



**IN THE CAYMAN ISLANDS COURT OF APPEAL
CRIMINAL DIVISION**

CRIMINAL APPEAL13/2019
SCA 17/2018
SC#06018/2013

BETWEEN

CAVENNA ELLIS

Appellant

AND

Her Majesty the Queen

Respondent

BEFORE: **The Rt. Hon Sir John Goldring, President**
 The Hon Sir Richard Field, Justice of Appeal
 The Rt. Hon Sir Jack Beatson, Justice of Appeal

Appearances: **Appellant, in person (absent)**
 Ms. Toyin Salako, Office of the DPP for the Respondent

Date of Hearing: **Wednesday 5th May 2021**

JUDGMENT

Transcript of oral judgment dated 5th May 2021 and Approved for Release 19th May 2021

GOLDRING, President.

1. On the 26th of February 2018, following a trial in the summary court before Magistrate Gunn, the Applicant, someone of previous good character, was convicted of a theft of CI\$57,872.99 from her employer, and, also, of making a false document. She was sentenced concurrently to sentences of three years nine months' imprisonment (that in respect of making a false document being reduced to two years' imprisonment on appeal to the Grand Court). She now seeks leave to appeal against conviction and sentence. She has submitted a detailed and lengthy document entitled "Leave to Appeal Skeleton and Affidavit". Although by no means easy to follow, we have sought to read it with great care.

2. On the 12th of June 2019, in a detailed and comprehensive ruling, Acting Justice Brooks dismissed the Applicant's appeal against conviction. He allowed her appeal against sentence in respect solely of making a false document. He reduced the sentence to two years' imprisonment concurrent. Magistrate Gunn had imposed a sentence in excess of the statutory maximum.
3. By the time of her appeal to Acting Justice Brooks, Mrs Ellis had dispensed with the services of Mr Brady, her attorney, and was in part blaming him for what she contended was her wrongful conviction. This application is, therefore, a proposed second appeal against conviction by the Applicant. That is a topic to which we shall shortly return.
4. A reading of the comprehensive judgments, both of Magistrate Gunn and Acting Justice Brooks, reveals that the Applicant faced a strong case. The Applicant was an office administrator and accounting assistant. Her employer was a company called Logic. In short, the allegation was that between May and June 2013, the Applicant stole cash from Logic's bank deposit bags. To hide her theft, she forged bank deposit slips. To hide the true state of the account, she used cash from later thefts to hide earlier ones. As it is frequently put, she was "robbing Peter to pay Paul." Once discrepancies between the sums that were to be deposited and those paid into the bank came to light, she immediately admitted to her employer what she had done. When interviewed by the police, she also admitted what she had done. Her defence was that others could have stolen the money. The fact that she had signed off the balance sheet did not mean she had delivered the money to the bank. She denied admitting to her employers that she had taken the money. As to her police interview, the Applicant claimed that she was denied an attorney, that in her admission she was simply repeating back allegations which the police officer had made.
5. There was a *voir dire* in which her account was rejected.
6. It is clear, both from the grounds of appeal and the skeleton argument that, in essence, the Applicant is seeking to challenge the findings of fact made by Magistrate Gunn. By section 29(1) of the *Court of Appeal Act (2011 Revision)*, a person may only appeal:

"any judgment given ... by the Grand Court in the exercise of its appellate ... jurisdiction ... on any ground of appeal which involves a point of law alone ... but not upon any question of fact".

7. This attempt to re argue the findings of fact is therefore bound to fail. None of the grounds, as we understand them, involves a pure point of law. That alone is fatal to the application for leave to appeal against conviction.
8. Moreover, as acting judge, Justice Brooks, in a clear and impressive judgment makes plain, Magistrate Gunn analysed the evidence with great care and fairness. She did not believe the Applicant. She believed others who had, by implication, been blamed by the Applicant for the theft. She accepted that the admissions to the police officer were voluntary and true. All these were matters for her.
9. As Acting Justice Brooks said, in paragraph 84 of his judgment:

"This was an exceptionally strong case for the prosecution. A conviction was inevitable."
10. This application for leave to appeal conviction is therefore refused.

Sentence

11. Magistrate Gunn explained her approach to sentence. We shall not repeat what she said in paragraphs 6 to 7 of her sentencing judgment. Thereafter, in paragraphs 9 to 14 she meticulously set out the principles to be applied and their application to the present facts. Again, we need not repeat what she said.
12. Although the Magistrate found there were some mitigating features, for reasons she explained, she was driven to impose the sentences she did for this serious breach of trust. We need not, in the circumstances, repeat what she said in paragraph 17 of her judgment.
13. Acting Justice Brooks considered whether the sentence of three and a half years for the theft following a trial was excessive. He concluded that for this breach of trust, involving as it did a significant degree of planning, forgery, a significant degree of harm in terms of value, and in terms of convenience and emotional distress, merited a starting point of four years in custody. He considered the Magistrate, was entitled to pass the sentence she did for the reasons she gave. We cannot fault either Magistrate Gunn's or Acting Justice Brooks' reasoning. We do not accept, as Ms Ellis submitted, that the guidelines were misapplied, or that the sentences imposed were in any way inconsistent with other sentences within this jurisdiction.
14. This application for leave to appeal against sentence is refused.