

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANGUILLA CIRCUIT
(CRIMINAL)
AD 2020**

CASE NO. AXAHCR 2020/0006

REGINA

v

DEION RICHARDSON

Appearances:

Mr. Kerith Kentish, Joyce Kentish & Associates of Counsel for the Defendant
Ms. Erica L.P. Edwards, Senior Crown Counsel, Attorney General's Chambers for
the Crown

2020: March 10;
April 27;
May 19; 28.

Sentencing – Conspiracy – False accounting – Criminal Code – Possession of criminal property – Proceeds of Crime Act – Eastern Caribbean Supreme Court Sentencing Guidelines (Offences of Dishonesty) – Eastern Caribbean Supreme Court (Sentencing Guidelines) Practice Direction 7A, No. 1 of 2019 – Eastern Caribbean Supreme Court (Sentencing Guidelines) Practice Direction 7B, No. 2 of 2019 – Eastern Caribbean Supreme Court (Sentencing Guidelines) Practice Direction 7C, No. 3 of 2019 Defendant paraplegic – Departure from sentencing guidelines – Factors to be considered when departing from Sentencing Guidelines

JUDGMENT

[1] **INNOCENT, J.:** The defendant, Mr. Deion Richardson ('Mr. Richardson'), entered pleas of guilty to two counts of conspiracy to commit the offence of false accounting contrary to section 269(1)(b) of the Criminal Code, R.S.A. c. C140 (the 'Criminal Code');¹ and two counts of possession of criminal property contrary to

¹ **269.** (1) Any person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another—

(a) destroys, defaces, conceals or falsifies any account or any record or document made or required for an accounting purpose; or

(b) in furnishing information for any purpose, produces or makes use of any account or any such record or document which to his knowledge is or may be misleading, false or deceptive in a material particular; commits an offence and is liable on conviction to imprisonment for 7 years.

section 127(1)(c) of the Proceeds of Crime Act, R.S.A. c P98 (the 'Proceeds of Crime Act').²

- [2] The court, being of the view that offences of this nature are likely to result in the imposition of a custodial sentence, ordered that a Presentence Report ('PSR') be prepared by the Department of Probation and submitted to the court and counsel appearing in the matter. The prosecution and defence filed an agreed statement of facts. Therefore, there was no dispute as to the factual basis of the plea.
- [3] The Eastern Caribbean Supreme Court Sentencing Guidelines (Offences of Dishonesty) (the 'Guidelines') speaks specifically to the offences of theft and robbery. However, no guidelines have been made with respect to other offences involving dishonesty, for example, the offence of false accounting or possession of proceeds of criminal conduct. Notwithstanding, the court will, as far as possible, follow the approach set out in the Guidelines in constructing the appropriate sentence in the present case. It is hoped that this will achieve consistency in approach, notwithstanding the absence of any formal sentencing guidelines for this type of offence.
- [4] The court has sought guidance from the case of **R v Barrick**³ where the House of Lords gave guidance on the proper sentence to be imposed in cases involving breach of trust. In **Barrick** Lord Lane LJ said:

"In determining sentence in breach of trust cases, the court should have regard to the following matters – (i) the quality and degree of trust reposed in the offender including his rank; (ii) the period over which the fraud or the thefts have been perpetrated; (iii) the use to which the money or property dishonestly taken was put; (iv) the effect upon the victim; (v) the impact of the offences on the public and public confidence; (vi) the effect upon fellow-employees or partners; (vii) the effect on the offender himself; (viii)

(2) For the purposes of this section, a person who makes or concurs in making in any account or other document an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from an account or other document, is to be treated as falsifying the account or document.

² 127. (1) Subject to subsection (2), a person is guilty of an offence if he—

(a) acquires criminal property;
(b) uses criminal property; or
(c) has possession of criminal property.

³ (1995) JP 705

his own history; (ix) those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like; where, as happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police. In these cases in general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. The Court should pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. Where amounts involved are less than £10,000 terms of imprisonment ranging from the very short up to 18 months are appropriate. Cases involving sums between £10,000 and £50,000 will merit a term of about two or three years' imprisonment. Where greater sums are involved, eg over £100,000, then a term of 3 1/2 to 4 1/2 years' imprisonment would be justified. The above terms are appropriate where the case is contested. Where a plea of guilty is entered the court should give an appropriate discount. It will not usually be appropriate in cases of serious breaches of trust to suspend any part of the sentence."

Approach to Sentencing

- [5] The court will adopt the following approach to sentencing. The general principle is that any punishment meted out for an offence must be commensurate with the seriousness of the offence. Accordingly, the court will first assess the seriousness of the offence having regard to Mr. Richardson's degree of criminal culpability in the commission of the offence and the degree of harm (consequences) caused by the commission of the offence, in order to arrive at a starting point sentence that is commensurate with the seriousness of the offence.
- [6] The court will then go on to weigh the aggravating and mitigating factors present in the case to determine a nominal sentence. After determining the nominal sentence, the court will then consider whether any deduction from the notional sentence is required to take account of any guilty plea entered and time spent on remand.
- [7] The court will also consider the totality principle, that is, that the sentence imposed, in a case where there is multiple offending, will reflect the totality of the offending.

- [8] In addition, where the court has determined that the appropriate sentence to be imposed is a custodial one, the court will consider whether the permissible aims of punishment can be achieved by the imposition of some other form of punishment in the alternative. The court will also consider any ancillary orders such as compensation and restitution.
- [9] Mr. Richardson, at the time of the offence, was employed by the Government of Anguilla as a customer service representative with the Inland Revenue Department ('IRD'). By falsifying certain entries and records on the IRD's database, Mr. Richardson, by obtaining payment of various sums, permitted persons who were unqualified by virtue of not having gone through the proper and recognized channels, to obtain Anguillian driver's licences. The sums obtained for this illicit service were US\$600.00 and US\$250.00.

False Accounting – Seriousness – Degree of Harm

- [10] In assessing the degree of harm caused by Mr. Richardson's offending, the court took into account the following factors. The commission of this offence involved a degree of breach of trust reposed in Mr. Richardson. The victim in this case was the GOA. Offences of this nature have a tendency to affect the trust and confidence that the public has in the ability of departments ran and operated by the State. The public expects that officers of the government will conduct the business and affairs of government departments in an honest and transparent manner.
- [11] In addition, Mr. Richardson, by his conduct has exposed the users of Anguilla's motorways to the risk of loss and damage likely to be sustained at the hands of unqualified drivers. The prospect of such a person having an accident resulting in damage to property or loss of life would be disastrous, particularly from an insurers point of view. Fortunately, no such harm occurred.
- [12] However, Mr. Richardson's actions has obviously caused the IRD to re-examine their control procedures which would inevitably involve loss of time and the

deployment of valuable human resources to curb the likelihood of such an event occurring in the future. Consequently, Mr. Richardson's offending must have resulted in some loss and inconvenience to the IRD.⁴

- [13] In the circumstances, the court would assess the degree of harm caused by Mr. Richardson's offending to be moderate.

False Accounting – Seriousness – Culpability

- [14] The court is of the view that the following matters are relevant in assessing Mr. Richardson's degree of criminal culpability in the commission of this offence.

- [15] The commission of this offence clearly involved some degree of planning; also, it involved Mr. Richardson's violation of the trust that had been reposed in him by his employer, the GOA. The offending conduct occurred on more than one occasion. Mr. Richardson committed these offences with the prospect of pecuniary gain. It appears that Mr. Richardson played a leading role in the commission of these offences.

- [16] In the circumstances, the court has assessed Mr. Richardson's degree of criminal culpability as moderate.

The Starting Point Sentence

- [17] The statutory penalty prescribed by section 269(1)(b) of the Criminal Code for the substantive offence of false accounting is seven (7) years imprisonment. Counsel in their submissions referred to the provisions of section 33 of the Criminal Code⁵ and submitted that the statutory penalty is three (3) years imprisonment. This provision is applicable as the Criminal Code does not provide for any specific punishment for the offence of conspiracy to commit the offence of false accounting.

⁴ See: Victim Impact Statement of Keil Connor, Comptroller IRD

⁵ **33.** Any person who is convicted of conspiracy to commit an offence is, unless any other punishment is provided in this Code or any other law, liable to imprisonment for 3 years.

- [18] Having assessed Mr. Richardson's offending as falling within the medium range of culpability and harm respectively, the court will adopt a starting point of one (1) year imprisonment for each offence of false accounting.

Notional Sentence

- [19] Having arrived at a starting point sentence, the court will go on to consider the notional sentence. In arriving at the notional sentence, the court will weigh the aggravating and mitigating factors present in the case; adjusting the sentence upwards or downwards depending on an assessment of the aggravating and mitigating factors.

Aggravating Factors

- [20] The aggravating factors present in the case were already canvassed in assessing Mr. Richardson's culpability in the commission of the subject offences. Therefore, to avoid double counting the court will not take these matters into account here.
- [21] However, the court has taken into account as an aggravating factor, the fact that Mr. Richardson was engaged in soliciting the illicit services he provided. In addition, Mr. Richardson utilized his knowledge of the IRD's systems and its weaknesses for his own pecuniary benefit and seemingly chose to exploit the same on more than one occasion.

Mitigating Factors

- [22] The court was able to distill the following mitigating factors in the present case. It appears that Mr. Richardson has no previous conviction for any or any similar offence. The offending conduct did not result in any pecuniary loss to the GOA. Mr. Richardson has expressed remorse for his offending conduct.⁶ In addition, the court has taken into account Mr. Richardson's good character and good standing in the community prior to his present offending. In addition, Mr. Richardson cooperated with the police and the police investigation.

⁶ See: paragraph 7 PSR

- [23] In assessing the mitigating factors, the court has also taken into account Mr. Richardson's personal circumstances. Mr. Richardson became a paraplegic under very tragic circumstances, to say the least. He is wheelchair bound and is dependent on his family for assistance with his daily personal needs.
- [24] Separate and apart from Mr. Richardson's disability, there are no subjective factors that might have influenced Mr. Richardson in the commission of the subject offences.
- [25] The court is of the view that the aggravating factors outweigh the mitigating factors in the present case. Therefore, the court will apply an uplift of six months imprisonment to the notional term of 1 year imprisonment. Although Mr. Richardson's offending conduct appears to be out of character, the court cannot downplay the serious breach of trust involved in the commission of the subject offences.

Discount for Guilty Plea

- [26] The court is of the view that Mr. Richardson entered his plea at the earliest opportunity. Therefore, Mr. Richardson is entitled to a full discount of one-third of the notional sentence. Therefore, the sentence that the court will impose will be imprisonment for one (1) year.

Possession of Criminal Property – Seriousness – Harm

- [27] The court has assessed the degree of harm consequent on Mr. Richardson's offending conduct to be moderate. Harm is generally assessed by the amount of money involved and the level of harm associated with the underlying offence. In the present case, although the amount of money involved was not significant, the underlying offence which was the source of the criminal property connotes a moderate degree of harm. The commission of the subject offences involved the participation, collaboration with or the inducement of members of the public in the undermining of a system of public administration for personal pecuniary gain. All of

the matters held to impact the assessment of the degree of harm or consequences of the commission of this offence are also present in the underlying offence of conspiracy to commit false accounting.

Possession of Criminal Property – Seriousness – Culpability

- [28] Mr. Richardson's degree of criminal culpability in the commission of this offence must also be assessed in light of the associated underlying offence. In this regard the court has assessed Mr. Richardson's degree of criminal culpability as high. The court's assessment of Mr. Richardson's culpability is informed by the same considerations as in the case of the associated underlying offence of conspiracy to commit false accounting.

The Starting Point

- [29] The statutory penalty for the commission of this offence is a term of imprisonment not exceeding 14 years or a fine not exceeding \$200,000 or both.⁷ Having considered the degree of harm and the degree of culpability, the court will adopt a starting point of imprisonment for a term of one (1) year.

The Notional Sentence

- [30] The notional sentence is derived by weighing the aggravating and mitigating factors present in the commission of the offence. In the present case, the court sees no reason for an uplift from the starting point sentence based on the aggravating and mitigating factors.

Aggravating Factors

- [31] Again, the aggravating factors are analogous to the aggravating factors already highlighted in the commission of the associated underlying offence.

⁷ Section 127(4)(b) Proceeds of Crime Act

Mitigating Factors

- [32] The court was able to identify the mitigating factors in the present case as being an analog of those mentioned in the case of the associated underlying offences.

Discount for Guilty Plea

- [33] Mr. Richardson will be given credit for his guilty plea in the amount of one-third of the notional sentence. Therefore, Mr. Richardson will be sentenced to imprisonment for eight (8) months.

Totality Principle

- [34] It appears that the separate and distinct offences were committed as part and parcel of the same or similar transactions and involved the same victim. Therefore, the court will apply the totality principle in determining whether the punishment imposed is reflective of the totality of Mr. Richardson's offending. In applying the totality principle, the court is of the view that the overall sentence imposed is reflective of the totality of Mr. Richardson's offending.
- [35] The court is of the view that the sentences should run consecutively. Although the several offences involved similar conduct they cannot properly be regarded as forming part of the same transaction. The two sets of offences involved separate and distinct players and require a different set of considerations in each case.

Alternative Sentencing

- [36] The court has given serious consideration to the nature and extent of Mr. Richardson's physical disability. Although the court is of the view that the circumstances of the commission of the present offences are sufficiently egregious to warrant the imposition of a custodial sentence, it would be disproportionate given the seriousness of the offences, notwithstanding Mr. Richardson's physical disability to simply discharge him.

- [37] The court holds the considered view that a suspended sentence⁸ would, in the circumstances, serve to palliate the wrong done. Section 45 of the Criminal Code empowers the court to impose a suspended sentence in certain circumstances.⁹ In this way, society's abhorrence for the commission of this type of offence will be reflected in the kind of punishment meted out to the offender. Offences of this nature cannot be tolerated in today's society where there is an ever-increasing call for accountability and transparency in public administration and government.
- [38] Indeed, this is an exceptional case, where the amount of money obtained was small. However, notwithstanding this, the court must pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. Considering the permissible aims of punishment, Mr. Richardson's personal circumstances, and the fact that only a small amount of money was involved, the court is minded to impose a suspended sentence.
- [39] The court has also taken into account the fact that Mr. Richardson is presently employed with one of the departments of the GOA. It appears that he has taken positive steps towards his rehabilitation. Therefore, there is the likelihood that the imposition of an immediate custodial sentence on him would inevitably derail his future prospects and the progress that he has made in his personal life thus far.

Order

- [40] In the circumstances, the court's order is as follows:

⁸ Eastern Caribbean Supreme Court Sentencing Guidelines (Suspended Sentences), Practice Direction 7 C No 3 of 2019 applied.

⁹ (1) Subject to subsection (2), where a court passes a sentence of imprisonment for a term of not more than 2 years for an offence, it may order that the sentence shall not take effect unless, during a period specified in the order, being not less than one year or more than 2 years from the date of the order, the offender commits in Anguilla another offence punishable with imprisonment.

(2) A court shall not deal with an offender by means of a suspended sentence unless it is of the opinion that—

(a) the case is one in which a sentence of imprisonment would have been appropriate even without the power to suspend the sentence; and

(b) the exercise of that power can be justified by the exceptional circumstances of the case.

1. With respect to counts 5 and 9 on the indictment (conspiracy to commit false accounting), Mr. Richardson is sentenced to imprisonment for one (1) year on each count.
2. The sentences imposed with respect to counts 5 and 9 are to run consecutively.
3. With respect to counts 6 and 10 on the indictment (possession of criminal property), Mr. Richardson is sentenced to imprisonment for eight (8) months on each count.
4. The sentences with respect to counts 6 and 10 are to run consecutively but concurrently with counts 5 and 9.
5. The sentences imposed are suspended for a period of one (1) year from today's date.
6. Should the defendant commit any offences during this period of one (1) year he shall be brought back to court for the determination of the length of the remainder of the sentence that he shall serve.

Shawn Innocent
High Court Judge

By the Court

Registrar