THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CRIMINAL)

CLAIM NOS. SLUCRD2018/0701-0706, 0540

BETWEEN:

THE QUEEN

Claimant

and

DESMA MARLIACY

Defendant

Appearances:

Ms. Stacey Anne St. Ville Counsel for the Crown
Mr. Keron Bruney Counsel for the Defendant
Defendant present via Video link
Mrs. Fiona Noel-Charlery Probation Officer

2020 : February 25.

DECISION

[1] **WILLIAMS J:** The Defendant Desma Marliacy was indicted by the Director of Public Prosecutions for the offence of Obtaining Property by deception Contrary to Section 211(a) of the Criminal Code Chapter 3.01 of the Revised Laws of St. Lucia.

Fact of the Case

[2] On the 2nd September, 2018, the Defendant, Desma Marliacy, met Aron Gopal and informed him about a lucrative job opportunity with Express Des Isles, where she also claimed to work. This job would provide a salary of $1800.00 Euros on a fortnightly basis. Mr. Gopal paid the Defendant fees to assist him with the

application process and he then attended a fake interview with the Saint Lucia Air and Sea Ports Authority.

[3] On the 23rd September, 2018, the Defendant requested further documents from Mr. Gopal which she informed him would be required for a trip to Guadeloupe for Training. The Defendant received a cheque from Mr. Gopal, in the sum of $1280.00, in the name of Alecia Lewis, as she requested.

[4] On the 26th September, 2018, Shanice Fanis, Nira Justin, Velon Hippolyte and Shem Gopal met the Defendant at the S.L.A.S.P.A. Sea port and was paid the sum of $1610 E.C. dollars by each of the said persons. On October 2nd, 2018, the Defendant was given another cheque from Mrs. Leonise Francois for the sum of $2000.00 E.C. dollars.

[5] However, the Defendant informed the said mentioned persons that the company she was recruiting them for work was of the view that they were not ready to work, and would leave the Island on a later date.

[6] Upon further investigation, the Management of Express Des Isles informed Mr Gopal that the Defendant had never been engaged with the company and that the company did not recruit any new employees.

[7] The Defendant admitted to fraudulently accepting $8050.00 E.C.dollars from five (5) persons and that she was not employed with L'Express Des Isles.

<u>The Law</u>

[8] The offence of obtaining property by deception, contrary to Section 211(1) of the Criminal Code of St. Lucia, attracts a maximum penalty of ten (10) years imprisonment.

[9] Section 211: Obtaining Property by Deception

1. A person who by deception obtains property belonging to another person with the intention of permanently depriving the other person of it, is liable on conviction on Indictment to imprisonment for ten (10) years.

2. For the purpose of this section, a person is to be treated as obtaining property if he or she obtains ownership, possession or control of it.
   "Obtain" includes obtaining for another or enabling another to obtain or to retain.

[10] Aggravating Factors

1. The prevalence of the offence

    - Theft related offences are highly prevalent in today's society and are among those frequently filed and disposed of by the Criminal Courts.

2. Significant degree of planning and pre-meditation of offence

    - The Defendant presented an elaborate and fraudulent scheme to obtain money from persons thereby illustrating the mind of a criminal

3. The offence was committed while on Bail for similar type offences

[11] Mitigating Factors

1. The Defendant entered an Early Guilty Plea and avoided the need for a trial.

2. The Defendant has expressed remorse for her actions.

3. The Defendant has previous convictions of a similar type of offence.

[12] The Aggravating factors far outweigh the Mitigating factors, and the Court is bound to consider the facts and circumstances that surround the commission of the offence and the character and record of the convicted person.
See: 1) Harry Wilson vs The Queen ECSC Criminal Appeal No. 30 of 2004
2) Rudy Monelle vs The Queen 0015/2007

Retribution

[13] This is a serious offence as the Defendant preyed on young, unemployed persons, some of which had to borrow money from other persons to fund her con-artist behavior.

[14] This kind of behavior can serve to shake public confidence in legitimate recruitment agencies, while the unemployment rate continues to persist in the country.

General and Specific Deterrence

[15] The Court must impose an appropriate sentence to deter the Defendant and other persons who seek to engage in this type of criminal behaviour.

Rehabilitation

[16] The Court will order that this Defendant participate in an Educational Programme at the Correctional Facility which may bolster her chances of securing gainful employment and assist with her reintegration into society. I would also order that the Defendant participate in counselling sessions.

Prevention

[17] The Court must protect society from those who persist in high rates of criminality. Some persons learn their lessons from incarceration and others do not, and the only way of curbing their criminal behavior is through sentences whose objective is to keep them away from society.
See: 1) Desmond Baptiste vs The Queen
2) R vs James Henry Sergeant

[18] The Court must show their abhorrence of particular types of crime by the sentences they pass.

Pre-Sentence Report

[19] The Court ordered a Pre-Sentence Report.

[20] The document revealed that the Defendant is a thirty-six (36) year old resident of Dennery, and the first of three children. She also has paternal brothers. The author of the report stated that the Defendants relationship ended after she left school; and that the household was plagued with Domestic disputes, and her mother migrated to Martinique. She joined her mother in Martinique after the birth of her first child, where she lived for about ten (10) years.

[21] The Defendant has five (5) children, with the youngest child being one (1) year old. The Defendant's mother disclosed that the Defendant has expressed a desire to change and has asked her to pray for her.

[22] Her father Mr. Monrose, informed the author that the Defendant was a disciplined, loving and understanding child while growing up. He worked hard to provide for his family's needs and to also provide his family with appropriate guidance.

[23] Mr. Monrose revealed that he was a sick man, and despite the Defendant's habit, she would care for him in his illness. He had tried to help the Defendant with her recurring habit and he is embarrassed by her actions.

[24] The residents of the Defendant's community informed the author that the Defendant's bad habits relating to money started from an early age where she conned people out of money. The Defendant would also use her children to extort money from other people. She would also use Raffle sheets where the Raffles never take place. The Defendant has also forged her father's signature on numerous occasions to withdraw his money from his account at the Bank. Some residents described her as a professional liar and were victims of her numerous scams.

[25] The Defendant has committed the offence she is presently charged with while she is out on Bail for a similar type of offence. She appears to be incorrigible. The Defendant has expressed remorse and stated to the author that she feels disgusted at herself, knowing that she knows better and that she has affected persons. She laments that her father, who has always been supportive of her, has not visited her since her incarceration.

[26] She was also distressed that her youngest child was five (5) months when she was remanded to prison.

[27] The Defendant further claims that she has learnt a lot from her incarceration and promises not to repeat her mistakes. The Defendant has accepted full responsibility for her actions. However, information from the Bordelais Correctional Facility revealed that the Defendant has stolen items from Inmates since her incarceration.

[28] The Virtual Complainants were all devastated, frustrated and disappointed when ` they found out about the Defendant's scam.

[29] They all were very excited about the prospects of employment, only to be disappointed and upset when they found out that the employment opportunity was a scam.

[30] The Pre-Sentence Report paints a disturbing picture of a young woman who is deceitful, a professional liar and a thief who has conned many persons into giving her money, based on her fraudulent misrepresentation and caused the victims financial harm and emotional distress.

Sentence

[31] The maximum penalty for this offence of obtaining property by deception is ten (10) years imprisonment and I also consider the seriousness of the offence as high.

[32] An appropriate starting sentence would be six (6) years as the circumstances are egregious.

[33] The Aggravating factors outweigh the Mitigating factors and I am alarmed that the Defendant has resorted to stealing from her fellow inmates while at the Bordelais Correctional Facility. The offence also warranted a degree of planning.

[34] I would increase the starting point by one (1) year, which equals seven (7) years. The Early Guilty Plea would attract a 1/3 discount on the sentence, taking the sentence to five (5) years, one (1) month.

[35] The Defendant addressed the Court and has shown remorse and promised to improve her life, which frankly does not move this Court to reduce the sentence.

[36] Desma Marliacy I believe you are incorrigible and a bad example to your children. I therefore sentence you, to five (5) years, one (1) month imprisonment, which is to be served consecutively with your present sentence.

[37] I will also make the following ancillary orders; I also believe there is a span of good in all of us.

1. The Defendant must enroll in an Education program to improve her decision-making skills and employability, during her period of incarceration.

2. The Defendant must receive counselling to assist her in her bad habits of lying, stealing and con-artistry. The Defendant needs help, serious help, and prayers.

3. The Defendant will reimburse all of the Virtual Complainants their monies within one (1) year of the expiration of her period of incarceration, failing which, the Defendant will serve an additional year in prison for this default. The Virtual Complainants are Aaron Shem Gopal ($1610.00), Leonise Francois ($2,000.00), Shanice Fanis ($1610.00), Nira Justin ($1610.00), Velon Hippolyte ($1610.00) and Cyrus Faulkner ($1600.00).

[38] I hope you can make a change in your life and become a productive member of this society and an example to your children after your period of incarceration.

LORRAINE WILLIAMS
HIGH COURT JUDGE

BY THE COURT

REGISTRAR