

IN THE EASTERN CARIBBEAN SUPREME COURT

ANGUILLA CIRCUIT

IN THE HIGH COURT OF JUSTICE

(CRIMINAL)

Indictment No 08 of 2015

REGINA

V

JOSEPH BRICE

2016; October 28th

JUDGMENT ON SENTENCING

- [1] **MATHURIN J:** This sentencing is pursuant to the finding of Guilty by a jury panel on one count of theft. The responsibility of any court is to impose a just sentence, having regard to all the circumstances of the case of the offender, and to implement the aims of sentencing which in the main are punishment, rehabilitation and deterrence. The court is guided by sentencing guidelines and takes into account all mitigating and aggravating factors.
- [2] The circumstances leading up to the indictment were that at the time of the offence Mr. Brice was a Director of a company called PITCO which was responsible for the management of an International Business Corporation called Regency Holdings Limited. Mr. Brice had sole signing authority on Regency Holding's account in Fortis Bank in Curacao. The normal practice over a number of years was that on receiving instructions of Leonard Reyneke and Associates, an accounting and auditing firm in South Africa, Mr. Brice would send written instructions to the Fortis Bank and the transaction was processed. This was a process that was strictly adhered to even when it came to remuneration of Mr. Brice for his own services.

- [3] The facts leading to Mr. Brice's conviction on the 27th October 2016 after a trial spanning one and a half weeks were that on the 10th December 2008 at 6:47pm in Anguilla, Mr. Brice sent an urgent email to Mr. Reyneke requesting him to ask the principals of Regency Holdings for an unusual loan of US\$900,000.00 for a period of eight weeks. As a result of the time difference of six hours, Mr. Reyneke did not read the email until the next day, the 11th December 2008. By the time he read the email, Mr. Brice had already instructed the bank in Curacao and received the funds.
- [4] Mr. Reyneke received a record of this transaction on Regency Holdings account on the 15th December 2008 and he contacted Mr. Brice who promised to return the funds the next day, claiming it was an error of judgment. Mr. Brice backed up this promise with a copy of instructions ostensibly sent to First Caribbean Bank requesting that the bank transfer the sum of \$950,000.00 to Regency Holdings account.
- [5] Mr. Brice however, knew he could not return the funds as he had done all these transactions on the account and in fact, he had continued to do transactions even after he sent the purported instructions to Mr. Reyneke. Mr. Brice used the funds and made several payments to various entities as well as himself.
- [6] The funds were subsequently recovered by one payment in January 2009 of \$400,000.00 and the other in March 2009 in the sum of \$600,000.00.

The Law;

- [7] The Criminal Code of Anguilla provides that any person convicted of theft is liable on indictment to 10 years imprisonment.
- [8] The sentencing process seeks to promote a respect for the law and an orderly society. A sentencing court must consider many things. In fashioning a sentence appropriate to the facts of the case and the characteristics of the offender, the court must consider the principles referred to by our Court of Appeal in **Desmond Baptiste v R**;
- a. Retribution – the court must reflect society's abhorrence of particular types of crime through punishment of such unlawful conduct;
 - b. Deterrence – this is specific to the offender and others who are minded to commit similar offences;

- c. Prevention – this is to protect the public from offenders who persist in committing crimes by separating them from society and
- d. Rehabilitation – the objective being to engage the prisoner in activities that would assist him with reintegration into society after prison

Mitigation

- [9] Mr. Foster urged the Court to take into consideration the Prosecution witness's view that Mr. Brice was a man of good character and had no previous convictions. Counsel said he was a business man and a professional and he had once held the post of Parliamentary Secretary in Saint Lucia. He said that Mr. Brice who has a Bachelor and Masters degree in Law had contributed to the society in Anguilla and served Anguilla well.
- [10] In mitigation, he reminded the court that the monies were repaid. He urged the court to consider a suspended sentence and take into account the various periods of time that Mr. Brice had spent on remand and served time pursuant to the original trial in this matter.

Prosecution's submission

- [11] Mrs. Hinds for the Prosecution responded that Mr. Brice had been convicted of Theft. She states that the aggravating factors are breach of trust, a large sum of money involved, the effect on Anguilla's financial sector and the impact on Mr. Brice's employees and she also agreed that the mitigating factors are the repayment of the funds and the defendant's previous good character.

Court's consideration

- [12] I considered the authorities referred to by the Prosecution when considering an appropriate sentence;
- (a) In **R v Barrick**; 81 Cr App R 78; the Accused used his position as manager of a finance company to steal in excess of £9,000.00 from persons who could ill afford the loss. He did this over a period of 23 months by the defalcation of accounts, he fought the case for 9 days. In reviewing a 2 year sentence, the court of appeal stated that the only thing in his favor was some incidental admissions of fraud and stated that it was a

case where no suspension of the sentence would be appropriate and that 2 years imprisonment was not excessive.

(b) In **R v D'Souza** (1996)2 Cr App 130; the Defendant pleaded guilty to a single count of theft. He was the book-keeper for a hospital and over the period of 10 years he had stolen £652,000. The judge took into account the fact that representations that the appellant had live a good and industrial life were misleading as he had been stealing for 10 years. He also took into account the plea of guilty and on appeal his sentence was reduced from 5 to 4 years.

(c) In **The Queen v Lyra Vanterpool-Todman** No 17 of 2007 BVI; the Defendant was an accounts officer in a bank and used her position to increase overdraft facilities on dormant accounts effectively stealing \$296,262.04 over a two and a half year period. She pleaded guilty to 12 counts of theft and eight counts of false accounting. She was sentenced to 3 years for theft and two years for false accounting. The Judge considered the false accounting was done to conceal the theft and ordered the sentences to run concurrently.

[13] The authorities presented to me while they indicate a clear pattern of breach of trust by a person in authority, relate to theft over an extended period of time and do not in my opinion assist with sentencing in this case. This situation is different in that in this matter the theft was done on one occasion and the full sum was repaid within a period of 3 months. According to the evidence, it was the first time he had done anything of the sort. He stole \$950,000.00 and it was disbursed within a week of him having it. Mr. Brice told Mr. Streete of the pressure he was under to meet other obligations and of his belief that the owners of Regency would not have objected to him receiving the loan. I note that he had offered in his email to repay it in 8 weeks and was prepared to pay interest.

[14] I consider that the aggravating factors were as follows;

- a. A large sum of money involved
- b. He was in breach of his position of trust
- c. He showed no contrition over a trial of 8 days
- d. He deceived Regency as to the money's return

- e. Spent the money knowing no consent was given
- f. Impact on Axa in that relies on soundness and integrity of its Registered agents

[15] I do not think that Mr. Brice, despite his email, had any intention of ascertaining whether or not he would get permission. In his mind, he needed that money and he needed it immediately and urgently. He must have known he was going about it the wrong way and that even though his position as Director facilitated a withdrawal of the funds, as an Attorney and practiced business man, he ought to have known, that he should have waited for the transaction for a personal loan to be considered. His correspondence to Mr. Reyneke and his continued spending did not help him. He was clearly in breach of his obligations as Director with responsibility of managing the account pursuant to directions from Regency Holdings.

[16] The payment of bills is something to which I also had regard. In essence Olivetti J stated that one cannot know how any person can react under stressful circumstances and one should be loathe to cast moral judgment unless one first walks in that person's shoes ... however, our society expects a certain standard of behavior despite the pressures of life and having the round education that Mr. Brice had, he must have known that what he was doing was wrong. He must have known that he should await a response.

I consider the mitigating factors were as follows;

- a. No previous convictions
- b. Good character as indicated by witnesses
- c. The theft and replacement of the money spanned 3 months

[17] I note that the authorities relied on by the Prosecution all refer to elaborate schemes carried out over long periods of time and as such do not assist me in this particular situation. I will take into consideration that Mr. Brice is a mature individual with no apparent propensity for the commission of the offence. I also note the professional nature of the relationship enjoyed over the years with Regency Holdings. In addition to this, he has no prior convictions and repaid the money within a span of three months. I add however that repayment generally does not obviate the need for the Court to mete out its punishment.

[18] I bear in mind that this is an unusual situation in this jurisdiction but it is not to be countenanced by others given the reputation that Anguilla seeks to establish based on the soundness and integrity of its registered agents and hence attracting investors to its shores.

[19] I have also considered the UK Sentencing Guidelines provided by Mr. Foster to provide some assistance in fashioning starting points and general ranges for this offence.

What is usefully extracted from these guidelines is the measure of culpability for these types of offences. The guidelines also identify the degree of harm caused.

Culpability is seen to be either as higher or lesser culpability. The UK Sentencing Guidelines in the case of theft list a number of factors that will inform a court's finding of greater culpability. When there is a breach of a high degree of trust or responsibility, the Guidelines demonstrate that this is an incident of High Culpability. In this case Mr. Brice was the Registered Agent with sole signing authority on the account of Regency Regency.

The Guidelines assess harm by reference to financial loss and the value of the goods stolen; in the situation of goods being over the value of 100K Pounds (the guidelines assess this as Category 1 harm.)

[20] The starting point for sentencing under the Guidelines for theft is 3 years and six months with a category range of 2 years to maximum. The court nevertheless has a discretion to go outside of the range in the guidelines with explanation.

Having identified the guidelines to assist in the sentence, I have considered the mitigating factors put forward and will set my starting range as two and a half years. I turn to consider the fact that he has had to wait some eight years to have this matter tried and during this time he has had this matter hanging over his head and it must have been some form of punishment during these years to adhere to the rigid bail conditions. This too in my view will mitigate this sentence and I accordingly make a deduction of 1 year against that sentence outside of the stipulated guidelines.

[21] In the exercise of the court's discretion I will deduct 12 months from the sentence and sentence Mr. Brice to 1 year and 6 months imprisonment. The time on remand of 2 weeks and 3 days is to be taken into account as well as the time spent of 1 month and 9 days. I thank Learned Counsel for their assistance.

Cheryl Mathurin
High Court Judge