



**IN THE CAYMAN ISLANDS COURT OF APPEAL
ON APPEAL FROM THE GRAND COURT, CRIMINAL DIVISION**

**Neutral Citation Number [2025] CICA (Crim) 2
Criminal Appeal No 6/2024
Ind#0042/2022
Sc#00155/2022**

GARFIELD ANTHONY ROBB

Appellant

-AND-

HIS MAJESTY THE KING

Respondent

BEFORE The Right Hon Sir John Goldring (President)
The Hon Sir Richard Field, Justice of Appeal
The Hon Sir Michael Birt, Justice of Appeal

Appearances: Mr Gregory Burke of McGrath Tonner appeared for the Appellant
Mr Barbour instructed by the Director of Public Prosecutions appeared
for the Crown

Date of Hearing: 14 May 2025

Date of Judgment: 12 June 2025

JUDGMENT

Field, JA

1. On 15 May 2025 this court heard the appeal brought by Garfield Antonio Robb against the total sentence of five years' imprisonment imposed on him in the Grand Court by Justice Frank Williams ("the Judge") on 22 March 2024 in respect of nine counts of obtaining money by deception contrary to section 247 (1) of the Penal Code. The maximum sentence for this offence is ten years' imprisonment.
2. The appellant also appealed against a compensation order made by the judge under section s. 33 of the Penal Code (2019 Revision).

3. At the end of the hearing on 15 May 2025 the court allowed the appeal to the extent of reducing the overall sentence from 5 to 3 years' imprisonment on each count concurrently and quashing the compensation order with reasons to follow. These are the reasons.
4. At trial before the Judge sitting without a jury the appellant faced an indictment of 13 counts all charging obtaining money by deception, on four of which he was acquitted. Those on which he was convicted were:

<u>No.</u>	<u>Complainant</u>
Count 1	Diana Jackson
Count 2	Anand Kumar Adapa
Count 3	Ira Bothwell
Count 4	Flavio Franca
Count 5	Burnstein Banks
Count 7	Michalakis Kyberd
Count 9	Ruby Ann Petrie
Count 10	Charles Moore
Count 11	Donnet O'Connor

5. The facts relating to these counts were as follows:

Count 1 – Diana Jackson

6. In May 2014, the appellant quoted Diana Jackson KYD \$3500 for work to install hurricane shutters at her address in Bodden Town. Ms Jackson paid the amount in full and was told that the shutters would be ordered a week after he collected the money, with work to start on installation approximately one month later. The shutters were never installed at her property. Ms Jackson sought the return of her money from the appellant who eventually paid back \$1500.

Count 2 – Anand Kumar Adapa

7. In August 2016, the appellant quoted Anand Adapa KYD \$6000 to install a screened patio at his address in South Sound. Mr Adapa paid \$3000 up-front. The appellant delivered some aluminium pieces around 6 months later but never completed the work. Mr Adapa eventually had to pay another contractor to complete the work and did not receive any money back from the appellant.

Count 3 – Ira Bothwell

8. On 1st June 2018, having seen an advert in the yellow pages, Mr Bothwell contacted the appellant for a quote to install shutters at his address in Rum Point. The appellant attended the same day and measured for the shutters. He later quoted Mr Bothwell KYD \$3300 for the work and asked for a deposit in US dollars as he was travelling to the US to buy equipment and materials. Mr Bothwell paid the appellant USD \$1965 (KYD \$1650) who later began to give Mr Bothwell excuses about the shipment of materials. In August 2018, with no progress made, Mr Bothwell demanded his money back from the appellant. By a series of payments, which began in November 2018, Mr Bothwell received his money back, save for KYD \$600. After the last payment in September 2019, the appellant blocked Mr Bothwell's calls.

Count 4 – Flavio Franca

9. In late-2018, Mr Franca saw an advert in the Yellow Pages and subsequently sought a quote from the appellant for the installation of hurricane shutters and roll-up doors at his address in West Bay. The appellant assured Mr Franca that the work would be completed by Christmas the same year and quoted KYD \$4500 for the work. On 2nd November 2018, Mr Franca paid 50% as down-payment (KYD \$2250). In December, Mr Franca sought an update on the progress of the project and was told there were difficulties shipping items from the US. A new deadline of January 2019 was agreed. However, no work was completed by January 2019, and a further extension to March 2019 was agreed. Around the time of the March deadline, the appellant attended Mr Franca's house and installed trackers for the roll-up doors and shutters. Mr Franca noticed that the work was sub-standard and the materials appeared to be second-hand. Mr Franca requested his money back and the appellant agreed but no money was ever returned to Mr Franca.

Count 5 – Burnstein Banks

10. In June 2019, Mr Banks contacted the appellant by telephone seeking a quote for hurricane shutters for a garage door at his property in Cayman Brac. The appellant quoted KYD \$2800 for the work. He asked for payment in US Dollars as he was sourcing the materials from the US and on 27th June 2019 Mr Banks transferred to the appellant USD \$3414.63. Mr Banks did not hear anything further for some time and called the appellant to chase him. On 24th September 2019, shutters arrived at Mr Banks' address which were clearly second-hand, had vital parts missing and were too

short for the garage door. Mr Banks asked for his money back, and the appellant agreed to refund him. However, Mr Banks received only KYD \$200.

Count 7 – Michalakis Kyberd

11. In February 2020, the appellant was contacted by Ms Kyberd for a quote to fit hurricane shutters on a commercial property in George Town. The appellant quoted KYD \$400 to complete the work, stating he would only charge labour as he had materials left over from a previous job. Ms Kyberd paid \$400 in two instalments. Ms Kyberd chased the appellant to complete the work but gave up by November 2020. She never received any money back.

Count 9 – Ruby Ann Petrie

12. In June 2020, Ms Petrie contacted the appellant for a quote to fit hurricane shutters at her address. The appellant attended on 24th June 2020 to measure for the shutters. On 25th June, he sent a WhatsApp message with a quote of KYD \$2500, before attending the address to collect a deposit of KYD \$1250. The appellant did not complete the work despite attempted contact by Ms Petrie. Eventually, in October 2020, the appellant attended to install a runner above the double-doors. He completed no further work and did not repay the deposit.

Count 10 – Charles Moore

13. The appellant attended Mr Moore's property in Newlands in July 2020 to provide a quote to fit shutters. The quote was KYD \$4800, and on 28th July 2020, Mr Moore paid a deposit of KYD \$1800. The appellant did not attend to fit the shutters. When chased by Mr Moore, the Appellant showed him, on a video call, shutters he said were for Mr Moore's property. In August 2020, a runner was put up at Mr Moore's house and shutter pieces were dropped off that were clearly second-hand. No other work was completed.

Count 11 – Donnet O'Connor

14. In October 2020, the appellant was asked to provide a quote to Ms O'Connor for the installation of guttering, and for her house to be painted. The appellant quoted KYD \$3000 and indicated the work would be completed by Christmas. On 7th October 2020, the appellant collected a deposit of \$1500. Ms O'Connor did not hear from the appellant

and so began contacting him. The appellant gave excuses for the non-completion of the work. Eventually, on 18th December 2020, he attended the address and power-washed the house, before leaving. He did not return to the property to complete any further work.

15. It was common ground that the gross amount received by deception by the appellant was KYD \$18,150 and the net amount after repayments was KYD \$15,400

Arrest and interview

16. The appellant was arrested on 9th March 2021, on which date he was interviewed under caution during which he denied any wrong-doing. In regard to Count 1, he said that he bought the shutters to complete the work but Ms Jackson said she did not want the work done and so he repaid her \$1500 and told her he would repay the balance on selling the shutters. In regard to Count 2, the appellant admitted he had not completed the work and said that he had been told by an angry Mr Adapa that he should leave. As to Counts 5 & 6, when enquiries were made of Cayman Islands Customs and Border Control whether the appellant had paid any customs for imported shutters from the US, the answer was that no such payments had been identified.

17. In written submissions addressed to the Judge for the sentencing hearing, the prosecution contended that the index offences were thefts with the aggravating feature that they involved “*a breach of trust*” within the section of the Chief Justices Statement on Tariffs and Guidelines for Sentencing issued on 16 January 2022 headed “*Offences of Dishonesty.*” It reads:

“For offences of THEFT or related offences, depending on the value of the property stolen and any other aggravating factors, particularly where there is a breach of trust in the context of a relationship of employment, an immediate term of imprisonment ranging from 1 to 4 years for a first offence, and an order for repayment, will likely be imposed. The tariff could be higher still depending on the seriousness of the offence.”

18. In support of this contention, the prosecution cited in their written submissions the following authorities dealing with sentences where property or money was unlawfully obtained in breach of trust:

“R v Barrick (1985) 81 Cr App. R.78. Here the appellant was convicted of four counts of false accounting, four counts of obtaining by deception

and two counts of theft. These offences were committed whilst the appellant was employed as manager to take control of a small finance company owned by a family. Over time the appellant had used bogus accounts to obtain £9000. The court observed that the case fell within the category of a person in a position of trust, for example an accountant, solicitor, bank employee or postman who has used his privilege and trusted position to defraud his partners, or clients or employers or the general public, of sizable sums of money. Generally, in these cases, a term of immediate imprisonment was inevitable, save in very exceptional circumstances, which should mark publicly the gravity of the offence. Where there are guilty verdicts after a trial and the amount involved was less than £10,000 or thereabouts, terms of imprisonment ranging from the very short to 18 months' imprisonment were appropriate. Cases involving sums between about £10,000 and £50,000 would merit a term of about two to three years' imprisonment. For greater sums over £100,000, a term of three, to three and a half years to four years, would be justified. The sentencing court should pay regard to the quality and degree of trust reposed in the offender including his rank; the period over which the fraud or the thefts have been perpetrated; the use to which the money or property dishonestly taken was put; the effect upon the victim; the impact of the offences on the public and public confidence; the effect on fellow employees or partners; the effect on the offender himself; his own history and those matters of mitigation special to himself such as illness."

"Trevor Clark v R [1998] 2 Cr App R (S) 137. *In this case the appellant pleaded guilty to two counts of theft and was sentenced to five years' imprisonment on each count to run concurrently. In the course of his employment as the bursar at the Royal Academy he had stolen £400,000 from his employers and £29,000 from his local church where he was treasurer. The Court of Appeal of England and Wales uplifted the sentences referred to in Barrick to take account of inflation as follows: £17,000, £85,000 and £170,000 were now the present equivalents of £10,000, £50,000 and £100,000"*

"Fyne v R [2007] CILR 27. Here, this court endorsed the approach taken in both *Barrick* and *Trevor Clark*. As Zacca P said in delivering the judgment of the court:

"This court reaffirms its adoption of the guidelines on sentencing in Barrick, and the cases which followed Barrick, in cases of theft involving a breach of trust. Even for a first offence, the appropriate sentence is one of immediate imprisonment unless exceptional circumstances are shown. The length of imprisonment will vary in each case depending on the mitigating and aggravating factors. In light of the economy of the Cayman Islands, the sentence imposed by the court in cases of theft involving breach of trust should be one which would act as all effective deterrent."

"Schultz v R [CICA (unreported) 24 April 2013]. *In this case, the appellant appealed the sentence of five years imposed by Quinn J for*

having extracted over a period about five years a total of US\$289,660.12 from the Chamber of Commerce Pension Scheme of which he had been the administrator. This court observed that sentencing for offences of theft involving breaches of trust was governed by non-statutory guidelines derived from Barrick which were affirmed in Fyne. Quinn J had taken between six and seven years as the starting point on the basis that the case came within the £250,000 - £1 million bracket set in Clark. In the view of the court, the sentence of 5 years was excessive. The sentence on count 1 was reduced to 3 years and on count 2 a consecutive sentence of 1 year was imposed. In the view of the court, even without a detailed currency conversion or precise figure for inflation, it was quite clear that the US\$ 289,660 involved was properly within the 3 – 4 year starting range and not the higher range adopted by Quinn J. Allowing a 25% discount for the guilty plea but taking into account the seriousness of the breach of trust and the sustained nature of the appellant’s conduct, the appropriate overall sentence was one of four years’ imprisonment.”

19. In *R v Self*, the defendant over a twelve month period stole by way of eight transactions the total sum expressed in sterling of approximately £520,000 from a company employing him as manager offering services to captive insurance companies. He confessed to this offending as soon as he was confronted with the dishonest transactions and assigned his property to the liquidators of the defrauded company. He also had no previous convictions. He was sentenced by Henderson J to five years’ imprisonment.

The sentencing hearing

20. At the sentencing hearing counsel for the Crown, Mr Milton-Job, told the Judge that he himself fully adopted the prosecution’s written submissions on sentence that had been put before the court. He went on to note that the appellant had nine traffic violations, the assessment of re-offending was at the medium level and he made a point of telling the court that the appellant had expressed no remorse for his offending. He also applied for a compensation order in the sum of CI\$15,400 pursuant to section 33 of the Penal Code.
21. The appellant was unrepresented, his counsel having been given leave by the judge to cease to represent the appellant.

The Judge’s Sentencing Remarks

22. At an early point in his sentencing remarks, the Judge stated that among all the facts and circumstances of the case he would be having regard to the helpful submissions

provided by the prosecution and the various cases referred to therein, including *Fyne v R* and *Schultz v R* which served as general guides. He added that the court would also bear in mind the objects of sentencing, including rehabilitation and deterrence.

23. Turning to the issue of culpability, the Judge repeated his view that the case involved a breach of trust, the appellant having been in a position of trust had made false promises which he had failed to honour. There was also the matter that there were nine convictions involving nine persons from whom the appellant had obtained property by deception over a span of seven years. In addition, it appeared, as counsel for the Crown had pointed out, that the offences were not opportunistic offences and there might have been some amount of planning involved. All in all therefore, the Judge was minded to make the compensation order requested by the Crown.
24. The Judge then observed that the maximum sentence for the indicted offences was ten years' imprisonment and he had to bear in mind that the appellant had no previous convictions to speak of, so he was someone of effective good character and the court had to bear that in his favour. He then went on to say, "*looking at the cases provided by the crown and other cases, if the court uses some of the sentences in some of the similar cases as having a range of say 1 to 10 years, and uses a starting point of say two years, there are the aggravating factors, the lack of remorse, there has been no effort to compensate the victims, or some of the victims who were owed money over a long period of years. There was also mentioned in the social inquiry report what was referred to as low levels of victim empathy. So, if we add that, let us say, two years on account of those factors and we take, let us say a year on account of the sole mitigating factor of no previous convictions, what the court would impose in relation to the first four offences was a sentence of two years imprisonment.*"
25. Turning to the remaining offences, the Judge took into account the totality of the overall sentence and imposed a sentence of three years in respect of each thereof, these sentences to run concurrently with each other but consecutively to the concurrent sentences of two years imposed in respect of the first four offences.

The appellant's case on appeal.

26. The appellant's counsel, Mr Gregory Burke, advanced four principal submissions:

- (1) The Judge had erred in sentencing the appellant on the basis that the offending constituted a breach of trust and was subject to the sentencing guidelines for offences of this character such as *Barrick* and *Trevor Clark*.
- (2) The prosecution having failed to draw the Judge's attention to the Definitive Guidance of 2014 on Sentencing for Fraud, Bribery and Money Laundering Offences issued by the UK Sentencing Council, as they ought to have done, the Judge erred in failing to sentence the appellant by reference to those guidelines.¹
- (3) The Judge erred in treating the appellant's lack of remorse as an aggravating factor in arriving at the sentence he passed.
- (4) The court ought not to have made the compensation order sought by the Crown since such an order should only be made if it appeared that funds were immediately available to satisfy the order whereas it was clear from the Social Inquiry Report that the appellant was saddled with debt; see *R v Ebanks (H)* (2013 (1) CILR N [2] and *R v Douglas and Hamilton* [2016] CILR Note 13

The Crown's Response to the appellant's case.

27. Counsel for the Crown on this appeal, Mr Barbour, very sensibly and responsibly conceded that each of the appellant's four submissions was well made.

Discussion and Decision

28. Mr Barbour was unable to explain how it was that the prosecution could have submitted to the Judge that the index case was one of breach of trust of the sort outlined in *Barrick* where the defendant is "a person in a position of trust, for example an accountant, solicitor, bank employee or postman who has used his privilege and trusted position to defraud his partners, or clients or employers or the general public, of sizable sums of money".
29. Mr Barbour was also unable to explain why the Judge was not taken to the Definitive Guidance of 2014 on Sentencing for Fraud, Bribery and Money Laundering Offences issued by the United Kingdom Sentencing Council, it being common practice in these courts for the applicable UK Sentencing Guidelines to be put before the court where

¹ The Cayman Islands 2024 Sentencing Guidelines for Offences of Dishonesty came into force from 1 December 2024 nine months after the appellant was sentenced.

there is no equivalent Cayman Islands Guideline applicable in the circumstances of the case; see e.g. *R v Aspinall* (Crim.App.16/2016 Unreported dated 6 December 2016).

30. Mr Burke submitted that under the Guideline for Fraud (false representation) the appellant's culpability would fall within A (High Culpability) since it involved a position of responsibility and several victims over a sustained period of time. In his submission, the financial loss was between £5000 and £20,000 on the basis of a starting point of £12,400 which placed the offences in Category 4, the starting point being one of 18 months, giving rise to a sentencing range of 18 months to 3 years. He contended that having regard to the scale and impact of the offending and taking into account the appellant's lack of any relevant previous convictions, the sentence that should have been passed ought not to have exceeded three years. When asked to respond to this submission, Mr Barbour told the court that he would not seek to persuade us that a higher sentence was appropriate.
31. Having regard to the Guideline for Fraud, and the submissions made thereon by Mr Burke, and taking into account the appellant's lack of previous convictions, we ordered that the overall sentence of five years' imprisonment be set aside and substituted a sentence of three years' imprisonment on each of the 9 counts to run concurrently. We also quashed the compensation order.

Birt, JA

32. I agree.

Goldring JA

33. I also agree.