for the Eastern Caribbean Supreme Court, assistance is provided therein for crafting sentences generally and in particular as it relates to offences of dishonesty.

[13] The Possession of Forged Notes will generally attract a custodial disposition because it is a serious offence with significant ramifications to the community and the economy. In the case of **R v Varle (Robbie James) [2016] EWCA Crim 634**, £20 notes were being passed in a local bar. The police seized 49 such notes. The court described it as a sophisticated operation with attempts made to destroy the evidence and flee. The court found that immediate custody was necessary and held at **para 23**:

The object of sentences for this type of offence is not only to punish but also to deter because of the effect of tendering counterfeit money on the economy, as well as on innocent members of the public. A further important consideration is the amount of the fake notes involved.

[14] Substantially more forged notes were involved in the case of **R v Eddison (Marc) [2017] EWCA Crim 2460**. 905 £10 notes and 1015 £20 notes, totaling £29,350, tied in bundles of £1,000, were found during a search of the residence of the Defendant. Although he also faced further charges, the Defendant was given a custodial sentence on the counterfeit currency offences. At **paragraph 8** the court noted that, although “there was no evidence the applicant tried to pass off the notes, on the jury’s verdict that was something which the applicant could have done.” This passage refers to the serious risk to the public, to the community and to the economy, should large numbers of forged notes enter circulation, and it calls for a message of deterrence in any resulting sentence.

FORMULATION OF SENTENCE

[15] In crafting this sentence, the court has relied upon the general provisions of the Eastern Caribbean Supreme Court Sentencing Guidelines for Offences of Dishonesty. This offence is not specifically recognized in those guidelines but they are helpful. In establishing a starting point for sentence, the court has considered several issues. The first is the value of the items. In this case, the total forged currency amounted to \$9,950.00, a substantial amount but at the lower end of total value.

This is simply the generic value of the items seized and does not take into account the ramifications of counterfeit currency possession per se. I shall come to that later. As the currency had not been passed into circulation, there was no direct victim nor direct harm at the time of the seizure. As a result, I would place this in the Lesser Category 4.

- [16] When considering the second stage, the court takes note of the place the Defendant has in this transaction. He was alone in the vehicle. He had no license to operate the vehicle and he did not own the vehicle. It was apparently borrowed. Obviously, he was transporting the forged notes to an unknown location. Although there was no sophistication involved, there being little attempt to conceal the currency, the Defendant clearly knew what he was transporting. Whether the Defendant was a courier or part of a larger operation, he clearly played a significant role in this incident. I therefore assess the seriousness of the offence to be Medium Level B.
- [17] By combining the first and second stages, I find the starting point for sentence to be 15% or 2 years. I am concerned by the large number of notes seized by the police from the Defendant. 147 notes in denominations of \$100 and \$50 has the potential to cause significant harm to the local economy and the general public. The case law indicates that the number of notes involved is a consideration for sentence. Further, when confronted by the police, the Defendant failed to stop, fled the scene, driving in a dangerous manner and only stopping when he collided with a utility pole. That behaviour is troubling. The sentence is therefore increased by 9 months for a total of 33 months.
- [18] The Defendant is 28 years of age. Still a young man. He is of good character with no criminal record. In recognition of that, I reduce the sentence by a further six (6) months to a total of 27 months.
- [19] I also give the Defendant full credit for his guilty plea. He has accepted responsibility for his actions and the sentence is therefore reduced by a further one third or 9 months to 18 months. The Defendant, I am told, was briefly held on remand on these charges for a total of 5 days. I have taken that into account in the formulation of the final sentence and he shall receive credit for that.

[20] This is a serious offence. In considering the principles of sentencing, I find the need for deterrence to be uppermost in this case. A significant custodial disposition is warranted, notwithstanding the mitigating factors including a guilty plea being entered and the Defendant being a first offender. Counterfeit money can wreak havoc in a local economy. The greater the number of notes involved, the greater the potential for small businesses and individuals to be devastated. A message must be sent to those who would seek to benefit from such behaviour that it will not be tolerated and will be met with imprisonment.

[21] I therefore impose a sentence of 18 months on count one, 18 months on count two and 18 months on count 3. Since each of these counts arises out of the same transaction, the sentence is to be served concurrently on each count. The total sentence is therefore 18 months. That accords with the sentence contemplated by the Goodyear Indication.

Richard G. Floyd
High Court Judge

By the Court

Registrar