

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCR2017/0038

BETWEEN:

THE QUEEN

V

GARY STEPHEN

Appearances:

Mr. Howard Pinnock for the Crown

Mr. George Prime for the Accused

2017: December 11.

SENTENCING JUDGMENT

Criminal Law – Sentencing – Aggravating and Mitigating Factors - Forgery and Counterfeiting Offences – Uttering – Forgery of documents for travel visa - Possession of false documents – False identity documents - Principles of Sentencing – Reformatory and Rehabilitative Justice.

[1] **AZIZ, J.:** The Learned Director of Public Prosecutions indicted the defendant on the 1st August 2017, for the offence of Forgery contrary to section 304 of the Criminal Code Cap. 72A Vol. 1 of the 2010 Continuous Revised Edition of the Laws of Grenada. The offence took place between the 1st January and the 4th February 2013.

[2] On the 13th October 2017, the defendant was arraigned and pleaded guilty. This was the first reasonable opportunity for the defendant to do so.

Facts

- [3] Lindoner Austin recalled that during the month of January 2013, her boyfriend's sister contacted her from the USA and asked her to find out who prepares documents for a US Visa and that she should make an appointment to get a visa. Ms. Austin made the enquiries and found out that the defendant could do the documents. She was informed by the defendant that she needed two school approval letters for both her children, two job letters, and two bank statements from her boyfriend and herself. Ms. Austin informed the defendant that she could not get a job letter as she was not working, and he stated that she should not worry as he could do one for her as long as she could pay for the cost of it all. She was informed that the cost of the four applications would be \$3,200.00 E.C.C. Ms. Austin paid some of the money, and on the 3rd February 2013, she met the defendant who handed over the documents to support the application for the US visa.
- [4] Ms. Austin later examined the documents, and saw a job letter for her from the Ministry of Education, stating that she was a teacher at the St Joseph's Convent for a period of four years and she knew it was a false letter as she never worked at the Convent or as a teacher. Ms. Austin attended for the visa in Barbados and presented the documents after which she was informed that her visa was granted.
- [5] The defendant was arrested as a result of investigations by Detective Sergeant Sheridan Coutain on the 23rd December 2014. The defendant was thereafter interviewed about the offence of Forgery, and admitted that he had assisted Ms. Austin with her visa application for the USA. The defendant stated that he had prepared a job letter using a letterhead from the Ministry of Education, where he had received some grades and typed over it. The defendant could not remember if he had placed a signature on from the Permanent Secretary in the Ministry of Education. He also stated that he would charge \$50.00 for an online application and had assisted several persons in applying for the US Visa.

The Law

- [6] The Laws of Grenada states that:

“Whoever forges any document whatsoever, with intent to defraud or injure any person, or with intent to defeat, obstruct, or pervert the course of justice or the due execution of the law, or with intent to evade the requirements of the law or with intent to commit, or facilitate the commission of any crime, shall be liable to imprisonment for two years¹.”

Counsel Submissions

- [7] Mr. Pinnock put forward the facts quite succinctly and states from the outset that the offence of forgery is a serious one. He referred to the case of **Marc Wilson v R²** in which there were several considerations as to the aggravating and mitigating factors. The accused he says wanted to plead guilty at an earlier stage but this offence is an indictable one and did so at the earliest opportunity. Counsel highlighted all the facts of the case at bar and submitted that the court had to balance all of the circumstances with the principles of sentencing and he highlighted the reformatory and rehabilitative principles as set out in the case of Marc Wilson.
- [8] Mr. Prime on behalf of the defendant adopted all of the mitigating factors as highlighted by the prosecution and set out in the authority provided of Marc Wilson. Mr. Prime submits that the defendant is now 32 years old, grew up with his mother and received a good education. He is a man of previous good character, single and has a son who is almost two years old for whom he provides. Mr. Prime says that there are striking similarities between the case at bar and the

¹ Criminal Code, CAP. 72A, s.304.

² [2014] JMCA Crim 41.

authority of **Marc Wilson v R**, such as genuine remorse, plea of guilty at the earliest opportunity, non-violent crime, absence of anything in the appellant's background to suggest that this was other than wholly aberrant behavior and not one for personal advancement. This says Mr. Prime was a one-off offence and out of character. Mr. Prime also submits that in sentencing the court in this particular case ought to impose a sentence that is reformatory and rehabilitative in nature.

Court Considerations

- [9] This is clearly a serious offence and Parliament has marked out that a custodial sentence is appropriate for these types of offences. Forgery by definition means the action of forging a copy or imitation of a document. Forgery by its' very nature implies that there is a specific "double intention" to deceive another, by the making of a false document or item which would be accepted as genuine, and secondly that someone would therefore act to their own or someone else's prejudice. Section 304 clearly requires proof of specific intention to make a false document to induce someone into accepting the document as genuine and an intention that the other should act to his own or someone else's prejudice.
- [10] This court has looked into the area of forgery and wishes to adopt the following meaning of false document³ as there is nothing to be found within the interpretation section of the Criminal Code⁴. A document is false if the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorize its making; or if, though made by or on behalf or on account of the person by whom or by whose authority it purports to have been made, the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any

³ The Forgery Act 1913, United Kingdom.

⁴ Criminal Code, CAP. 72A, s.3.

distinguishing mark identifying the document, is falsely stated therein; and in particular a document is false:

- (a) If any material alteration, whether by addition, insertion, obliteration, erasure, removal, or otherwise, has been made therein;
- (b) If the whole or some material part of it purports to be made by or on behalf of a fictitious or deceased person;
- (c) If, though made in the name of an existing person, it is made by him or by his authority with the intention that it should pass as having been made by some person, real or fictitious, other than the person who made or authorized it.

[11] As far as the offence of Forgery is concerned it is defined without reference to dishonesty, but rather by the yardstick of the intention of the forger that his false document should be accepted as genuine and acted upon to the prejudice of someone else⁵. By way of reference, dishonesty was adopted since the Theft Act 1968 in the definition of some, but not all, acquisitive criminal offences. Dishonesty really is a jury concept characterized by recognition rather than by definition, and matters of dishonesty ought really to be left up to the jury, as “Dishonesty is something which laymen can easily recognize when they see it⁶.”

[12] As far as uttering forged documents are concerned and for completeness this court has seen that utters is also synonymous with deals with or uses. A further complete definition can be stated as:

“A person utters a forged document, who, knowing the same to be forged, and with either of the intents necessary to constitute the offence of forging the said document, uses, offers, publishes, delivers, disposes of, tenders

⁵ Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67.

⁶ Criminal Law Revision Committee discussion on the Theft Act 1968, para [39].

in payment or in exchange, exposes for sale or exchange, exchanges, tenders in evidence, or puts off the said forged document.”

[13] Possession of false documents whether it be identity documents⁷ such as passports⁸, identification cards, driving licences⁹ or documents such in today's world of cybercrime such as software, voice, sound or database, video, emails, text messages, or data used to procure a service such as travel visas, waivers, or exemptions of any kind are serious matters for which an immediate custodial sentence will usually be justified, even where it is a case of simple possession, and not withstanding a guilty plea. The court is bound to take into consideration the purpose of the defendant being in possession of the document being material to sentence¹⁰.

[14] In conducting research into this offence, this Court has come across many cases including those for false passports such as in the case of Kolawole¹¹, in which there is learning that the appropriate sentence, for having the intention of using just one false passport, even on a guilty plea by a defendant of previous good character, should usually be an immediate custodial sentence of between 12 and 18 months. This Court finds that the principles applicable to cases relating to forged passports although it may be a separate and distinct offence provides sufficient guidance for the consideration of any sentence that the court may impose on anyone convicted of a forgery offence. The court must consider the nature of the false or forged document that the offender possessed and to what use it was or may have been put to. Some documents can breach the integrity of a system at the international level for example presenting the false passport to enter into another country for the purposes of remaining there and receiving

⁷ R. v. Carneiro [2008] 1 Cr.App.R.(S.) 95, CA.

⁸ R v Olurunnibe [1998] 2 Cr.App.R.(S.) 260, CA; R v Kolawole [2005] 2 Cr.App.R.(S.) 14, CA; R v Juma [2008] 1 Cr.App.R. (S.) 5, CA; R v Mutede [2006] 2 Cr.App.R.(S.) 22, CA.

⁹ R. v. Jamalov [2010] 2 Cr.App.R. 4, CA.

¹⁰ See R. v. Zenasni [2008] 1 Cr.App.R. (S.) 94, CA.

¹¹ [2005] 2 Cr.App.R. (S.) 14, CA.

benefits of which they would not otherwise be entitled or obtaining a travel visa to enter a country where there are strict requirements, thereby breaching a national immigration system, or some documents can undermine and cause prejudice at a local level such as at a bank or with a potential employer where a forged or false bank statement may be offered to prove security or to get around another strict requirement.

[15] In the case at bar, there is involved a letter prepared by the defendant using the Ministry of Education letterhead. The letter was forged and tendered at the United States Embassy in Barbados for the purpose of obtaining a visa to the United States of America. The court makes it clear, that not only the preparation of the letter designed to prejudice the embassy into granting an entry visa is serious, but on the same level of seriousness if not more, is the fact that a person knowing that the letter was forged and manipulated presented the job letter to the United States Embassy. The person presenting the letter knowing it is forged before presentation and still does so is highly culpable and this shows on their part a very clear intention to deceive.

[16] The court considers that this defendant was producing false documents, although in this particular case, only one letter was involved, nonetheless it is still a serious offence by its very nature. This court is of the view that when considering the sentence to be imposed a court must consider:

- a. What the forgery/falsity was hoping to achieve;
- b. The role of the defendant;¹²
- c. What the defendant has gained or was likely to gain from the production of the forged/false documents .

[17] As mentioned above, the manipulation of a piece of letterhead paper from the Ministry of Education, with the intention that it be presented and thereafter cause

¹² For cases involving a conspiracy see R. v. Velez [2009] 1 Cr.App.R.(S.) 96, CA.

prejudice to the United States Embassy by causing them to issue an entry visa, which they potentially may not have otherwise issued, propels the court to the view, that the level of harm and seriousness is equivalent to those cases in which false passports are issued to allow someone to enter a country or assists in getting permission to work.

[18] This sort of criminality not only breaches the integrity of a government ministry, but also the integrity of the United States immigration system.

[19] In the case of **R v Ovieriakhi**¹³ the appellant had pleaded guilty to possessing a false identity document with the intention of using it to establish registrable facts about herself. She was sentenced to twelve months imprisonment with a direction that 18 days spent in custody on remand should count towards her sentence. The appellant was thereafter granted leave to appeal against the sentence by the full court. In short Immigration Officers visited a nursing home on information that a Nigerian woman (appellant) was working there illegally. The appellant arrived in the U.K. as a visitor for six months and became an overstayer having entered the U.K. on her valid passport. The officers searched her home and she was found to have a false Nigerian passport with the appellant's photograph. This passport was bought for 300 pounds sterling so that she could get employment as she received no financial support from her husband and suffered financially, so obtained work and received payment of more than she would in Nigeria.

[20] This seems to be a developing if not developed trend where persons have ambitions to earn quickly and in some times through desperation, therefore taking measures which are against the law to achieve the required ends. Many persons will attempt to get to another country in hopes of better lives or for what can be described as extended holidays, and work to earn money to send back to their home country for themselves and/or their families. Although this is human nature

¹³ [2009] EWCA Crim 452.

to want better, it cannot be done at the cost of committing criminal offences and breaching the integrity of a country's immigration system.

[21] In the case of **Kolawole**¹⁴ the appellant had two forged passports containing his photograph and two consecutive eight month sentences were imposed making sixteen months imprisonment in total were upheld even on a plea to having a false instrument with intent that it be used, contrary to section 5(1) of the Forgery and Counterfeiting Act 1981, which has a maximum of ten years. The court held that where a passport was being used or held with the intention of use, the appropriate sentence, even on a guilty plea by a person of good character, would be within the range of twelve to eighteen months.

[22] In the case of **R v Mutede**¹⁵ the appellant had pleaded guilty to possession of a false instrument with intent and to obtaining a pecuniary advantage by deception. The appellant was a Zimbabwean woman of good character who had permission to enter the United Kingdom as a visitor. She had applied for a student visa and had a legitimate passport. In order to obtain employment as a care worker, she had used forged letters purporting to come from the Immigration and Nationality Directorate which purportedly gave her permission to stay and seek employment. The Court in that case distinguished between using a false passport to obtain entry and using a false immigration letters to obtain work, and substituted sentences of six months' imprisonment for the fourteen that had been imposed.

[23] In the case of **R v Adebayo**¹⁶ the appellant went to an employment agency, where he produced a National Insurance card and a Nigerian passport, both of which were fakes. He also used these documents to try to obtain a bank account. The court declined to adopt the approach in **Mutede**. The court pointed out that in **Mutede** no false passport was involved and declined to distinguish between using

¹⁴ See Above.

¹⁵ [2005] EWCA Crim 3208, [2006] 2 Cr.App.R.(S.) 2.

¹⁶ [2007] EWCA Crim 878.

a false passport to enter a country and a false passport to remain in a country. It regarded the case as indistinguishable from **Kolawole** and regarded the appropriate bracket for sentencing as falling between the twelve and eighteen months' range. The court substituted for the sentence of two years' imprisonment that had been imposed, a sentence of fifteen months' imprisonment.

[24] The aggravating circumstances¹⁷ of the offence are the planning and sophistication, deliberate nature of the offending, an accompanying breach of trust, personal financial gain, breach of the integrity of immigration policy, the impact on public confidence, the impact on the victim(s), length of time over which offence committed and multiple victims.

[25] The court can find no mitigating circumstances of the offending other than the offence happened on one occasion. It is clear that the aggravating factors outweigh the mitigating factors and the starting point is assessed at fifteen months imprisonment.

[26] As far as the offender is concerned the mitigating factors are his age, good character, genuine remorse and assistance to the authorities. The starting point is therefore neither adjusted upwards or downwards.

[27] The defendant entered his guilty plea at the earliest reasonable opportunity and will therefore be entitled and awarded his one third credit. This brings the sentence to ten months imprisonment.

[28] The defendant has no time on remand to be credited towards his sentence.

¹⁷ Not all the aggravating factors have been listed, but there are factors such as length of time over which the offending took place that may ameliorate the weight that may be afforded to good character; the amount of money gained or lost as a premeditative deception is a significant factor in determining the seriousness of the offence as it indicates the extent to which a defendant may flout the law for his own gain; Motive is also a factor in assessing criminality.

- [29] The court has considered the totality of the circumstances, and whether the sentence ought to be immediate imprisonment or a suspended sentence. The defendant is a man of previous good character but it is usually persons of good character who do commit such offences as they are the type of persons who are put in positions of trust or have access to information and material to allow the offences to take place and therefore the court ought to pass a sentence of general deterrence. The Court in passing sentence must look at whether the offender's criminal conduct reflected a pattern or an aberration¹⁸ and has found that there was no established pattern of offending.
- [30] This is a case in which the court is considering a one off offence for little personal financial gain, albeit as stated in the case of **Marc Wilson v R**¹⁹ this offending does show deviousness in the mind of the defendant to design or participate in such a deceptive scheme for some personal gain. In addition to this, the fact that the defendant knew that the document was required for the purpose of obtaining a travel visa, to another country smacks of brazenness and is indicative of a blatant disregard for the law.
- [31] Having stated this court's views above on the defendant's conduct, this court is of the view that the likelihood of reconviction is low after the salutary experience and lessons learned of these proceedings. In this particular case a non-custodial sentence would still achieve the ends of justice as the defendant now has a criminal record, the effect of which will remain with him for the rest of his life in that his good name has been blemished. In these cases, and depending on the individual factors of each case the mere fact that a person's good name has been blemished, their character soiled, and having the experience of court could be weighty and achieve the primary objectives of sentencing.

¹⁸ Patricia Henry v R [2011] JMCA Crim 16.

¹⁹ [2014] JMCA Crim 41 at para [61].

Conclusion

- [32] The sentence that this court imposes on the defendant is ten months imprisonment suspended for twelve months.
- [33] The defendant is to perform 250 hours of unpaid work in total of which 150 hours will be spent at Her Majesty's Prison teaching inmates to read and write.
- [34] The balance of 100 hours will be directed at assisting children with special needs at the special needs children school in the town of St George's and any other special needs school between St George's and Grenville. The total 250 hours are to be completed within twelve months of the day of sentencing.
- [35] The court will require regular periodic quarterly updates for assessment on progress of lack thereof.
- [36] If there is any breach of the unpaid work requirement, meaning the defendant fails to attend as directed on at least 3 occasions without good reason, he will be brought back to court for consideration of the suspension being activated in full or in part depending on the number of hours of unpaid work completed.
- [37] This courts thanks both Mr. Pinnock and Mr. Prime for their helpful oral submissions on sentence.

Shiraz Aziz
High Court Judge

By the Court

Registrar