

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

3 **INDICTMENT NO: 55 OF 2019**



6 **THE QUEEN**

7 **V.**

8 **CASSANDRA JASMINE EBANKS**

9

10 **Appearances:** **Mr. Garcia Kelly for the Prosecution**

11 **Mrs. Prathna Boddan of Samson Law for**  
12 **Defendant**

13  
14

15 **Before:** **Justice Cheryll Richards Q.C.**

16 **Submissions on Sentencing:** **11<sup>th</sup> May and 24<sup>th</sup> September 2021**

17 **Delivery of Judgment:** **18<sup>th</sup> October 2021**  
18

19

20 **HEADNOTE**

21 *Criminal Law – Theft – Section 241 of the Penal Code – Principles on sentencing*  
22 *where additional Harm, medical issues, effect on minor children and the effect of*  
23 *incarceration raised - Percentage discount for guilty plea.*  
24

25  
26

27 **SENTENCE JUDGMENT**  
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1 1. The Defendant is before the Court for sentencing following her guilty plea to the offence  
2 of Theft of \$60,000.00 from Cayman Dental Services Ltd between the period 1<sup>st</sup> March  
3 and 30th November 2018.

4  
5 2. The Defendant was initially charged on a three-count indictment with Theft (Count 1)  
6 of CI\$101,403.00 and US\$1,190.00. The Defendant first appeared in the Grand Court  
7 on the 12<sup>th</sup> July 2019. On the 26<sup>th</sup> July 2019, the Defendant was arraigned and on a basis  
8 of plea, pleaded guilty to Count 1 of the Indictment to Theft of \$30,000.00. This plea  
9 was not accepted by the Prosecution. A Judge Alone trial commenced on the 17<sup>th</sup> June  
10 2020. On the 26<sup>th</sup> July 2020, following evidence in chief of the Complainant Dr. Terry  
11 Giancrego, the Defendant was re-arraigned and pleaded guilty to the Theft of  
12 \$60,000.00. This plea is acceptable to the Prosecution. Counts 2 and 3, Forgery and  
13 Uttering of False Documents, respectively, are to be left on file.

14  
15 3. Section 241 of the *Penal Code* provides that the maximum sentence, where the Theft  
16 exceeds five thousand dollars is imprisonment for ten years.

17  
18 4. The facts are summarised by the Prosecution as follows.

19  
20 5. Cayman Dental Services Limited is a dental practice situated in Camana Bay, George  
21 Town. The Defendant was employed to the practice as a Receptionist. The Complainant,  
22 Dr. Giancrego, is one of three co-owners of the business. All the co-owners are resident  
23 overseas and therefore have long periods of absences from the business. Because of this,  
24 the Practice Manager Maralynn Mulvihill is provided with blank signed cheques for the  
25 purpose of paying suppliers.





1       6.       On the 13<sup>th</sup> November 2018, Dr. Giancrego reviewed the business accounts for the  
2       practice. He had been having difficulty receiving the bank statements from the bank.  
3       Whilst doing what was for him a delayed review, he noticed that the funds in the accounts  
4       were much less than expected, by about \$150,000.00. The deposits into the bank  
5       accounts were between C\$30,000.00 and \$40,000.00 less than is normal. He also  
6       noticed that some 36 cheques had been written payable to the Defendant and to two  
7       persons on behalf of the Defendant; these were in addition to the salary cheques which  
8       the Defendant had legitimately received. Cheques payable to the Defendant had either  
9       been cashed or paid into the Defendant's bank accounts at two local banks.

10  
11       7.       Later that day, Dr. Giancrego spoke to the Defendant and asked her how many cheques  
12       she had written to herself and she replied that she had written one or two since August  
13       2018. The Police were called and the Defendant was arrested, cautioned and transported  
14       to the Detention Centre. Whilst en route to the Centre, the Defendant said that she had  
15       been writing cheques to herself since March 2018. She said that she had cashed some of  
16       them and deposited some. The amounts of the cheques varied. She said that she was  
17       desperate as her water had been disconnected and the Landlord had demanded the rent.  
18       She had three children and they had no water. She said that she had never taken any cash  
19       from the business.

20  
21       8.       The Defendant was interviewed under caution. In the course of the interview, the  
22       Defendant admitted that she stole pre-signed cheques which had been signed by the  
23       business owners that were left in an open office by the Practice Manager. She would  
24       write cheques to herself of varying amounts which she would either cash or deposit to  
25       her own account. The Defendant admitted that she did not have permission to write these  
26       cheques. She said that she was in debt and in need of money to pay her bills. She had

1 used some of the money to pay rent and for her children and not for a lavish lifestyle.  
2 She had been receiving financial assistance from the Needs Assessment Unit (NAU)  
3 which had ceased.

4  
5 9. Investigations revealed that between November 2017 and May 2018, she had received  
6 in excess of \$12,000.00 from the NAU.

7  
8 10. An examination of the Defendant's phone was carried out by the Police. This showed  
9 screen shots of trips booked to the United States, purchases on Amazon, photographs of  
10 jewelry and watches, money transfers to her boyfriend and the purchase of real property  
11 and vehicles. In particular the Defendant obtained a mortgage during the period and  
12 made various payments with respect thereto. On the 26<sup>th</sup> October 2018, the Defendant  
13 obtained a loan of \$25,495.00 from a local bank and purchased a Chevrolet Trax motor  
14 vehicle.



15  
16 **VICTIM IMPACT STATEMENT**

17  
18 11. Dr. Giancrego has provided a Victim Impact Statement (VIS) dated 14<sup>th</sup> May 2021. He  
19 states therein:

20 *“The impact Ms. Cassandra Ebanks has had on my business has been very*  
21 *long lasting. It has changed how I interact with my employees and I have*  
22 *had to put many costly safeguards in place.*

23 *I have had to pay a forensic accountant to uncover all of the unlawful*  
24 *activities that occurred.*

25 *I have now had to continue this on a monthly basis to ensure all safety*  
26 *protocols are taken now that other employees know what is possible.*

27 *My bank accounts were depleted and went into the negative. My*  
28 *relationship with my bank has still not recovered completely. Ms. Ebanks’*  
29 *embezzlement has been a huge financial hardship on me both from a*  
30 *business and personal standpoint.*

1 *From a personal standpoint, I have had to take off numerous days from work*  
2 *to sort through all of the data and appear in court on different occasions.*  
3 *On top of all of the financial hardships, I have had a huge loss from a*  
4 *patient/doctor prospective. Numerous patient accounts were taken*  
5 *advantage of and it has been very difficult to re-establish trust with them.*  
6 *Trust in doctor–patient care is of utmost importance. This will be an*  
7 *ongoing issue I will have to deal with for years to come as many of the*  
8 *families I treat have multiple children that I will continue to see over the*  
9 *next 5-10 years.*  
10 *Mentally this has been an enormous hardship. These past years, this entire*  
11 *endeavour has literally kept me up at night.”*

12 ...

13 *Please put measures in place with Ms. Ebanks’ sentencing to ensure that*  
14 *amount is paid back so that I may at least partially recover from this huge*  
15 *impact on my life.”*



17 **SOCIAL INQUIRY REPORT**

- 18
- 19 12. The Department of Community Rehabilitation has provided a Social Inquiry Report
- 20 (“SIR”) dated the 30<sup>th</sup> September 2020. This provides details as to the Defendant’s
- 21 background and history. She is 34 years old with no previous convictions. She is a single
- 22 mother of three children who are 14, 11 and 8 years old. The Report indicates some
- 23 trauma in her early years due to the poor relationship between her parents who eventually
- 24 separated. She is described as having been part of a dysfunctional family setting and to
- 25 have been psychologically impacted by her exposure to multiple traumatic events. Her
- 26 teenage years were without any major incident and she graduated from high school with
- 27 seven passes in external examinations. She has had a history of employment through to
- 28 2018 when this case before the Court is said to have impacted her ability to secure
- 29 employment. The Officer concludes that a pattern of trauma from broken relationships
- 30 seems to have escalated into her current psychological response.



1 13. The Defendant reported to the Probation Officer that she was diagnosed in 2015 as  
2 suffering from intracranial hypertension. This causes headaches and chronic pain. She  
3 also reported symptoms of ongoing anxiety and depression.

4  
5 14. The Defendant provided six character references from members of the community, a  
6 number of whom were customers of Cayman Dental Services. She is described as a kind,  
7 honest, hardworking, dependable and valued employee and, as demonstrating excellent  
8 customer service skills with efficiency and warmth. She is also described as a person of  
9 responsibility, integrity and ambition and as a devoted single parent.

10  
11 15. The Probation Officer states that while the Defendant has acknowledged that her action  
12 was wrong and seems prepared for the possible outcome, the Defendant appears to have  
13 minimised her behaviour and seeks to blame her employers. She has expressed the view  
14 that she was overworked and underpaid and asked to perform tasks outside her job  
15 description. She spoke of being promised a bonus which she never received. She  
16 admitted taking money but said that she did not “steal it”. She also did not believe that  
17 she was properly compensated. She described the organization as disorganised and  
18 presented herself as a victim of a mismanaged dental practice. Under Attitude Towards  
19 Offending the Report states:

20  
21 *“According to Ms. Ebanks, the culture of the organization was for*  
22 *employees to fill in blank slots on pre-signed cheques for wages. She said*  
23 *that she would also do so to pay bills on behalf of the company. As required,*  
24 *she advised she would photocopy the cheques and place them in Ms.*  
25 *Muldhill’s (sic) (Mulvihill’s) tray. She informed she had endeavoured to be*  
26 *an outstanding worker so as to dispel the belief that “Caymanians are lazy”.*  
27 *She argued that overall she did not “like the operation of the office.”*  
28

1 Ms. Ebanks admitted to “taking” money from Cayman [Dental Services]  
2 without authorisation. She said these figures represented accrued salary  
3 and bonus referred to as “client incentive”. She said she “did not steal” the  
4 funds but instead she “took” it by writing cheques in her name. She was  
5 asked to clarify what she means by “taking” and she responded “if it  
6 belongs to you”. She rationalized that she was “owed” the money, she  
7 “took it”. She said the \$3,500 made on these cheques represented her  
8 agreed salary for February 2018 even though there was no formal  
9 modification to her terms of employment. She however acknowledged that  
10 she was not authorized by the doctors to write the cheques but Ms. Mulvihill,  
11 the Supervisor, had bestowed such responsibility upon her. She also  
12 admitted to writing cheques to her sister whom she owed a \$1,000 and Mr.  
13 Fritz McPherson, with Ms. Muldhill’s (sic) (Mulvihill’s) permission. She  
14 claimed this was an easier arrangement to make in lieu of cash. She later  
15 confessed that she took “extra” but justified she as doing Ms. Muldhill’s  
16 (sic) (Mulvihill’s) job; hence this might have accumulated to “\$60,000.”  
17

18 16. The Defendant was assessed by the Probation Officer as being at medium risk of re-  
19 offending with a high-risk score in one of the eight criminogenic factors, that being pro-  
20 criminal attitude and orientation.



22 **CHARACTER REFERENCES**

23  
24 17. Defence Counsel provided the Court with three additional character references from  
25 members of the community.<sup>1</sup>

26  
27 18. One person has known her since she was 7 years old and states that she is very honest  
28 and will tell the truth about any situation she has been into. He says that her future is  
29 bright as a young person and asks for leniency and mercy for her. A second has known

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<sup>1</sup> Bishop Dolbert A. Clarke dated 4<sup>th</sup> June 2021; Hon. McKeeva Bush dated 22<sup>nd</sup> June 2021; Danielle Watler dated 23<sup>rd</sup> September 2021.  
Sentence Judgment: *The Queen v. Ebanks (Cassandra Jasmine)*. Ind. 55/2019. Coram: Richards J.Q.C. Date: 18<sup>th</sup> October 2021.

1 her from birth and describes her as a kind, considerate and industrious individual who is  
2 dedicated to the well-being of others. She gives voluntary service to a number of  
3 organizations. She is also described as deeply remorseful and repentant and as having  
4 been engaged in conduct which is a one-time indiscretion.

5  
6 19. Since July 2021 the Defendant has been working with a marketing company. Her  
7 employer describes her as a valuable asset to the company and says that she has found  
8 her to be of sound character, honest, capable, detail-oriented, pleasant and extremely  
9 competent.

10  
11 **HEALTH ISSUES – PSYCHOLOGICAL REPORT**

12  
13 20. Following the receipt of the SIR, Defence Counsel sought a psychological assessment  
14 of the Defendant.

15  
16 21. Dr. P. Gayle of the Health Services Authority provided a Psychological Assessment in  
17 June 2021 and an Addendum Assessment on 26<sup>th</sup> August 2021. Tests indicated no  
18 evidence of cognitive impairment and no difficulties with memory functioning. Her  
19 overall cognitive functioning is slightly below the average range although her  
20 crystallized intelligence (vocabulary) which is within the average range is a more  
21 accurate assessment of her general intelligence.

22  
23 22. Other tests indicated that the overall integrity of her general brain functioning is within  
24 the normal range for cognitive functioning. Her risk of recidivism is assessed as low.

25  
26 23. The addendum report stated:





1       25.     The Court inquired as to the detailed basis for the statements made. Following the  
2             hearing, both Counsel provided agreed further questions to the Doctor for a response. A  
3             further report was provided by the Doctor dated 1<sup>st</sup> June 2021 the contents of which are  
4             set out below:

5  
6             i.     *“What is Idiopathic Intracranial Hypertension (IIH)?*

7                     *IIH happens when the pressure in the fluid around the brain (cerebrospinal*  
8                     *fluid) increases. The increase in the pressure has no known cause –*  
9                     *“Idiopathic” “Intracranial” mean within the skull.*

10                    *“Hypertension” means high pressure. Due to the increased fluid around*  
11                    *the brain and spinal cord, the pressure builds up and puts extra pressure on*  
12                    *the brain/and the nerves in the back of the eyes (called the optic nerve).*  
13                    *Symptoms of IIH are often similar to the symptoms of a brain tumor.*

14  
15             ii.    *Can you outline the symptoms that Cassandra is experiencing as a result of*  
16                    *her Idiopathic Intracranial Hypertension?*

17                    *Severe headaches - daily and constant nausea, eye pain and blurred vision,*  
18                    *back and neck pain.*



19  
20             iii.   *How severe are the symptoms?*

21                    *She has constant daily headaches. The headache is severe but may fluctuate*  
22                    *in intensity. The body aches are constant. Eye pain fluctuates. Blurred*  
23                    *vision is episodic.*

24  
25             iv.    *How does this impact her day to day life?*

26                    *Cassandra does not go a second without pain. Her headaches are constant*  
27                    *(@4-5/10) and when extremely severe (@8-9/10), she is bedridden and*  
28                    *unable to move due to the pain and nausea. When moderate pain, she can*  
29                    *manage her daily life but this is becoming harder for her to do. When she*  
30                    *has visual impairment, she is unable to do anything.*

1 v. *Has her condition improved or worsened in the last 5 years?*

2 *It has worsened in the last 3 years.*

3  
4 vi. *What is the prognosis and treatment?*

5 *Treatment is aimed at preserving the Optic nerve function (and thus*  
6 *preventing visual loss and blindness) and managing the raised intracranial*  
7 *pressure. This can be done with medication/weight loss and if unsuccessful,*  
8 *then surgery – this is done if medication fails or if visual function*  
9 *deteriorates. Surgery entails basically draining the Cerebrospinal fluid*  
10 *from around the brain into another part of the body.*

11 *This is usually a chronic illness and the prognosis, although not known to*  
12 *be associated with any specific mortality risk per se, there is increased*  
13 *mortality associated with the complications that can occur with*  
14 *management. Also there is an increased mortality and morbidity and*  
15 *morbidity risk with obesity – especially obese females.*

16  
17 vii. *Will she require any surgery etc., in the near future?*

18 *It is a possibility.*

19  
20 viii. *How will prison worsen her condition?*

21 *Stress can worsen the headaches and other symptoms.*

22  
23 ix. *Have you been to the women's prison? If so, are you aware of the facilities*  
24 *etc., which may or may not assist Ms. Ebanks?*

25 *No – have not visited but yes, am aware of the facilities.*

26  
27 x. *Why can't she be treated etc., whilst in custody?*

28 *She can be treated in custody.”*





1 **SENTENCING GUIDELINES**

2  
3 26. The *Statement on Tariffs and Guidelines for Sentencing for Certain Offences (2002)*<sup>2</sup>  
4 in respect of the offence of Theft provides:

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

11  
12  
13 27. In the absence of offence-specific Guidelines in this jurisdiction, Counsel referred the  
14 Court to the *United Kingdom Sentencing Council Guidelines* of February 2016. The  
15 maximum term of imprisonment in the United Kingdom is 7 years’ custody which is less  
16 than in the statute<sup>3</sup> in the Cayman Islands.

17  
18 **SUBMISSIONS**

19  
20 28. The Prosecution submits that the Culpability in the instant case is high as there was a  
21 breach of a high degree of trust. The Defendant was given access to signed blank cheques  
22 and betrayed the trust of her employer.

23  
24 29. As to the category of Harm, the Prosecution submits that the amount of money stolen  
25 was substantial and that there was also loss of confidence in other employees, which  
26 directly resulted therefrom.

27  
28 30. Prior to the receipt of the VIS, the Prosecution submitted that this would be category 2  
29 Harm. The starting point for category 2 Harm and Culpability A is 2 years’ custody with  
30 a category range of 1-3 years and 6 months’ custody.

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<sup>2</sup> *The Chief Justice’s Sentencing Guidelines (2002) (dated 16<sup>th</sup> January 2002)*

<sup>3</sup> s.241 of the *Penal Code*

*Sentence Judgment: The Queen v. Ebanks (Cassandra Jasmine). Ind. 55/2019. Coram: Richards J.Q.C. Date: 18<sup>th</sup> October 2021.*



1 31. Defence Counsel submits that the Culpability level is B or medium level, (some degree  
2 of trust or responsibility rather than a high degree of trust or responsibility). It is argued  
3 that the Defendant was only the Receptionist and was not in a position of a high degree  
4 of trust such as would be an accountant or manager.

5  
6 32. Defence Counsel also submits that the level of Harm, based on the value, would be a  
7 category 2 and that there are no other aggravating factors apart from the value. In this  
8 regard it is said that the method of the theft was not sophisticated neither was it a long  
9 period of offending.

10  
11 33. Culpability B, category 2 harm has a starting point of 1 year custody with a range of 26  
12 weeks to 2 years' custody.

13  
14 34. In mitigation Defence Counsel submits that the Defendant is remorseful, embarrassed  
15 and has psychological issues such that her mental health is a concern. She has now  
16 engaged in counselling on the advice of her doctor so that she can start getting the help  
17 that she needs. The factors in mitigation are said to include her remorse, previous good  
18 character, good work ethic, health issues, that she is the sole carer of dependent children  
19 and the significant passage of time since the commission of the offence which is not the  
20 fault of the Defendant. Counsel also submits that the delay in this case has been  
21 significant. These offences were committed in March 2018 and despite the early  
22 acceptance of responsibility, this is now the latter half of 2021. The Defendant is  
23 recently, since July 2021, in gainful occupation. It is accepted that she will never be able  
24 to pay back the amount of \$60,000.00 in the near future. The most that she is able to  
25 offer, given her recent employment, is \$1,000.00 to be paid now and \$300.00 per month  
26 going forward.

1 35. Counsel further submits that while it is agreed that the custody threshold has been passed  
2 in this case, there are personal and specific circumstances of the Defendant which justify  
3 the imposition of a suspended sentence.



4  
5 **GUIDING PRINCIPLES - CHILDREN**

6  
7 36. As this case involves dependent children, Prosecuting Counsel has drawn the Court's  
8 attention to two cases in which the relevant principles have been considered. In *R v*  
9 *Petherick*<sup>4</sup>, the English Court of Appeal provided guidance on sentencing an offender  
10 where the right to respect for family life is engaged. Where dependent children are  
11 involved this is a relevant factor in sentencing and their interests must be considered.

12  
13 37. A court will require information about the domestic circumstances of a defendant and  
14 where the family life of others especially children will be affected will ask "*whether the*  
15 *sentence contemplated is or is not a proportionate way of balancing such effect with the*  
16 *legitimate aims that sentencing must serve.*"

17  
18 38. With respect to the balancing exercise which requires to be undertaken, the Court said:

19  
20 *"Fifth, in a criminal sentencing exercise the legitimate aims of sentencing*  
21 *which have to be balanced against the effect of a sentence often inevitably*  
22 *has on the family life of others, include the need of society to punish serious*  
23 *crime, the interest of victims that punishment should constitute just desserts,*  
24 *the needs of society for appropriate deterrence (see section 142 Criminal*  
25 *Justice Act 2003 ) and the requirement that there ought not to be unjustified*  
26 *disparity between different defendants convicted of similar crimes.*  
27 *Moreover, as Sachs J pointed out in the South African Constitutional Court*  
28 *in N v The State [2007] ZACC 18, in a case in which there was under*  
29 *consideration a specific provision in the Constitution which required the*  
30 *interests of an affected child to be "the paramount consideration", not only*  
31 *society but also children have a direct interest in society's climate being one*  
32 *of moral accountability for wrongdoing."*  
33

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<sup>4</sup> [2012] EWCA Crim 2214

Sentence Judgment: *The Queen v. Ebanks (Cassandra Jasmine)*. Ind. 55/2019. Coram: Richards J Q.C. Date: 18<sup>th</sup> October 2021.

1 39. Additional principles considered by that Court may be summarised in the following way.

2 A finely balanced case may mean that interference with the family life of innocent  
3 children may sometimes tip the scales such that it would be disproportionate to impose  
4 a custodial sentence. The more serious the offence, the less likely that this would be the  
5 case. In a case where custody cannot be avoided proportionately, the effect on children  
6 may be grounds for the mitigation of the length of the sentence.

7  
8 40. In *R v. Nethersole*<sup>5</sup>, the Court stated:

9  
10 *“The approach the recorder ought to have taken to impact on dependent*  
11 *children is set out in well-established guidance by this court in R v Petherick*  
12 *[2012] EWCA Crim 2214, where the court accepted that recognition that*  
13 *the sentencing of an offender engages not only the offender's own Article 8*  
14 *rights but also the Article 8 rights to family life of those members of the*  
15 *family, including dependent children, must be considered. Consistently with*  
16 *Article 8, a sentencing judge should consider as a relevant factor the*  
17 *consequences for children if their sole carer is sent to prison, and should*  
18 *consider whether the sentence contemplated is or is not proportionate when*  
19 *balancing the impact of it on those children and the separation from their*  
20 *carer against the seriousness of the offending and the legitimate aims such*  
21 *a sentence serves. In a case where custody cannot proportionately be*  
22 *avoided, the effect on children should be considered in the context of the*  
23 *length of the overall sentence to be imposed, as the Court of Appeal*  
24 *expressly discussed at paragraph 24. Where the court has insufficient*  
25 *information to enable it to carry out that balancing exercise, then it must*  
26 *ask for additional information.”*

27  
28  
29 41. These principles are borne in mind by this Court in considering an appropriate sentence  
30 in respect of this case.

31  
32 42. In the instant case the SIR records that the Defendant stated that if the outcome of the  
33 sentencing exercise is a custodial sentence, her parents will assume guardianship of her  
34 children with the assistance of their paternal aunt.



35  

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<sup>5</sup> 2015 EWCA Crim 2174

Sentence Judgment: *The Queen v. Ebanks (Cassandra Jasmine)*. Ind. 55/2019. Coram: Richards J Q.C. Date: 18<sup>th</sup> October 2021.

1 43. The father of the Defendant advised the Probation Officer that that he has been rendering  
2 financial support to them and:

3  
4 *“... they reside with their aunt who works on shifts which includes nights.*  
5 *He pondered that if Ms. Ebanks is given a custodial sentence, he and her*  
6 *mother would not be able to provide suitable accommodation for the*  
7 *children; hence they would have to rely on Ms. Mitzy Codner to have full*  
8 *custody of the children. He acknowledged that Ms. Codner has not*  
9 *confirmed her ability to assume this responsibility. He concluded that he*  
10 *could do whatever it takes to ensure that his grandchildren are protected.*  
11 *He mentioned that their father is on Island but he has not been fully*  
12 *committed to the care of the children.”*



13  
14 **SENTENCE**

15  
16 44. This was not a theft which was sophisticated in nature, neither did it require significant  
17 planning. This appears to have been one of opportunity facilitated by the way in which  
18 the blank signed cheques were stored. While there was a level of trust reposed in the  
19 Defendant in allowing her to write cheques to herself for her salary on occasion, she was  
20 not entrusted with the cheque book nor with the finances of the office. The Court accepts  
21 the submissions of Defence Counsel that given her limited level of responsibility as the  
22 Receptionist, there was breach of some degree of trust rather than breach of a high degree  
23 of trust or responsibility. The case therefore falls within the category of medium  
24 culpability.

25  
26 45. As to the level of Harm, the Guidelines provide that:

27  
28 *“Harm is assessed by reference to the financial loss that results from the*  
29 *theft and any significant additional harm suffered by the victim or others.”*  
30 *Some examples of significant harm are provided.”*  
31

1 46. Defence Counsel submitted that the harm which resulted is solely because of the high  
2 value of the amount stolen and that there are no factors which indicate significant  
3 additional harm.

4  
5 47. The VIS from Dr. Giancrego sets out the personal distressing effect upon him, the  
6 significant financial impact on the business and the hardship which resulted. The bank  
7 accounts of the business were depleted and went into negative balances. The accounts  
8 of many patients were affected and the patient/doctor relationship of trust in respect of  
9 these patients was negatively impacted. The victim states that re-establishing trust with  
10 these patients is very difficult. A forensic accountant had to be hired to complete an audit  
11 and the hiring has been continued on a monthly basis in order to ensure that other  
12 employees do not steal from the business. There is thus continuing impact on the  
13 business.

14  
15 48. Each case has to be considered on its particular facts,. There will, of course, be  
16 businesses of a nature that harm from a theft of this kind or amount would be  
17 insignificant. The nature of this business, involving patients, its apparently small size  
18 and limited management structure has made the conduct all the more harmful to it.

19  
20 49. In the Court's view, there is, in the instant case, significant additional harm which, from  
21 the examples given in the *Guidelines*, includes fear/loss of confidence caused by the  
22 crime as well as the consequential financial harm on the victim and the impact of the  
23 theft on the business. This case could properly fall into Harm Category 1, being one of  
24 high value with significant additional harm to the victim.



1 50. An offence of Culpability B (medium culpability) and category 1 Harm, has a starting  
2 point in the *Guidelines* of 2 years' custody with a range of sentencing of 1 year - 3 years  
3 and 6 months.

4  
5 51. In the case of *R v. Robert Aspinall*<sup>6</sup>, the Cayman Appellate Court expressed the view  
6 that “*the higher maximum in the Cayman Islands is an explicit statutory direction as to*  
7 *how seriously theft is regarded in the Cayman Islands*” and that this higher maximum  
8 ought to be taken into account when reference is made to the United Kingdom  
9 Guidelines.

10  
11 52. Applying an uplift to reflect the higher sentence in the Cayman Islands, the starting point  
12 in the instant case is one of 34 months' imprisonment.



13  
14 **AGGRAVATING FACTORS**

15  
16 53. The Prosecution submitted that there is one aggravating factor of an attempt to  
17 conceal/dispose of evidence. This is on the basis that the Defendant wrote the cheques  
18 and engaged in such activity over a long period of time. This is not a submission which  
19 is accepted. Writing the cheques was done in order to effect the theft and not to conceal  
20 it. The Court finds that there are no aggravating factors in this case.

21  
22 **MITIGATING FACTORS**

23  
24 54. The Court takes account of all that has been said about the Defendant, the contents of  
25 the SIR, all the character references provided and the submissions of Counsel on her  
26 behalf. The mitigating factors taken into account include, the absence of previous

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<sup>6</sup> CICA Appeal 16 of 2016, 6<sup>th</sup> December 2016

Sentence Judgment: *The Queen v. Ebanks (Cassandra Jasmine)*. Ind. 55/2019. Coram: Richards J.Q.C. Date: 18<sup>th</sup> October 2021.

1 convictions, her remorse, her acceptance of responsibility at an early stage, her good  
2 work ethic, the fact that she is the sole carer for dependent children, and that she has a  
3 serious medical condition and psychological issues. Were these the only factors, to be  
4 taken into account, with some weight being given to the factor that she is the sole carer  
5 for dependent children, the sentence would have been reduced from the starting point to  
6 one of 24 months' imprisonment.

7  
8 55. However there has also been significant delay in respect of this case which is no fault of  
9 the Defendant. The delays were in part occasioned by the pandemic period during which  
10 the trial was listed in 2020 and, more recently, due to the need to await the completion  
11 of the respective reports. When all the factors in mitigation are considered, the sentence  
12 is reduced to one of 21 months' imprisonment.



13  
14 **REDUCTION FOR GUILTY PLEA**

15  
16 56. The Prosecution and the Defence disagree as to the nature of the reduction for guilty  
17 pleas which should be allowed in this case. The Prosecution ask the Court to consider  
18 that the evidence was overwhelming such that the Defendant ought not to receive full  
19 credit and that credit in this case should be limited to 20% as recommended in the  
20 ***Cayman Islands Sentencing Guidelines***, paragraph 10.7.1. The Court has considered  
21 this submission and concludes that while the evidence appears to have been strong, it  
22 does not find that the evidence in the absence of admissions was overwhelming - in  
23 particular as to the level of funds taken - such that a full reduction should be withheld.

1 57. Defence Counsel argues that full credit ought to be given in circumstances where a plea  
2 was offered at an early stage, albeit to a lesser amount. Counsel submits, in addition, that  
3 it was not until after the evidence had commenced that some agreement was able to be  
4 reached.

5  
6 58. It is accepted that some early admissions were made and that the issue related to the  
7 amount said to have been taken. The trial began and it was only at that stage that the  
8 Defendant pleaded to theft of the much larger amount. The *Guidelines* do not address  
9 this directly however, paragraph 10.5 of the Guidelines suggests that the Court in  
10 determining the level of reduction considers:

11  
12 *“The stage in the proceedings for the offence at which the offender indicated*  
13 *his intention to plead guilty and the circumstances in which this indication*  
14 *was given.”*



15  
16  
17 59. Paragraph 10.6 (d) provides that

18  
19 *“Where a defendant is convicted after pleading guilty to an alternative*  
20 *(lesser) charge to that to which he she/she had originally pleaded not guilty,*  
21 *the extent of any reduction will be determined by the stage at which the*  
22 *defendant first formally indicated to the court willingness to plead guilty to*  
23 *the lesser charge, and the reason why that lesser charge was proceeded with*  
24 *in preference to the original charge.”*

25  
26  
27 60. The Court is also mindful of the principles set out in the English case of *R v. West*<sup>7</sup>. In  
28 the instant case the Defendant made an unequivocal indication of a guilty plea in open  
29 court to a lesser amount. Ultimately the plea which was accepted by the Prosecution was  
30 less than the amount stated in the Indictment. In these circumstances the Court considers  
31 that it is appropriate that a reduction is given which refers to the earlier stage at which  
32 the plea was offered.

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<sup>7</sup> [2019] EWCA Crim. 497

Sentence Judgment: *The Queen v. Ebanks (Cassandra Jasmine)*. Ind. 55/2019. Coram: Richards J.Q.C. Date: 18<sup>th</sup> October 2021.

1 61. The Defendant is thus afforded full credit of one-third - reducing the sentence to one of  
2 14 months' imprisonment.

3  
4 62. The *Cayman Islands Sentencing Guidelines* provides general guidance as to the aims  
5 of sentencing, assessing the seriousness of an offence, the custody threshold and the  
6 principle of proportionality. Notwithstanding the individualized nature of the sentencing  
7 process, there should be parity of sentences between those who have been convicted of  
8 similar offences committed in similar circumstances. The Court reminds itself of this  
9 guidance including that in sentencing an offender, the Court has to balance a number of  
10 competing interests and objectives and to tailor the punishment to the individual  
11 circumstances of the offender while ensuring that it is in line with the seriousness of the  
12 offence. The Court should consider which of the aims which govern the sentencing  
13 process will be best served by the sentence to be passed. The aims which are set out in  
14 the *Alternative Sentencing Act 2008* include deterrence, punishment, rehabilitation and  
15 restitution. The Guidelines also provide that a custodial sentence should not be passed  
16 unless the offence is so serious that no other sentence can be justified for the offence.  
17 Custody should be reserved for the most serious offences. Even where the custody  
18 threshold is passed, custody can still be avoided in light of personal mitigation or if there  
19 is suitable community intervention which would meet the aims of punishment and  
20 rehabilitation.



21  
22 63. This is a case in which there was some breach of trust in the course of the  
23 employee/employer relationship. It is a serious offence in which the custody threshold  
24 is firmly passed. The Court has given consideration to whether the sentence of 14 months  
25 or any part of it may be suspended and as to the primary aims of sentencing in this case.  
26



1       64.     The Defendant is assessed by the Probation Officer as at medium risk of re-offending.  
2       The Psychologist assesses her as at low risk of re-offending given her background  
3       history of employment and lack of prior offences. There is personal mitigation as set out  
4       above including as to previous good character, remorse, medical/psychological issues  
5       and caring responsibilities for her children. Balanced against these personal  
6       circumstances is the fact of the nature of the offending.

7  
8       65.     The Defendant took advantage of what she described as a disorganised office culture.  
9       Armed with the knowledge that there were within an unlocked area of the office pre-  
10      signed blank cheques - cheques which she had on occasion been allowed to fill out for  
11      lawful payments to herself - she proceeded to utilise this knowledge for her own  
12      purposes.

13  
14      66.     Significantly this was not a one-off taking. What may have begun as a crime of  
15      opportunity became a systemic course of conduct over a period of nine months during  
16      which the Defendant wrongfully wrote to herself or for her benefit some 36 cheques. It  
17      continued until it was detected in November 2018.

18  
19      67.     The behaviour is dishonest and inconsistent with the public persona which is described  
20      by the character witnesses. Some persons refer to her as having been led into this conduct  
21      as a result of a male/female relationship. This cannot excuse it. Moreover despite  
22      accepting responsibility and showing remorse, the Defendant continued to try to  
23      minimize her actions by blaming the disorganised state of the business. Contrary to  
24      assertions as to this having been done because of need, it is evident from the  
25      investigations that there was spending which was entirely unrelated to need.  
26

1 68. The harm which has been caused is significant as detailed above. The harm has not been  
2 abated to any extent. No restitution has been made to date. The Defendant has been  
3 unable to do so because of her employment circumstances and it is not likely that she  
4 will be able to do so in the near future.

5  
6 69. The Court has considered with care the psychological and medical reports. The latter  
7 states that a custodial sentence may worsen her condition as it may be stressful for her  
8 but also states that her condition can be treated in Prison if a custodial sentence is  
9 imposed. The Court does not consider that these reports evidence personal  
10 circumstances which would serve to make a custodial sentence unavoidable. The Court  
11 does not consider that these reports together with all her personal circumstances are such  
12 as to make a custodial sentence unavoidable.

13  
14 70. In the Court's view, balancing all factors and taking all of the personal circumstances  
15 and delay into account as against the seriousness of the offence, this is not a case where  
16 a custodial sentence can be avoided. There must, in arriving at the appropriate sentence,  
17 be both elements of punishment and deterrence as well as rehabilitation. The conclusion  
18 is that given her particular circumstances, the entirety of the sentence should not be  
19 custodial in nature. Consequently the sentence of 14 months' imprisonment is to be  
20 served as follows:

21  
22 i. Seven (7) months immediate custody.



23  
24 ii. 7 months imprisonment suspended for two years.

25  
26 iii. A Supervision Order is made with some of the conditions as recommended  
27 by the Probation Officer, including that the Defendant :

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- a. Attends the Counseling Center for counselling as directed;
- b. Participates in the Female Empowerment Services Programme;
- c. Engages in any other programme as directed by the Probation Officer and/ or Counselor;
- d. Registers with WORC

iv. Any time served is to be deducted.

**COMPENSATION**

71. The offer which is made based on her limited financial circumstances is of payment of \$1,000.00 now and \$300.00 per month. If paid continuously it will take 196 further payments or 16 years to complete payment of the amount of \$60,000.00. Given the nature of the sentence imposed and the uncertainty as to whether following her release from Prison, she will have the means to pay, no order for compensation is made. The Defendant may however wish to consider her moral responsibility and obligation in respect of this amount.

**Dated this the 18<sup>th</sup> October 2021**



**Honourable Justice Cheryll Richards Q.C.  
Judge of the Grand Court**