

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

3 **INDICTMENT NO. 6/2021 & 91/2021**

4
5 **REGINA**



6 **-v-**

7 **DAVID SAMUEL BODDEN**
8 **STATAN OMAR CLARKE**
9 **ELTON DAVID WEBSTER**
10 **ELIZA EUNICE WEBSTER**

11
12 **Appearances:**

**Mrs. Nicole Petit with Mr. Orrett Brown for
the Crown**

**Mrs. Prathna Bodden of Samson Law for
David Bodden**

**Mrs. Lee Halliday-Davis of Brady Attorneys
for Statan Clarke**

**Ms. Amelia Fosuhene of Brady Attorneys for
Elton Webster**

**Mr. Crister Brady of Brady Attorneys for Eliza
Webster**

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26 **Before:**

Justice Roger Chapple (Actg.)

27 **Heard:**

6th November 2024

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30 **HEADNOTE**

31 *Criminal Law – Burglary, Possession of Criminal Property – Sentence following trial*
32 *by jury - Burglary of bank resulting in loss in excess of \$560,000 – abuse of trust by*
33 *bank employee – 8 years elapsed between offence and sentence – appropriate*
34 *reduction in sentence to reflect delay and its effects upon defendants – applicable*
35 *sentencing guidelines*

36
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38 **SENTENCE JUDGMENT**
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1 **INTRODUCTION**

2 1. The defendants were convicted of the offences upon which they were indicted following
3 a lengthy trial by jury. David Bodden, Statan Clarke and Elton Webster were convicted
4 of Burglary, contrary to section 243(1)(b) of the *Penal Code* (2013 Revision). Eliza
5 Webster was convicted of Possession of Criminal Property – part of the proceeds of that
6 burglary – contrary to section 145 of the *Proceeds of Crime Act* (2016 Revision). It is
7 now my duty to pass sentence upon the defendants for these offences.

8
9 2. To assist me in what is, on any showing, a difficult sentencing exercise, I have been
10 provided with a wealth of written material, supplemented by oral submissions made on
11 behalf of the prosecution and all defendants on Wednesday 6th November. Amongst the
12 material placed before me, which I have considered and taken into account, are the
13 following:

- 14 i. Prosecution sentencing note dated 4th October 2024, together with an
15 addendum dated 11th October
16 ii. On behalf of David Bodden:
17 1. A Social Inquiry Report (SIR) dated 25/7/24.
18 2. written sentencing submissions dated 7/10/24.
19 iii. On behalf of Statan Clarke:
20 1. A Social Inquiry Report (SIR) dated 26th August 2024.
21 2. Character references from Tamar Clarke (his wife), Mark Foster,
22 Harvel Grant, Norman Wilson and Christopher Bailey.
23 3. Written sentencing submissions dated 7/10/24 and revised
24 22/10/24.
25 4. Various authorities and guidelines.
26 iv. On behalf of Elton Webster:
27 1. A Social Inquiry Report (SIR) dated 27/8/24.
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1 the position of trust in which the bank had placed him. Any financial institution has the
2 right to expect nothing less than scrupulous honesty and integrity from its employees.
3 He was a valued and trusted employee. He had been working at the bank since leaving
4 school in 2007 - working his way up the promotional ladder, with some success. Save
5 for motoring offences, which I of course ignore, he was a man of good character. Why
6 he betrayed the bank in the comprehensive way that he did, and why he chose to throw
7 away all that he had achieved, only he can know, and I cannot fathom.

8
9 5. I treat Defendants Statan Clarke and Elton Webster also as men of good character. I
10 ignore any and all previous convictions as they are minor infringements which have of
11 course played no part in this sentencing exercise. I likewise cannot fathom why they
12 should choose to become involved in serious crime, as the jury determined, particularly
13 given their station and achievements in life and their hitherto law-abiding lives.

14
15 6. The position is different insofar as Defendant Eliza Webster is concerned. She has
16 previous convictions which I cannot ignore, but as I indicated yesterday, I can, in her
17 case, for reasons I will explain in due course, avoid an immediate custodial sentence.

18
19 7. This case is also unusual because of the very long period of time that separates these
20 offences, which were carried out in June and July 2016, from final disposal today – a
21 period of over eight years. I shall later be discussing how I should approach this aspect
22 of the case. Plainly and obviously, this case has cast a long shadow over the lives of all
23 four defendants for many years. Their lives have been in turmoil for far too long, facing
24 an uncertain future. Suffice it to say at this stage that I will be reducing the sentences I
25 would otherwise deem appropriate to reflect the substantial delay in this case.



1 **THE SENTENCING GUIDELINES -GENERAL**

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3 8. My starting point when considering the appropriate sentences is, of course, the *Cayman*

4 *Islands Sentencing Guidelines*. Reference was made in written and oral submissions to

5 “the 2015 guidelines” and “the 2021 guidelines” in order to draw attention to a change

6 in the offence specific guidelines for burglary. The applicable guideline, had this case

7 been dealt with expeditiously, would have been the 2015 guideline. I am therefore urged

8 to apply the 2015 guidelines when assessing culpability and harm, rather than the

9 guidelines in force today, at the time of sentencing. As Counsel Ms Halliday-Davis put

10 it in her written submissions “*as this offence was committed in 2015, I will mainly*

11 *address the guidelines that were in operation at the time.*” That is, with respect, not the

12 correct approach. In accordance with general principles, the applicable guideline is that

13 in force as at the date of sentencing. The correct approach to sentencing historic cases

14 has been discussed in a number of cases in the England and Wales Court of Appeal. In

15 *R v H¹*, the Lord Chief Justice summarised the position as follows:

16

17 *“In short, consistently with the statutory provisions, the starting point for the*

18 *sentencing decision should normally be assessed by reference to the guidance in*

19 *force on the sentencing date.”*

20

21 9. Unlike the complex position when dealing with many historic cases, the maximum

22 sentence here has not changed. The maximum sentence for a burglary committed in 2016

23 was 14 years imprisonment. The maximum sentence for a burglary committed in 2024

24 is 14 years imprisonment. Similarly, the relevant starting points and sentencing ranges

25 in the 2015 and 2021 guidelines have not changed. However, some of the features – and

¹ [2011] EWCA Crim 2753

1 the wording of some features – of both Culpability and Harm – have changed, although
2 for the purposes of this case, in my judgment, not significantly. For example, a feature
3 of high culpability in the 2015 guidelines was “*sophisticated organised*
4 *nature/significant planning.*” In the 2021 guidelines it is put this way: “*a significant*
5 *degree of planning or organisation.*” If the degree of planning is both significant and
6 sophisticated, this is, according to the 2021 guidelines, an additional aggravating feature.
7 I have of course taken into account all the provisions of the 2015 guidelines, both as to
8 the correct approach to sentencing, the weighing of culpability and harm, aggravating
9 and mitigating features and so on. Counsel Ms Fosuhene warns against the danger of
10 jumping straight to the offence-specific guideline and ignoring the statement of general
11 principles and approach – and I have not done so.

12
13 **SENTENCING GUIDELINES: ASSESSMENT OF CULPABILITY AND HARM**

14 10. I am altogether satisfied that this is a case of high Culpability and category 1 Harm within
15 the meaning of the guidelines. Most of the listed features of high culpability are present,
16 as follows:

- 17 i. The Shedden Road branch of the RBC was plainly deliberately targeted.
18
19 ii. There was in my judgment a significant degree of planning or organisation.
20
21 iii. A vehicle was used.
22
23 iv. This was a gang or group activity – there were at least 4 people, including
24 the first three defendants, involved in this criminal enterprise.





1 11. I should say that I do not regard the use of a vehicle as a significant factor in the
2 categorisation of Culpability. As always, one must be careful to avoid “double
3 counting.” The arrangements made for the use of a getaway vehicle I regard as an
4 integral part of the planning and organisation. It is plain from all the evidence I heard
5 that there was considerable planning and preparation; the offence could not have taken
6 place without it. Arrangements made included the obtaining and use of a third party’s
7 vehicle and phone, the second and third defendants meeting some distance from the
8 bank, transferring to the getaway vehicle and waiting in the vicinity of the bank, until a
9 signal was received from Defendant David Bodden once the cash dispensing units were
10 open, the coast was clear and access could be given to the exterior and interior security
11 doors of the bank. True it is that the planning here was not the height of sophistication.
12 Suspicion would – and did – inevitably fall on David Bodden. Thus, sophistication is not
13 a factor increasing seriousness, as indicated in the 2021 guideline.

14
15 12. I note that whereas in the 2015 guidelines “abuse of position” was a feature of high
16 culpability, in the 2021 guidelines it has moved from a culpability feature to a factor
17 increasing seriousness.

18
19 13. I next turn to the assessment of Harm within the meaning of the guidelines. One feature
20 of category 1 Harm is present, that is to say, “theft of property causing a significant
21 degree of loss to the victim.” It is argued on behalf of the first three defendants that
22 given the assets of RBC, the theft of half a million dollars was not, in the grand scheme
23 of things “a significant degree of loss to the victim.” A wealth of documentation has
24 been produced (to be found in the bundle submitted on behalf of Elton Webster)
25 evidencing the assets of RBC. As Ms Fosuhene put it, “*the harm in relation to the entity*

1 *is small.*” Whilst I understand the argument, I unhesitatingly reject it. True it is that RBC
2 is an enormous, rich and financially secure establishment. Nevertheless, half a million
3 dollars, none of which has been recovered by RBC, remains, on any sensible approach,
4 a significant sum and a significant loss.

5
6 14. Accordingly, the guidelines indicate a starting point sentence of 6 years’ custody, with
7 a category range of 4 to 14 years custody.



8
9 **AGGRAVATING FEATURES**

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11 15. I then look at what are said to be aggravating and mitigating features. I deal firstly with
12 the prosecution submission, pursued at some length both in written and oral submissions,
13 that this offence “*is likely to negatively impact confidence in the finance industry*” (listed
14 as a potentially aggravating feature in the general sentencing guidelines (paragraph 8)).
15 In emotive language, which I do not regard as appropriate, the prosecution urge² that
16 “*the harm inflicted by this crime extends far beyond the walls of RBC, to our very*
17 *economic foundations.*” In assessing the gravity of these offences, the prosecution urges
18 the Court to weigh not just the money stolen, but “*the incalculable damage done to our*
19 *jurisdiction’s most vital industry should this perfidy go insufficiently punished.*” I readily
20 appreciate the importance of protecting the Islands’ reputation as a centre of financial
21 excellence and integrity, but, as I indicated at an earlier hearing, I am unable to make the
22 leap, as it were, between this offence and likely damage to that reputation. Although I
23 appreciate that I am not altogether comparing like with like, a burglary targeting a bank
24 in the City of London is unlikely to tarnish the city’s reputation as a world financial

² Prosecution’s sentencing note, page 4



1 centre. I cannot conclude that it is remotely likely that an existing or potential investor
2 would think twice about doing business in the Cayman Islands by reason of this one,
3 thankfully rare, if not unique, burglary of a bank. I note in passing that the 2021 offence
4 specific guidelines require “established evidence of community/wider impact.” There is
5 no such evidence, and it is not, in my judgment, a reasonable inference. I reject the
6 prosecution’s submissions about this aspect of the case.

7
8 16. I have already referred to the gross abuse by David Bodden of the position of trust in
9 which he was placed by his employers. This is a factor increasing seriousness as listed
10 in the 2021 offence specific guidelines. And in this case, in my view, that feature
11 substantially aggravates the seriousness of this burglary, first and foremost for David
12 Bodden. I also consider it an aggravating feature in the cases of Statan Clarke and Elton
13 Webster. Given their pleas of not guilty and the rejection of their evidence at trial by
14 the jury, together with David Bodden’s silence at trial, “*we just do not know*” – to use
15 Ms Halliday-Davis’ oft-repeated mantra – the details of the arrangements between the
16 defendants. However, that does not prevent me from drawing reasonable inferences.
17 Indeed, it is my duty as the sentencing judge to do so in conducting this exercise I have
18 to perform. The first three defendants, as the jury found, committed this offence jointly.
19 All defendants must inevitably have been aware that one of the participants in this joint
20 enterprise was a dishonest bank employee acting in abuse of his position of trust. The
21 participation of Statan Clarke and Elton Webster embraced and endorsed that abuse of a
22 position of trust. Thus “abuse of a position of trust” is an aggravating feature of this case
23 for all three defendants. This aspect of the case compels me to raise the starting point for
24 sentence from one of 6 years to one of 8 years imprisonment in the case of David
25 Bodden, and 7 years in the cases of Statan Clarke and Elton Webster.



1 **MITIGATING FEATURES**

2
3 17. I now turn to mitigating features. I have already referred to the good character of the first
4 three defendants. Their previous good character will reduce their sentences.

5
6 18. I indicated earlier that I would return to the question of delay in this case, by which I
7 mean very long period that has elapsed between the commission of these offences and
8 the conclusion of these proceedings. All defence Counsel have properly emphasised the
9 impact of that delay on the defendants' lives. I accept all that is said in that regard. All
10 defendants have been substantially affected by the length of time this case has taken to
11 resolve. All defendants lost their jobs as a result of their initial arrests. To their credit,
12 all defendants have done their best in difficult circumstances to rebuild their lives. I note
13 all that is said also about the impact of the delay upon the defendants' families,
14 particularly the traumatic effect upon the Websters' children.

15
16 19. I have been referred to a number of authorities which recognise that delay is a mitigating
17 factor. In *R v Beattie-Milligan*³ it was observed that whilst delay between events and
18 charge was becoming increasingly common, "*it imposed extra strain on the defendant*
19 *and in such circumstances, it may be justifiable for a court to take account of unjustified*
20 *delay.*" In that case, a particularly sensitive one, with a delay of 11 months between
21 offence and charge, the English Court of Appeal reduced the sentence from one of two
22 years' imprisonment to one of 18 months' imprisonment, that is to say a reduction of
23 twenty-five (25%).

³ [2019] EWCA Crim 2367



1 20. Reference has been made to the case of *R v Counihan*⁴ - a case in which a 4-year delay
2 led to the suspension of custodial sentences which would otherwise have been
3 immediate. However, that case involved a conspiracy to steal rather than burglary, it had
4 a lower maximum sentence, a guideline-starting point of 3½ years and a sentencing
5 range of 2½ to 6 years – substantially lower than the starting point and range in this case.

6
7 21. Many of the reasons for the long delays in this case were canvassed in the course of legal
8 submissions at trial, particularly submissions relating to the application that posited that
9 continued prosecution of the case would amount to an abuse of the process of the court.
10 It would not be helpful for me at this stage to embark upon a lengthy post-mortem into
11 the reasons for the various delays along the way. Sustained criticism has been maintained
12 by the defence that the reason for almost all the delay was incompetence and/or fault on
13 the part of the prosecution, both the Office of the Director of Public Prosecutions
14 (ODPP) and the Royal Cayman Islands Police Service (RCIPS). I should, in fairness,
15 place on record that I do not accept all that has been said by the defence in this regard.
16 Despite their submissions to the contrary, this was in my view a complex investigation,
17 involving a great deal of dogged, determined and dedicated investigation, particularly
18 by the then newly established cold cases team, in linking the currency in Eliza Webster’s
19 possession at the airport with the proceeds of the burglary. One must be cautious of the
20 apparent wisdom that comes with the benefit of hindsight. The delay in this case between
21 offence and charge was almost 4 years. Thereafter the case began its long journey
22 through these courts. The pandemic and all its ramifications affected this case and its
23 investigation. Many other factors added to the delay, including listing a case of this

⁴ [2024] 2 Cr App R (S) 40

1 length in the Grand Court, Counsel’s availability, manpower, resources and human
2 failings.

3
4 22. All that said, the important point here is that blame for the lengthy delays cannot properly
5 be laid at the feet of any of these defendants, who have had to suffer, daily, all the effects
6 and uncertainties of that delay. Ms Fosuhene’s description of lives in tatters is apt. Of
7 course, had the defendants pleaded guilty, the case would have concluded a great deal
8 sooner. But it would be wrong in my judgement to hold it against them that they
9 exercised their right to trial and to have their guilt or innocence determined by a jury. I
10 therefore put that consideration from my mind.

11
12 **CONCLUSIONS: DAVID BODDEN, STATAN CLARKE, ELTON WEBSTER**

13
14 23. The question then in this case is the extent of the reduction I should make to the sentences
15 which would otherwise be appropriate in this case to reflect that delay and the very real
16 punishment that delay has itself imposed. I have helpfully been referred to the learned
17 Chief Justice’s sentencing decision in the relatively recent case of *R v Watson & Blake*⁵.
18 The Chief Justice gave substantial credit for the long delay in that case. It is possible,
19 from her sentencing remarks when dealing with the second defendant, Bruce Blake, to
20 arrive at the percentage reduction she applied to reflect the main mitigating factors in his
21 case, that is to say, his good character and the very substantial impact of the delay on his
22 life. The Chief Justice dealt with it globally, applying a reduction of 50%. I propose to
23 do the same in this case.



⁵ Ind. 79A, 80A & 89A/19

1 24. Of course, I cannot give these defendants any of the substantial reduction in sentence
2 that guilty pleas would have attracted.

3
4 25. It follows that the sentences I impose upon the first three defendants are as follows:

- 5
6 a. David Bodden: 4 years' imprisonment
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8 b. Statan Clarke: 3½ years' imprisonment
9
10 c. Elton Webster: 3½ years' imprisonment



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12
13 26. Given the length of these sentences, suspension is of course not possible I was urged to
14 reduce the sentences to such a length as could be suspended. I am firmly of the view that
15 despite the delay, the gravity of these offences nevertheless must be marked by
16 immediate sentences of imprisonment of some length.

17
18 27. This morning a request was received from Counsel Mrs Bodden that her client's sentence
19 be deferred until January 2025, in order for him to spend the Christmas period with his
20 "*children [as] this might be the last Christmas that his children are children before he*
21 *is released*" That cannot amount to a proper reason for deferment. The serving of all
22 sentences will commence today.

23
24 **CONCLUSIONS: ELIZA WEBSTER**

25
26 28. I now turn to deal with Eliza Webster. I can do so shortly. I am satisfied that a custodial
27 sentence is appropriate in her case but also satisfied that the interests of justice and mercy
28 require that sentence to be suspended. I bear firmly in mind that this offence effectively
29 came to her: the stolen money was given to her by her husband. That said, she was

1 prepared it seems to enjoy the proceeds of crime as she was about to depart on a spending
2 spree in Miami. I have considered the Cayman Islands guideline for money laundering
3 offences. Amongst other considerations to which attention is drawn is the provenance of
4 the criminal property involved which, as here, it can be ascertained. In money
5 laundering terms, the value of the banknotes in Eliza Webster's possession, some
6 US\$4000, was not substantial, but, nevertheless, an appreciable sum. Within the
7 meaning of the money laundering guidelines, it sits firmly in category 4 harm. In my
8 view, it sits between levels B and C Culpability. Had it not been for the delay in this
9 case, I would have imposed a sentence of 12 months' imprisonment. Though this
10 defendant cannot claim the credit of a good character, I reduce the sentence by fifty
11 percent (50%) to reflect the effect of the delay upon her, resulting in a sentence of 6
12 months' imprisonment, which I suspend for a period of 2 years. I do that for a number
13 of reasons but first and foremost for the sake of her children who would otherwise need
14 to face having both parents incarcerated at the same time.

15
16 29. Eliza Webster should understand how a suspended sentence works. Assuming she
17 commits no further offences in the next two years, she will not have to serve the sentence
18 imposed. The obverse of that coin is this: should she commit any further offence in the
19 next two years, the strong likelihood is that she would have to serve that prison sentence
20 as well as any penalty imposed for the new offence.





1 **CONFISCATION**

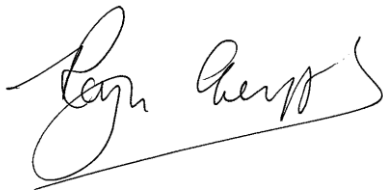
2 30. Lastly, the prosecution asks this court to proceed in accordance with s15 of the *Proceeds*
3 *of Crime Act (POCA)* (2024 Revision). The court has no discretion in the matter once
4 such a request is made. It must proceed. Counsel Ms Fosuhene indicated in her written
5 submissions an application to postpone any confiscation proceedings, given that an
6 appeal was in contemplation, although she did not pursue the application further. Whilst
7 pursuant to s.25 of the Act, the court has power to postpone, I decline to do so in this
8 case. The maximum period of postponement permitted by the Act is a period of 2 years;
9 that period began to run on the date of conviction in May 2024. The timetable proposed
10 by the prosecution envisages a further 7 months before any confiscation hearing. The
11 confiscation application must take its usual course.

- 12 31. Accordingly, I make the following orders:
- 13 a. Prosecution to serve a written request for information on each of the defendants by
14 the 15th November 2024.
- 15 b. Defendants’ reply in writing to that request with full particulars by the 12th
16 December 2024.
- 17 c. Prosecution to serve a written statement of information in respect of each defendant
18 by the 21st February 2025.
- 19 d. Defendants to respond thereto in writing and to serve any and all witness statements
20 and documents relied upon by the 18th April 2025.
- 21 e. Prosecution to serve any response to that served material by the 13th June 2025.
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- f. Case to be listed for mention and trial readiness hearing on the 27th June 2025.
Defendants need not attend/be produced – but, of course, may attend if they wish.
- g. Case to be listed for confiscation hearing on the 17th July 2025, or such nearby convenient date as may be agreed at the hearing on the 27th June 2025.

Dated this the 8th day of November 2024



**Justice Roger Chapple
Acting Judge of the Grand Court**