

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON ANTIGUA & BARBUDA

CASE ANUHCR 2019/0080

REGINA

V

ANTUAN SOLAN

NEKITO WEIR

EDLORN RALPH

KARIM DANIEL

SAMUAL COX

APPEARANCES

Mr Michael Archibald for the defendants.

Mr Curtis Cornelius for the Crown.

2020: DECEMBER 15

SENTENCE

For coordinated encashment of stolen cheques

- 1 **Morley J:** Five defendants face sentence for in combination encashing 121 stolen cheques belonging to Simon Tranter to the value of \$82900ec during 01.11.16 to 30.06.17.

- 2 Antuan Solan was working for Simon, who ran two restaurants, Papas and Trappas, around Falmouth, and says he found the chequebooks in Simon's car while cleaning it, and then over 8 months got his friends to cash them in local supermarkets, keeping 40%, of whom Edlorn Ralph, Karim Daniel and Samuel Cox had previously worked for Simon. In victim impact, Simon when interviewed by the probation office, and his wife Caroline in court, expressed their deep unhappiness, indeed upset, at the breach of trust by Solan, who had worked for them for 15 years, being like family, and their disbelief other former employees would join the fraud. The money lost has not been recoverable through any bank insurance, and has helped tip one of the restaurants into closure, so that understandably they have asked to be compensated as best possible.
- 3 On 27.10.20, at the earliest practical opportunity, pleas were entered with express agreement from defence counsel Archibald to an amended six count indictment offering 'roll-up' counts against each. While Solan pleaded to forging 121 cheques, contrary to **s4(2) Forgery Act** cap 181, all pleaded to 'obtaining property by virtue of a false instrument' contrary to **s10(a) Forgery Act**, by passing forged cheques, in attributed amounts as follows: Solan \$33500ec, Weir \$21800ec, Ralph \$11400ec, Daniel \$10400ec, and Cox \$6000ec.
- 4 Of the \$82900ec stolen, \$46800ec has on 14.12.20 been paid back, with a further \$7000ec offered overnight by Weir, so that the loss stands currently at \$19100ec. All expressed remorse, each being the subject of pre-sentence reports, which to differing extents show moderate personalities, with financial and family difficulty, there being no obvious extravagance in spending monies stolen, and for whom this offending is thought by the community to be surprising. This was however coordinated planned group activity over a sustained period of 8 months involving multiple encashment offences.
- 5 The maximum sentence for either offence is 14 years, and on 04.12.20 sentencing guidelines for fraud were issued by the ECSC.
 - a. An offence involving less \$10000ec is in consequence category 4, then up to \$50000ec in category 3, then above \$50000ec up to \$250000ec in category 2.

- b. Seriousness at level A takes into account abuse of high degree of trust, and/or the extent to which the fraud involves planning, and a series of criminal acts, occurring over a sustained period of time, which level to differing extents applies to all defendants.
- 6 The prosecution opened on 10.12.20, mitigation was on 14.12.20, with written remarks offered today 15.12.20, (largely to capture the different nuance per defendant, which made an ex tempore exercise impractical).
- 7 Dealing with the defendants in reverse amounts:
- a. Cox is 25, was on remand for 18 months unable to post bail, with a minor previous conviction in 2016 for setting a fire which I ignore. He cashed 12 cheques, to the value of \$6000ec, and has paid back \$3000ec, being in a position to pay back the balance of \$3000ec at \$500ec pm. He falls within 4A with a starting point of 20%, being 3 years, discounted 18 months for the amount paid back so far, being half, to 18 months, a further 3 months for remorse and having no relevant convictions to 15 months, discounted a further one-third for early plea, meaning a total of 10 months, which in light of his 18 months remand can be converted to a probation order of 18 months, to attend as directed on his probation officer or face resentence to a prison term, with an ancillary order he must repay as compensation the outstanding \$3000ec at \$500ec pm, for restitution for the Tranters, on the last working day of each month from 31.01.21, or failing any payment date face 12 months prison in default (for which time on remand will not count).
 - b. Daniel is 34, was on remand for 3 weeks, with a minor previous conviction for cannabis possession in 2009 which I ignore. He cashed 15 cheques to the value of \$10200ec, and has paid back \$4000ec, further offering on 15.12.20 his \$5000ec cash bail security, being in a position to pay back then the balance of \$1200ec at \$500ec pm. He falls arguably within 4A, given repayment, with a starting point of 20%, being 3 years, discounted 18 months for the amount paid back so far, to 18 months, a further 3 months for remorse and having no relevant convictions to 15 months, discounted a further one-third for early plea, meaning a total of 10 months, which can on hesitant reflection be converted to a probation order of 18 months, even though not long on remand, to attend as directed on his probation officer or

face resentence to a prison term, with an ancillary order he must repay as compensation the outstanding \$1200ec at \$500ec pm on the last working day of each month from 31.01.21, and make over to the High Court the cash bail security of \$5000ec by 31.01.21, for restitution for the Tranters, or failing any payment date face 12 months prison in default (for which time on remand will not count).

- c. Ralph is 33, was on remand for 2 years unable to post bail, with no convictions. He cashed 16 cheques to the value of \$11400ec, and has paid back \$2000ec, being in a position to pay back the balance of \$9400ec within a year. He falls arguably just within 4A, given repayment, with a starting point of 20%, upped within the range for being on the offence border, to 3.5 years, discounted 6 months for the amount paid back so far, to 36 months, a further 3 months for remorse and having no relevant convictions to 33 months, discounted a further one-third for early plea, meaning a total of 22 months, which can on hesitant reflection, noting he was two years on remand, be converted to a probation order of 18 months, to attend as directed on his probation officer or face resentence to a prison term, with an ancillary order he must repay as compensation the outstanding \$9400ec at \$900ec pm on the last working day of each month from 31.01.21, for restitution for the Tranters, or failing any payment date face 18 months prison in default (for which time on remand will not count).
- d. Weir is 31, was on remand for 2 weeks, with a minor previous conviction for disorderly conduct in 2017 which I ignore. He cashed 23 cheques to the value of \$21800ec, has paid back \$13300ec, further offering on 15.12.20 his \$5000ec cash bail security, and being said as a marine rigger in a position probably to pay back the balance of \$3500ec within a year if the sailing season resumes post covid. He falls within 3A, with a starting point of 35%, being 5 years, discounted 2 years for the amount paid back, plus not having been employed by the Tranters so that no breach of trust arises, to 3 years, being 36 months, a further 3 months for remorse and having no relevant convictions to 33 months, discounted a further one-third for early plea, meaning a total of 22 months, which on hesitant reflection can be converted to a probation order of 24 months, even though not long on remand, to attend as directed on his probation officer or face resentence to a prison term, with an ancillary order he must repay as compensation the outstanding \$3500ec at \$500ec pm on the last working

day of each month from 31.01.21, and make over to the High Court the cash bail security of \$5000ec by 31.01.21, for restitution for the Tranters, or failing any payment date face 24 months prison in default (for which time on remand will not count).

- e. Solan is 32, was on remand for 2 weeks, with no convictions. He cashed 56 cheques to the value of \$33500ec, and by bankers draft has paid back in full, (though also arranged for the other 65 cheques' encashment, taking 40%, being of \$49400ec, amounting to receipt of about a further \$19760ec). Solan was the leader and is culpable for the entire loss of \$82900ec, as reflected in his plea to coordinating forging all 121 cheques. He falls within 2A, with a starting point of 50%, being 7 years, discounted 3 years for the amount paid back so far, being the full amount on his second count, to 4 years, being 48 months, a further 3 months for remorse and having no relevant convictions to 45 months, discounted a further one-third for early plea, meaning a total of 30 months, which cannot nor should be converted to a probation order, given the number of cheques cashed, that the offence is category 2, and the calculated prison term is greater than 24 months. In his circumstances, there will be no further compensation order.

8 It should be noted the defendants Cox, Daniel, Ralph, and Weir have avoided jail time, being placed on probation instead, largely owing to how they have paid back almost everything they stole, which is unusual, and will have to pay back the remainder or be jailed, and be jailed if in breach of probation, meaning to pay back what remains is obviously assisted by being at liberty to earn, so that in the end it is expected no monies will be lost by Simon and Caroline Tranter.

9 *All five defendants please stand up.* For the reasons explained:

- a. Antuan Solan, the sentence on the counts for forging 121 cheques and obtaining \$33500ec by 56 false instruments will be 30 months prison concurrent. Time on remand shall count, and you shall be eligible for automatic remission at two-thirds if of good behaviour.
- b. Nekito Weir, the sentence for obtaining \$21800ec by 23 false instruments will be a probation order of 24 months, and you will repay as compensation the outstanding \$3500ec at \$500ec pm from 31.01.21, and make over your cash bail security of \$5000ec to the High Court by

31.01.21, for restitution for the Tranters, or face 24 months prison in default (for which, please be aware, the 2 weeks on remand cannot count).

- c. Edlorn Ralph, the sentence for obtaining \$11400ec by 16 false instruments will be a probation order of 18 months, and you will repay as compensation the outstanding \$9400ec at \$900ec pm from 31.01.21 or face 18 months prison in default (for which, please be aware, the 2 years' time on remand cannot count).
- d. Karim Daniels, the sentence for obtaining \$10200ec by 15 false instruments will be a probation order of 18 months, and you will repay as compensation the outstanding \$1200ec at \$500ec pm from 31.01.21, and pay over to the High Court your cash bail security of \$5000ec by 31.01.21, for restitution for the Tranters, or face 12 months prison in default (for which, please be aware, the 3 weeks on remand cannot count).
- e. Samuel Cox, the sentence for obtaining \$6000ec by 12 false instruments will be a probation order of 18 months, and you will repay as compensation the outstanding \$3000ec at \$500ec pm from 31.01.21 or face 12 months prison in default (for which, please be aware, the 18 months on remand cannot count).

The Hon. Mr. Justice Iain Morley QC

High Court Judge

15 December 2020