

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CRIMINAL SIDE

COURTS OFFICE LIBRARY

INDICTMENT NO: 0049/2009

THE QUEEN

V

HENRY BLODSIT EBANKS

Appearances:

Mr. Michael Snape on behalf of the  
DPP for the Crown

Ms. Lucy Organ of Samson and  
McGrath for the Defendant

Before:

Justice Carol Beswick (Actg.)

Heard:

Sentence submissions: 24<sup>th</sup> August  
2012

SENTENCE RULING

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1. The Defendant, Mr. Henry Ebanks, was charged on an indictment containing 4 counts. He has pleaded Guilty to one count which is that for the offence of Theft, contrary to section 241 of the Penal Code (2007 Revision), and is now to be sentenced.
  2. The particulars of that offence are that on the 9<sup>th</sup> May 2008, Mr. Ebanks, at Jacques Scott Ltd, Shedden Road, George Town, Grand Cayman, stole cash in the amount of CI\$180.00 the property of Jacques Scott Ltd. The prosecution offered no evidence on the remaining 3 counts.

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*FACTS*

3. The Defendant was an employee of the business known as Jacques Scott for a number of years. He had retired from his job there and then was called back to continue working after his retirement. His post-retirement job included collection of the takings from various stores of Jacques Scott on the Cayman Islands. He would then deposit those monies to the business' bank account.

4. Jacques Scott installed a camera on its property and, on the 9<sup>th</sup> May 2008, the Defendant was observed, via the camera, putting a deposit bag with cash down the sock he was wearing. He was confronted and in his sock were found one hundred and eighty dollars (CI\$180.00).

*PROSECUTION'S SUBMISSIONS*

5. The prosecution acknowledged that the amount of CI\$180.00 is not a huge amount in the context of a Company, but urged the Court to recognise that Jacques Scott had placed a level of trust in the Defendant in permitting him to deal with the safety of their takings.

6. The Defendant had failed the Company and, because of this, the starting point for an appropriate sentence should be imprisonment. Counsel submitted that thereafter the Court could determine if there were exceptional circumstances to mitigate such a sentence.

7. In support of these submissions, prosecuting counsel relied on the Sentencing Guidelines of the Chief Justice and the decisions of the Court of Appeal in *R v. Barrick* (1985) 81 Cr. App. R. 78 and *R v. Clark* [1998] 2 Cr. App.R.137

1 which updated the guidelines in *Barrick*. That Guidelines stated that, in  
2 general, a term of imprisonment is inevitable where there is breach of trust  
3 involving theft and false accounting.

4 *DEFENCE'S SUBMISSIONS*

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6 8. Counsel for the Defendant agreed that *R v. Barrick (supra)* had been  
7 affirmed many times in this jurisdiction. However, she argued that a term of  
8 imprisonment was not inevitable and that *Barrick* provided that an exception  
9 should be made to the approach of imprisonment where the money concerned  
10 was small. She sought further support for the argument that the sentence  
11 need not be custodial from *R v. Scott, Fyne v. R.*[2007] CILR 175, which she  
12 said upheld that position.

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14 9. Her argument was that the impact of the Defendant's action on the public  
15 was low as, not only was the amount of money stolen small, but the money  
16 had been returned to Jacques Scott.

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18 The Defendant had immediately lost his job at the time of the discovery of  
19 the theft and now, at the age of 78 years, he had blemished his record and  
20 was embarrassed by what he had done .

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22 10. Counsel submitted further on behalf of Mr. Ebanks that he has suffered by  
23 having this matter unresolved for four years. She urges that community  
24 service would be an appropriate sentence.

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ANALYSIS

11. The guidelines on sentencing in the Cayman Islands were promulgated by the Honourable Chief Justice in 2002 and indicate that for the offence of theft, an immediate term of imprisonment ranging from 1 to 4 years and an order for repayment will likely be imposed, particularly where there is a breach of trust in the context of a relationship of employment. The guidelines state further that the sentence would also depend on the amount stolen and any aggravating factors. The guidelines thus allow for keen attention to be paid to circumstances surrounding the theft involved.

Lord Lane CJ in *R v. Barrick* (*supra*) set out the matters to be considered in determining the proper level of sentence in cases involving breach of trust and acknowledged the danger of generalising in sentences for such cases where the circumstances of the offender and the offence may vary so widely. He did however suggest at page 82 that:

“*In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances OR where the amount of money obtained is small.*” (emphasis supplied)

In *R v. Scott* and *Fyne v. R* *supra* the Court of Appeal of the Cayman Islands reaffirmed its adoption of the guidelines on sentencing suggested in *Barrick* and the cases which followed it. There the Court stated that an immediate term of imprisonment would have been appropriate where the defendant Scott had been convicted of 13 counts of theft from her employer involving approximately \$30,000.00. The Court went on to allow the appeal by the Appellant, Fyne, against his term of imprisonment, even though Mr. Fyne

1 had been convicted of several counts of theft and false accounting as a result  
2 of his participation in a fraudulent scheme at his workplace.

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4 14. The Court suspended the term of imprisonment, imposing instead a  
5 community service order of one hundred and fifty (150) hours and ordering  
6 that the Defendant repay the balance of money not recovered. This approach  
7 was adopted because there were several mitigating factors amounting to what  
8 the Court described as exceptional circumstances. These included the fact  
9 that the Defendant had assisted the police to gather evidence against others  
10 and also that eight (8) years had passed between his confession and the  
11 sentence.

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13 15. I am mindful that maintaining sound business principles at all levels of the  
14 economy is critical for the Cayman Islands – a jurisdiction which is built on  
15 the sophistication and success of its financial investment and money  
16 management operations. It is therefore important that theft, involving breach  
17 of trust, should be effectively deterred, in order to ensure that persons can  
18 continue to place confidence in the operation of businesses in these Islands.

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20 16. However this instant matter is not a case which would be expected to impact  
21 on the economy in general or on the public in particular.

22  
23 The Defendant was really a messenger. He was not involved in any financial  
24 dealings. He held no lofty position in the company and had retired from the  
25 company as a warehouse attendant before he was rehired as a messenger.

1 17. It is clear to me that the Defendant's job, which carried with it a wage of  
2 C1\$8.00 per hour, was not one which would normally be described as  
3 involving such trust that the breach of that trust should result in immediate  
4 imprisonment.

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6 18. Further, the amount of money which the Defendant stole, C1\$180.00, could  
7 scarcely be described as anything but small, especially in the world of  
8 commerce, and it is my view that immediate imprisonment is not inevitable  
9 in these circumstances.

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11 19. There is no evidence as to how the Defendant benefitted from his ill-gotten  
12 gains and that is perhaps no surprise as the sum of C1\$180.00 is not likely to  
13 have contributed in any enduring and noticeable way to his lifestyle.

14  
15 20. The Defendant has acted in such a manner that now, in his 78<sup>th</sup> year, he has  
16 tarnished his erstwhile good police record. He has only previously been  
17 involved in offences concerning traffic.

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19 21. The Social Inquiry Report (SIR) shows that he enjoys a harmonious  
20 relationship with his family and, in fact, resides with his 80 year old sister.

21 The Defendant is a fisherman and a churchgoer and the SIR reveals that he is  
22 held in high regard by his community. Indeed the Premier of the Islands, the  
23 Hon. Mr. McKeeva Bush, as well as a Pastor of the Church of God Chapel,  
24 West Bay, Rev. Stanwyck Myles, have both submitted written references as  
25 to his good character. His former supervisor is also one of the persons

1 attesting to the strength of character of the Defendant, which he is said to  
2 have exhibited for decades.

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4 22. The Defendant has pleaded guilty and must enjoy a discount in his sentence  
5 for adopting that approach. This offence concerns one incident and he has  
6 returned the money to its owner. His actions reflect his remorse. Any reason  
7 the Defendant may have had for committing himself in the way did on the 9<sup>th</sup>  
8 May 2008 remains shrouded in mystery, open only to conjecture.

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10 23. He is in receipt of a pension from seafaring activities – having spent decades  
11 working at sea. Consequently, the Defendant is not seeking any employment  
12 now from any business place and will not pose a danger to commerce. The  
13 SIR concludes that the Defendant has a very low risk of recidivism and that  
14 he is a suitable candidate for a community service order.

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16 24. It is my view that the circumstances of this case should not result in  
17 immediate imprisonment and, applying the law as I understand it, the  
18 appropriate sentence is one of giving age appropriate voluntary service to the  
19 community.

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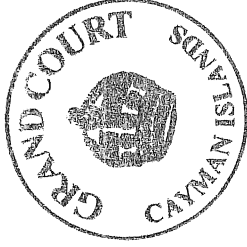
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1           25.       Accordingly, I impose a sentence of one hundred (100) hours of community  
2           service which will assist the Defendant to repay his debt to society and will  
3           serve as a reminder to the community and to the Defendant that the crime of  
4           theft was indeed committed, and carries with it, consequences, no matter how  
5           small the amount stolen may be.

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9           **Dated this the 5<sup>th</sup> September 2012**

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*Carol Beswick*

14           **Madam Justice Carol Beswick (Actg.)**  
15           **Judge of the Grand Court**