



1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL DIVISION**
3

4 **IND NO: 9 of 2022**
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9

10 **V.**
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12 **APRIL ANGELES BAUTISTA**
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16 **Appearances:** **Ms. Orrett Brown, Crown Counsel, Office of the Director of Public**
17 **Prosecutions for the Prosecution**
18

19 **Mr. Jonathon Hughes, Samson Law for the Defence**
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22 **Before:** **The Hon. Justice Cheryll Richards KC**
23

24 **Submissions Heard:** **8th November 2024**
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26 **Sentence Judgment:** **21st November 2024**
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30 ***Criminal Law – Sentencing, Theft contrary to s.241 of the Penal Code (2022 Revision) - Sentencing***
31 ***following guilty plea – Totality Principle and Principles on Sentencing.***
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SENTENCE JUDGMENT

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1. The defendant is before the Court for sentencing following her guilty plea to the single count on the Indictment. This charges her with Theft contrary to s. 241 of the *Penal Code* (2019 Revision). The particulars are that she between the 8th February 2019 and the 27th February 2019, in the jurisdiction of the Cayman Islands, stole approximately KYD \$18,727.75 in cash belonging to Eats Fresh Limited T/A Subway Limited.
2. By s. 241 of the *Code* the maximum penalty where the value of the thing stolen exceeds five thousand dollars is ten years imprisonment.

SUMMARY OF FACTS

3. The prosecution has provided a summary of the facts which is not disputed. The defendant is a Philippine national. In June 2017 she migrated from her home country to take up employment with Eat Fresh Limited, trading as Subway (“the Company”). This is a business which operates in the Cayman Islands at multiple locations. It is owned by the victims, Lisa and Troy Burke. The defendant had been recommended to the owners by her sister, Annie Bautista-Simon who is a former employee of the Company.
4. The defendant was employed as an Assistant Manager. Her duties included cash handling, verifying the funds received at the end of each day, depositing these funds into bank accounts and documenting the daily deposits onto a cash sales summary report.
5. On the 1st March 2019, Mr. and Mrs. Burke made checks into their online bank account and noticed that the Company’s accounts were short on funds to perform payroll upload and was overdrawn for the period 8th February to 27th February 2019. This was inconsistent with the deposits reported by the defendant to the Corporate Office and recorded in the accounting system.
6. As a result of this an internal investigation was launched to ascertain what deposits were outstanding to be made to the bank from various stores. This disclosed that there had been a

1 lapse in deposits and as such a check was made in relation to the Company's bank account. No
2 deposits were being shown in the Company's online bank account and accordingly there were
3 no night deposits recorded on dates that the defendant had advised that there was.
4

5 7. Following an internal investigation and assistance from the police, it was found that between
6 the 8th and 27th February 2019, the defendant had stolen from the Company the amount recorded
7 in the Indictment.
8

9 8. The defendant was spoken to by Mrs. Burke and another company staff member Ms. Tanya
10 Pennant. The defendant confessed to stealing the money, telling Mrs. Burke "*I didn't spend it*
11 *in large portions, I didn't buy any house, any land, I didn't send it home*".
12

13 9. The defendant was asked by the staff member what she did with the money, and she replied, "*I*
14 *don't know*". The defendant's sister contacted the Company, apologised on the defendant's
15 behalf, and made an initial repayment of \$1,500.00. The defendant's sister stated that she would
16 sell family property and repay money from her salary to compensate the Company. However,
17 no additional payments were made.
18

19 10. The police were called, and the defendant was arrested. During her police interview under
20 caution on the 9th August 2018, the defendant in the presence of her attorney provided a
21 prepared statement in which she denied stealing any money. She said that she had in fact made
22 the night deposits and could not explain why the deposits were not reflected in the account
23 statement.
24

25 COURT APPEARANCES

26
27 11. The defendant first appeared before the Summary Court on the 7th December 2021. Disclosure
28 was served following which there were hearings on the 15th December 2021 and 11th January
29 2022 relating to issues involving legal aid. The defendant's case was committed to the Grand
30 Court on the 25th January 2022.
31



1 12. In the Grand Court, there were three appearances before the defendant entered a plea of not
2 guilty on the 29th April 2022. The case was listed for trial. The time estimate for the trial was
3 ten days. A number of trial dates were adjourned upon the information that the defendant was
4 suffering from a serious medical illness and required surgery. Medical Reports were provided.
5 The trial dates were 3rd October 2022, 27th March 2023, 24th July 2023, 4th October 2023, and
6 3rd June 2024.

7
8 13. There were nine listed hearings before a plea of guilty was entered on the 3rd June 2024, the
9 last scheduled trial date, although an indication had been given some days earlier that there
10 would be a plea. The prosecution submits that the guilty plea in fact only came on the day of
11 trial.



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13 **VICTIM IMPACT REPORT**

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15 14. The Department of Community Rehabilitation (“DCR”) has provided a Victim Impact Report
16 dated 29th July 2024, (“VIR”). Attached to this is a Victim Impact Statement from Lisa Burke
17 who writes on behalf of both victims. They state that the defendant’s betrayal of trust has had
18 significant financial, emotional and psychological repercussions. It caused substantial financial
19 strain as the money was essential for daily operations. At the time they were in the midst of
20 building a new store and had extra staff for training. With the added expense of construction,
21 this was the worst time for them to be short of funds. They state that the loss disrupted their
22 financial stability. They had to make difficult decisions to mitigate the impact. The recovery
23 from the setback took considerable time and resources.

24
25 15. Under psychological effects and treatment, Mrs. Burke states that preparing for trial multiple
26 times has been distressing and brought the emotional toll of revisiting the theft and feelings of
27 betrayal anger and helplessness. This affected her overall well-being. She states that:

28
29 “In addition to the \$18,727.95 theft, not including interest for the past five years, the time
30 and effort spent preparing for the trial have been overwhelming. Gathering evidence and
31 meeting with attorneys consumed countless hours that could have been used for work and

1 personal commitments. These constant interruptions and the need to reschedule important
2 tasks have caused significant stress and anxiety.

3
4 The theft has eroded our trust, leading us to avoid hiring for a similar managerial position
5 for the past four years. This decision has significantly increased the workload for both
6 myself and Troy, adversely affecting our primary business, other ventures, and personal
7 lives as we work to regain trust in staff handling cash.”¹



8
9 **ANTECEDENT HISTORY**

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11 16. The defendant has no previous convictions recorded against her.
12

13 **SOCIAL INQUIRY REPORT**

14
15 17. The DCR has provided a Social Inquiry Report dated 30th September 2024 (“SIR”) in respect
16 of the defendant. The Court has read this Report in its entirety and takes into account everything
17 said therein in favour of the defendant.
18

19 18. The defendant is 32 years old. She is married with two young children, ages 3 years and 5
20 months old. She is the primary caregiver for them. The defendant grew up in the Philippines
21 in a loving household with supportive parents. She completed High School and tertiary
22 education without incident. Thereafter she worked at various jobs before migrating to the
23 Cayman Islands in 2017 to work for the Company. She was employed for some two and a half
24 years, managing the finances for all four locations of the Company before being terminated for
25 this offending. She secured other employment in 2020 and worked until August 2023 when her
26 employment contract ended. She did not renew her contract because of her health challenges.
27 She is presently unemployed and is financially supported by her husband. She would be unable
28 to pay a financial penalty or compensation because she has no financial resources. She has had
29 serious health challenges and in 2021 underwent major surgery. Her health is now stable with
30 the assistance of daily medication.
31

¹ Page 2 of VIR

1 19. Her husband expresses concern that the family will not be able to afford alternative childcare
2 should the defendant be incarcerated.

3
4 20. Under the heading Attitude Towards Offending, the Probation Officer records that the
5 defendant said that she was unable to explain why she had stolen the money. She said it was
6 just stupidity on her part as at the time she did not have significant financial responsibility but
7 had been short of money. She would take a few hundred dollars for her personal use from the
8 collection for the last day of the week. She is unsure how she could have stolen as much as
9 \$18,000.00. The defendant expressed her regret and feelings of remorse for her actions.

10
11 21. Under the heading Assessment/Evaluation, the defendant is assessed as being at very low risk
12 of re-offending. The Probation Officer states that there is every indication that the defendant
13 was exposed to the appropriate morals and taught the difference between right and wrong. The
14 Officer also states that at the time of the offending the defendant gave no thought to the impact
15 which her actions would have on the victims. She was unable to give a reason why she
16 committed the offence as she was not under financial pressure. The Officer concludes that given
17 the account of the defendant, *“there appears to be situational opportunity and a lack of self-*
18 *control when she committed the offence”*. The recommendation is that the defendant may need
19 to address issues of impulsivity to prevent future reoffending.

20
21 22. As to the possibility of a community-based sentence the Probation Officer states: -

22
23 “While the Client could benefit from engaging in a community-based order, it is noted
24 however, that as the Client may be required to leave the jurisdiction shortly, her ability to
25 access services and level of engagement will be significantly impacted. Hence a
26 community-based sentence with supervision is not deemed suitable at this time. The Client
27 will therefore also not be deemed suitable for a Community Service Order.

28
29 Given the seriousness of her crime, as well as the breach of trust element of the offence, if
30 the Court is not minded to impose a period of imprisonment, a suspended sentence could



1 be considered. The Court may also consider imposing restitution to account for the
2 financial loss to the victims in this matter.”²

3
4 **THE SUBMISSIONS**

5
6 23. Both Counsel have referred the Court to the United Kingdom *Sentencing Council Guidelines*
7 for the offence of Theft. There are no offence specific Guidelines in the Cayman Islands at the
8 date of sentencing. However, the *Chief Justice’s Statement on Tariffs and Guidelines for*
9 *Sentencing for Certain Offences (2002)* provides for a tariff of 1-4 years for an offence where
10 there is a breach of trust: -

11
12 “For offences of THEFT or related offences, depending on the value of the property
13 stolen and any other aggravating factors, particularly where there is a breach of trust
14 in the context of a relationship of employment, an immediate term of imprisonment
15 ranging from 1 to 4 years for a first offence, and an order for repayment, will likely be
16 imposed. The tariff could be higher still depending on the seriousness of the offence.”

17
18 24. By reference to the United Kingdom *Sentencing Council Guidelines* for the offence of theft
19 (“the SGC Guidelines”), the prosecution submits that culpability can be nothing less than
20 Category A because this offending involves a breach of a high degree of trust or responsibility.
21 The defendant was employed in a senior position in the Company, and was responsible for
22 handling significant quantities of cash. It is because of the position of trust that the defendant
23 was able to carry out this offence.

24
25 25. With respect to harm, the prosecution submits that this offence is at the lower end of Category
26 2 harm because the value stolen was \$18,727.75. The equivalent of this was GBP £17,149.00
27 in February 2019.



² Page 9 of SIR

- 1 26. The starting point for a Category A2 offence is 2 years' custody, with a range of sentence of 1
2 year to 3 years 6 months' custody.
- 3
4 27. Defence Counsel accepts that this is a Category 2 case but submits that on the monetary bands,
5 it must fall at the very bottom end of that category. Counsel submits that the starting point
6 should be adjusted accordingly because of this.
- 7
8 28. The prosecution submits that there are two aggravating factors. The offence was not an isolated,
9 one-off theft. It was committed over a period of two weeks and five days and involved the theft
10 of multiple sums of money. Counsel also refers to the high level of inconvenience caused to
11 the victims because of the financial impact on the business.
- 12
13 29. Defence Counsel disagrees that there are aggravating factors and submits that while the
14 allegation is that the funds were taken over a nineteen day period, this should be seen in the
15 context of an employment relationship which lasted two and a half years. Counsel submits
16 that the conduct is not sufficiently sustained such that it warrants an upward adjustment to the
17 starting point by way of aggravation.
- 18
19 30. As to the impact on the business, Counsel submits that the VIR speaks to impact in the context
20 of building a new restaurant. There is reference to incurring an overdraft and additional loans
21 to complete the project. Counsel said that it is not clear if these overdraft/additional loans were
22 within or without the \$18,727.75 taken by the defendant. Counsel submits that "*in any event,*
23 *it is inherent in the Court's assessment of harm that financial loss occurs and that will have an*
24 *impact on the loser. Whether there has been "a high level of inconvenience caused to the victim*
25 *or others" is considered at the harm calculation stage and should not be double counted.*"
- 26
27 31. It is difficult to accept defence Counsel's submission on this aspect, surely one must take one's
28 victim as one finds him. Depending on the circumstances of a victim, a theft of this nature may
29 or may not be significant. The victim's account was that this occurred at a time of expansion
30 and new hire when their financial resources were already depleted. The impact on them must
31 be accepted to be greater than it would have been at another time and for another business.
- 32



1 32. The SGC Guidelines provide for a two stage process in assessing harm and states: -

2
3 “Harm is assessed by reference to the **financial loss** that results from the theft **and any**
4 **significant additional harm** suffered by the victim or others – examples of significant
5 additional harm may include **but are not limited to:**

6
7 Items stolen were of substantial value to the loser – regardless of monetary worth

8 High level of inconvenience caused to the victim or others

9 Consequential financial harm to victim or others

10 Emotional distress

11 Fear/loss of confidence caused by the crime

12 Risk of or actual injury to persons or damage to property

13 Impact of theft on a business

14 Damage to heritage assets

15 Disruption caused to infrastructure”



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17 **SUBMISSIONS IN MITIGATION**

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19 33. In mitigation Counsel submitted that one of the reasons for the significant delay in the
20 resolution of this case was a serious medical issue which the defendant had. Counsel drew the
21 Courts attention to the medical records of the defendant, and the Court takes note of the serious
22 nature of her medical issues, the requirement for continued follow-up checks every three to six
23 months and the significant financial cost of this treatment.

24
25 34. Counsel submits that in addition to her medical condition the following are mitigating factors:-

26 Remorse (as detailed in the SIR)

27 Restitution (albeit limited)

28 Assessed as posing a ‘very low’ risk of re-offending

29 Mother of two young children, one of whom is only 6-months-old.
30
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- 1 35. Counsel said that despite the late plea, the defendant is remorseful. The fact that it was her
2 sister who got her the job has amplified and contributed to a sense of shame around her
3 involvement in the offence.
4
- 5 36. Counsel submits that this is a curious case. The defendant is not known to be materialistic.
6 There is no suggestion of luxurious spending. She began giving herself “informal bridging
7 loans” but the repayments quickly fell away and by the end there was much more money
8 coming out than was being put back in. Counsel said that this was not a sophisticated or
9 planned offence. It began without the intention to be dishonest but morphed into an offence in
10 which dishonesty played a part. The end figure took the defendant by surprise because the
11 money was coming out in drips and drabs. Some of it was sent to ailing parents in the
12 Philippines and the rest spent on day-to-day expenses.
13
- 14 37. Counsel submits that when all the defendant’s circumstances are considered in this case a short
15 custodial sentence would do more harm than good.
16
- 17 38. As to credit for guilty plea, Counsel submits that the defendant should be afforded credit for
18 her plea. Counsel says that all of the aims for affording credit are met in this case. The plea
19 avoided the need for a trial, saved considerable costs and resources, and saved the victims and
20 witnesses from the ordeal of giving evidence. It also acts as an encouragement to others to
21 plead guilty where appropriate. All of these aims are met in this case, and so a reduction should
22 be applied. Counsel accepts that this plea on any view was late in this case and is unlikely to
23 attract a full discount. Nevertheless it is urged that the medical history of the defendant and the
24 mental and financial strain which it occasioned, puts the decisions of the defendant in this case
25 in some kind of context.
26
- 27 39. Counsel also submitted that although the guilty plea was entered ‘on the day of trial’, an
28 indication was given well in advance that the trial was unlikely to proceed and witnesses were
29 not required to be brought to Court. As a result, other trials were identified and the Courtroom
30 was not left empty.
31



1 40. Counsel notes that the Court may pursuant to section 22(4) of the *Penal Code*, order that a
2 sentence of imprisonment of 2 years or less be suspended. It is submitted that “because of the
3 defendant’s personal mitigation, and specifically her poor health, the recommendations within
4 the SIR, and the likely length of any custodial sentence, this is a case in which the Court may
5 properly exercise its discretion to suspend any period of imprisonment as an exception to the
6 usual rule”.



8 **THE SENTENCE**

9
10 41. This Court accepts the submissions of both Counsel that by reference to the SGC Guidelines
11 this is a culpability A offence because of the significant breach of trust. The defendant was
12 trusted with the earnings of the business which were mostly in cash. The harm is at level 2
13 because of the amount stolen. The starting point in the United Kingdom is 2 years imprisonment
14 with a range of sentence of 1 year to 3 years and 6 months custody. However, the maximum
15 sentence in the United Kingdom is 7 years imprisonment. In the Cayman Islands it is 10 years.

16
17 42. In the case of *R v Robert Aspinall*³, the Appellate Court stated that the SGC Guidelines cannot
18 be applied in the Cayman Islands without taking into account the higher maximum sentence
19 for theft in this jurisdiction. The Court said that the higher maximum in the Cayman Islands is
20 an explicit statutory direction as to how seriously theft is regarded in this jurisdiction.

21
22 43. In the instant case, this Court proposes an uplift of one third from the United Kingdom starting
23 point from 24 months to one of 32 months. It is considered an aggravating factor that there was
24 multiple offending over a sustained period of time. This was not a one off theft. This factor
25 serves to increase the sentence by 6 months to one of 38 months. It is also an aggravating factor
26 which was not taken into account at the harm stage that there was a high level of inconvenience
27 caused to the victim and others but little weight is given to this factor at this stage because there
28 was no reduction made to the starting point for the lower level of the value of the offending.
29

³ CICA 16/2016 Unreported Judgment dated 6th December 2016

1 44. From the 38 months, there is significant mitigation in the case. The defendant has no previous
2 convictions and is of good character. The Court accepts the findings in the SIR and the
3 submissions of Counsel that she is genuinely remorseful. Limited restitution has been made on
4 her behalf. She is assessed to be at very low risk of re-offending. She is the primary caregiver
5 for her two young children and there will be difficulties in her absence. Additionally, she has a
6 serious medical condition. Because of the combination of these circumstances an exceptional
7 reduction is made of 18 months for a balance of 20 months imprisonment. As recommended
8 by the *Cayman Islands Sentencing Guidelines* where the plea came at the door of the Court
9 the usual reduction is for 10%. However again an exception is made because of her overall
10 circumstances in particular her medical condition and a reduction of 25% is afforded to her for
11 a final sentence of 15 months imprisonment.

12
13 45. The Court has considered whether the proposed sentence is proportionate to the offending. The
14 offending clearly passes the custody threshold. It is a breach of trust which is serious. It had a
15 significant effect on the victim and on the business. It appeared to have been committed for no
16 reason other than plain and simple dishonesty. The defendant's conduct thereafter was
17 inconsistent. Rather than fully admitting at an early stage what she had done and making an
18 offer even of a partial plea, she put the victims through years of uncertainty and preparation for
19 trial. Praying in aid her medical issues does not and cannot completely explain this conduct.
20 Her admissions came at a very late stage when she well knew what she had done. She took the
21 money not once but over a period of time. By her actions she has destroyed the faith that was
22 placed in her by her family and the victims. Plainly the proposed sentence is proportionate to
23 the serious nature of the offending which involves a breach of trust. Her personal circumstances
24 have been considered in particular her medical issues as well as everything said in her favour
25 by her Counsel and in the SIR. Community service is not an option given the nature of the
26 offending. The aims of sentencing must be to provide due reparation for the harm done as well
27 as punishment, deterrence and rehabilitation. The Court notes the request of defence Counsel
28 but does not consider a suspended sentence to be appropriate in the serious circumstances of
29 this case. The father of the children must make the appropriate arrangements to care for them.

30
31



1 46. The sentence is therefore 15 months imprisonment to be served immediately with any time
2 previously served to be taken into account.

3

4 **ANCILLARY ORDERS**

5

6 47. The prosecution applies for a compensation order for the outstanding amount of \$17,227.75
7 pursuant to section 33 of the *Penal Code* (2024 Revision).

8

9 48. The Court is also asked to exercise its discretion to award an amount of interest on that sum
10 (given the five years since the commission offence), as well as any additional compensation
11 spent for the inconvenience, stress and difficulty caused by the defendant.

12

13 49. The defence submits in response that should the Court impose a custodial sentence, it would
14 be inappropriate to make a compensation order which the defendant would have no prospect
15 of fulfilling.

16

17 50. Counsel refers to the case of *Inwood*⁴ in which Scarman LJ said (at p. 73): -

18

19 “Compensation orders were not introduced into our law to enable the convicted to buy
20 themselves out of the penalties for crime. Compensation orders [are] a convenient and rapid
21 means of avoiding the expense of resort to civil litigation when the criminal clearly has
22 means which would enable the compensation to be paid.”

23

24 51. Counsel submits that the defendant has no means to pay compensation. She is currently
25 unemployed and is entirely dependent on her husband for support.

26

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⁴ (1974) 60 Cr App R 70

1 52. The Court accepts that there is no evidence in the material before the Court that the defendant
2 has or will have the means to pay a compensation order. Consequently, no compensation order
3 can be made in this case.
4

5 **Dated this the 21st November 2024**

A handwritten signature in blue ink, appearing to be 'Cheryll Richards', written in a cursive style.

6
7 **The Hon. Justice Cheryll Richards KC**
8 **Judge of the Grand Court**