



IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 17/2020

IND.20/2018

SC#0566/2018

BETWEEN:

**MARCUS ALEXANDER**

**Appellant**

- and -

Her Majesty the Queen

**Respondent**

BEFORE:

**The Rt. Hon Sir John Goldring, President**  
**The Hon C Dennis Morrison, Justice of Appeal**  
**The Rt. Hon Sir Alan Moses, Justice of Appeal**

Date of Hearing: 10 September 2021

Appearances: Mr Keith Myers, Attorney at Law for the Appellant  
Mr Greg Walcolm of DPP for the Respondent

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JUDGMENT

Transcript of oral judgment dated 10 September 2021 and Approved for Release 1 October 2021

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**GOLDRING, President**

1. On 16th January 2019, the Applicant was convicted after a trial before Acting Justice St John Stevens of conspiracy to commit fraud on the government, contrary to sections 11(1)(a) and 52 of the *Anti-Corruption Act (2014 Revision)*. That was count 1 on the indictment. He was also convicted of failing to report solicitation of an advantage, contrary to section 24 of the *Anti-Corruption Act (2014 Revision)*. That was count 2 on the indictment.

2. The Applicant was one of 12 defendants accused of corruption, prosecuted in two trials. He is the only one of the defendants at the moment pursuing an appeal against conviction.
3. On the 30th of July 2020, Acting Justice Chapple, who had been the trial judge in the second trial, sentenced him to 4 years' imprisonment on count 1 and 4 months concurrent on count 2. The Applicant now seeks leave to appeal against that sentence of 4 years.
4. Justice Chapple set out the facts with great clarity in his sentencing remarks. We can do no better than quote a substantial part of what he said.

*"8. The trials were concerned with events taking place in 2015 and 2016. At that time Mr. Alexander, Ms. Forbes, Mr. Robinson, Ms. McDonald and Ms. Dey Rankine were employed by the Cayman Islands Department of Immigration (DOI) as immigration officers. Some were senior immigration officers. Most had been working for the DOI for many years. They all, self-evidently, held positions of trust and responsibility. Their duty, essentially, was to police and protect the borders of the Cayman Islands, to ensure that those properly entitled were permitted entry to these islands and to ensure that those who had no such entitlement were not. That is the broad role and function of all immigration officers. They were, as is properly conceded, law enforcement officers.*

*9. There were many persons living abroad who, hoping to make a better life for themselves and provide for their families, wanted to come to these islands to live and work. That prospect was particularly appealing for nationals of other nearby less prosperous countries. This case is concerned with nationals of the Dominican Republic, Cuba and Honduras.*

10. *One of the prerequisites for entry to the Cayman Islands for employment is a work permit. These are issued by the DOI. For those whose first language is not English, an applicant must pass an English language test, again administered by the DOI, before a work permit can be issued. The test is conducted either immediately on arrival at the airport or within a day or so of arrival. The purpose of the test, as the name implies, is to ensure that a prospective worker has the ability to speak, read and write English.*
11. *A high degree of trust was placed and a high degree of integrity expected from those carrying out the tests, in as much as those carrying out the tests were not supervised, neither were the tests audio or video recorded. Generally, only the immigration officer and the candidate were present while the test was carried out. For the most part, the test paper was completed by the officer, who also marked the paper, determining whether the candidate passed or failed.*
12. *Each of the immigration officers in the dock, as juries have determined, acted corruptly, either themselves accepting bribes, or playing their part in such an arrangement, to ensure that candidates who were otherwise unlikely to pass the test, did so successfully and thus were issued with a work permit and allowed entry to the Cayman Islands. In short, in return for payment, immigration officers were willing to do the precise opposite of that which their duty required and that which they were employed, at public expense, to do. They knowingly, deliberately and for payment, permitted entry into this country, those who should have been refused entry.*
13. *These corrupt immigration officers did not act alone. Also in the dock are those described in the course of these proceedings as facilitators or middle men and middle women. Mr. Robinson, although an immigration officer, was not of sufficient seniority to conduct tests and is more*

*properly described as a facilitator. The facilitators were the links in the chain between the 'would be' immigrants and immigration officers who were prepared to break the rules.*

*14. Telephone evidence figured prominently in both trials and, as is almost always the case with this type of evidence, proved illuminating as to what was going on, how the conspiracy operated, the roles and activities of the defendants.*

*15. The WhatsApp exchanges paint a clear picture. At the centre of the conspiracy reflected in count 33 of the indictment (count one of the first trial indictment) were Mr. Alexander, Mr. Robinson and Mr. Castillo—the latter accurately described by Mr. Moran, on behalf of the prosecution as "an extremely active facilitator."*

*16. Mr. Alexander was the testing officer in 10 of the approximately 15 suspect tests examined in detail in the first trial."*

5. The application for leave to appeal against conviction arises as a result of, firstly, an anonymous email received by the court and, secondly, a letter submitted to the court. The anonymous email stated, so far as is relevant:

*"My concerns are growing for the Officers in the Immigration corruption trial. Reasons being that Ms. Pheadra McDonald [one of the defendants in that trial] made it clear that she is related to [JUROR A], through McDonald's mother, Sharon Scott of Cayman Brac. Hence the reason she was not convicted, on the more serious offence!*

*When the proof clearly shows that she was the person, who gave her boyfriend [who is named] ALL of the Immigration Officers telephone numbers."*

6. Ms. McDonald was acquitted of the conspiracy but convicted of one of the substantive offences.
  
7. The email then goes on to request an investigation. It goes on to recite various aspects of a conversation which ostensibly took place in Fosters supermarket. It refers to the fact that the unknown writer of the email had contacted the Chief Justice.
  
8. The email, as it seems to us, amounts to little more than tittle tat.
  
9. There was then a letter written by Ms. McDonald herself. Again, this was after the verdicts. It is undated. It states:

*"I wish to bring to your attention that during the selection of the jury there was a lady who looked familiar to me as a distant relative of my great grandmother, but as I had a retinal detachment of my right eye and cannot see to certain distance clearly I disregarded it as not being so and moved on. It was later during the trial whilst talking to my sister I mentioned it to my sister who later (a few days) confirmed that the woman was known to us as children by a different name, she is a distant relative to my great grandmother from Cayman Brac by marriage I believe. I would like to bring this to the courts attention and if required I will attend court."*
  
10. Mr Myers on behalf of the applicant submits that that provides grounds for quashing the conviction on the basis that there was an irregularity. He also submits that it founds the basis for seeking a further investigation, in particular calling Ms. McDonald so that she can expand upon what she says in her letter.
  
11. As it seems to us plainly, rightly, Mr Walcolm, in his helpful submissions on behalf of the Crown, submits that this falls far short of any possibility of actual or reasonable belief of bias upon the basis of any relationship between the members of the jury and the parties to

the trial. He refers us to the case of *Tibbetts v. Attorney General 2010 (1) CILR 92*. It is unnecessary to go into the detail of that case. It seems to us that no reasonable person could conclude, on the basis of the letter that there arose a risk of bias. What is set out in the letter revealed at most a relationship which, if it existed, was far too remote to justify any further investigation.

12. We refuse leave to appeal against conviction.
13. As far as sentence is concerned, a number of submissions are made by Mr Myers. None have substance.
14. Firstly, he repeats a submission made to the judge and rightly rejected by him. It came to this. The maximum sentence for a single substantive offence of commission of fraud on the government is ten years' imprisonment and/or a fine of \$10,000 (see section 11(2) of the *Anti-Corruption Act*). By section 52 of that Act, a conspiracy to commit fraud on the government is an offence. By section 44 Act, a person convicted under the Act "*for which no penalty is ... provided shall be liable to a fine of five thousand dollars or to imprisonment for ... two years or to both.*"
15. The submission is this. Section 52 does not provide a penalty: section 44, therefore, applies. Section 44 provides a maximum sentence of 2 years. The sentence imposed by the judge was unlawful. In other words, although for the substantive offence you may be sentenced to 10 years, for conspiring to commit that same offence, you may only be sentenced to 2.
16. That counterintuitive submission is wholly without merit.
17. Section 321 of the Penal Code applies to conspiracy. It states:

*"In the absence of a specific provision elsewhere [a defendant] is liable, if no other punishment is provided, to imprisonment for ten years, or, if the greatest punishment to which a person convicted of the offence in question*

*is liable is less than imprisonment for ten years, then to imprisonment for such lesser term."*

18. That deals with the first ground of appeal on sentence.
19. The second ground, equally without merit, is that there was disparity between this Applicant and the other defendants. It is unnecessary to go through the different sentences which were passed. It suffices to say that this Applicant received the highest sentence of those who were sentenced by the judge. The reason for that was clearly explained by the judge. He was the main actor in this widespread conspiracy. The judge explained how he arrived at that conclusion. It was a decision he was plainly entitled to reach.
20. In our judgment, the submission of disparity is hopeless.
21. In the circumstances, there is no basis to impugn the sentence of 4 years' imprisonment. We refuse leave in respect of that also.