

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**  
2 **CRIMINAL SIDE**

3  
4 **IND. NO: 0093/2017**

5  
6  
7 **THE QUEEN**

8  
9 **v.**

10  
11 **JUDITH FRANCEA DOUGLAS**



12  
13  
14  
15 **Appearances:**

**Ms. Toyin Salako for the Crown**

16  
17 **Mr. Jonathon Hughes of Samson Law for**  
18 **the Defendant**

19  
20 **Before:**

**Justice St. John-Stevens (Actg.)**

21 **Heard:**

**24<sup>th</sup> February 2021**

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25  
26 **HEADNOTE**

27 *Criminal Law – Obtaining property by deception – Case returned to the Grand*  
28 *Court for re-trial by the Cayman Islands Court of Appeal (CICA) – Defendant*  
29 *pleads guilty three days prior to the commencement of the re-trial – Points argued:*  
30 *Whether this offence is to be considered along with previous offence; Percentage*  
31 *reduction for guilty plea - Sentence.*

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34  
35 **SENTENCE JUDGMENT**  
36



1    **INTRODUCTION**

2

3           1.     Judith Douglas falls to be sentenced upon a single count of obtaining property by  
4           deception, contrary to s.247 of the *Penal Code* (2010 Revision), the particulars  
5           being:

6                     *“between the 2<sup>nd</sup> day of November 2010 and the 30<sup>th</sup> day of January*  
7                     *2016...dishonestly obtained KYD\$1,946,437.00, being property belonging to*  
8                     *Nathaniel Robb, with the intention of permanently depriving Nathaniel Robb*  
9                     *thereof, by deception, namely by falsely representing that the money was*  
10                    *required for the purposes of payment for a legitimate application for permanent*  
11                    *residency status and a Caymanian passport to the Cayman Islands*  
12                    *Government.”*

13

14           2.     The operative deception is that Nathaniel Robb paid over the monies believing that  
15           it was legitimately required to obtain the grant of permanent residency, and not that  
16           the money was paid over believing it was to be used corruptly to obtain permanent  
17           status.  
18

19           **HISTORY OF THE CASE**

20           3.     Judith Douglas was first convicted by a jury of this offence on the 9<sup>th</sup> July 2019.  
21           Pursuant to a judgment of the Cayman Islands Court of Appeal (CICA), delivered  
22           on the 5<sup>th</sup> October 2020, her conviction was quashed. The Appellate Court was  
23           ultimately driven to conclude that no reasonable observer would have left court  
24           feeling Judith Douglas had a fair trial – this being due to the tone and tenor of judicial  
25           interventions during the trial. Thus a retrial was ordered to commence in January  
26           2021.  
27

28           4.     On the 20<sup>th</sup> January 2021 Judith Douglas pleaded guilty to this offence. A written  
29           basis of plea was submitted which was accepted by the Prosecution.  
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1 **HISTORY OF OFFENDING**

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5. Judith Douglas was arrested on the 20<sup>th</sup> April 2010 for offences of dishonesty - such were reflected in a thirty-eight Count indictment (Indictment 56/2012) which preferred against Judith Douglas and others and dated 21<sup>st</sup> August 2012. Thirty-six counts alleged that this defendant with others obtained property by deception.

6. The charges reflected a period of dishonest criminality from the 2<sup>nd</sup> September 2009 until 21<sup>st</sup> June 2010. On each occasion, the operative deception was that cash was required for the purpose of submitting a legitimate application for Permanent Residency to the Cayman Islands Government. The total amount of money dishonestly obtained was CI\$20,500.00.

7. The case arose from a complaint made to the Cayman Islands Immigration Department that Judith Douglas and her co-defendants were collecting KYD\$2,500 in cash from members of the public with the promise of securing permanent residency.

8. In October 2010, approximately 6 months after her arrest for the earlier offending, and whilst on bail, Judith Douglas first met Nathaniel Robb - the complainant in respect of this case which she now falls to be sentenced. By the 2<sup>nd</sup> November 2010 Judith Douglas was falsely representing to Nathaniel Robb that money was required for the purposes of payment for a legitimate application to the Cayman Islands Government for Permanent Residency and a Caymanian passport.

9. On the 24<sup>th</sup> August 2012 Judith Douglas pleaded not guilty to the first set of offences; a number of trial dates were identified and vacated.



1 10. On the 4<sup>th</sup> September 2015 Judith Douglas asked to be re-arraigned and she pleaded  
2 guilty to nine counts of obtaining property by deception pursuant to s.247 of the  
3 **Penal Code** (2007 Revision). These pleas were accepted by the prosecution. The  
4 prosecution, then, choose not to pursue the remaining counts.

5  
6 11. The period of criminality in relation to the instant case lasted until January 2016.  
7 Nathaniel Robb handed Judith Douglas a total of KYD\$1,946,437 - this being on  
8 472 separate occasions in various amounts of cash (with the exception of one cheque  
9 payment of USD\$2,439.03). The largest single amount handed to Judith Douglas on  
10 any one day was KYD\$18,000.00.

11  
12 12. On the 26<sup>th</sup> April 2016 Judith Douglas was sentenced to a term of 2 years' 6 months'  
13 imprisonment in relation to these nine counts.

14  
15 13. Even after that date Judith Douglas continued to contact Nathaniel Robb, still  
16 representing the scheme was legitimate.

17  
18 14. On the 24 November 2016 Judith Douglas was notified of the allegation in relation  
19 the matters she falls to be sentenced for today

20  
21 **FACTUAL BASIS OF SENTENCE**



22  
23 15. The Written Basis of Plea (Agreed by Prosecution) reads as follows:

24  
25 *"In October 2010, Nathaniel Robb contacted me through our mutual*  
26 *acquaintance Daniel Barker and said that he had heard that I could help him*  
27 *get Caymanian status.*

28  
29 *He asked me if I could put him in touch with Immigration officials to achieve*  
30 *this and that he would pay me money.*

31  
32 *I agreed to make efforts to identify an Immigration official who could assist him.*

1 *I never represented myself as acting on behalf of the government, but I accept*  
2 *that I represented to Nathaniel Robb that I was in contact with officials who*  
3 *were facilitating status applications.*

4  
5 *Over the following months I collected money from Mr. Robb. I accept that I*  
6 *obtained this money and that I was never able to secure the assistance for Mr.*  
7 *Robb which I had undertaken to provide to him. In doing so I deceived him.*

8  
9 *I retained the initial \$2,500 given to me by Mr. Robb. I did not retain the rest of*  
10 *the money for myself, but instead passed it on to a third party who I do not wish*  
11 *to name. This third party paid me \$1,500 on three separate occasions, \$500 on*  
12 *approximately ten occasions and \$300 on a further fifteen occasions to act as a*  
13 *go between.”*

14  
15 **THE FACTUAL CONTEXT OF THE WRITTEN BASIS**



16  
17 16. Nathaniel Robb, a citizen of the United States, was the owner of a Cayman company  
18 called *Indepth Water Sports*. He was running this company under the benefit of a  
19 work permit. He, as many on this island, wished to obtain Cayman Permanent  
20 Residency and ultimately Caymanian Status.

21  
22 17. Mr. Robb was told by Daniel Barker, a neighbour, that Judith Douglas could  
23 facilitate his status application. No doubt, this was a reputation Judith Douglas  
24 garnered whilst facilitating the same service in the context of her previous dishonest  
25 offending.

26  
27 18. Nathaniel Robb met Judith Douglas in October 2010. She told him that that in return  
28 for a cash payment of KYD\$8,000.00 she could obtain non-revocable Caymanian  
29 Status. She also told him most of the money would be reimbursed. Nathaniel Robb  
30 acted on this, and gave Judith Douglas the KYD\$8,000. Judith Douglas handed him  
31 a Permanent Residency application form, which he completed and returned to her.

1 19. From that point on Nathaniel Robb regularly paid Judith Douglas sums of money, in  
2 the expectation, and ongoing reassurance from Judith Douglas, that he would be  
3 granted Cayman Permanent Residency.

4  
5 20. In November 2010 Nathaniel Robb paid over a further KYD\$11,000.00 in cash. In  
6 March 2011, he paid over a further KYD\$14,000.00. The receipt he was given stated  
7 that the fees had increased.

8  
9 21. Judith Douglas asked Nathaniel Robb for documents which would be needed for a  
10 legitimate application (such as a passport and bank references) - this in no doubt to  
11 underpin the facade of legitimacy. Nathaniel Robb continued to pay over regular  
12 sums in cash. There was one non-cash payment: Nathaniel Robb gave Judith  
13 Douglas a cheque for KYD\$2,000.00 which she cashed.

14  
15 22. By March 2012 Nathaniel Robb had paid over KYD\$141,150.00 in cash.

16  
17 23. On the 5<sup>th</sup> April 2012 Mr Robb was granted Permanent Residency. Nathaniel Robb  
18 believed erroneously that Judith Douglas had facilitated this. Judith Douglas used  
19 this to further convince Nathaniel Robb that the process was legitimate and that they  
20 could now concentrate on his Caymanian Status application. She continually  
21 reinforced her false representations that she was in close contact with government  
22 officials for his application.

23  
24 24. Sometime on or just after the 9<sup>th</sup> April 2012 Judith Douglas handed Nathaniel Robb  
25 a letter ostensibly from the “Committee Chairperson”. This particularised monies to  
26 be repaid and owed. A letter of similar import was dated 4<sup>th</sup> July 2012 and informed  
27 Nathaniel Robb that he was required to pay more money; each a falsification.



1 25. A letter of the 5<sup>th</sup> July 2012 stated he would be refunded KYD\$130,000.00 by the 9<sup>th</sup>  
2 July. No such refund ever materialised.

3  
4 26. By the 30<sup>th</sup> January 2016 Nathaniel Robb said he had paid over cash in the sum of  
5 KYD\$1,911,925.00 – not including the one cheque for KYD\$2000.00.

6  
7 27. Between the 10<sup>th</sup> July 2014 and 26<sup>th</sup> February 2016, many WhatsApp messages were  
8 exchanged between Nathaniel Robb and Judith Douglas. The messages from Judith  
9 Douglas requested further money and made reference to Nathaniel Robb being  
10 refunded money. The letters were exhibited. In the messages, Judith Douglas  
11 requested further sums of money, referred to money being refunded and provided  
12 various explanations as to why more money was required.

13  
14 28. In April 2016 Judith Douglas telephoned Nathaniel Robb. She asked him to be  
15 patient with her and for him not to contact the police. She maintained the pretence  
16 that this was a legitimate scheme and that the cash Nathaniel Robb had paid her was  
17 for his grant of Permanent Residency, Caymanian Status and a Caymanian passport  
18 and that at the end of the process he would receive a refund. This was a call made by  
19 Judith Douglas from HMPS Fairbanks, that is, she was at the time, in custody,  
20 awaiting sentence for the 9 counts of Obtaining Property by Deception.

21  
22 29. On the 26<sup>th</sup> April 2016 Judith Douglas was sentenced to a term of 2 years’ 6 months’  
23 imprisonment, nonetheless, she continued to contact Nathaniel Robb maintaining  
24 that the process was legitimate and that her incarceration was a misunderstanding<sup>1</sup>.

25  
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<sup>1</sup> Calls made on the 8<sup>th</sup> and 22<sup>nd</sup> May 2016.

1 **ARREST AND INTERVIEW**

2  
3 30. On the 24<sup>th</sup> November 2016 Judith Douglas was notified of the allegation. She was  
4 cautioned and she said “No. I recognise the name but it’s nothing to do with me”.  
5 She was then arrested.

6  
7 31. Douglas was interviewed and answered ‘no comment ’to all questions asked of her.

8  
9 **SUBMISSIONS & MATERIALS CONSIDERED**

10  
11 32. I have read with care the Prosecution Submissions<sup>2</sup>, the materials and authorities  
12 attached, as well as the Defence submissions dated 29<sup>th</sup> January 2021 and the  
13 materials and authorities attached. I have also read a number of character references  
14 and a report from HMPS Fairbanks.

15  
16 33. I have also had the benefit of hearing oral submissions to augment the written  
17 submissions.

18  
19 **SENTENCING GUIDELINES**

20  
21 34. The Court must first consider and identify this Court’s principled approach to  
22 sentence. Guidance in relation to this is embodied in the *Cayman Islands Sentencing*  
23 *Guidelines*. They provide a framework for the proper exercise of judicial discretion  
24 promoting consistency of approach and the identification of factors which materially  
25 impact upon the assessment of the seriousness of an offence.



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<sup>2</sup> Undated

1 35. Paragraph 2 of the *Cayman Islands Sentencing Guidelines* provides that in  
2 considering the seriousness of any offence, the court will consider the offender's  
3 culpability in committing the offence and any harm which the offence caused, was  
4 intended to cause or might foreseeably have caused.

5  
6 36. I have considered and applied the guidelines to assess the category of culpability and  
7 harm in this case. I remind myself that, to quote the guidelines:

8  
9 *“The culpability of the offender in the particular circumstances of an individual*  
10 *case should be the initial factor in determining the seriousness of an offence”.*  
11

12  
13 37. I have had particular regard in this case to para.3.4 and the Guidance on the Custody  
14 Threshold.



15  
16 38. The *Cayman Islands Sentencing Guidelines* do not provide specific guidelines in  
17 relation to the offence before the court.

18  
19 39. There are such Sentencing Guidelines in England and Wales (SG-E&W). The  
20 applicability of the Sentencing Guidelines in England and Wales are governed by  
21 statute. They are not law in themselves, and therefore are not directly applicable in  
22 the Cayman Islands. However their assistance and application in this jurisdiction is  
23 provided for in the *Cayman Islands Sentencing Guidelines*, which states:

24  
25 *“Those [SG -UK] guidelines have been regularly referred to and adopted by the*  
26 *courts into the laws of the Cayman Islands, with appropriate adjustments”*  
27

28  
29 40. Whilst having considered the SG-E&W for the offence fraud, however, they in my  
30 view are of limited assistance. I have come to this determination having reflected the  
31 authorities referred to including *R v Douglas and Hamilton*<sup>3</sup> an application for leave

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<sup>3</sup> [2016 (1) CILR Note 13]

1 to appeal against the sentence of the late Quin J in the Grand Court with respect to  
2 the same defendant Judith Douglas.

3  
4 41. The circumstances of the case are that in May 2015, again after a change in  
5 representation, Judith Douglas asked to be re-arraigned and pleaded guilty to 9  
6 counts of obtaining property by deception over a 9-month period in the total sum of  
7 CI \$20,500.

8  
9 42. Although her guilty plea was entered over 3 years after the indictment was laid  
10 against her, Quin J reduced her sentence by 25%.

11  
12 43. The Court considered authorities including *R v Ebanks (Paul Hume)* (specifically  
13 considered by this court); also the *2002 Statement on Tariffs and Guidelines for*  
14 *Sentencing for Certain Offences*<sup>4</sup> for theft offences and the *UK Sentencing*  
15 *Council's Definitive Guideline on Fraud, Bribery and Money Laundering*  
16 *Offences* and concluded:

17  
18 *"The starting point for these scam immigration offences, regardless of the plea,*  
19 *should be four years – with a range of sentence from 18 months to 7 years,*  
20 *depending on the aggravating and mitigating factors."*  
21

22  
23 44. The CICA considered the correct approach in terms of the SG - E&W and also the  
24 well-known case of *Barrick (John)*<sup>5</sup> when considering an application for leave to  
25 appeal against sentence. Moses JA stated:

26  
27 *"The essential case against her is that, notwithstanding that she was right at the*  
28 *centre of this dishonest scheme, nonetheless the sentence was manifestly*  
29 *excessive and that the starting point should have been something in the region*  
30 *of 18 months. The argument was based on English cases, particularly Barrick*  
31 *1985, 81 Cr. App. R. 78 and Clarke 1998, 2 Cr. App. R. 137.*  
32

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<sup>4</sup> *The Chief Justice's Sentencing Guidelines*

<sup>5</sup> (1985) 81 Cr. App. R. 78



1 *Those were cases of where the essence of the offence was a breach of trust which*  
2 *support the starting point identified by this applicant. These echoed submissions*  
3 *made by the counsel to the judge at the sentencing hearing. The judge had*  
4 *rejected any analogy with those cases and indeed rejected any assistance to be*  
5 *derived from sentencing guidelines in the United Kingdom concerning fraud,*  
6 *bribery and money laundering offences, all of which, counsel submitted, justified*  
7 *a much lower starting point. The guidelines might do so and Barrick 1985, 81*  
8 *Cr. App. R. 78 and Clarke 1998, 2 Cr. App. R. 137 undoubtedly would justify a*  
9 *lower starting point. But, in the judge's view, quite rightly in our view, they were*  
10 *of no assistance at all. He put it this way:*

11  
12 *"This is a small jurisdiction. These dishonest offences attack the*  
13 *integrity of our immigration laws and immigration procedure. These*  
14 *offences tarnish the reputation of the Cayman Islands. The victims were*  
15 *all on work permits and subject to the roll over. It is not surprising that*  
16 *they fell for this most cynical of scams as they sought and paid for the*  
17 *security they mistakenly thought purported Permanent Residence would*  
18 *provide for them. The Court must impose a punishment to reflect the*  
19 *gravity of the offence and act as serious deterrent to others who may be*  
20 *contemplating such dishonest conduct".*

21  
22 Moses JA repeated later in his judgment:

23  
24 *"The deception was the most cynical exploitation of vulnerable and unsuspecting*  
25 *victims".*

26  
27 *We agree with the judge's approach. On that approach it is quite impossible, in*  
28 *our judgment, to argue that the sentence of two and-a-half years, even after a*  
29 *plea of guilty and allowing for 25 percent, was excessive. Indeed, on some this*  
30 *appellant had not been in trouble before and was a lady of 50.*

31  
32 *For those reasons, in our view, it is not arguable that the sentence was*  
33 *manifestly excessive or the judge misdirected himself as to the correct approach.*  
34 *He did refer to other cases, whether they were relevant or not we need not decide*  
35 *in this case. In our judgment, the sentence was the least he could properly pass*  
36 *in the correct view he took of the facts, it might have been regarded as lenient.*  
37 *The judge, however, did take into account the fact that and we refuse permission*  
38 *to appeal".*

39  
40 45. Bearing in mind the reduction of the sentence by 25%, this equates to a sentence  
41 before plea of 3 years' and 4 months' imprisonment. At the time of sentence The  
42 Defendant presented as a person of hitherto good character.



1 46. To set this against the SG-E&W - such offending would, it appears fall, as a Category  
2 1A offence, with a sentence starting point of 7 years and with a range of 5-8 years<sup>6</sup>.

3  
4 47. In relation to Culpability: It is submitted on behalf of defendant that her culpability  
5 is reduced, as she only benefited to a proven degree; that being as a consequence of  
6 only “keeping” KYD\$16,500.

7  
8 48. The Crown’s position is that they do not know what Judith Douglas did with the cash  
9 or whether she shared it with others. What they can establish to the criminal standard  
10 is that Nathaniel Robb gave all the cash directly to Judith Douglas and to no one else.  
11 The Crown have undertaken financial investigations into known bank accounts of  
12 the defendant. No significant movement of funds could be identified, nor any  
13 significant assets or lavish lifestyle.

14  
15 49. Judith Douglas was, at the very least, the sole conduit for just over KYD\$1.9 million  
16 on 472 occasions. It was she who made and continued to make the false and  
17 dishonest representations and excuses to Nathaniel Robb to secure all the funds. It  
18 was she who sought documents from him and reassured him of the legitimacy of the  
19 scheme. This is placed in the context of her being, as described by the CICA, “*right*  
20 *at the centre of this dishonest scheme.*” For the previous scheme of dishonesty she  
21 received the 2.5 year sentence. In essence this is an identical scheme, in terms of  
22 pedalling falsehoods in relation to Caymanian Status to obtain money. She was well-  
23 practiced and adept at presenting a believable front. She was therefore aware of the  
24 complete extent of the dishonest scheme playing a pivotal role – and even  
25 committing these offences whilst on bail.

26



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<sup>6</sup> (Sentencing Council; Definitive Guideline-Fraud)

1 50. The court accepts that her culpability may be reduced to reflect her reduced  
2 immediate financial benefit, however, for the reasons set out above, this is of limited  
3 import.

4  
5 51. In relation to Harm: The gravamen of this case is not simply measured by financial  
6 loss, although it is significant in this case, but by the fact that the dishonest  
7 representations centre upon the ability to provide Permanent Residency, Caymanian  
8 Status and a Caymanian passport. The whole dishonest scheme calls into question  
9 the integrity of the Caymanian Permanent Residency process and standing. The  
10 scheme flies in the face of the very Constitution of the Cayman Islands which  
11 declares the Islands as fostering the highest standards of integrity in the dealings of  
12 the private and public sectors.

13  
14 52. The Cayman Islands is, quite rightly, held in high esteem and such a privileged  
15 position is not one that should ever be compromised or undermined by such schemes  
16 which embody dishonesty and corruption.

17  
18 53. The Court does reflect that, in this case, it was one individual who was enticed  
19 unwittingly into the dishonest scheme – as opposed to cases the court has dealt with  
20 in the past in which a large number of individuals were involved.

21  
22 **OVERALL TERMS OF IMPRISONMENT**



23  
24 54. As Judith Douglas was not sentenced for the previous offence prior to the  
25 commission of the instant case, it could be viewed as appropriate to look at all  
26 offending and overall incarceration in the round.

27  
28 55. It is legitimate for this court, when considering totality in terms of the sentence Judith  
29 Douglas faces, to reflect upon what the overall, just and proportionate sentence  
30 would have been if she had been sentenced to this offence when sentenced to the

1 period of 2.5 years; that is, to, in effect, treat both cases as a course of criminal  
2 conduct, of a similar type, whilst, of course, reflecting upon the fact that she  
3 committed this offence whilst she was on bail for the prior offending.

4  
5 56. In my judgement all of her offending would have her sentence go to the very top of,  
6 and indeed beyond, the 7-year range identified by Quin J. The features of culpability  
7 and harm identified by Quin J., may not have countenanced a financial loss of  
8 KYD\$1,946,437.00 – remembering that every dollar of that money handed to the  
9 defendant in cash (save one cheque of KYD\$2,439.03) on a total of 472 occasions.

10  
11 57. To place this into the context: When she was sentenced to the term of 2.5 years by  
12 Quin J., she had been of good character and she was then 50 years old.

13  
14 58. This court poses the question: What is the correct consecutive period of  
15 imprisonment to that 2.5 years, to achieve a just and proportionate overall period of  
16 imprisonment for this overall course of criminal conduct?

17  
18 59. In answering that question the Court is moved towards a “check and balances”  
19 approach to achieve the proper sentence



20  
21 **MITIGATION**

22  
23 60. The *Cayman Islands Sentencing Guidelines* at paragraph 9 and s.4 ***Alternative***  
24 ***Sentencing Act*** 2008 sets out the court’s approach to mitigating factors. In  
25 sentencing an offender, the Court should take into account mitigating factors relevant  
26 to both the offence itself and the offender.

1       61.     The Defendant is now in her mid-fifties. She had been of good character before being  
2            sentenced baby Quin J. in 2016. She had not been sentenced for those offences when  
3            she committed this offence. Therefore the effect of a sentence, and the rehabilitation  
4            process had not yet bitten. Such is recognised by this court in its determination of  
5            the correct approach and structure to this sentencing,

6  
7       62.     I have a number of character references and I have reflected carefully upon all the  
8            personal mitigation presented to the court. The court has considered all the material  
9            in support of this defendant. References so often provided to a court are from  
10           individuals who are not aware or cannot come to terms with the existence or extent  
11           of a defendant's criminality. Judith Douglas has the benefit in this regard of a  
12           comprehensive letter of reference from Clairia Range (Deputy Director, HMP  
13           Fairbanks). This, when read in conjunction with the supporting attachments,  
14           provides a positive reflection on Judith Douglas' response to incarceration,  
15           rehabilitation and assistance with other detainees - this person, being fully aware of  
16           Judith Douglas' criminality. To quote Ms. Range:

17                               *"Judith is a rare combination of academic brilliance, complemented by strong*  
18                               *social skills, self- motivation and a determination to make a difference in her*  
19                               *unfortunate circumstances and the lives of her peers through the "teaching*  
20                               *sewing programme" to which she has many students and with the support of*  
21                               *HMP Fairbanks rehabilitation programme sends a clear sign that her*  
22                               *conformity to the prison rules, support, guidance and motivation in conjunction*  
23                               *with her positive attitude, inner discipline and drive to be successful in all her*  
24                               *endeavours regardless of her circumstances provides her with the secure bridge*  
25                               *required for self-reform".*



1 63. Whilst it is an aggravating feature that Judith Douglas committed these offences after  
2 the offences she was sentenced for in 2016, the chronology does mean that the  
3 defendant was never incarcerated and/or sentenced before these offences. It is now  
4 that the rehabilitative element of a sentence as had the opportunity to bite.

5  
6 **CONDITIONS IN PRISON DURING THE COVID-19 PANDEMIC**

7  
8 64. The Defence submit at para19 of there submissions:

9  
10 *“[19] The court is also invited to apply a reduction to the sentence*  
11 *imposed to reflect the harsher nature of serving a prison*  
12 *sentence during the COVID-19 pandemic.”*

13  
14 65. This Court finds favour with this submission, such being enunciated in the well-  
15 known 2020 case of *Manning*<sup>7</sup> in which the Court of Appeal of England and Wales  
16 said:

17  
18 *“In accordance with established principles, any court will take into account the*  
19 *likely impact of a custodial sentence upon an offender and, where appropriate,*  
20 *upon others as well. Judges and magistrates can, therefore, and in our*  
21 *judgement should, keep in mind that the impact of a custodial sentence is likely*  
22 *to be heavier during the current emergency than it would otherwise be. Those in*  
23 *custody are, for example, confined to their cells for much longer periods than*  
24 *would otherwise be the case—currently, 23 hours a day. They are unable to*  
25 *receive visits. Both they and their families are likely to be anxious about the risk*  
26 *of the transmission of COVID-19.”*

27  
28 66. It is clear that in so many ways this jurisdiction should be rightly proud of the way  
29 it has dealt with Covid-19. This includes how it has managed those in custody.  
30 Indeed from the glowing reference on behalf of this Defendant, written by the  
31 Deputy Director of HMP Fairbanks, the rehabilitation projects, gym and outdoor  
32 activities to assist with welfare have continued.

33



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<sup>7</sup> [2020] EWCA Crim 592 at paragraphs 41 and 42

1 67. Covid-19 has, for quite understandable reasons, restricted visiting. This, no doubt,  
2 has had a profound effect on those detained and their families - such being  
3 recognised in *Manning*.



4 **DELAY**

5  
6 68. The *Cayman Islands Constitution 2009* is a cornerstone of democracy in the  
7 Cayman Islands. Paragraph 7 enshrines minimum rights - protecting the rights of  
8 every accused person to a fair trial, and within a reasonable time.

9  
10 69. The CICA determined that due to the conduct of the trial judge in this case there was  
11 a fundamental breach of that right during the trial of this case - such conduct being  
12 described at para.66 of the CICA judgement:

13  
14 *“...the judge displayed persistent rudeness towards the Appellant, laced with*  
15 *aggressions, hostility and on one occasion sarcasm.”*  
16

17  
18 70. This led the CICA to, on the 5<sup>th</sup> October 2020, quash the conviction. She had been  
19 convicted on the 9<sup>th</sup> July 2019 and sentenced to a 10-year term of imprisonment - the  
20 maximum sentence.

21  
22 71. She had been serving her sentence of 10 years as a result of an unsafe verdict for  
23 approximately 15 months. There was a clear and understandable delay for her case  
24 to be heard by the CICA - caused by the court’s operational constraints occasioned  
25 the onset of the Covid-19 pandemic. Understandable though it may have been, it  
26 does not detract from the obvious upset and anxiety doubtlessly felt during the course  
27 of her unfair trial and the wait for her appeal to be heard.

28  
29 72. Of course, a portion of the overall delay from arraignment, was substantially due to  
30 the defendant maintaining that she acted honestly.  
31

1 73. That being said I am in no doubt that there should be a reduction in the sentence  
2 reflecting the delay, stress, upset and anxiety on the basis referenced in paragraph 71  
3 above.

4  
5 **REDUCTION FOR THE PLEA OF GUILTY**



6  
7 74. It is incontrovertible that a reduction in the sentence should be given to reflect a plea  
8 of guilty. Such well-recognised position can be found at para.10 the *Cayman Islands*  
9 *Sentencing Guidelines of October 2015*. Para. 10.1 reads:

10 *‘Once the court has determined the sentence to be imposed, the court is required*  
11 *to give consideration to a reduction in the sentence for any guilty plea. The*  
12 *reduction principle is employed because a guilty plea avoids the need for a trial,*  
13 *saves considerable costs and resources, and in the case of an early plea, saves*  
14 *victims and witnesses from the ordeal of giving evidence. It also acts as an*  
15 *encouragement to others to plead guilty where appropriate.’*

16  
17  
18 75. As to the level of reduction, assistance is sought from para.10.5 of the Guidelines:

19  
20 ***“10.5 Determining the Level of Reduction***

21  
22 *In order to determine the appropriate reduction in sentence for a guilty*  
23 *plea, the court should take into account:*

- 24  
25 (a) *the stage in the proceedings for the offence at which the offender*  
26 *indicated his intention to plead guilty and*  
27  
28 (b) *the circumstances in which this indication was given.*

29  
30 *The level of reduction should be expressed as a proportion of the total*  
31 *sentence imposed, with the proportion calculated by reference to the*  
32 *above factors. The amount of reduction is to be gauged according to a*  
33 *sliding scale ranging from a recommended one third (where the guilty*  
34 *plea was entered at the first reasonable opportunity in relation to the*  
35 *offence for which sentence is being imposed), reducing to a*  
36 *recommended one quarter (where a trial date has been set) and to a*  
37 *recommended one tenth (for a guilty plea entered at the ‘door of the*  
38 *court ’or after the trial has begun).’*

39  
40  
41 76. The following is submitted on behalf of this defend that at para [25] and [26] of the  
42 written submissions on behalf of the defendant:

1                    “[25] *In determining the amount of credit to be afforded to this defendant, the*  
2                    *court is invited to disregard the unfair trial which took place in July*  
3                    *2019 and any consequential delay to these proceedings. In overturning*  
4                    *that conviction, the Court of Appeal has in effect declared those*  
5                    *proceedings a nullity. The defendant should not be disadvantaged as a*  
6                    *consequence.*

7  
8                    [26] *The defendant should be afforded the same amount of credit as any other*  
9                    *defendant who changes their plea to guilty in the week before her trial*  
10                    *is due to commence. In accordance with the ‘sliding scale’ as set out in*  
11                    *the aforementioned guidelines, it is submitted that a discount in the*  
12                    *region on 25% is appropriate in such a case.”*

13  
14                    77. This Court rejects the bald assertion that the first appealed trial was a “nullity.” It  
15                    was the conviction which certainly was.



16  
17                    78. Indeed it is of note the court received an application from the defence for copies of  
18                    transcripts of all the evidence of Nathaniel Robb from that trial. This was provided  
19                    at, no doubt, considerable cost and it was material which was indeed required for the  
20                    “new” trial - should there have been any evidential inconsistencies.

21  
22                    79. To consider the issue of delay I have looked at the history of the case. I have  
23                    considered the length of time the Defendant had to consider her position -  
24                    commencing at the time she was arrested in 2016. Also, the defendant appreciated  
25                    the case against her as she had the case clearly put to her when giving evidence  
26                    during the first trial. I have also considered that the defendant was represented by  
27                    different counsel commencing in November 2020.

1 80. Taking all this into account, a week before trial is, nonetheless, to be properly  
2 described as the “*door of the court.*” Considerable costs and resources had been  
3 consumed by the stage of the plea of guilty.

4  
5 81. I reject the submission on behalf of the Defendant that the court should consider a  
6 discount in the region of twenty-five percent (25%) as appropriate in such a case. I  
7 also reject the submission at para [28] of the defence submissions that *substantially*  
8 *more than minimal credit*” should be considered.

9  
10 82. The reduction will be one of ten percent (10%). This reduction is considered based  
11 on the unfair trial and the additional stress upon the Defendant identified above.

12  
13 **VICTIM IMPACT**

14  
15 83. I have had regard to the effect upon the victim of this crime. Nathaniel Robb paid  
16 over KYD\$1.8 million. It had a profound effect financially and, no doubt,  
17 emotionally. Nathaniel Robb was left in a position of impecuniosity; unable to even  
18 pay his bills.



19  
20 **COMPENSATION**

21  
22 84. I have considered my power pursuant to s.33 of the *Penal Code*. However it is wrong  
23 to make such an order when the offender lacks the means to meet it.

24  
25 85. It is of note that the Defendant sets out in her basis of plea that she passed on the  
26 majority of the money to an unnamed individual. Although that does not aggravate  
27 her sentence, it would have provided powerful mitigation if she had revealed who  
28 that person was. This perhaps identifying a possible avenue of financial redress for  
29 Nathaniel Robb.

1 **SENTENCE**

2

3 86. The sentence of this Court is five (5) years' imprisonment.

4

5 87. Any period the defendant has spent on remand for this case shall count towards this  
6 sentence. The Defendant may also be eligible for early release in pursuance of the

7 ***Conditional Release Act.***

8

9

10

11 **Dated this the 8<sup>th</sup> June 2021**



12

13

14 **Justice St. John-Stevens**

15 **Acting Judge of the Grand Court**