

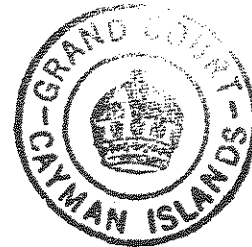
1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
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5 INDICTMENT NO.: 98/2012 (Carter)  
6 INDICTMENT NO.: 98A/2012 (Ebanks)  
7 INDICTMENT NO.: 106/12 (Crawford)  
8 INDICTMENT NO.: 85/13 (Brandon Liberal)  
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11  
12 REGINA

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14 v.

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16 MANUEL RAMIREZ CARTER  
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18 JOHN PHILLIP COHEN EBANKS  
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20 ~~TARRICK KEVIN CRAWFORD~~  
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22 BRANDON RENO LIBERAL  
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26 **Appearances:**

Mme. DPP Cheryll Richards Q.C. and Mr.  
Neil Kumar for the Crown

28  
29 Mr. John Furniss for Brandon Liberal

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31 Mr. Charles Clifford for Manuel Carter

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33 Mr. Clyde Allen for John Phillip Cohen  
34 Ebanks

35 **Before:**

The Hon. Mr. Justice Charles Quin

36 **Sentence Submissions heard:**

37 10<sup>th</sup> April 2014 - Brandon Liberal and  
Manuel Carter

38 14<sup>th</sup> May 2014 – John Phillip Cohen Ebanks

39 8<sup>th</sup> & 23<sup>rd</sup> July 2014 – Tarrick Crawford  
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41 **SENTENCE RULING**  
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1 8. Between July and December 2013 Mr. Cohen-Ebanks provided statements to the  
2 police which resulted in an Indictment being laid against Mr. Liberal on the 11<sup>th</sup>  
3 December 2013.

4 9. On the 13<sup>th</sup> December 2013, Mr. Liberal, pleaded not guilty to both counts on that  
5 Indictment.

6 10. On the 12<sup>th</sup> February 2014, the DPP laid a new joint Indictment – Ind. 98/2012 and  
7 Ind. 85/2013 against Mr. Carter and Mr. Liberal.

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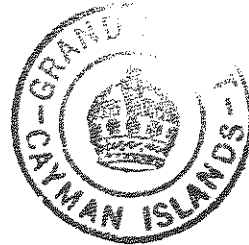
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1                    *ii. Re R v. Manuel Ramirez Carter and John Phillip Cohen Ebanks*

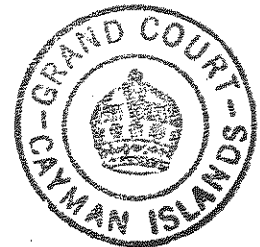
2                    (a) Indictments 98/12 and 98A/12 - Dated the 31<sup>st</sup> October 2012.

3                    (b) Count 1 – Robbery, Contrary to s.242(1) of the Penal Code (2010  
4                    Revision)

5                    The Particulars of the offence are that Manuel Ramirez Carter and John  
6                    Phillip Cohen Ebanks, on Thursday the 4<sup>th</sup> day of October 2012, in  
7                    George Town, Grand Cayman, Cayman Islands, stole CI\$8,117.00 and  
8                    US\$593.00 the property of BritCay Insurance Company, and at the  
9                    time of so doing and in order to do so sought to put Winston Nelson in  
10                    fear of being then and there subjected to force.

11                    (c) Count 2 – Possession of an Unlicensed Firearm, contrary to s.15(1) and  
12                    (5) of the Firearms Law (2008 Revision).

13                    The Particulars of the offence are that Manuel Ramirez Carter and John  
14                    Phillip Cohen Ebanks on Thursday the 4<sup>th</sup> day of October 2012, in  
15                    George Town, Grand Cayman, Cayman Islands, had in their possession  
16                    a firearm, namely a Bryco semi-automatic pistol, not under and in  
17                    accordance with the terms and conditions of a Firearm's User's  
18                    (Restricted) Licence.



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*iii. Re R v. Tarrick Kevin Crawford*

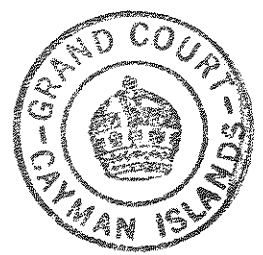
(a) Indictment 106/12 - Dated the 28<sup>th</sup> November 2012.

(b) Count 1 – Robbery, Contrary to s.242(1) of the Penal Code (2010 Revision)

The Particulars of the offence are that Tarrick Kevin ~~Carter~~<sup>1</sup> Crawford, on Thursday the 4<sup>th</sup> day of October 2012, in George Town, Grand Cayman, Cayman Islands, together with another person, stole CI\$8,117.00 and US\$593.00 the property of BritCay Insurance Company, and at the time of so doing and in order to do so sought to put Winston Nelson in fear of being then and there subjected to force.

(c) Count 2 – Possession of an Unlicensed Firearm, contrary to s.15(1) and (5) of the Firearms Law (2008 Revision).

The Particulars of the offence are that Tarrick Kevin Crawford on Thursday the 4<sup>th</sup> day of October 2012, in George Town, Grand Cayman, Cayman Islands, together with another person had in your possession a Bryco .380 semi-automatic pistol, not under and in accordance with the terms and conditions of a Firearm’s User’s (Restricted) Licence.



<sup>1</sup> Indictment bore this typographical error.

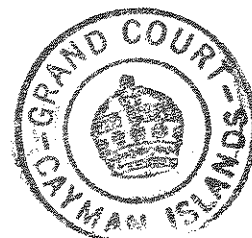


1 *THE FACTS*

2 16. Shortly after 1 p.m. on Thursday the 4<sup>th</sup> October 2012, an employee of Sprint  
3 Express Services (“Sprint”) completed a delivery at Grand Pavilion on the West  
4 Bay Road. He proceeded along the West Bay Road on to Eastern Avenue where he  
5 stopped at BritCay House for another delivery and pick up. The Sprint employee  
6 was travelling in a white Toyota Yaris motorcar which bore the Sprint company  
7 logo. He parked at the front of the building and then entered the building and made  
8 a delivery and collected a black bag with three night deposit bags. He placed that  
9 bag in a blue canvas Sprint bag, signed for it and left the office. As he returned to  
10 the Sprint motorcar he had the deposits under his arm in the Sprint bag. As he  
11 approached his driver’s door he observed a white car coming from the left of the  
12 parking lot but did not pay it much attention. As he opened his door the Defendant,  
13 Carter, came up to him, pointed a gun towards his stomach and demanded the bag  
14 carrying the deposits.

15 17. The Sprint employee said the man that we now know to be the Defendant Carter  
16 was wearing a mask, with the eyes and mouth cut. The gun did not actually touch  
17 the Sprint employee’s stomach, but Carter was able to take the bag from him and he  
18 then got back into the white car.

19 18. The Sprint employee saw the white car exit the complex and turn right on to  
20 Eastern Avenue.

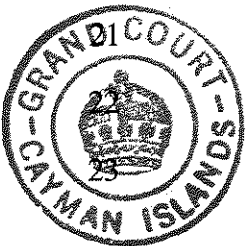


1 19. A 911 call was made and the police responded quickly to the call. PC Tamara  
2 Jackson was on mobile patrol duty in the George Town area when she overheard  
3 the 911 transmission. She saw a parked white vehicle bearing the registration plate  
4 #135 064 and, when checked, discovered that this plate did not match the  
5 description of the vehicle and the DVL. PC Jackson then called for assistance. PC  
6 Rabess and PS Harvey responded to the call and arrived at 1:45 p.m. They checked  
7 the vehicle and found it was still warm – having been abandoned on a grass verge.  
8 They called the canine unit and began searching the area. PC Rabess and PS Harvey  
9 found the black bag, the blue pouch, a black hand-held radio and open envelopes  
10 and immediately called for a Scenes of Crime officer.

11 20. At approximately 2:25 p.m. SOCO Camille Haughton took photographs and  
12 secured the items which included: the Butterfield blue zipper bag; the Motorola  
13 radio; the Butterfield cheques; a pair of jeans pants; a small firearm – the black  
14 Bryo semi-automatic pistol, serial number #1191048; 3 rounds of ammunition – 2  
15 of which were viable.

16 21. The Bryo semi-automatic pistol firearm was tested by the Ballistics Expert, Mr.  
17 Allen Greenspan and the RCIPS firearms officer, Officer Stewart, and found to be  
18 capable of discharging bullets and therefore the firearm is a lethal weapon within  
19 the meaning of the Firearms Law.

20 22. The items secured were examined for fingerprints and DNA. Mr. Cohen-Ebanks'  
fingerprints were found on envelopes. Mr. Carter's fingerprints were found on the  
green receipt. Mr. Carter's DNA was found in the pockets of the pair of jeans pants  
– together with the lighter found in the same pocket. The firearm was found in a



1 jeans pocket. Mr. Carter's DNA was found on the right front door of the white  
2 vehicle.

3 23. CCTV footage was taken from the parking area of Kirk Home Centre which  
4 identified Mr. Cohen Ebanks in the parking lot shortly before the robbery took  
5 place.

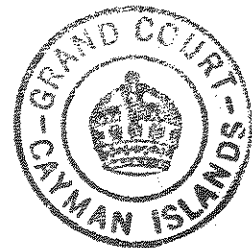
6 24. Mr. Cohen-Ebanks' statements confirm that the Defendants had been observing the  
7 Sprint courier vehicle. It should be noted that the Defendants had been observing  
8 this vehicle on Monday the 1<sup>st</sup> October 2012 when the three men had driven in Mr.  
9 Liberal's red SUV to reconnoitre the scene.

10 25. On the 3<sup>rd</sup> October 2012 the Defendants had actually planned to execute the robbery  
11 but the Sprint Courier did not turn up.

12 26. From Mr. Cohen-Ebanks' statement it was established that on the 4<sup>th</sup> October 2012  
13 Mr. Liberal and Mr. Cohen-Ebanks left Mr. Cohen-Ebanks' house in Mr. Liberal's  
14 red SUV. They went to pick up Mr. Carter and then Tarrick Crawford. From there  
15 they drove into George Town – to the house of a man called Big Jeff. At Big Jeff's  
16 was the white car which was to be used for the robbery.

17 27. Mr. Liberal left Big Jeff's house in his red SUV and returned in a gray KIA  
18 motorcar which belonged to his (Mr. Liberal's) girlfriend. This time Mr. Liberal  
19 handed to another man called Big Brother, a small grey gun. Big Brother handed  
20 the gun to Mr. Carter, who put it in his waistband.

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1 28. Mr. Liberal then said, "It's time to go." Mr. Cohen-Ebanks got into the driver's seat  
2 of the white motorcar and Mr. Carter got into the backseat. Mr. Liberal and Mr.  
3 Crawford got into the grey KIA – with Mr. Liberal driving. The KIA drove to the  
4 parking lot of Kirk Home Centre. Mr. Cohen-Ebanks and Mr. Carter followed them  
5 there and the all waited in the parking lot. They used hand-held radios to  
6 communicate with each other.

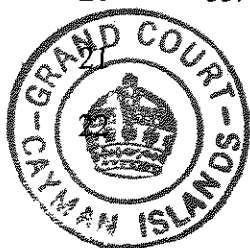
7 29. At some point Mr. Cohen-Ebanks began getting "cold feet" and walked over to Mr.  
8 Liberal to tell him not to go through with it. Mr. Cohen-Ebanks eventually returned  
9 to the car he drove and then Tarrick Crawford delivered a message to Mr. Cohen-  
10 Ebanks from Mr. Liberal which said he was "not to mess up on him."

11 30. The CCTV footage from Kirk Home Centre confirms that Mr. Cohen Ebanks was  
12 seen walking from the white motor vehicle to Mr. Liberal's grey KIA.

13 31. After a further wait, Mr. Liberal gave the signal over the handheld radio saying:  
14 "*The food is ready*" or, as Defence counsel said he said, "*the food is on the table.*"

15 32. At that point Mr. Cohen-Ebanks saw the Sprint vehicle drive into the car park at  
16 BritCay. In his statement Mr. Cohen-Ebanks tells the police that he drove to the  
17 front of the BritCay building and told Mr. Carter to "go and get him." Mr. Carter  
18 pulled on his mask and went up the courier with the gun he had put in his waist in  
19 his hand, grabbed the bag and got back into the white vehicle.

20 33. Mr. Cohen-Ebanks drove out of the BritCay parking lot, on to Eastern Avenue and  
then over to Puritan cleaners, where they had agreed to meet up with Mr. Liberal  
and Tarrick Crawford.



1       34.     Mr. Cohen-Ebanks received a call from Mr. Liberal which advised that there was a  
2             police car near the Uncle Bills store and, accordingly, they drove to an area behind  
3             Puritan Cleaners – beside an old container. There they cut open the bags, removed  
4             the cash – throwing the papers and cheques to the ground of the car. Mr. Carter  
5             removed his clothing and left his pants with the gun and ammunition inside them.  
6             Mr. Cohen-Ebanks and Mr. Carter left the white vehicle, ran over to North Church  
7             Street, where they were picked up by Mr. Liberal in the grey KIA. Mr. Liberal then  
8             drove them to West Bay.

9       35.     When they got to West Bay Mr. Cohen-Ebanks handed the money over to Mr.  
10            Liberal. At this point Mr. Liberal asked for the gun and the radio and Mr. Carter  
11            told him he had left them behind. Mr. Liberal became angry.

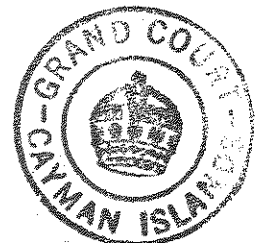
12       36.     At Mr. Liberal's home he distributed the money between Mr. Cohen-Ebanks and  
13            Mr. Carter and Mr. Crawford.

14       37.     Mr. Carter was arrested on suspicion of robbery on the 4<sup>th</sup> October 2012. He was  
15            interviewed on the 5<sup>th</sup> and 6<sup>th</sup> October 2012 and in his interviews he said he was at  
16            home all day on the 4<sup>th</sup> October 2012.

17       38.     Mr. Liberal was interviewed on the 29<sup>th</sup> and the 30<sup>th</sup> November 2013 and denied  
18            being involved in the robbery. Ultimately cell phone evidence was obtained and  
19            telephone analysis confirmed Mr. Liberal's communication with Mr. Carter and Mr.  
20            Cohen Ebanks on the day of the robbery and at the time of the robbery.

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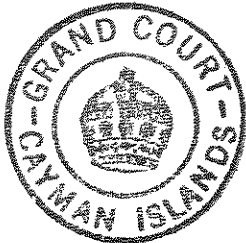
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*VICTIM IMPACT REPORT*

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39. The Sprint employee said that he has never forgotten the events of that day. He said the incident will never go away from his memory. At the time he was extremely frightened when Mr. Carter approached him with the handgun. He said the robbery only lasted for a few seconds but the handgun was pointed at his stomach. Throughout the weeks following the incident he kept going over the robbery in his mind. He said the robbery affected his health, in that, he began drinking more heavily as a way to fall asleep and he now finds that he is scared to go out and he opts to stay home or at a friend's home. As a result of the robbery the victim had to stop working as a courier and he still feels affected by the event.



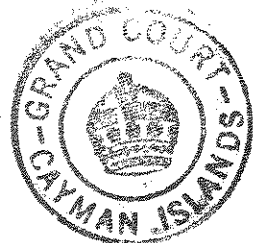
*SUBMISSIONS ON BEHALF OF MANUEL CARTER*

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40. Counsel for Mr. Carter acknowledged that the Defendant was aware that the robbery was going to take place. In fact, the robbery was to have taken place on the day prior, on the 3<sup>rd</sup> October 2012, but the Sprint vehicle did not arrive. Counsel acknowledges that the Defendant was aware of the facts and circumstances, but, at the time, he was under the influence of both cocaine and ganja, and the Defendant specifically recalls being under the influence of cocaine at the time of the robbery. As a consequence, counsel submits that the facts were “fuzzy” for the Defendant and the Defendant did struggle with his ability to recall each and every related fact.

41. Notwithstanding the Defendant’s knowledge of and participation in the robbery, counsel asks the court to accept that the Defendant had pleaded guilty, avoiding the need for a trial – albeit one year and four months after the Indictment was laid on the 31<sup>st</sup> October 2012.

42. Counsel informs the Court that the Defendant, Carter, was born in Cuba to a Caymanian father and a Cuban mother, and did not arrive in the Cayman Islands until he was 5 or 6 years of age. As a result of having Spanish as his mother tongue he had language problems and was, actually, referred to the Lighthouse School because he was considered a very slow learner. Counsel submits that the Defendant had a very difficult start in life and, as a result of these early challenges Mr. Carter exhibited significant anti-social behavioural problems, which led to serious crime in his adult years.



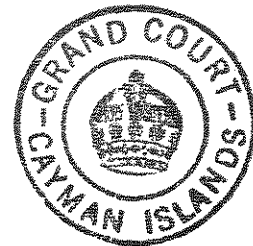
1       43.     Counsel points out that the Defendant now sees the error of his ways and realises  
2             that he must change his lifestyle, or, otherwise, he will spend the rest of his life in  
3             prison. Quoting from the SIR, counsel refers to the section where Mr. Carter states:

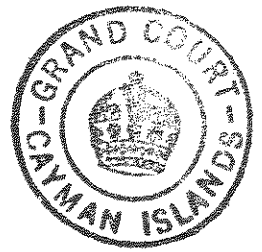
4                     *“I was not thinking about the consequences because of this drug thing, it*  
5                     *doesn't give me time to think and, because I wanted that drug, that is why I*  
6                     *know I did it.”*

7       44.     Counsel went on to add that his client now feels bad because, *“it (the robbery) is*  
8             *keeping him away from everything that he loves.”* Counsel said the offence also  
9             gave him a name which he never wanted to have, namely, “a robber.”

10      45.     In conclusion, counsel submits that Mr. Carter has seen the error of his ways and  
11             that is the main reason for his guilty plea.

12      46.     Counsel stated that because the firearm, of itself, is an aggravating factor in  
13             connection with the Robbery, it would be usual and reasonable for the term of  
14             imprisonment imposed for Count 1, the Robbery charge, to run concurrent with the  
15             term for Count 2, rather than consecutive





*BRANDON LIBERAL*

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47. Like counsel for Mr. Carter, counsel for Mr. Liberal stated that because the firearm, of itself, is an aggravating factor in connection with the Robbery, it would be usual and reasonable for the term of imprisonment imposed for Count 1, the Robbery charge, to run concurrent with the term for Count 2, rather than consecutive. Counsel for Mr. Liberal stated that this approach is consistent with the case law in the Cayman Islands and the United Kingdom.

48. Counsel for Mr. Liberal stated that although Mr. Liberal's guilty plea was late – entered on the 25<sup>th</sup> February 2014 when his client was first charged in December 2013 – it still saved the Court at least two weeks of valuable court time and avoided Crown witnesses being subject to cross examination.

49. Counsel concedes that Mr. Liberal participated in the robbery and because of the fact that all four defendants participated in the robbery, they are all equally guilty of possession of the firearm and that the firearm was part of the robbery.

50. Counsel acknowledges that the expression "*the food is ready*" was Mr. Liberal's words and counsel added that the expression was actually "*the food is on the table*" but for the purposes of this hearing the difference is immaterial. Mr. Liberal was clearly giving the signal to go.

51. Counsel points to the fact that all four Defendants played a particular part. Mr. Carter put the gun to the Sprint employee, collects the money and brings it back to the car; Mr. Cohen Ebanks was the getaway driver and played a part in the planning. However, counsel states that the person who supplied the firearm to Mr. Liberal and Big Jeff are not before the court.

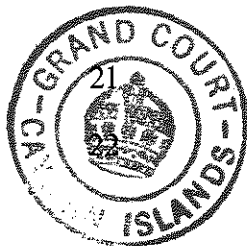
1 52. At the close of proceedings on the 8<sup>th</sup> July 2014 and today, counsel on behalf of Mr.  
2 Liberal drew the court's attention to the fact that, on the 14<sup>th</sup> April 2014 – some  
3 four days after the Sentencing Submissions were made by him on the 10<sup>th</sup> April  
4 2014 on behalf of Mr. Liberal – Mr. Liberal requested a meeting at which he  
5 offered to assist the police with the recovery of an illegal firearm, that is, a .22  
6 revolver. Mr. Furniss explained that the recovery of the firearm took place shortly  
7 afterwards.

8 Mr. Furniss advised that the firearm “was functional” even though he accepts that it  
9 was capable of firing only once and, in addition, there was no connection between  
10 the firearm recovered and the charges against Mr. Liberal on Indictment 85/2013.

11 Mr. Furniss asks the Court to note that an Indictment was not laid against Mr.  
12 Liberal until December 2013 and, therefore, Mr. Liberal has provided this  
13 assistance with the discovery of an unlicensed firearm only some 4 months after  
14 being charged. Therefore, Mr. Furniss states it would be wrong of the Court to view  
15 Mr. Liberal's association with this case as being as long as that of his co-defendants  
16 – that is, more than a year prior in October 2012.

17 Mr. Furniss states that, in light of the existing dangers when an illegal firearm is  
18 “on the streets” and, in light of this Court's view, expressed in the past, relating on  
19 the importance of persons cooperating with the authorities for the recovery of  
20 firearms, Mr. Liberal is entitled to credit for the production of the weapon.

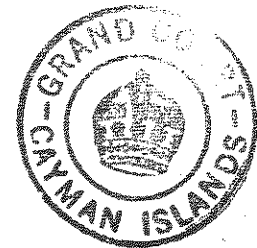
Counsel asks the Court to consider that this is an exceptional circumstance for the  
purpose of s.39 of the Firearms Law.



1       53.     As I stated on the 8<sup>th</sup> July 2014, I cannot find how the handing in of an unlicensed  
2       firearm – one that is wholly unrelated to the events of the 4<sup>th</sup> October 2012 – could  
3       constitute “exceptional circumstances” in relation to Count 2 of this Indictment, or  
4       in relation to Mr. Liberal.

5       54.     Further, it is my view that, Mr. Liberal, having now pleaded guilty to the robbery  
6       which occurred almost 2 years ago on the 4<sup>th</sup> October 2012, involving the use of a  
7       firearm, is, by his own guilty plea, and, in the eyes of the Court, associated with this  
8       crime since the 4<sup>th</sup> October 2012. Therefore, this Court rejects Mr. Furniss’  
9       submission that this is not a late act on the part of Mr. Liberal because his  
10      Indictment was laid just over 12 months after the Indictment against Mr. Carter and  
11      Mr. Cohen-Ebanks. Mr. Liberal, having now pleaded guilty to robbery involving  
12      the use of a firearm which occurred in October 2012, for which the basis of his plea  
13      includes the fact that he was the one who supplied the firearm to Mr. Carter to point  
14      towards the stomach of the Sprint employee, has, in this Court’s view, stood  
15      silently by for more than a year and a half while the RCIPS invested a large amount  
16      of manpower and resources into investigating this crime.

17      55.     Mr. Liberal’s assistance to the police has now occurred far too late – a mere  
18      afterthought long after he had fully instructed his counsel through his Goodyear  
19      hearing on the 24<sup>th</sup> February 2014 and the full mitigation submissions made on his  
20      behalf at the Sentence hearing on the 10<sup>th</sup> April 2014.

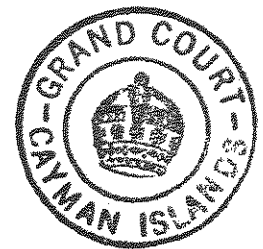


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1       56.     Accordingly, it is my view that, whilst Mr. Liberal's handing in of a weapon was a  
2             creditable act on his part, this assistance is far too late and it does not alter his  
3             position in relation to this Indictment. I therefore reject the submission that the  
4             handing in of an unrelated firearm, sometime after Mr. Liberal had already fully  
5             instructed his counsel through a sentence hearing on his behalf, is an exceptional  
6             circumstance and deserving of a discounted term of imprisonment.

7       57.     The Court can take judicial notice of the fact that there has been no amnesty in  
8             relation to firearms in the late 2013 or in 2014 and, therefore, whilst the Court  
9             commends Mr. Liberal for handing in an unlicensed firearm, the fact that he has not  
10            been charged with another offence of possession of an unlicensed firearm, means  
11            that the authorities have already given him the credit he seeks. Consequently, and  
12            despite the fact that there is no current amnesty, in handing in the illegal firearm  
13            Mr. Liberal has avoided facing a new and second charge for possession of an  
14            unlicensed firearm contrary to s.15(1) and (5) of the Firearms Law (2008) Revision.

15       58.     Accordingly it is my view that this late handing in of the unlicensed firearm does  
16             not, in my opinion, constitute "exceptional circumstances" relating either to Count  
17             2 on Indictment 85/2013 or to Mr. Liberal which would justify this Court giving  
18             Mr. Liberal less than the minimum prescribed of seven (7) years' imprisonment.



**JOHN PHILLIP COHEN EBANKS**

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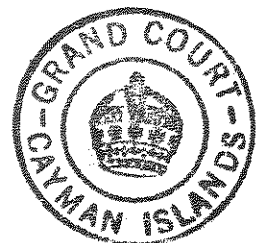
59. This Defendant gave a number of statements denying his involvement and then, at a later stage, provided statements giving full details of how the robbery occurred and the roles each robber played.

60. Mr. Ebanks gave the Crown further witness statements and expressed a willingness to give evidence on behalf of the Crown. Mr. Cohen-Ebanks maintained this position for several months, right up to the start of the trial, including on the 14<sup>th</sup> February 2014, when he gave a further witness statement before trial – indicating certain corrections to details of the robbery.

61. Furthermore, Mr. Cohen-Ebanks was physically present at the beginning of the trial on the 24<sup>th</sup> February 2014 – fully ready and prepared to give evidence against the other Defendants.

62. Mme DPP stated that this Defendant has been of significant assistance to the prosecution and the RCIPS has said that, without his evidence and his willingness to assist, they would have failed to identify two of the other three offenders responsible for the robbery.

63. Somewhat similar to Mr. Carter, Mr. Cohen-Ebanks has said that his addiction to cocaine has led him into the difficulties he now faces, and is largely responsible for his poor criminal record.



1       64.     Counsel points to the fact that before the robbery took place Mr. Cohen-Ebanks  
2       tried to stop the robbery, or at least tried to get himself out of it. However, the  
3       evidence shows that the Defendant was forced into continuing by Brandon Liberal  
4       who threatened to harm Mr. Cohen-Ebanks and his family if he didn't carry out the  
5       robbery as planned.

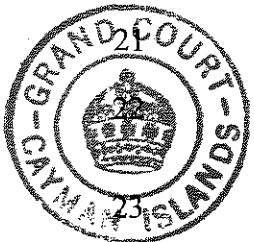
6       65.     Counsel stated that serious consideration was given to the Defence of duress in  
7       relation to Mr. Cohen-Ebanks but, Mr. Cohen-Ebanks accepted his responsibility in  
8       the robbery. At that stage, he had made it clear that he would be prepared to assist  
9       the Crown by giving evidence against the other offenders.

10      66.     Aside from cocaine, Mr. Cohen-Ebanks said he used the money he obtained from  
11      the robbery to pay his mother's medical bills and, since that time, his mother has  
12      passed away.

13      67.     Counsel explained that one of the reasons for the delay in assisting was the time it  
14      took to ascertain whether or not the defence of duress was open to Mr. Cohen-  
15      Ebanks.

16      68.     Counsel submits that, despite threats to the Defendant's life he has come forward  
17      and provided very significant information to the police – which has assisted the  
18      prosecution of this case and, ultimately led to the guilty pleas of two other  
19      offenders.

20      69.     Counsel has acknowledged that his client is not of exemplary character. He does  
    have a bad record. However, this Defendant was never the ringleader or the  
    mastermind.



1       70.     Counsel also points out that the firearm was not given to Mr. Cohen-Ebanks; it was  
2             given to Mr. Carter and Mr. Carter sat behind Mr. Ebanks.

3       71.     Counsel relies heavily on the significant assistance his client has given to the police  
4             and the Crown and contends that, together with Mr. Cohen-Ebanks' contrition and  
5             remorse can constitute exceptional circumstances in relation to Count 2. Counsel  
6             relies upon the fact that Mr. Cohen-Ebanks' assistance to the police and his  
7             willingness and preparedness to give evidence right up to the 24<sup>th</sup> February 2014,  
8             constitutes one single striking feature – which itself can constitute exceptional  
9             circumstances in relation to Mr. Cohen-Ebanks for the purposes of imposing a  
10            sentence less than the minimum sentence of seven (7) years for Count 2.

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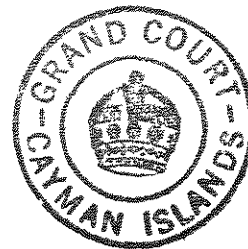
1 *ANALYSIS AND CONCLUSION*

2 72. I am grateful to the DPP and to all counsel for the Defendants for their helpful  
3 review of both the UK and the Cayman authorities.

4 73. It is common ground that this offence is a street robbery with the use of a firearm.  
5 Under the Chief Justice's Sentencing Guidelines<sup>2</sup> (the Guidelines) at page 6 this  
6 offence could attract a tariff of 14 years imprisonment for a first offence involving  
7 the use of a firearm. Under the UK Sentencing Council Guidelines this would  
8 equate to a Level 2 offence. At page 11, the UK Sentencing Guidelines set out the  
9 various starting points for the offence of a street robbery or robbery of a small  
10 business. Under s.225 and 227 of the UK Criminal Justice Act 2003 robbery is a  
11 serious offence with a maximum penalty of life imprisonment. Under Cayman law,  
12 the maximum penalty is also life imprisonment.

13 74. It is agreed between counsel that Count 1 is a level 2 offence and the Guidelines set  
14 out a starting point of 4 years' custody with a sentencing range of 2 to 7 years'  
15 custody, depending on the nature and duration of the threat.

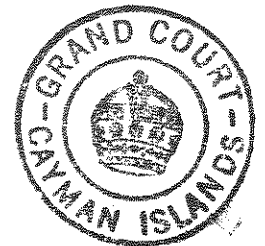
16 75. In this case there are several aggravating factors which would warrant a more  
17 severe sentence and, if the aggravating factors are exceptionally serious, the case  
18 may move to the next level of seriousness, namely, Category 3.



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<sup>2</sup> Statement on Tariffs and Guidelines for Sentencing for Certain Offences 2002

- 1       76.    In this case:
- 2            i.    We have a loaded firearm.
- 3            ii.   We have four offenders before the court.
- 4            iii. It is clear that the offence was pre-planned with some considerable  
5                organization.
- 6            iv. We have two different vehicles being used – one to commit the robbery and  
7                another to get away from the robbery.
- 8            v.    We have the switching of licence plates for the vehicles.
- 9            vi. We have the presence and use of handheld radios for the robbers to  
10               communicate with each other.
- 11           vii. The Defendant Carter who actually used the gun to execute the robbery wore a  
12               disguise in the form of a ski mask to conceal his identity.
- 13           viii. A large sum of money was targeted for the robbery.
- 14           ix.   Three Defendants played a very active part



15       77.    There is evidence to suggest that Liberal supplied the handheld radios and made  
16            sure that Cohen-Ebanks did not back out of the planned robbery at the last moment.  
17            In addition, Liberal is the one who gave the signal to go when he said either "*the*  
18            *food is ready*" or "*the food is on the table*" – clearly indicating that he was the man  
19            who was directing the heist. It was Liberal who spotted the police near to the pre-  
20            arranged meeting point after the robbery and, consequently, warned Carter and  
21            Cohen-Ebanks not to go there.



1           78.     The UK Sentencing Guidelines state:

2                     *"It is the use of violence that is the most serious part of the offence of robbery,*  
3                     *but it is not the only determinative factor.*  
4                     *The relative seriousness of each offence depends on factors such as the degree*  
5                     *of injury to the victim or the nature and duration of threats.*  
6                     *The degree of force used is important in determining the seriousness of the*  
7                     *offence but the degree of fear which was experienced by the victim is a relevant*  
8                     *consideration."*

9  
10  
11           79.     In this case the Sprint employee suffered a terrifying and traumatic fright. He is no  
12                     longer able to be employed as a courier and finds adjusting to normal activities such  
13                     as going out with other people, extremely difficult. One cannot underestimate the  
14                     effect such a terrifying incident, with a gun being pointed at him, must have had on  
15                     this innocent victim.

16           80.     The President of the CICA Sir John Chadwick stated at paragraph 11 in the case of  
17                     the *R v. Haylock, Avila McLaughlin and Watson*<sup>3</sup>:

18                     *"... those who arm themselves with weapons and undertake pre-meditated*  
19                     *robbery of small commercial businesses in these islands must expect at least*  
20                     *five years' imprisonment if they are convicted."*

21  
22           81.     As a result of the high number of aggravating factors in this case the starting point  
23                     for Count 1 has to be between six (6) and seven (7) years. It should be noted that  
24                     this is at the higher end of the range for Category 2 offences recommended by the  
25                     SGC. It is a long established principle that the earlier an accused pleads guilty, the  
26                     greater the reduction in the sentence imposed by the Court. Had the accused, Carter  
27                     and Liberal, pleaded guilty from the outset, they would have been entitled to a  
28                     discount of 33 1/3 %. As they maintained their not guilty pleas until the day of the  
29                     trial, and after a jury had been empanelled, any discount can only be 10% or less.

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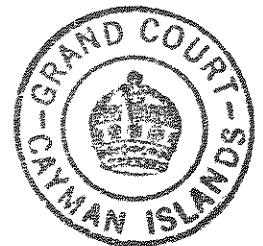
<sup>3</sup> CICA (Crim) No. 33 of 2010

1       82.     Mr. Carter was the robber who actually put on the mask and pointed the gun at the  
2             victim outside BritCay. Mr. Carter took the bag containing the cash from the Sprint  
3             courier. Mr. Carter has 23 previous convictions, including six for Burglary and  
4             Attempted Burglary, 3 for Criminal Trespass and convictions for Aggravated  
5             Criminal Trespass, Common Assault and Assault Causing Actual Bodily Harm.

6       83.     There is sufficient evidence for the Court to find that Mr. Liberal played a, if not  
7             the, major role in organizing the robbery. He was involved in obtaining the firearm  
8             from others not before the Court. The evidence shows that he provided the vehicles  
9             and the false registration plates for the vehicles used in the robbery. He provided  
10            the hand-held radios for the robbers to communicate with each other before and  
11            after the robbery. He made sure that Cohen-Ebanks did not back out of the robbery  
12            when it was clear that Mr. Cohen-Ebanks was having second thoughts. Mr. Liberal  
13            was the one who gave the signal to go when he said, via his radio, "*the food is*  
14            *ready*" or "*the food is on the table*". After the robbery Mr. Liberal was the one who  
15            warned Carter and Cohen Ebanks not to go to the pre-arranged meeting point as the  
16            police were nearby. Finally, and very significantly, Mr. Liberal was the one to  
17            whom the money was handed after the robbery and he was the one who allocated  
18            and distributed the portions to the other robbers.

19       84.     Mr. Liberal, on the other hand, unlike Mr. Carter, has only 2 convictions – one for  
20             possession of ganja and the other for disorderly conduct. However, in view of his  
21             leading role in this armed robbery, I can find no good reason to impose a lesser  
22             sentence than one imposed for Mr. Carter.

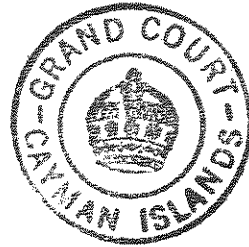
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1 85. Accordingly, in all the circumstances I find that, on Count 1 both Defendants  
2 should be sentenced to six (6) years' imprisonment:

3 86. On Count 2 both Defendants are sentenced to seven (7) years' imprisonment – the  
4 minimum prescribed by the law – to run concurrent to the sentence on count 1.

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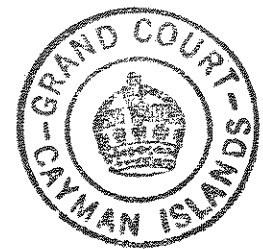


1 **MR. JOHN PHILLIP COHEN EBANKS**

2 87. Mr. John Phillip Cohen Ebanks has 59 previous convictions. The Court notes that  
3 of those 59, 28 offences relate to the consumption and possession of illegal drugs.  
4 He has 2 offences of burglary and several offences of obtaining property by  
5 deception and uttering a false document, and, one conviction for theft.

6 88. In England, assistance to law enforcement agents is governed by the Serious  
7 Organised Crime and Police Act 2005 (SOCPA). In the Cayman Islands we do not  
8 have any corresponding legislation.

9 89. The English Court of Appeal in the case of *R v. P and Derrick Stephen Blackburn*<sup>4</sup>  
10 reviewed the case law in relation to Defendants assisting investigations and  
11 prosecutions – both before the SOCPA and since. This Court notes that the UK  
12 statute did not include any direct provisions suggesting the level of discount  
13 appropriate to be provided to the Defendant who entered into and performed an  
14 agreement to assist the prosecution. At Chapter E 1.13 of *Blackstone's Criminal*  
15 *Practice 2014*, the learned editors state that s.73 and 74 of the SOCPA are silent as  
16 to the appropriate extent of any reduction to reflect actual or promised assistance by  
17 the offender. The former Lord Chief Justice, Lord Judge, in *R v. P and Derrick*  
18 *Stephen Blackburn* stated that the pre SOCPA Court of Appeal authorities are still  
19 relevant despite the introduction of the statutory scheme.



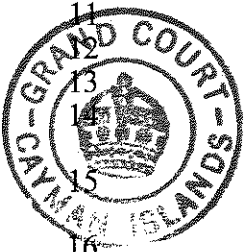
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<sup>4</sup> [2008] 2 Cr. App R. (S) 16

1 90. The learned editors of the *Archbold 2014* review the case law provided other than  
2 in accordance with the new SOPCA 2005 Act. At paragraph 5-139 the learned  
3 editors of Archbold refer to *R v. P and Derrick Stephen Blackburn* and *R v.*  
4 *Sinfield*<sup>5</sup> and state that an offender who assists the police by giving information that  
5 leads to the apprehension and prosecution of his associates or of other offenders  
6 may expect a discount – possibly substantial – from his sentence.

7 91. In *R v. Michael King*<sup>6</sup> the English Court of Appeal set out some guidelines  
8 regarding the appropriate discounts for those who assist the authorities in their  
9 investigation and prosecution of offenders. Stating that it would be impossible to  
10 lay down any hard and fast rule, the Lord Chief Justice, Lord Lane, said:

11 *“The amount by which that figure should be reduced would depend on a*  
12 *number of variable features; the quality and quantity of the material disclosed*  
13 *... its accuracy and his willingness to confront other criminals or give evidence*  
14 *against them.”*  
15



16 The Lord Chief Justice, giving the opinion of the Court of Appeal stated that there  
17 should be an expectation of some substantial reduction of what otherwise would be  
18 the proper sentence and suggested that the amount would vary between a half and  
19 two-thirds of the appropriate sentence.

20 92. Some three years later the English Court of Appeal in *R v. Sivan*<sup>7</sup> confirmed that it  
21 was a well-established feature of sentencing practice that credit should be given to a  
22 Defendant in certain circumstances for assistance or information given to the  
23 authorities. The Court of Appeal said that the matters that should be taken into  
24 account are:

<sup>5</sup> 3 Cr App R (S) 258

<sup>6</sup> 7 Cr. App R. (S) 227

<sup>7</sup> 10 Cr. App R. (S) 282

1                   *“The nature and the effect of the information, did it bring justice to persons*  
2                   *who otherwise would not have been brought to justice, and the degree of the*  
3                   *assistance provided, namely, was the offender prepared to give evidence, and,*  
4                   *finally, the degree of risk to which the defendant had exposed himself and his*  
5                   *family.*

6                   *Within those limits the judge must bring himself to tailor the sentence so as to*  
7                   *punish the Defendant, but at the same time reward him as far as possible for*  
8                   *the help he had given, in order to demonstrate to offenders that it was worth*  
9                   *their while to disclose the criminal activities of others for the benefit of the law-*  
10                   *abiding public in general.”*

11  
12           93.       Finally, in considering the appropriate reduction, there are authorities to suggest  
13                   that the judge should consider the reduction for the assistance separate and apart  
14                   from any reduction for a plea of guilty. However, in *R v. Sehitoglu (Dervis)*<sup>8</sup> the  
15                   English Court of Appeal stated that the sentencer should determine the final  
16                   sentence by calculating a single discount – taking into account all the relevant  
17                   factors including the plea of guilty and the assistance given to the authorities. I  
18                   follow and adopt this approach from Mr. Cohen-Ebanks.

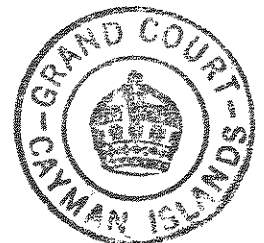
19           94.       In *R v. P and Blackburn* the Lord Chief Justice, Lord Judge, endorsed the totality  
20                   principle when it came to sentencing in cases of this nature and stated that the  
21                   normal level for reduction would continue to be a reduction of between a half and  
22                   two-thirds.

23           95.       Had Mr. Cohen-Ebanks not provided this substantial assistance to the RCIPS and  
24                   the Crown, I would have imposed a sentence of 6 years’ imprisonment on Count 1.  
25                   In light of his substantial assistance and willingness to give evidence at trial, I  
26                   impose a sentence of three (3) years’ imprisonment.

27           96.       I turn now to this Defendant’s guilty plea to Count 2.

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<sup>8</sup> [1998] 1 Cr. App R. (S) 89 CA



1 97. Section 39(2) of the Firearms Law (2008 Revision) reads:

2 “(2) Notwithstanding sections 6(2) and 8 of the Criminal Procedure Code  
3 (2006 Revision), the court of summary jurisdiction or the Grand Court before  
4 which the individual pleads guilty or is convicted, shall-

5 (a) in a case where the individual pleads guilty, impose a sentence of  
6 imprisonment for a term of at least seven years (with or without a fine); or

7 (b) in any other case, impose a sentence of imprisonment for a term of at least  
8 ten years (with or without a fine),

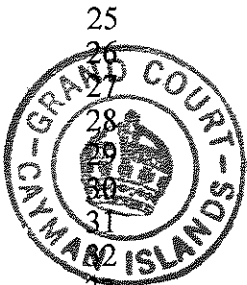
9 unless the relevant court is of the opinion that there are exceptional  
10 circumstances relating to the offence or to the offender which justify its not  
11 doing so; and such exceptional circumstances shall be stated by the relevant  
12 court.”

13  
14 98. In the case of *Chavarría-Atily v. R*<sup>9</sup> the CICA applied Lord Bingham’s dicta in *R*  
15 *v. Avis et al.* The Acting President Forte JA set out Lord Bingham’s guidelines and  
16 added the following words at paragraph 10 of his Judgment:

17 “In the Cayman Islands, it has been the massive increase in offences under the  
18 Firearms Law that has led Parliament to enact the minimum sentences in  
19 respect of those offences, while at the same time making special provision for  
20 cases of exceptional circumstances.”

21 99. The English Court of Appeal in *R v. Zakir Rehman and Gary Dominic Wood*<sup>10</sup>  
22 examined the question of “exceptional circumstances” in relation to the minimum  
23 sentence under the UK Firearms Act 1968, which are similar to the provisions  
24 under our Firearms Law. The then Lord Chief Justice, Lord Woolf stated:

25 “The question of exceptional circumstances in that context has been considered  
26 in *Buckland* (2000) 2 Cr. App R (S) 217. In the light of that decision the court  
27 considered that it was not appropriate to look at each circumstance separately  
28 and then to conclude that it did not amount to an exceptional circumstance. A  
29 holistic approach was needed. There would be cases where there was single  
30 striking feature which related either to the offence or the offender, which  
31 caused that case to fall within the requirement of “exceptional circumstances.”  
32 There could be other cases where no single factor by itself would amount to an  
33 exceptional circumstance, but the collective impact of all the relevant  
34 circumstances truly made the case exceptional.”



<sup>9</sup> [2009] CILR 118

<sup>10</sup> (2006) 1 Cr App R. (S) 77

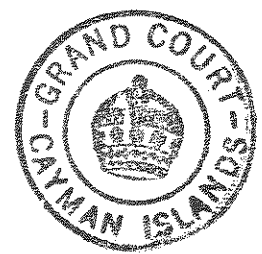
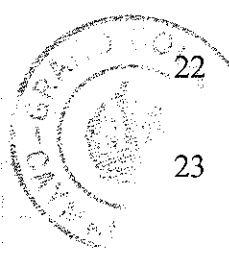
1           100.    In *Chavarría-Atily v. R* the Cayman Islands Court of Appeal referred to *R v. Zakir*  
2                   *Rehman and Gary Dominic Wood* and added at paragraph 12 of their Judgment:

3                               *“We would say, however, that the section (in the Firearms Law) makes it clear*  
4                               *that it is the opinion of the court that is critical as to what constitutes*  
5                               *exceptional circumstances.”*

6  
7                   In *Chavarría-Atily v. R* the Court of Appeal did not disturb the Grand Court’s  
8                   finding of exceptional circumstances.

9           101.    The DPP has confirmed to the Court that the Defendant Mr. Cohen-Ebanks  
10                   provided several statements which assisted both the investigation of this case and  
11                   the prosecution of both Carter and Liberal. Ms. Richards has confirmed that since  
12                   Mr. Cohen-Ebanks gave his statements assisting the police he had always expressed  
13                   a willingness to give evidence in court and he maintained that position right up to  
14                   the 24<sup>th</sup> February 2014 when the jury was empanelled. Mme DPP confirmed that, in  
15                   summary, this Defendant has been of significant assistance and the police have  
16                   stated that, without his assistance they would have been unable to identify 2 of the 3  
17                   offenders responsible for the robbery.

18           102.    The Court notes that Mr. Cohen-Ebanks cannot be described as a person of good  
19                   character in light of his record which demonstrates that he had or has a serious drug  
20                   addiction which led to many offences under the Misuse of Drugs Law and other  
21                   criminal offences.



1       103. Defence counsel for Mr. Cohen-Ebanks submits that his client's assistance  
2       constitutes a single striking feature and his willingness to come forward and help  
3       the police – notwithstanding the threats to him and his family – constitute  
4       exceptional circumstances.

5       104. I am satisfied when a Defendant gives such significant assistance – assistance  
6       which enables the police to apprehend the perpetrators of such a serious crime, and  
7       assistance which includes giving evidence in the court proceedings – this  
8       constitutes, in my view, “exceptional circumstances” relating to Mr. Cohen-Ebanks.  
9       This view justifies me not imposing a minimum sentence of seven (7) years’  
10      imprisonment.

11      105. Accordingly, I impose a sentence of three (3) years’ imprisonment in relation to  
12      Count 2, with time spent in custody to be deducted.

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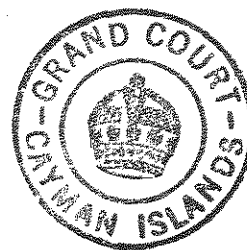
14      **Dated this the 23<sup>rd</sup> day of July 2014**

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19      **Honourable Mr. Justice Charles Quin**  
20      **Judge of the Grand Court**