IN THE CAYMAN ISLANDS COURT OF APPEAL

CRIMINAL APPEAL 9/2020
IND. 010/2019
SC#02745/2018

BETWEEN:

DANIEL EZRA MEEKS

Appellant

- and –

Her Majesty the Queen

Respondent

BEFORE:

The Rt. Hon Sir John Goldring, President
The Hon John Martin QC, Justice of Appeal
The Sir Richard Field, Justice of Appeal

Date of Hearing**:** 30th April 2021

Appearances: Ms Margeta Facey-Clarke, Attorney for Appellant
Ms Candia James-Malcom of the DPP for the Respondent

JUDGMENT

Transcript of oral judgment dated 30th April, 2021 and Approved for Release 25th June 2021

Goldring J, President

1. On the 11th of February 2020, the Applicant was convicted by Acting Justice Dobbs of one count of misconduct in public office. The words of the indictment make the essence of the allegation clear. They state:

> "*Daniel Ezra Meeks, between the 9th day of November 2017 and the 28th day of November 2017, within the jurisdiction of the Cayman Islands, being a public officer, namely a Police Constable of the Royal Cayman Islands Police Service, without reasonable justification and excuse, wilfully misconducted himself in office to such a degree as to amount to an abuse of the public's trust, by using his position as a police [officer] to convince Vernice Johnson to execute a transfer of land*

belonging to her into his name, and subsequently registered that land into his name."

2. The Applicant was sentenced to 3 years' imprisonment. He now seeks leave to appeal against conviction and sentence.

The facts

3. Miss Johnson was 73 at the time of the trial. She lived at 244 Palm Dale in a house which she owns. Also living there was her daughter, Sasha. Sasha's son Hubert, who is autistic, lives in a care home. Miss Johnson had left school when she was nine. She has very limited reading and writing skills. Sasha has mental health problems which sometimes lead to violence and the police having to be called.

4. There was an incident on the 10th of November 2017. The police were called. The Applicant was one of the two officers who attended. He did so twice that day. On the first visit, Miss Johnson told him she did not have a mobile phone that Sasha had broken it, and she could not afford to replace it. On the second visit, Sasha was arrested and taken into custody. The Applicant said he would let Miss Johnson have a spare mobile phone which he had at home.

5. On the 12th of November, the Applicant called again. He was not in uniform. The judge summarised Miss Johnson's evidence in chief about these events in the following way (paragraphs 17 and 18 of the judgment):

"*Miss Johnson explained how the Defendant returned the following day in civilian clothes. He had bought a phone to replace her broken phone as he said she seemed such a nice lady. He got into a conversation with Miss Johnson and told her he was looking for someone to 'stand responsible' for him to get an apartment. Miss Johnson replied that at her age she could not do something like that. The Defendant replied that he was not a thief. He had two sick children and where he lived was so small. She said she couldn't help him. He persisted. She understood that he wanted her to put his name on her land papers so he could take them to the bank. He had some papers with him and he told her to sign them. She told him that she did not know what she was doing and what she was signing. She didn't know why she signed it. She was scared because she was alone and because she*

could not read. At this stage of her evidence, Miss Johnson became very distressed.

Miss Johnson said that she told the Defendant about the problems with her daughter; that her daughter had an autistic son Hubert who was in a care home and that she would ... leave the house for her grandson; also, that she was widowed and by herself."

6. The Applicant called again on the 13th of November. He had not been invited. He brought some fruits and water for Miss Johnson.

7. So it was that on the 16th of November the Applicant collected Miss Johnson from her home. He was to take her to see Mr McKoy, a justice of the peace seemingly selected by Mrs Meeks. The transfer documents having been completed, all that was required to transfer half of Miss Johnson's home to Mr Meeks, was her signature (and that of the Applicant) witnessed Mr McKoy. Mr McKoy said he understood from Mrs Meeks that Miss Johnson was the Applicant's mother-in-law: in other words, that this was an arrangement between family members. Produced for Mr McKoy were the completed documents authorising transfer. Both the Applicant and Miss Johnson told Mr McKoy they understood the documents. Mr McKoy did not ask Miss Johnson whether she could read. He said that she produced a passport as identification, something which she disputed. Mr McKoy said there was a brief conversation about transfer fees. He recommended seeing an attorney. That was because the transfer fees could be waived when the transfer was between family members. Mr McKoy said the Applicant said he had an attorney whom he would consult. The Applicant disputed it was ever suggested that Miss Johnson was his mother-in-law. He necessarily disputed Mr Mckoy's account of the conversation. Unsurprisingly, the Applicant never saw an attorney in respect of the transaction at any stage.

8. Miss Johnson said she was subsequently concerned about what had happened. She could not sleep at night. She did not know whether she had done something wrong by signing the papers.

9. On the 17th of November, the Applicant submitted the notarised documents to the Lands and Survey Department. The transaction was processed subject to the payment of stamp duty fees.

10. So it was that within seven days of first meeting Miss Johnson, the Applicant, subject to the payment of the duty fees, was half owner of her home.

11. Sasha learned of the transaction. She was not pleased. On the 24th of November, she called the police and made a report regarding the Applicant's actions.

12. On the 26th of November, Miss Johnson told the police what had happened. The next day the Lands and Survey Department was contacted about having the transaction cancelled. Miss Johnson took a letter of withdrawal to the department. Before doing so, she had been to her former bank to ask what she should do.

13. At paragraph 25 of her judgment, the judge encapsulated Miss Johnson's account:

> *"She* [Ms Johnson] *never made on offer to the Defendant to transfer half the property to him. She hadn't really understood that by signing the document she was actually transferring half the property to the Defendant. She was not signing voluntarily. She was very nervous and did not know exactly what she was doing. The Defendant had asked repeatedly for assistance on a number of occasions. Eventually she signed the documents because she was scared of him, living as she was on her own. She said that she still doesn't understand what all the documents mean and what happened. She did not intend the Defendant to be part owner of her house. She felt very sad that she had worked very hard all her life for her home. She would never willingly pass it over to a stranger".*

14. At paragraph 29 the judge said:

> "*She* [Miss Johnson] *explained that initially she was not scared of the Defendant. However, with each visit she became more scared, but went along with what he wanted. She was very scared by the time they went to the Notary Public as she didn't know what was happening*".

15. At no time did the Applicant inform anyone in the Royal Cayman Islands Police, or in authority, about what had happened.

16. There was a subsequent investigation by the Professional Standards Unit "(PSU") of the Cayman Islands Police into what had happened. On the 12th of December 2017, the Applicant submitted

his account (the "Duty Report") to the PSU. It is his case he was directed to do so. It was the Respondent's case that the report was voluntarily made. He was, it is clear, never interviewed under caution. This is a topic to which we shall return.

17. On the 9th of January 2018, the investigation by the PSU having taken place, and by then not having had his contract of employment with the Cayman Islands Police renewed, the Applicant emailed the Lands and Survey Department. He requested that his withdrawal of the application for transfer which he had made on the 27th of November 2017 be ignored and sought to have the transfer reinstated.

The submission of no case to answer

18. At the close of the prosecution, a submission of no case based on the second limb of Galbraith was made. The judge rejected it. In short, she found that if Miss Johnson's evidence were accepted, there was ample evidence for a reasonable tribunal of fact to convict. As she put it, the case was "*far from being in the territory of being so vague and tenuous that no tribunal could convict*." Again, this is a topic to which we shall return.

The defence case

19. The Applicant gave evidence. In summary, it was his account that he was a compassionate man doing all he could to help Miss Johnson. She wanted someone honest to take care of the house for her autistic grandson Hubert. Miss Johnson was concerned that Sasha would sell the house. She was looking for someone like Mr Meeks to help her. The arrangement was agreed before he met Hubert. He spoke of subsequently meeting Hubert and getting on with him. In examination in chief and cross-examination, the Applicant was adamant that it was Miss Johnson's suggestion that she transfer half of the property to him. However, his attention was drawn to what he had said in his Duty Report, namely that:

> *"I told* [Miss Johnson] *my wife and I are seeking to purchase a property, so instead of doing a will she could add me as a co-owner which would* [leave] *me to do what she desired for Hubert."*

20. He then agreed that the suggestion to transfer the property was his, albeit for motives of compassion. He said he had made a mistake in his earlier account in evidence. He described a happy and trusting relationship between him and Miss Johnson. It only went wrong, he said, when Sasha found out about the transfer. That led to Mrs Johnson going back on the agreed arrangement and the police becoming involved.

21. As to initially seeking to cancel the transfer of the property, he said he did that because he was concerned that for a public servant the arrangement did not look good.

22. The Applicant said he did not know how Mr McKoy could have come to believe Miss Johnson was his mother-in-law.

23. On about the 11th of November 2017, the Applicant took a witness statement from Miss Johnson in which she withdrew her complaint against Sasha. That statement was submitted as part of the case concerning Sasha. However, he did not log his visit to her on the police Record Management System on that occasion, as he should have done. Indeed, he made no record of any of his visits to Miss Johnson after the 10th of November.

24. After he had given evidence, the Applicant produced another witness statement, ostensibly made by Miss Johnson, and dated the 13th of November. He had never submitted it. He said it was in his file and that he had overlooked its return.

25. He agreed that he did not tell his superiors or anyone else of the arrangement with Miss Johnson. He said he had never been given a copy of the Public Servant Codes of Conduct, although he did accept when cross-examined that it was in his contract of employment. He said he had never read it.

The Judge's decision

26. The judge accepted Miss Johnson as a witness of truth. She considered the inconsistencies in her evidence which had been drawn to her attention by Ms Facey Clarke, who represented the Applicant below, and represents him before us. They are matters relied upon in this appeal and therefore we refer to them. The judge said (paragraphs 76-80):

"*76. The first discrepancy relied on is what took place in Mr McKoy's office. Miss Johnson says that she did not show Mr McKoy her passport. It is clear from the paperwork and the evidence of Mr McKoy that she did. Mr McKoy could not have notarised the ... document without having seen proof of identity.*

77. The Defence also rely on the fact Miss Johnson said she did not know what she was signing yet she said that Mr Meeks wanted title to her land so he could get a loan.

78. And finally, the Defence refer to the fact that the letter written on Miss Johnson's behalf dated 27th November 2017 to cancel the transaction which read as follows: 'This was done without my understanding, and I signed the form without seeing a Justice of the Peace or a Notary Public. I don't have knowledge of who the Witness was.'

79. I find that these discrepancies do not affect Miss Johnson's overall credibility such as to reject her evidence completely. Miss Johnson is an elderly woman with very limited education. She cannot read or write. None of the documents she saw were comprehensible to her. At the time that these events transpired the evidence is that she was going through a very difficult time. Mr Meeks himself accepted in cross examination that Miss Johnson was a vulnerable person."

27. As to events in Mr McKoy's office, the judge said (paragraph 80):

"*... both Mr McKoy and Mr Meeks gave evidence of a discussion about getting legal advice in relation to the waiver of stamp duty fees, but when asked about it, Miss Johnson had no memory of such a conversation. She didn't remember any conversation at the office. She describes herself as scared and holding back her tears when she was at the office. It is unsurprising therefore that Mr McKoy noticed no 'red flags'. It is unsurprising ... she had no recollection of showing her passport.*"

28. The judge accepted Mr McKoy's evidence that Miss Johnson had been described as the mother-in-law. The judge said that supported the prosecution's contention that this was a scheme which the Applicant had hatched. As the judge put it (paragraph 85):

"*Mr Meeks accepts that Mr McKoy advised him to get legal advice about waiver of stamp duty. He did not follow up on the advice — and the Prosecution say for very good reason, because he knew that it would be pointless. This small piece of evidence is a significant marker of where the truth in this case lies. The question needs to be asked — why was it necessary, as I find, for Mr and Mrs Meeks to give the impression that Miss Johnson was the mother-in-law? The answer is simple. There was no inquiry on the part of Mr McKoy. As he said in evidence, he noticed no red flags to cause him to question the transaction. Had Mr McKoy been aware that Miss Johnson was no relation to Mr Meeks and had only known him for a matter of days, there is no doubt ... he would have had concerns about the transaction. Mr Meeks has lied on an important matter in this case*".

29. At paragraphs 86 and 87, the judge went on to say:

"*Another aspect supporting the prosecution's case is the implausibility of the Defendant's account which is that it was Miss Johnson, a complete stranger, whom she had only known for a few days, who pressed him to have a half share of her hard-earned property in order that one day he would look after her autistic grandson whom he had met once. He had accepted the offer as a favour to Miss Johnson out of compassion for her. The favour also included giving Miss Johnson a phone, buying food and drink for her when she asked, paying $50 fees for the processing of ... transfer documents and presumably the notary public fees. Moreover, Mr Meeks had not worked out where the stamp duty fees of over $20,000 were to come from given the impecunious state of Miss Johnson.*

87. Mr Meeks made no enquiries as to his responsibilities, the legal position, (especially given how vulnerable Miss Johnson was), nor what would actually be needed in order to look after [her] grandson and where the money to do so was to come from. Moreover, he gave no thought to the conflict of interest in relation to his position as the police officer in the case involving Sasha Johnson where Miss Johnson was the complainant, especially as, on his case, Miss Johnson was seeking to disinherit Miss Carter from the property. He did not raise it with his RCIPS superiors or HR."

30. The judge said (paragraph 88), that the Applicant was an "*unsatisfactory witness — inconsistent in a number of important areas*". She said she did not believe his account. She said (paragraphs 89 and 91):

> "*Mr Meeks gave evidence that he was the person who took the original statement from Miss Johnson when he visited her the following day after her report to the police on 10th November. In cross-examination he accepted when he was shown the statement that it was his colleague who had taken the statement on the same day Miss Johnson had reported her daughter to the police. Why is this discrepancy important? Because the defendant sought to use it as a reason why he had to return to see Miss Johnson on the 11th November…*
>
> *...In evidence in chief and cross-examination, Mr Meeks was adamant that it was Miss Johnson who had suggested that she transfer half title in her property to him. His attention was drawn to page 6 of his Duty Report on the Sasha Carter case, which read 'I told her my wife and I are seeking to purchase a property so instead of doing a will she could add me as a co-owner which would leave me to do what she desired for Hubert….' He then conceded that it was his suggestion. This discrepancy is important because the defendant has been at pains to portray Miss Johnson as the person driving the transaction at all times*."

31. The judge also took into account the Applicant's failure to log visits to Miss Johnson after the 10th of November. His claim never to have been given a copy of the Public Servant's Code of Conduct was a way, said the judge, of distancing himself from all codes. It was a means of seeking to justify why he did not declare any interests or conflicts.

32. Finally, the judge said (paragraphs 94-6):

> *"Does the evidence satisfy me so that I am sure of guilt? It does. Mr Meeks deliberately persuaded Miss Johnson to sign the transfer document. He used his position as a police officer to bring pressure to bear on Miss Johnson. He bought presents for her and paid for items — all to achieve his goal. He knew what he was doing was wrong because he did not document any of his visits, neither did he speak to any superior or other*

person in authority about the appropriateness of the transaction. Even on his own version of events it could be said to be reckless indifference…
…This without a doubt is an abuse of the public's trust in the office holder. I can do no better than quote from Miss Johnson, who in evidence said: 'I went to Georgetown Police station as I thought I had to report this. He is a policeman and he is not supposed to do this thing. If you come to arrest someone you are not supposed to do this kind of thing'…

…I find that there is no reasonable excuse or justification for the conduct. I would make the same finding even on his own case. The misconduct is very serious even though, mercifully, the transaction was reversed. In my judgment the conduct was so serious as to be calculated to injure the public interest, and to call for condemnation and punishment. Mr Meeks' actions represent an abuse of his position, exploitation of a very vulnerable old lady for his personal gain, a serious conflict of interest and [a] breach of some of the provisions of the various codes which govern the behaviour of public officials — for example the provisions on acceptance of gifts, conflicts of interest, using position of public officer for gain."

The grounds of appeal

33. There are many grounds of appeal. They have been, at least in some respects, expanded upon by Ms Facey Clarke in her submissions. Some only warrant a very short response from the court.

34. We start with Ground 2. For, if correct, the appeal must succeed. By Ground 2 it is submitted that:

> *"The Prosecution failed to prove beyond a reasonable doubt, an essential element of the offence of misconduct in public office under the common law as set out in the guideline case of Attorney General's Ref. No.3 [2004] 2 Cr.App.R. 23.*"

35. It is said that the prosecution failed to prove that the Applicant wilfully misconducted himself. Before turning to the argument, we should first consider that authority.

36. The facts were very different from the present. However, the court set out the law in a way which is now considered to be the definitive as far as the offence of misconduct in public office is concerned. As it is put in the headnote:

> "*... the elements of the offence of misconduct in a public office were that a public officer was acting as such, that he wilfully neglected to perform his duty and/or wilfully misconducted himself, that his conduct amounted to an abuse of the public's trust in the office holder and that he acted without reasonable excuse or justification. The misconduct complained of had to be serious misconduct, the seriousness of which might depend on the seriousness of the consequences that followed the act or omission. In order to establish the mens rea of the offence it had to be proved that the office holder was aware of the duty to act or, subjectively, was reckless as to the existence of the duty applying. The recklessness test applied both to the question whether in particular circumstances a duty arose at all as well as to the conduct of the defendant if it did arise and the subjective test applied both to reckless indifference to the legality of the act or omission and in relation to the consequences of the act or omission*."

37. The width of the offence of misconduct in public office can be illustrated by what was said in the English Court of Appeal case of *R v W(M)* [2010] 1 Cr.App.R. 28. The appellant, who was an officer in the Metropolitan Police, misused the American Express card provided by his employer. He was convicted of misconduct in public office. His defence was that he honestly believed he was entitled to use the card in the way he did. He denied deliberate misconduct or dishonesty. The Court of Appeal found the trial judge should have directed the jury they could only convict if they were sure that the appellant was dishonest.

38. In the course of giving the judgment of the court, Lord Judge LCJ referred to a Law Commission paper (Consultation Paper 125), in which the width of possible criminal misconduct for the offence to be made out is referred to. As the Chief Justice put it:

> "*The offence of misconduct in a public office may arise from acts or omissions by holders of that office and, depending on the acts and omissions alleged, the mental element of the offence will vary*."

39. The Lord Chief Justice quoted from a paper entitled 'Official Misconduct'. He said the paper:

> "*…highlights…the difficulty of attempting a definition of the offence…but its principal applications are said to include (a) frauds and deceits (frauds in office); (b) wilful neglect of duty (nonfeasance); (c) 'malicious' exercise of official authority (misfeasance); (d) wilful excesses of official authority (malfeasance); and (e) the intentional infliction of bodily harm, imprisonment, or other injury upon a person (oppression). Accordingly, the nature of the conduct falling within the ambit of the offence is very wide, and logically it would follow that any necessary element relating to the defendant's subjective state of mind cannot be identical for each and every one of its different manifestations.*"

40. The Lord Chief Justice also spoke of "*a criminal state of mind*" being required. He said that the Attorney General's Ref. No.3 of 2003, "*reinforces the requirement for some subjective element, appropriate to whatever form of misconduct is alleged*." Finally, he said:

> "*In our judgment it is clearly established that when the crime of misconduct in a public office is committed in circumstances which involve the acquisition of property by theft or fraud, and in particular when the holder of the public office is alleged to have made improper claims for public funds in circumstances which are said to be criminal, an essential ingredient of the offence is proof that the defence was dishonest."*

41. The submission on Ground 2, as we understand it, is that the Crown failed to prove that the Applicant knew that the arranging of the transfer to him of half of Miss Johnson's property was dishonest. In support of that assertion, Ms Facey Clarke repeats the submissions on the facts, which the judge had rejected. It is said the Applicant did not genuinely perceive any risk to Miss Johnson. It was his intention to help her.

42. We do not agree. The judge was plainly entitled to conclude on the evidence that the Applicant was dishonest; that he deliberately and dishonestly made use of his position as a police officer to exert pressure on a vulnerable elderly woman in order to obtain half of her home. In other words, that what the Applicant did was wilful, and amounted to a serious breach of his duty as a police officer.

In short, as the judge was entitled to conclude, this was a deliberate and dishonest abuse of power which amounted to misconduct in public office.

43. There is nothing, therefore, in Ground 2.

44. By Ground 1, as we have indicated, it is submitted that the judge should have withdrawn the case at the close of the prosecution. Although put at some length by Ms Facey Clarke in her written submissions, the submission essentially is this:

(1) That Miss Johnson's conduct was voluntary and 'erased all allegations of force, trick, bribery, pressure or enticements towards Miss Johnson'. Several, what are essentially jury points are then made, including such assertions as, she could have locked her gate or called the police if she was afraid of the Applicant, that she never told him she was afraid.

(2) It is clear that because of the animosity and fear caused by Sasha, Miss Johnson was desperate for the Applicant's help.

(3) In her skeleton argument Ms Facey Clarke sets out (in paragraph 25), some 13 pointers said to support of her submission. Each of these is a jury point. We need not repeat them.

45. Additionally, Ms Facey Clarke relies on some inconsistencies in Miss Johnson's evidence, particularly in respect of the issue as to the production of a passport when visiting Mr McKoy.

46. In the circumstances, we can do no better than adopt the judge's observations, when rejecting the defence submission at the close of the prosecution case. The judge said:

> "*Miss Facey Clarke, when questioned by the court, agreed that the essence of her submission was that the evidence of the complainant was internally inconsistent and also inconsistent with the evidence of Mr McCoy [sic]*".

47. The judge, having set out the rival contentions, went on to say:

> "*In my judgment, if the evidence of the complainant is accepted, there is ample evidence for a reasonable tribunal of fact to convict. This, of course, would depend*

*on the view taken of the evidence. It is, in my judgment, far from being in the territory of being so vague and tenuous that no tribunal could convic*t".

48. It seems to us that was a conclusion which the judge was unarguably entitled to reach.

49. In Grounds 3 and 4 of the original grounds, it was submitted that the judge erred in failing properly to consider that the Applicant had been tried by the PSU and dismissed from the police. The judge, it was submitted, should have addressed her mind to the fact that the Applicant being tried a second time for the same offence. Those are submissions which, to some extent, are made to us. They are self-evidently wholly without merit. There was no call for the judge to consider them. Grounds 3 and 4 cannot begin to get off the ground.

50. By Ground 5, it is submitted that the judge erred in relying on authorities concerning dishonesty when dishonesty is not an ingredient of the offence. The most cursory reading of *R v W* makes it plain that this ground is wholly without merit. Moreover, considering dishonesty could not conceivably have prejudiced the Applicant.

51. Ground 6, as we understand it, is the obverse of Ground 5. It is said the judge failed to focus her mind on dishonesty. We disagree. The judge plainly focussed on the relevant issues and, to adopt the phrase in *R v W*, was sure of the Applicant's 'criminal state of mind'.

52. In Ground 7 it is submitted that the judge failed to take into account that two years had elapsed between the date of the alleged offence, and the date of the trial, that the Applicant may, quite innocently, have forgotten what had happened two years before. That is another submission self-evidently without merit. The time was not substantial. These were not events likely to have been forgotten. It was for the judge to assess the Applicant's evidence, having heard him give evidence.

53. Ground 8 in effect repeats the submission made in Ground 1. It is said that too much weight was placed on Miss Johnson's ‘discredited’ evidence. This is a submission, in the light of what we have said, without merit.

54. By Ground 9, it is submitted:

"*There has been a procedural irregularity which amounted to breach [sic] of the Judges' Rules as the Appellant was not cautioned at any time. Neither was he informed of the seriousness of the offence and to seek legal advice before he was directed by the police to prepare and submit an account of the alleged offence in writing. This is a breach of the Applicant's fundamental rights under Section 7(b) and 7(d) of the Cayman Islands Constitution Order 2009 (fair trial)*".

55. The Applicant, as we have indicated, provided an exculpatory statement to the PSU (the "Duty Report)". The statement starts with the following words:

"*In accordance with the Royal Cayman Islands Police Disciplinary Policy and Procedures, failure to cooperate with, hindering an Internal Investigation or providing false or deliberately misleading information during an internal investigation constitutes unacceptable professional misconduct and may result in disciplinary action, up to and including dismissal".*

56. It then states:

"*I understand this statement will be considered part of the official investigation and that I may be called on to testify or provide written or verbal clarifying statements. The statement I have provided is an accurate account of the case to the best of my knowledge.*"

57. The statement was not adduced by the Crown as part of its case. Ms James Malcolm on behalf of the Crown had made it clear to the judge that it would form no part of the Crown's case. It was adduced in cross-examination to challenge the Applicant's evidence that it was Miss Johnson who suggested the transfer of the property to him, which was inconsistent with what was said in his statement (see paragraphs 19-20 above). At the time that inconsistency was put, there was no objection by the defence. In the event, the Applicant accepted, what was said in the statement was correct.

58. The submission by Ms Facey Clarke is that there should have been no reference to the statement in cross-examination.

59. In our judgment, it would have been better for there to have been argument before the statement was put in cross-examination. However, in the circumstances, we cannot see how reference to it could render the conviction unsafe. For, in the final analysis, the Applicant accepted that what was said in the statement was the truth. We cannot see how adducing evidence agreed by the Applicant to be truthful can in the circumstances render the conviction unsafe. It is not necessary for us to consider whether, as was urged upon us by Ms James Malcolm, it can be said that this was a voluntary statement, having regard to the words at the beginning of it. In the circumstances, we reject Ground 9.

Sentence

60. We turn now to sentence.

61. The judge dealt with the impact of this offence on Miss Johnson. The judge said (paragraph 9):

> "*[In]…[the] Victim Impact Report…Miss Johnson again re-iterates that she was scared of Mr Meeks and observed that he played on her known vulnerabilities. When she is alone, she goes to the window at the slightest noise. As a result of the experience, she doesn't sleep very well. Despite having some insight as to how the Defendant has exploited her, Miss Johnson said she holds no resentment towards him and does not wish him ill. However, she would not want to see him again*."

62. The judge set out the background of the Applicant. He was a man of previous good character with a family. He maintained his innocence, and therefore, as the judge observed, had shown no remorse.

63. Having had several different authorities drawn to her attention, none on all fours with the present offence, the judge said:

> "*…I start from the premise that misconduct in public office involves a breach of trust by the person in the public office. That makes it serious in itself and prima facie deserving of a custodial sentence. The position of the public officer, and the level of trust placed in him or her, will also affect the*

seriousness of the offence. The public put great faith in the police to protect them, keep them safe and to uphold the law…

…Any act done to undermine that trust will merit an immediate custodial sentence in my judgment. There is no need for reliance on the Theft Breach of Trust guidelines to reach that conclusion….

There are two main aggravating features in this case namely:

(i) *That the offence was for personal gain — whether to act as collateral for a mortgage or ultimately to benefit from a half share of the value of the property — the Defendant stood to gain significantly;*

(ii) *That the offence was committed against a very vulnerable victim. The Defendant knew how vulnerable Miss Johnson was and played on her vulnerability to achieve his aims. To exploit the weak and vulnerable who put such trust in you is inexcusable and merits condign punishment*."

64. The judge considered the various points raised in mitigation, which are in substance repeated before us as grounds of appeal. The judge reduced the sentence by some 6 months to reflect the previous good character of the Applicant, and his work in the church since losing his job.

65. The submission comes to this: that the sentence of three years was manifestly excessive; that the judge should have imposed a non-custodial sentence.

66. Many points are made, few, we are bound to say, of real substance. While we agree, as was submitted, there was no loss, that, as the judge said, was because the Applicant was found out. The fact the Applicant provided a Duty Report to the PSU did not, as is submitted, show cooperation with the police. For it was an untruthful account. The length of time between the offence and the appearance was not such as to merit a reduction in sentence, as is urged upon us. The shortness of the offending, which is relied upon, was only because, as the judge said, the offence was reported.

67. We briefly refer to the three authorities relied upon on behalf of the Applicant, each very different on its facts and none of which is a guideline case.

68. In the case of *Myles*, June 27, 2014 (Grand Court), the Honourable Justice Henderson imposed concurrent sentences of six months' imprisonment on a life insurance salesman who defrauded the

National Housing Trust of a sum of money. While that case, like the present, was a breach of trust, it provides no assistance in a proper assessment of sentence in this case.

69. In the case of *Webster* [2013] (2) CILR 72, a civilian receptionist pleaded guilty to passing on information from official databases. Justice Quin imposed concurrent sentences of nine months suspended for 12 months. Again, that case does not help in respect of the present.

70. Finally in the case of *Nazir*, [2003] EWCA Crim 901, the Court of Appeal in England reduced a sentence of three months' imprisonment to one month in respect of a police officer who had intended to destroy a fixed penalty notice. Again, that provides no assistance in respect of the present case.

71. In our judgment, this case falls to be sentenced, as the judge found, on the basis of a serious breach of trust by a police officer, the victim being elderly and vulnerable. A measurable term of imprisonment must inevitably follow. Such aspects as were urged upon the judge, and upon us, as to good character and family background are inevitably of limited weight in the circumstances. This is not a case in which there was a mitigation of a plea of guilty or remorse. We have concluded that the judge was entitled to pass the sentence she did.

72. In all the circumstances, therefore, we refuse leave to appeal both against conviction and sentence.