



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

4 **INDICTMENT NO: 28 of 2024**

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6  
7 **R**

8  
9 **V.**

10  
11 **GARETH ANTHONY FORBES**  
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13  
14  
15

16 **Appearances:** **Ms. Angelique McLoughlin, Crown Counsel, Office of the Director of Public**  
17 **Prosecutions for the Prosecution**

18  
19 **Mr. Keith Myers for the Defence**  
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21  
22 **Before:** **The Hon. Justice Cheryll Richards KC**  
23

24 **Submissions Heard:** **11<sup>th</sup> October 2024**  
25

26 **Sentence Judgment:** **14<sup>th</sup> October 2024**  
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31 *Criminal Law – Damage to Property contrary to s.267 (1) (b) of the Penal Code (2022 Revision). Sentence*  
32 *after trial. Principles on Sentencing.*  
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## SENTENCE JUDGMENT

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3 1. The defendant is before the Court for sentencing following his conviction after trial for the  
4 offence of Damage to Property contrary to s.267 (1) (b) of the *Penal Code* (2022 Revision).  
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- 6 2. The particulars are that he on the 17<sup>th</sup> day of September 2023 in the vicinity of Seaview Road,  
7 East End, Grand Cayman, Cayman Islands without lawful excuse damaged property of a value  
8 of \$3,870.66 belonging to the Cayman Islands Government, namely double yellow line markings  
9 on the main road, intending to damage such property or being reckless as to whether such  
10 property would be damaged.
- 11  
12 3. The maximum sentence is a fine of \$5,000.00 or 5 years custody.
- 13  
14 4. The facts may be shortly stated. The defendant used black paint or tar to paint over the double  
15 yellow lines which were placed by the National Roads Authority in the vicinity of the stated  
16 address. This is adjacent to the Eastern Star Bar and extends east going past the Rubis Gas Station.  
17 Closed Circuit Television (“CCTV”) footage exhibited at trial showed the defendant doing this.  
18
- 19 5. The defendant’s mother operates the Gas Station and Bar. During the trial, under cross  
20 examination, the defendant admitted painting over the yellow lines. He said that removing the  
21 lines was necessary in order for patrons to be able to park on the roadway. He said that the  
22 inability to park on the roadway was affecting his family’s business. He said that he is not sorry  
23 that he did it and would do it again until the day he dies.
- 24  
25 6. A Social Inquiry Report dated 24<sup>th</sup> September 2024 (“SIR”) has been provided by the Department  
26 of Community Rehabilitation (“DCR”). The Court has read and considered the entirety of the  
27 SIR and takes into account everything said therein in favour of the defendant.  
28
- 29 7. The defendant is forty-one years old and is married with four children living in his household.  
30 He provides financial support for his family. He is self-employed as a farmer and raises pigs for  
31 sale. He also works part time with a tour company and at his mother’s Restaurant and Bar.
- 32  
33 8. The defendant has an antecedent history mainly for traffic and drug offences. In addition, in 2018  
34 he was fined and placed on probation for an offence of Assault Occasioning Actual Bodily Harm.

1 He also has one previous conviction for Damage to Property in 2019. For this offence, he was  
2 sentenced to a one-year Conditional Discharge Order and ordered to pay compensation. DCR  
3 records indicate that while he was only partially compliant with his supervision appointments on  
4 probation, he completed his anger management programme and participated to a high level.

- 5  
6 9. He is assessed as being at medium risk of re-offending. The Probation Officer describes him as  
7 minimising and justifying his actions.  
8

9 **THE SUBMISSIONS**

- 10  
11 10. In the absence of offence specific guidelines in this jurisdiction, Counsel for the prosecution has  
12 referred the Court to the *United Kingdom Sentencing Council Guidelines* for the offence of  
13 criminal damage. This is not on all fours with the offence under Cayman Islands law. The  
14 *Guidelines* for an offence of criminal damage of a value not exceeding GBP 5,000.00 state that  
15 this offence is triable only summarily with a maximum sentence of a fine and or 3 months  
16 custody.  
17

- 18 11. The offending in the instant case is of a value of over \$3,000.00 which is triable on indictment  
19 with a maximum sentence of \$5,000.00 or 5 years custody.

- 20  
21 12. The *Guidelines* for an offence of damage to property which exceeds GBP 5,000.00 in value state  
22 that this offence is triable either way with a maximum sentence of 10 years imprisonment.  
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24 **SUBMISSIONS IN MITIGATION**

- 25  
26 13. Defence Counsel submits that the defendant took it upon himself to be a “superman” for the  
27 community and that this is not a pattern for him. He just tried to do the right thing. Counsel says  
28 that he has no savings which could be put toward the payment of compensation.  
29





1   **THE SENTENCE**  
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- 3       14. This Court has considered the *United Kingdom Sentencing Council Guidelines* for the offence  
4       of damage to property which is triable on indictment with some modification given the  
5       differences in the maximum sentence. There is some planning in the offence because the  
6       defendant would have had to obtain the paint or tar and brush or roller in order to use to effect  
7       the damage. It is thus an offence of Medium Culpability.  
8
- 9       15. The harm is not at the highest level given the value and is thus one of medium or Category 2  
10      Harm. An offence of Medium Culpability B and Category 2 Harm has a starting point of a high-  
11      level community order with a range of sentence of a medium level community order to 9 months  
12      custody. Adjusted given the lower maximum sentence in this jurisdiction, the higher end point  
13      would be 4 ½ months custody.  
14
- 15      16. From a starting point of a medium level community order, this offence is aggravated by the fact  
16      that the defendant has a previous conviction for similar offending. There is the additional factor  
17      that this offending would have impacted the wider community. The defendant himself said in  
18      evidence that people began parking in the area again once the double lines had been removed.  
19      These factors serve to increase the sentence to one of 2 months or 8 weeks imprisonment.  
20
- 21      17. In mitigation the Court takes into account everything said in the defendant's favour in the SIR  
22      and by his Counsel. The SIR records that the defendant apologises to the Court for wasting the  
23      Court's time. He is said to have good personal qualities such as honesty and trustworthiness. He  
24      is described by his part-time employer as a punctual, dependable and dedicated individual. His  
25      Counsel also highlights the defendant's motive in assisting the community and supporting his  
26      mother's business. All the mitigation serves to reduce the sentence by 2 weeks to one of 6 weeks  
27      imprisonment.  
28
- 29      18. The Court has considered whether the custody threshold has in fact been passed and whether the  
30      proposed sentence is proportionate to the offending.  
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- 32      19. In the course of his evidence, the defendant detailed first trying to get the assistance of his  
33      Member of Parliament and also making contact with the National Roads Authority about the

1 double yellow lines. It is plain that he well knew that there was a right way to go about the issue  
2 which he saw as having an adverse effect on his mother's business and on the community. His  
3 evidence in cross examination was that there was other parking available nearby.  
4

5 20. In doing what he did, the defendant acted deliberately and must have known that he was taking  
6 the law into his own hands. He knew that what he was doing was wrong. What is also of note is  
7 that before this Court, under oath in cross examination he expressed the determination to continue  
8 doing what he did until the day he dies. This is the kind of deliberateness and intention to persist  
9 which clearly calls for a deterrent sentence. In the Court's view the offending is serious such that  
10 the custody threshold is passed.

11  
12 21. However, the defendant's personal circumstances are such that a sentence of immediate custody  
13 is avoidable. He is at medium risk of re-offending. He is gainfully employed and supports his  
14 family. He is said by the Probation Officer to accept the decision of the Jury. He has been  
15 compliant with community sentences in the past and is willing to comply with any community  
16 orders made by this Court. Consequently, the 6-week sentence will be suspended for the period  
17 of 2 years.

18  
19 22. In addition, pursuant to s. 42 of the *Penal Code*, the defendant is to complete 120 hours of  
20 community service in 12 months.

21  
22 23. The prosecution has applied for compensation to the extent of the damage. The defendant is of  
23 limited means as set out in the SIR. Through his Counsel he has offered to pay only \$100.00 per  
24 month. This would take thirty-eight and a half months or more than three years. This is not  
25 acceptable.

26  
27 24. In the case of *R v York*<sup>1</sup> the general principles as to the appropriateness of making a compensation  
28 order are set out. The court must consider the means of the offender and whether making a  
29 compensation order is realistic. The court must be satisfied that the offender has or will have the  
30 means to pay that order. While a repayment period of two or three years in an exceptional case

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<sup>1</sup> [2019] 1 Cr App R (S) 41 (2018)



1 would be appropriate, in general, excessively long repayment periods should be avoided. A court  
2 should not make a compensation order against an offender who does not have the means to pay.

3  
4 25. The Court considers that making a compensation order in the circumstances of this case is not  
5 realistic.

6  
7 26. The Court will however make an order for costs.

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9 27. Pursuant to s. 34 of the *Penal Code*, the defendant is ordered to pay costs of \$500.00 towards the  
10 costs of the prosecution or 2 months imprisonment. This is to be paid into the Courts Funds  
11 Office. At the request of his Counsel, the defendant is given time to pay as follows, \$250.00 by  
12 the 14<sup>th</sup> November 2024 and the balance of \$250.00 on or before 16<sup>th</sup> December 2024.

13  
14 **Dated this the 14<sup>th</sup> October 2024**

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

15  
16 **The Hon. Justice Cheryll Richards KC**  
17 **Judge of the Grand Court**