

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

IN THE HIGH COURT OF JUSTICE

CASE NO. GDAHCR2016/0037

BETWEEN:

REGINA

V

ELVIN CHITAN

Appearances:

Ms. Crisan Greenidge for the Prosecution
Mr. Richie Maitland for the Accused

2017: April 11

SENTENCING JUDGMENT

Criminal law – sentencing – Offences of dishonesty – Stealing by reason of employment – Money laundering – Theft – Principles of sentencing – Restorative justice – Aggravating and mitigating factors – Consideration of dependents and family – Impact of custodial sentence – Suspended sentences – Individual and general deterrence.

- [1] **AZIZ, J.:** On the 15th August 2016, the Learned Director of Public Prosecutions indicted Mr. Elvin Chitan (“the defendant”) with money laundering, defrauding his employer by falsifying payrolls and other payment documents and stealing from his employer Columbus Communications Grenada Limited (“CCGL”). The money that was stolen and laundered amounted to four hundred and seventy-two thousand and one dollars and twenty-four cents Eastern Caribbean Dollars (\$472,001.24).

- [2] The defendant pleaded guilty to the offences of theft from his employer on the 4th November 2016, and to money laundering on the 6th December 2016.

Summary of the offences

- [3] The circumstances leading to the commission of the offences were set out on behalf of the prosecution in writing and are agreed by the defence.
- [4] CCGL had several accounts with GRENLEC¹. Bills for payment would be sent every month to CCGL, who would in turn send information in relation to the accounts and the amounts to be paid on each account.
- [5] The payment sheets would be prepared by the defendant, who was working as an accounting officer for CCGL. It became apparent through various queries that there was an account in the name of the defendant which had a balance of \$77,174.41. Enquiries also revealed that the sum of \$92,491.43 was paid into this particular account which was always in credit. The defendant admitted this debt to CCGL and as a result his employment terminated on 12th March 2015.
- [6] Further enquiries revealed that there were payroll discrepancies as names of persons not employed with CCGL were contained on its payroll and included Mr. Chitan who was also on the payroll. As a result of these enquiries, a further sum of \$257,343.35 was discovered to have been misappropriated from CCGL. From that further sum misappropriated the defendant overpaid himself \$124,894.60.
- [7] As the investigation continued and further checks made it was discovered that an additional sum of \$122,166.66 was stolen.

¹ The Grenada Electricity Company

[8] The defendant admitted stealing the sum of \$122,166.66 in addition to the money credited to GRENLEC. Some of the money stolen was used to pay for work done on the defendant's home and other monies were kept in the bank. Some of the misappropriated monies were used to purchase various items for the church that he attended.

[9] It is also agreed between prosecution and defence that some monies misappropriated have been repaid to CCGL

The Law

[10] The Proceeds of Crime Act No. 6 of 2012, sections 35(1)(a) and 35(10)(b) states that:

(1) "A person commits an offence if –

(a) he acquires, transfers or uses any property or has possession of it which, in whole or in part, directly or indirectly represents his proceeds of criminal conduct; or

(b) knowing or suspecting that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires, transfers or uses that property or has possession of it.

(10)(a) A person who commits an offence under this section is liable – (a) on summary conviction, to imprisonment of five years or to a fine of \$500,000, or both; or

(b) On conviction on indictment, to imprisonment for a term of fourteen years or to an unlimited fine, or both.

Section 275 (a) The Criminal Code as enacted by Section 45 of the Criminal Code (Amendment) Act states:

“Stealing in special cases and from the person

(See 95(2)(3))

275. A person who is convicted of –

- (a) Stealing anything of which he had the custody, control or possession, or to which he had the means of access, by reason of any office, employment or service;
- (b) Stealing from in or any dwelling house, shop, garage, manufactory, warehouse or vessel;
- (c) Stealing from or in any place of worship
- (d) Stealing from the person
- (e) Stealing any cattle, not being goat or swine, the value of which cattle does not exceed two hundred dollars; or
- (f) Stealing any pole, wires, or apparatus used for the purposes of any telegraph or telephone,

commits an offence and is liable on conviction on indictment to a term of imprisonment not exceeding twenty years.”

Court’s Considerations

- [11] In the case of **Regina v Joseph Brice**, the Learned Judge stated that ‘the responsibility of any court is to impose a just sentence having regard to all the circumstances of the case, the offender and to implement the aims of sentencing which in the main are punishment, rehabilitation and deterrence’.

- [12] The Court is guided by sentencing principles² such as Retribution, Deterrence, Prevention and Rehabilitation and takes into account all the aggravating and mitigating factors.
- [13] When considering the sentences that must be passed for a particular offence or offences the sentencing judge must examine each case carefully. In considering the case before court there must be an assessment on whether an immediate custodial sentence is the only realistic option, bearing in mind the considerations in **Desmond Baptiste v R**³. If the sentencing court is of the opinion that a custodial sentence is the only realistic option then such sentence is to be as short as possible. This, as said before, is consistent with the duty to protect the interest of the public and to punish and deter the offender and potential future offenders.
- [14] In cases where a short custodial sentence is being considered, that, in my view, being 12 months in certain instances, then the Court should ask itself, particularly where the defendant has not been incarcerated before, whether a shorter sentence might be equally effective in advancing the principles of sentencing. In other words, where the Court was considering a sentence of 12 months, a sentence of 9 months may be just as effective or 2 months instead of 4 months.

Prosecution's Submissions

- [15] Ms. Greenidge for the Prosecution submits that the defendant has by his plea now been convicted of money laundering and stealing from employer, which are serious offences. Some of the aggravating circumstances include the fact that there is a large sum of money involved, there has been breach of trust, abuse of position, there would have been a serious financial impact on the company's operations and employees, offending conducted over a period of time, there was a sophisticated scheme and prevalence of this type of crime as noted from the court

² Desmond Baptiste v R, Criminal Appeal No 8 of 2003

³ Criminal Appeal No. 8 of 2003

lists. It is clear to the court that CCGL has been affected by the defendant's actions and dishonesty but there is also recognition that the defendant is a man of previous good character and pleaded guilty at an early stage.

Defence's Submissions

[16] Mr. Maitland on behalf of the defendant submits both in written submissions and orally that there are three aggravating factors (seriousness of the offence, breach of trust and the length of time over which the offences were committed). The mitigating factors, he further submits, included co-operation with police, genuine remorse as evidenced in statements made to the police, a letter written by the defendant and from the social inquiry report, a guilty plea at the earliest opportunity, good character and the fact that there was a paper committal, an indication, he says, that the defendant did not want to waste the Court's time and expense involved in going through a preliminary enquiry. Counsel urges the Court to adopt an approach that can be best described as 'Rehabilitative and Restorative Justice'. This, he submits, is an appropriate approach for an offender's first involvement in offending behaviour and most certainly where the offender is a youth. In this case the defendant is not a youth. In the case of **The Queen v Monnalyssa George**⁴ the Court referred to the case from the Supreme Court of Canada, **R v Proulx** [2000] 1 S.C.R 61 in which it was stated:

"Restorative justice is concerned with the restoration of the parties that are affected by the commission of an offence. Crime generally affects at least three parties: the victim, the community, and the offender. A restorative justice approach seeks to remedy the adverse effects of crime in manner that addresses the needs of the parties involved. This is accomplished in part, through the rehabilitation of the offender, reparations to the victim and to the community, and the promotion of a sense of responsibility by

⁴ SLUCHRD2013/1682, Ramdhanie J. (Ag.) at Page 5, Para 14

the offender and acknowledgment of the harm done to the victims and to the community.”

[17] At the end of the day, a sentencing court must not only deter the offender from any further criminal activity, but ensure that they and others tending to lead towards a life of crime can take two steps back and continue onto the path of an honest and productive life in society. In this particular case there is no evidence to suggest that this defendant will be encouraged into further crime and therefore does not need a deterrent sentence but a sentence must be passed for general deterrence. A sentence must also be passed that would reflect the courts abhorrence of these types of crimes through punishment, but must balance that against a sentence that would allow the defendant to be useful and productive in society.

[18] The case of **Proulx**⁵ also set out the following:

“Where a combination of both punitive and restorative objectives may be achieved, a conditional sentence will likely be more appropriate than incarceration. Where objectives such as denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved. However, a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of lesser importance, depending on the nature of the conditions imposed, the duration of the sentence, and the circumstances of both the offender and the community in which the conditional sentence is to be served. A conditional sentence may be imposed even where there are aggravating circumstances, although the need for denunciation and deterrence will increase in these circumstances.”

Guidelines

[19] In Grenada, and other OECS territories there are no sentencing guidelines, but within time there will be to ensure that the courts are uniformed and consistent in their approach to sentencing, bearing in mind that guidelines are merely such and

⁵ (2000) 1 S.C.R 61

do not bind the sentencing judge or put them in a straight jacket. This Court has considered the UK Definitive Guidelines on Fraud and Money Laundering offences.

- [20] Reference is had to Fraud by reason of abuse of trust. In the United Kingdom guidelines, there is reference to culpability ranging from high to lesser and also to harm. Harm A is assessed by the actual, intended or risked loss that may arise from the offence. Harm B is related to victim impact. Again this ranges from high (vulnerable victim, age, mental capacity) to medium and lesser (where there is some detrimental impact).
- [21] The Court must consider what the notional starting point would be. In doing so, this Court has considered cases placed before it ranging from 2010-2015.
- [22] The Court has already alluded to the United Kingdom Sentencing Guidelines and how the sentence starting point and range are arrived at. These guidelines also set out categories of harm such as Harm A ranging from £100,000 - £500,000 with a starting point based on \$300,000.00. The particular case before this Court falls between Category 2 & 3 and a starting point of over £50,000.00 which is equivalent to approximately \$175,000.00. The higher range starting point is above the value of offending in the case at bar, and there is no starting value equivalent to this case. This Court takes the view that the appropriate range of sentence is between 18 months and 4 years imprisonment. Starting point is 3 years, which may be adjusted upwards or downwards.
- [23] The House of Lords case of **R v Barrick**⁶ gave guidance on some of the considerations that ought to apply when dealing with cases of this kind involving breach of trust. In the **Barrick** case Lord Lane CJ, delivering the judgment of the English Court of Appeal laid down detailed guidelines for sentencing in cases of theft and dishonesty constituting a breach of trust by employees and professional

⁶ (1985) 7 Cr. App. R. 142

persons. The appellant, a man aged 41, of previous good character, was convicted by a jury of four counts of false accounting, four counts of obtaining by deception and two counts of theft. The appellant was employed as the manager of a small finance company, and over a period of time stole a total of at least £9,000. He was sentenced to 2 years imprisonment on each count, the sentences to be concurrent.

[24] Lord Lane CJ stated at 145:

"This case provides us with an opportunity to make some observations upon the proper sentence to be passed in respect of certain types of theft and fraud as to which there has been recently some divergence of opinion. The type of case with which we are concerned is where a person in a position of trust, for example, an accountant, solicitor, bank employee or postman, has used that privileged and trusted position to defraud his partners or clients or employers or the general public of sizeable sums of money. He will usually, as in this case, be a person of hitherto impeccable character. It is practically certain, again as in this case, that he will never offend again and, in the nature of things, he will never again in his life be able to secure similar employment with all that that means in the shape of disgrace for himself and hardship for himself and also his family."

[25] In **Jacob**⁷ a solicitor who had over a period of some 3 years stolen money from clients and his partners to the tune of between £40,000 and £57,000 had his sentence of 4 years imprisonment reduced by English Court of Appeal to 18 months.

[26] In **Milne**⁸ the English Court of Appeal following the decision in **Jacob** substituted for the sentence of 3 years imprisonment imposed upon a solicitor who had stolen some £40,000 from his client account, the term of 18 months imprisonment, a quarter of which was suspended, leaving some thirteen and a half months to be served.

⁷ (1981) 3 Cr. App. R(S) 298

⁸ (1982) 4 Cr. App. R(S) 397

[27] Other persons doing important jobs such as postmen did not fare as well before the Courts. In **Eagleton**⁹, a postman had been sentenced to 5 years imprisonment for three offences of theft of packets in transit by mail with 80 offences taken into consideration. A sentence of 30 months imprisonment was substituted.

[28] The English Court indicated that they could see no proper basis for distinguishing between cases of this kind simply on the basis of the defendant's occupation. Professional men should expect to be punished as severely as the others; in some cases more severely.

[29] The Court went on to state:

"It is, we appreciate, dangerous to generalise where the circumstances of the offender and the offence may vary so widely from case to case. In the hope that they may be helpful to sentences generally, and may lead to a little more uniformity, we make the following suggestions.

*In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide. Where the amounts involved cannot be described as small but are less than £10,000 or thereabouts, terms of imprisonment ranging from the very short up to about 18 months are appropriate (see for example **Weston** [1980] 2 Cr. App. R(S) 391). Cases involving sums of between about £10,000 and £50,000 will merit a term of about 2 to 3 years' imprisonment. Where greater sums are involved, for*

⁹ (1982) 4 Cr. App.R(S) 47

*example those over £100,000, then a term of 3 and a half years to 4 and a half years would be justified (see for example the case of **Strubell** [1982] 4 Cr. App. R(S) 300). In that case the defendant was employed as an accountant. He pleaded guilty to offences involving it seems over £150,000. A sentence of 3 years imprisonment was substituted for the 5 years imposed at trial.”*

[30] In **Regina v Joseph Brice**¹⁰, the defendant was sentenced to 1 year and 6 months imprisonment for theft. Mr. Brice was convicted after a trial lasting one and a half weeks. The Defendant was the director of a company which was responsible for the management of another company. On the 10th December 2008 the Defendant requested an unusual loan of \$900,000.00 by email from the business he was managing. Due to time difference of six hours, the email was not read until the next day, the 11th December 2008. By the time the email had been read, the defendant had already instructed the Bank in Curacao and received funds. A few days later, on the 15th December 2008 when the banking transaction had been discovered, Mr. Brice promised to pay the funds back by the following day claiming an error in judgment, but could not, knowing that he had made payments to several entities and to himself. The money was repaid shortly after in two payments in January and March 2009.

[31] In the case **The Queen v Lyra Vanterpool-Todman**¹¹, the defendant was sentenced to 3 years for theft and 2 years for false accounting, effectively stealing \$296,262.94. The defendant was an accounts officer in a Bank and used her position to increase overdrafts on dormant accounts over a 2.5 year period. The judge was of the view that the false accounting was done to conceal the theft and ordered the sentences to run concurrently.

¹⁰ Case from Anguilla; Indictment No.08 of 2015

¹¹ No. 17 of 2007 (BVI)

- [32] In Grenada, there have been a number of cases before the High Court, in which various sentences have been passed for theft and dishonesty offences, including stealing by reason of employment, forgery, fraudulent appropriation by directors, and falsification of minutes. In **The Queen v Terry Hagley**¹² the defendant was charged with stealing by reason of employment and on a plea was ordered to pay \$20,000.00 compensation into the Registry of the High Court, to do 20 hours of community service and entered a bond to keep the peace.
- [33] In the case of **Kelvin Moses**¹³, charged with stealing by reason of employment, was sentenced on the 3rd July 2012, after a guilty plea, to make compensation in the sum of \$51,962.35 before June 2016, in default he was to serve 9 months imprisonment.
- [34] In **The Queen v Joann Fortune**¹⁴ the defendant was charged with various offences including stealing by reason of employment and forgery. In July 2012 she was sentenced to 18 months imprisonment after entering guilty pleas to stealing by reason of employment.
- [35] In the case of **The Queen v Catoria Jeremiah**¹⁵ the defendant pleaded guilty to stealing by reason of employment. On the 10th July 2012 the Court imposed a non custodial sentence. The defendant entered a bond in the sum of \$3,000.00 to be of good behavior for 18 months, in default of which the matter would be brought back to court for the breach of bond and the defendant re-sentenced in light of any breach.
- [36] In the case of **The Queen v Shandell Du Bissette**¹⁶ the defendant pleaded guilty to the offences of forgery and stealing by reason of employment. On the 17th July 2013, the court imposed a sentence for the defendant to enter into a bond to be of

¹² GDAHCR2010/0068

¹³ GDAHCR2010/0094

¹⁴ GDAHCR2010/0106

¹⁵ GDAHCR2012/0012

¹⁶ GDAHCR2012/0064

good behavior and keep the peace in the amount of \$10,000.00 with two sureties, in default 2 years imprisonment. The defendant was also ordered to make compensation in the sum of \$28,621.11 on or before December 2014 or 2 years in default.

[37] In the case of **The Queen v Dwight Celestine**¹⁷ the defendant was charged with various offences of forgery, stealing by reason of employment and money laundering and pleaded guilty to all offences on the 29th April 2016. He was sentenced to 3 years imprisonment for certain counts (1-5) of stealing by reason of employment and 3 years imprisonment on other counts of the same kind. The sentences were to run concurrently. The defendant was also ordered to repay the sum of \$198,039.70 together with interest of \$59,211.91 within five years. That sum was to be paid in monthly installments of \$4,921.00 until paid off and in default 3 years imprisonment. On the money laundering offences the defendant was sentenced to 3 years imprisonment and a fine of \$20,000.00 to be paid in installments of \$5,000.00 on or before the last working day in December 2016, and each and every month thereafter. The prison term was to be consecutive to the sentence for stealing by reason of employment. The defendant was also sentenced to do five hours of work per week with the Government of Grenada Audit department for 3 years. Yearly update reports were also requested by the Court and any breach of the Court's sentence would activate the terms of imprisonment without variation.

[38] In the case of **R v Yandel Gaston**¹⁸ the defendant pleaded guilty to stealing the sum of \$108,000.00 XCD over a 12-month period from the St. Lucia hospital Industry Credit Union and was a man of previous good character. The Court made a compensation order in the sum stolen and also ordered the defendant to do 200 hours of community service, in default 3 years imprisonment along with keeping

¹⁷ GDAHCR2014/0079

¹⁸ Case No 1937 of 2012 (unreported), St Lucia

the peace and to be of good behavior for 3 years, in breach of which the defendant would have to serve two years imprisonment.

Social Inquiry Report

[39] I have considered the Social Inquiry Report in which it is clear that Mr. Chitan was brought up in a loving, peaceful and religious home, with his parents and siblings. Mr. Chitan is married and has 3 children ages 2-11. During the interview Mr. Chitan was co-operative, calm and respectful. He was also spoken of highly in the community.

[40] Mr. Chitan's former colleagues spoke of him as a good supervisor, always willing to assist in their development and were shocked on learning of these offences. Pastor Noel described Mr. Chitan as helpful, reliable and respectful, involved in youth activity and headed social committees. The defendant was the first elder at the church and executed his duties with pride and diligence and was very committed to youth development. Despite learning of these offences, the Pastor is still committed to assisting Mr. Chitan.

[41] The defendant's parents and wife spoke of him with love and warmth and expressed concern over the children. He was described as his parents' right hand and have a special love for him although not favouring him more than any of their other children. He has been described as being very active in his parents' health care and financial support. The defendant's parents believe that this experience has taught him a very valuable lesson which will serve to deter him for this type of behavior in the future, and they have also expressed a willingness to help with financial compensation. The defendant's wife spoke of him as a good father and provider who ensured that the family's needs were always met.

[42] I have also noted that there is potential employment opportunity being offered to the defendant even though that particular company is aware of these court

proceedings. The defendant is currently employed as a financial consultant with responsibility for reviewing financial accounts and financial reconciliation. The company representatives believe that Mr. Chitan has a lot more to offer than his financial expertise and stated that he has tremendous potential, according to the social inquiry report. Mr. Chitan has demonstrated and expressed remorse.

Victim Impact

- [43] The financial manager for CCGL did meet with the probation officer and shared their position. The financial manager operated as the defendant's supervisor for almost three years and described the defendant's general deportment and attitude to his work as excellent. He stated that the defendant always went beyond the call of duty and this was admired and appreciated. The defendant was always open to correction and therefore these offences greatly disappointed them and was asking that the company CCGL be compensated for their loss.
- [44] Having heard and seen all of counsel's submissions, it is clear that the aggravating factors do outweigh the mitigation. The defendant was placed in a significant degree of trust and responsibility, the amount of money was large, the offending took place over a period of time, the money was used to pay others and also for personal use, including being placed in his personal bank accounts, it has had a significant impact on the victim, this type of offending impacts the public and public confidence. This is of course balanced with the fact that the defendant pleaded guilty at the earliest opportunity, he is a first-time offender and therefore a man of previous good character, he assisted the investigation, and he has made efforts to repay the money and has not placed blame on anyone else. The defendant has shown genuine remorse.
- [45] In the case of **Bjarnason**, 2011 Can LII 67010 (MB PC) Moar P.J referring to the case of **R v Saleem** stated:

“Because of the fact that thefts from employers are difficult to detect, because employees have the ability to know the employer's systems and weaknesses, perhaps in the security; they have the ability to exploit those weaknesses for their own benefit, therefore, there is a considerable amount of employee theft in this country that goes undetected.”

Although there aren't any statistics or evidence currently before the Court, it would seem that there is an increase in the prevalence of this type of offending. The prosecution has provided a short table with some of the previous cases, some of which have been set out here. The Court can take notice of its court list.

[46] I do acknowledge that at times a suspended sentence or other penalty outside of a penal institution can be the appropriate sentence to be imposed in cases involving a breach of trust. Breach of trust is not an offence where such a disposition is precluded. However, as one can see from the comments in previous cases, it's safe to conclude that it would be a rarely used disposition, given the aggravating factors usually present, as well as the emphasis on deterrence and prevention.

[47] Considering the background of this defendant it is not difficult to accept that this was certainly offending that was out of his character. There is no doubt that since the crime was detected that the defendant has taken some positive steps to redress the wrong. What has been said within the social inquiry report certainly supports the conclusion that a suspended sentence would be definitely in his best interests. However, sentencing is not entirely about the individual but also involves a consideration of the offences that are before the court.

[48] I must consider, amongst other things, the fact that the offence occurred over a period of time and involved multiple transactions. It was a well thought out scheme and the losses occasioned were significant.

- [49] It is unclear to the court as to what happened with all of the money or what it was being used for in its entirety.
- [50] I have taken the opportunity to consider the positions of counsel and I have reviewed the applicable law. Based on the facts now before the Court I must conclude that the principles of deterrence and prevention can be dealt with by a non custodial sentence. I have firmly in mind the other principles of rehabilitation and reformation.
- [51] The aggravating factors point to a serious offence that fortunately came to a stop once the discrepancies had been found out. But for that, there is no reason to believe the losses would have not continued to mount.
- [52] I am also prepared to say that, given the nature of the offence, I would have had no difficulty on the facts alone to conclude that general deterrence aspects demand that the sentence be served within an immediate custodial sentence. However, I have considered the efforts and cooperation made by the defendant since his arrest and the immense remorse I do believe he harbours. I have considered the effect that this has had on the defendant and also the effects on his family life in particular his very young children and elderly parents who depend on the defendant and believe that the suspended sentence regime was designed for offenders, such as this defendant, who commit a very serious offence that appears to be completely out of character and then does as much as possible or offers to remedy that mistake.
- [53] In the case of **R v Petherick (Rosie Lee)**¹⁹ the English Court of Appeal considered the effect of sentencing on the rights of an offender's dependent children and other family members under the European Convention on Human

¹⁹ (2012) EWCA Crim 2214; [2013] 1 W.L.R. 1102; 1 Cr. App. R.(S.) 116

Rights 1950 art. 8 and gave guidance²⁰. A number of general observations were made:

“(a) the sentencing of a defendant inevitably engaged not only their own art. 8 family life but also that of their family, including any dependent children; (b) the correct approach in all art. 8 cases was to ask whether there was an interference with family life, whether such interference was in accordance with law and in pursuit of a legitimate aim within art. 8(2) and whether such an interference was proportionate on a balance of the various factors. That approach was as true of sentencing as of any other kind of case in which family life was in question, HH applied. In sentencing cases, the first two questions would usually be straightforward, it was the third question which might call for careful judgment; ... that dependent children were a relevant factor in sentencing; (d) it followed that a criminal court should be informed about the defendant’s domestic circumstances, and where the family life of others, especially children, would be affected, would take it into consideration. The court would ask whether the sentence contemplated was a proportionate way of balancing such effect with the legitimate aims that sentencing had to serve; (e) in a criminal sentencing exercise the legitimate aims which had to be balanced against the effect a sentence often had on the family life of others, included: society’s need to punish serious crime; the interest of victims that punishment should constitute just deserts; society’s need for appropriate deterrence; and the requirement that there should not be unjustified disparity between defendants convicted of similar crimes. Moreover, children also had a direct interest in society’s climate being one of moral accountability for wrongdoing. It was also relevant that a crime often involved the infringement of other people’s family life in addition to the defendant’s family R. v Kayani (Talib Hussein) [2011] EWCA Crim. 2871 considered; (f) the balance would be likely to be a fine one where the case stood on the cusp of custody; (g) the likelihood of any

²⁰ Article 8 deals with the Right to respect for private and family life.

interference with family life inherent in a sentence of imprisonment being disproportionate was inevitably progressively reduced the graver the offence; (h) where custody could not proportionately be avoided, the effect on children or other family members might afford grounds for mitigating the sentence length, but also might not. There could be no standard or conventional reduction; it was an infinitely variable factor to be trusted to the judgment of experienced judges..."

The Sentence

[54] The sentence of the Court is as follows:

1. On Count 3, two years imprisonment suspended for 2 years. This shall be suspended on condition that:
 - a. The Defendant is to repay the sum of \$472,001.24 within 5 years of today's date at 6% interest from the date of sentence until the debt is paid off.
 - b. This sum is to be repaid in monthly installments of \$4,090.00 commencing 28th April 2017 and thereafter on the last working day of each and every month.
 - c. The sums held on account including the sum of \$77,174.41, pension monies and further the monies subject to the restraint order made on 26th May 2015 shall be credited towards the payment of \$472,001.24.
 - d. The payments are to be made at the Supreme Court Registry.

2. On Count 1, there will be a sentence of 3 years imprisonment suspended for a period of 2 years. The conditions of the suspension are:
 - a. The Defendant is also to complete 200 hours of unpaid work in the area of his expertise, that being accounting, at a nominated accounting department within the government service of Grenada, deemed suitable and appropriate and this must be completed within 12 months.
 - b. In default of completing this part of the sentence the defendant will serve 2 years imprisonment on each count which shall be consecutive to 3 year sentence imposed.
 - c. A fine in the sum of \$30,000.00 which must be paid within 3 years at the rate of \$833.00 per month, the first payment being on or before the 28th April 2017 and each and every month thereafter until paid off. Any breach will activate the 2 year suspended prison sentence and the sentences for Count 1 and 3 are concurrent to one another.
3. The Defendant is to sign a bond to keep the peace and not commit any further offences within a 3-year period in the sum of \$50,000.00.

[55] The Court wishes to thank counsel for their assistance through their written submissions and the brief and cogent oral submissions.

Shiraz Aziz
High Court Judge