

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 CRIMINAL SIDE  
3

4 INDICTMENT NO: 0043/2012

5  
6 THE QUEEN

7  
8 V

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10 ROBERT WILLIAM SCHULTZ

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13 **Appearances:**

Mr. Michael Snape for the Crown

14  
15 Ms. Ben Tonner of Samson and McGrath  
16 for the Defendant  
17

18 **Before:**

The Hon. Mr. Justice Charles Quin

19 **Sentencing Submissions Heard:**

20 20<sup>th</sup> November 2012



21 SENTENCE RULING  
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- 23 1. The Defendant was initially charged on an Indictment with 29 Counts being one  
24 Court of Theft, 14 Counts of Forgery and 14 Counts of Uttering a False Document.
- 25 2. On the 20<sup>th</sup> November 2012 the Defendant pleaded guilty to Count 1 on the  
26 Indictment, that being Theft, contrary to s.241 of the Penal Code (2007 Revision).  
27 The particulars of the offence are that the Defendant, between the 17<sup>th</sup> day of April  
28 2009 and the 25<sup>th</sup> day of June 2011, within the jurisdiction of the Cayman Islands,  
29 stole **US\$289,660.12**, the property of the Cayman Islands Chamber of Commerce  
30 Pension Plan.

1 3. In light of the Defendant's guilty plea to Count 1, the Crown views Count 1 as the  
2 roll up charge which takes into account all the initial charges laid against the  
3 Defendant on this Indictment.

4 *THE FACTS*

5 4. On the 22<sup>nd</sup> November 2011, the Complainant, Peter Huber, one of the trustees of  
6 the Chamber Pension Plan, reported that after the Defendant resigned from his  
7 position as Administrator of the Chamber of Commerce Pension Plan in July 2011,  
8 an audit was conducted and it was discovered that the Defendant had requested a  
9 number of fraudulent wire transfers from the Chamber Pension account at JP  
10 Morgan Chase in New York to his own account at Butterfield Bank.

11 5. When the report of the fraudulent wire transfers was initially made, it was believed  
12 that the total sum of the thefts was **CI\$118,770.00**. An audit was subsequently  
13 conducted by JP Morgan Chase and the Chamber of Commerce and the total  
14 amount of funds stolen by the Defendant from the Chamber Pension Plan was  
15 found to be **US\$289,660.12**.

16 6. Both counsel have agreed that the sum of **US\$289,660.12** will not be in dispute  
17 even though both agree that, of the 43 illegitimate transactions which total the  
18 stated amount on the Indictment of **US\$289,660.12**, two of these transactions,  
19 which amount to \$20,000.00, were legitimate bonuses. Defence counsel states that,  
20 as this amount of \$20,000.00 does not make a big difference to the total sum to  
21 which the Defendant has pleaded guilty, the Defence will not argue the point – as  
22 they do not wish such an argument to detract from the Defendant's guilty plea and  
23 remorse.





*SUBMISSIONS BY THE CROWN*

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7. The Defendant was the sole salaried employee, employed by the Chamber of Commerce Pension Plan (“the Chamber Pension Plan”) from the October 2007 until his resignation in July 2011.

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8. The Chamber Pension Plan is a designated Government Plan Scheme in which Cayman businesses paid funds into a Government-approved pension plan on a monthly basis and the Plan is overseen by a Board of seven Trustees.

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9. The signatures of two Trustees are required for payment transactions.

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10. The Defendant held the position of Pension Administrator. In this role he had access to the Board’s bank accounts and had permission to conduct business on behalf of the Board. It is clear that a substantial amount of trust was placed in the Defendant.

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11. The Chamber Pension funds would initially be paid into the Chamber Plan’s account with Butterfield Bank (Cayman) before being moved to JP Morgan Chase in New York – the custodian bank for the Fund.

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12. In January 2011 the Defendant was granted leave of absence from the Chamber to attend a drug rehabilitation clinic in the United States for his cocaine addiction and returned to his post at the Chamber in March 2011. The Defendant continued to work at the Chamber for another four months, during which time he battled, with little success his addiction. Eventually in July 2011 he resigned.

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13. The Defendant was replaced by a temporary employee, Mr. Matthieu Santerre (“Mr. Santerre”), who reviewed the annual financial statements. During his review

1 Mr. Santerre discovered an invoice made out by the Defendant and signed by two  
2 trustees authorising a payment to the Defendant. Upon review it was determined  
3 that the trustees, did not authorise or sign for the payment and the documents were  
4 false. It appears from the evidence that the signatures were copied and pasted.

5 14. It was ultimately discovered that, between the 17<sup>th</sup> April 2009 and the 25<sup>th</sup> June  
6 2011 Mr. Schultz submitted 43 fraudulent letters to JP Morgan Chase resulting in a  
7 total of US\$289,660.12 being paid from the Chamber Plan's account with JP  
8 Morgan Chase to a personal bank account held by the Defendant at Butterfield  
9 Bank (Cayman). The smallest amount was US\$675.00 on the 4<sup>th</sup> September 2009  
10 and the largest was US\$12,500.00 on the 5<sup>th</sup> April 2011. All the other amounts were  
11 not lower or higher than these two sums.

12 15. The Crown submits that the Defendant was able to activate and complete these  
13 fraudulent transactions because of his position as the Chamber Plan's Pension  
14 Administrator. The Defendant used the Chamber Plan's letterhead to request the  
15 funds and forged the signatures of two trustees to give the request apparent  
16 legitimacy.

17 16. Following his resignation in July 2011, on the 24<sup>th</sup> November 2011 the Defendant  
18 attended the Chamber to collect documents related to his work permit. The  
19 Defendant was then confronted by the Complainants and he admitted to creating a  
20 large number of false documents and stealing unauthorised funds from the Chamber  
21 Pension Plan.

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1                   iii. Premeditation: The paperwork involved in executing this crime –  
2                   submitting over 40 items of paperwork overseas, forging the signatures  
3                   of trustees, and, transferring the money on a consistent basis to his  
4                   personal account in Cayman – demonstrated that considerable thought  
5                   went into executing this fraud over a long period and that there was  
6                   “obvious premeditation.”

7                   iv. Forgeries: The Crown submits that the high number of forgeries  
8                   involved prejudice the case against the Defendant.

9                   v. The sense of criminality: The Crown refers to the case of **R v. John**  
10                  **Barrick** (1985) 81 Cr. App. R. 78 and states that it is not only the  
11                  amount of money that is involved in a theft but the other factors  
12                  involved in executing the crime reveal the sense of criminality.

13                  vi. Reimbursement to the citizens and the Government: The Crown  
14                  submits that, as the Chamber of Commerce Pension Plan is an  
15                  approved government scheme, thoughts will turn to how will public  
16                  funds be paid back to the citizens of the Cayman Islands and the  
17                  government?

18                  vii. Local Public and overseas confidence in financial management is  
19                  diminished: The Crown submits that this point speaks for itself. As a  
20                  jurisdiction that places significant importance on its name as a financial  
21                  centre, theft and fraud of this magnitude – especially the fact that this  
22                  could be committed by one individual – has a seriously detrimental  
23                  effect on the image and reputation of the Cayman Islands.

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viii. The breadth of the offence: The Crown maintains that, even though, it is clear that the Defendant acted on his own, the effect of the offence is much wider than the Defendant due to 20(vii) *supra*.

*MITIGATING FACTOR FROM THE CROWN*

21. The Crown submits that it is to the Defendant’s credit that when he was confronted on the 24<sup>th</sup> November 2011 by RCIPS FCU officers he “*immediately acknowledged his wrongdoing.*”





*SUBMISSIONS BY THE DEFENCE*

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22. The Defendant was born and raised in the United States with his mother, father and a brother. The Defendant's education was completed in the United States where he obtained a Bachelors of Science degree in Finance from Seattle Pacific University. The Defendant did further studies and obtained certification as an Accredited Asset Management Specialist as well as other qualifications which enabled him to trade stocks and act in the capacity of an investment advisor.

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23. The Defendant subsequently entered the financial services industry and worked with Smith Barney, Everen Securities and then, for 12 years, he was employed at Chase Bank as a Senior Financial Consultant.

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24. The Defendant came to the Cayman Islands with his family because his wife obtained employment here with the Ministry of Education as a Child Psychologist in August 2007. Soon after that, in October 2007, the Defendant obtained employment as the Administrator of the Chamber Pension Plan.

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25. Shortly after the family arrived in the Cayman Islands the Defendant's wife admitted she wanted to be with another man and, as a result, the marriage fell apart and the Defendant began drinking alcohol and indulging in narcotics. It wasn't long after that he developed an addiction to cocaine and, as stated by Defence counsel, used all of the money he took from the Chamber Pension Plan to fund his drug habit – with none of the money now remaining.

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26. Defence counsel therefore submits that it was not a question of greed – that is, living above his means and stealing to gain material possessions. The Defendant's theft of the funds was based on his cocaine addiction.

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- i. When confronted by his employers regarding the fraudulent transfers the Defendant made an immediate admission.
- ii. When arrested on the 24<sup>th</sup> November 2011 the Defendant answered all the questions put to him by the RCIPS officers with full admissions.
- iii. When arrested the Defendant expressed his desire to return the money he had stolen.
- iv. The theft of the funds by the Defendant did involve some skill for the Defendant to re-use the wire transfer template, (which was sent by JP Morgan Chase for the Defendant's first performance bonus on the 21<sup>st</sup> November 2008), to execute the illegal transactions which began some months later on the 17<sup>th</sup> April 2009. Nevertheless, the fraud, Defence counsel submits, is unsophisticated in its execution – demonstrating significant elements of naiveté and stupidity. Defence counsel argues that the fraudulent activity was always going to be uncovered and it was inevitable that the Defendant would end up where he has ended up today.
- v. The Defendant is a person of hitherto good character and has no previous convictions either in the United States or in the Cayman Islands. He is described as a person of integrity by his ex-wife – the mother of his two teen aged boys.
- vi. The Defendant had a good home life and, even though he and his wife are separated, he is a very good father and his ex-wife testifies to that fact. The Defendant continues to take up every opportunity afforded



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him to have contact with his children. His ex-wife describes him as a superb provider and father.

vii. Very favourable written references have been provided to the Court from Neil Lumley, Deborah Marken-Jerness and Nathaniel Wisdom (“Mr. Wisdom”). The Court notes that Mr. Wisdom states that he would welcome the opportunity to employ the Defendant and give him a second chance to prove his commitment to recovery.

viii. The Defendant has been in custody from March 2012 and it is reported that his behaviour as an inmate of HMPS Northward has been exemplary. He is an active member of the library and attends Narcotics Anonymous at every opportunity.

ix. The Defence submits that all of the foregoing items highlight the fact that the Defendant’s criminal activity is out of character and he is extremely remorseful.



x. The Defendant has consistently made efforts to remain enrolled in treatment programmes for his drug habit and, in that respect he is in a better place today than he was some years ago.

xi. The Court has been provided with a letter from the Defendant dated the 16<sup>th</sup> November 2012 in which he states that after his separation from his ex-wife, when she left him for another man, he felt crushed and began drinking and taking to cocaine to alleviate the bitter disappointment of his broken marriage.

1 33. Defence counsel submits that the Defendant's professional life and personal life  
2 now lie in ruins, and yet there is an offer of employment still available to him.  
3 Accordingly, the Defence pleads for the Defendant to be given the opportunity by  
4 the Court to be allowed to work and repay the funds peculated. The Defence  
5 accepts that it is difficult for the Court to craft this option, in light of the  
6 Defendant's status as a work permit holder and one with no security of tenure in the  
7 Cayman Islands.

8 *AGGRAVATING FACTORS PRESENTED BY DEFENCE*

9 34. The Defence accepts that an aggravating factor is that the Defendant was in position  
10 of seniority and trust with the Chamber and therefore there is the substantial breach  
11 of trust to consider. The Defence also accepts that the money misappropriated by  
12 the Defendant is, on any view, a considerable amount of money.

13 *THE SOCIAL INQUIRY REPORT (SIR)*

14 35. The Court is grateful to the Probation Officer, Mr. Joseph Tatum ("Mr. Tatum"),  
15 who has provided an in-depth SIR confirming much of what the Defence has set  
16 out.

17 36. It is clear from the report that the Defendant is a good father.

18 37. The Court notes that Mr. Tatum's assessment is that the Defendant's probability of  
19 re-offending is 8% based on the level of service/case management inventory risk  
20 assessment guide. The Defendant's risk of re-offending is described as "low". Mr.  
21 Tatum concludes by stating that the Defendant is an individual,



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*“who lived a useful and productive life for a long time but made out-of-character decisions by using drugs and then stealing from his employer. It seems as if the deterioration of his marriage had a profound effect on him and he did not address the issue appropriately, and his coping mechanisms caused even more grief for him.”*



1 **THE LAW**

2 38. The leading case for offences where there has been a breach of trust is still the  
3 English Court of Appeal decision of *R v. John Barrick* (1985) 81 Cr. App. R. 78  
4 and the Judgment of the then Lord Chief Justice Lord Lane. *R v. Barrick* was  
5 discussed and applied extensively in the Cayman Islands Court of Appeal decision  
6 of *R v. Scott. Fyne v. R* 2007 CILR 175 and in subsequent Grand Court decisions.

7 39. Lord Lane stated at page 81 of *R v. Barrick*:



8 *“The type of case with which we are concerned is whether a person in a*  
9 *position of trust, for example, an accountant, solicitor, bank employee or*  
10 *postman has used that privileged and trusted position to defraud his partners or*  
11 *clients or employers or the general public of sizeable sums of money. He will*  
12 *usually, as in this case, be a person of hitherto impeccable character. It is*  
13 *practically certain, again as in this case, that he will never offend again and in*  
14 *the nature of things, he will never again in his life be able to secure a similar*  
15 *employment, with all that that means in the shape of disgrace for himself and*  
16 *hardship for himself and also his family.”*

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18 40. Lord Lane’s words could have been written for Mr. Schultz.

19 41. The Cayman Islands Court of Appeal in *R v. Scott. Fyne v. R* applied the guidelines  
20 set out by Lord Lane in *R v. Barrick* and, in particular the following factors which I  
21 now take into account:

22 *“The Court.....should have regard to the following matters. (1) the quality and*  
23 *degree of trust reposed in the offender including his rank; (2) the period over*  
24 *which the fraud or thefts have been perpetrated; (3) the use to which the money*  
25 *or property dishonestly taken was put; (4) the effect upon the victim; (5) the*  
26 *impact of the offences on the public and public confidence; (6) the effect on*  
27 *fellow employees or partners; (7) the effect on the offender himself; (8) his own*  
28 *history; (9) those matters of mitigation special to himself such as illness; (10)*  
29 *being placed under great strain by excessive responsibility or the like; (11)*  
30 *where, as happens, there has been a long delay, say over two years, between*  
31 *his being confronted with his dishonesty by his professional body or the police*  
32 *and the start of his trial....”*

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42. In the later English Court of Appeal decision of *R v. Clark* [1998] 2 Cr. App. R. (S) 95, the Appellant was employed as the bursar of a charitable body and acted as the treasurer of a local church. He stole almost £400,000.00 from his employer and £29,000.00 from the church over a period of four years. There was some dispute between the Prosecution and the Defence as to the precise total figure which he had taken, but it was conceded by the Appellant that the sum was certainly in excess of £300,000.00. Mr. Clark pleaded guilty at the first opportunity and he made repayment in the sum of approximately £120,000.00. At the Court of first instance he was sentenced to five years imprisonment on each count to run concurrently. The Court of Appeal allowed the appeal and imposed a sentence of 3 years on count 1 and one year on count 2, which was ordered to run consecutively, making a total of 4 years.

43. The English Court of Appeal in *R v. Clark* referred to sentencing guidelines and stated:

*“They were by way of guidelines only and many factors other than the amount involved might affect sentence. Where the amount is not small, but is less than £17,500.00, terms of imprisonment from the very short up to 21 months will be appropriate; cases involving sums of between £17,500.00 and £100,000.00 will merit two to three years; cases involving sums of between £100,000.00 and £250,000.00 will merit three to four years; cases involving between £250,000.00 and £1,000,000.00 will merit between five and nine years and cases involving a million and more will merit 10 years or more.”*

The Court stated that these terms were appropriate for contested cases and, pleas of guilty would attract an appropriate discount.



1        44.     In addition I refer to the *“Statement on Tariffs and Guidelines for Sentencing for*  
2        *Certain Offences”* issued by the learned Chief Justice. The Guidelines state that for  
3        offences of theft or related offences an immediate term of one to four years  
4        imprisonment is appropriate, with a higher tariff available for more serious cases..

5        45.     In the Cayman Islands, the Legislative Assembly has retained ten (10) years  
6        imprisonment as the maximum penalty for theft.

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ANALYSIS

46. The Quality and Degree of Trust Reposed in the Offender including his Rank: The Defendant can properly be described as a senior financial consultant. Undoubtedly, his job as the Administrator the Chamber of Commerce Pension Plan is one in which the trustees placed a substantial amount of trust in him. He was trusted with full access to the materials he ultimately used to perpetuate his theft.

The Crown submits, as a salaried employee of the Chamber Pension Plan the Defendant was expected to carry out his duties to assist and benefit the Board and the Plan. Instead, through premeditated actions, the Defendant chose to steal from the very institution that provided his livelihood.

Furthermore, the Defendant showed a cynical and callous lack of concern for the fact that the funds he administered could become the sole source of income for persons saving hard for their retirement.

47. The Period over which the Fraud or the Thefts have been perpetrated: The Defendant first started these fraudulent transactions on the 17<sup>th</sup> April 2009, and the last offence was on the 25<sup>th</sup> June 2011 – which is a period of two years and two months.

48. The Use to which the money dishonestly taken was put: It appears from everything the Court has heard that the Defendant used the stolen funds entirely to fund his drug habit.



1       49.     The Effect upon the Victim: I can do no better than to read a portion of the statement  
2             of Mr. William (Bill) Fleury – the manager of the Chamber of Commerce Pension  
3             Plan – in which he states:

4                     “Mr. Schultz was in a position of trust as an employee of the Plan, and he  
5                     abused that trust by making intentional forgeries of the signatures of the Plan’s  
6                     trustees who he was reporting to. The Plan is a not-for-profit entity whose  
7                     goals are to help provide for the retirement of its members, to protect the assets  
8                     within the Plan, and to deliver the highest possible returns to the Plan members  
9                     who come from all walks of life. Schultz’s actions amount to stealing from the  
10                    members who contribute to the Plan, thereby making this a very serious matter  
11                    in the minds of the trustees. This incident has harmed the reputation of the Plan  
12                    and comes at a time when we are working to educate the public as to the merits  
13                    of pension savings. In conclusion, the trustees wish for the full extent of the law  
14                    to be applied to Mr. Schultz.



15                    We sincerely hope that once the sentence has been served he is able to emerge  
16                    to resume a normal, healthy and productive life.”

17       50.     The Impact of the Offences on the public and Public Confidence: It is clear that Mr.  
18             Schultz’s fraudulent actions can do nothing but damage the confidence reposed in  
19             the Plan and harm the reputation of the Plan and the financial services industry of  
20             the Cayman Islands.

21       51.     The Effect on the Offender himself, his own history and mitigation: The Court  
22             accepts that Mr. Schultz comes before the Court with no previous convictions and,  
23             that he is entitled to credit for his guilty plea.

1       52.     Much has been made of the Defendant's contrition and remorse since his arrest in  
2             November 2011. Furthermore, on more than one occasion, the Defendant has  
3             expressed his desire to repay the money he has stolen. The Court notes that  
4             although the Defendant had been on bail for four months, no monies have been  
5             repaid by him to the Chamber of Commerce to date.

6       53.     The Court also notes that the Defendant was bailed by the RCIPS on the 24<sup>th</sup>  
7             November 2011. However, on Wednesday the 28<sup>th</sup> March 2012 the officers from  
8             the Immigration Department at the Royal Watler Terminal stopped the Defendant  
9             travelling with his birth certificate and a boarding pass for The Carnival Valor in  
10            the name of Robert Schultz. The Defendant explained to the Immigration Officers  
11            that he had lost his passports, and then it was discovered that he was on the stop  
12            notice. Consequently, the Defendant was immediately re-arrested.

13            It is clear that the Defendant was attempting to abscond. One is therefore forced to  
14            question the genuineness and sincerity of the Defendant's professed contrition and  
15            remorse when he took such serious steps to evade punishment for his fraudulent  
16            actions

17       54.     Crown Counsel has submitted that the Court should consider a starting point of at  
18             least four years imprisonment, before considering any mitigating factors. The  
19             principle behind the starting point procedure in sentencing is that a starting point is  
20             based on a not guilty plea by a Defendant with no previous convictions. Once that  
21             starting point has been identified then the Defendant is entitled to a reduction on  
22             mitigating factors and in particular his guilty plea.



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1       55.     For an offence of this very serious nature it is my view that the starting point is  
2             between six and seven years. It certainly comes within the higher tariff referred to  
3             by the learned Chief Justice in the “*Statement on Tariffs and Guidelines for*  
4             *Sentencing for Certain Offences*” for more serious cases. Moreover, on the basis,  
5             as explained by Lord Justice Rose in *R v. Clark* I would regard this case as coming  
6             between \$250,000.00 and \$1,000,000.00 – meriting between 5 and 9 years. There is  
7             a compelling basis for treating the Cayman dollar as having parity of value with the  
8             UK pound, for the purposes of sentencing, and not to engage in a currency  
9             conversion process.

10       56.     However, the Court is not embarking on a mathematical exercise. As has been said  
11             before, guidelines are not tramlines. It is difficult for this Court to justify giving a  
12             customary discount based on the Defendant’s guilty plea when faced with a  
13             complete absence of any repayments, or repayment plan, coupled with the evidence  
14             from the Immigration Officers of the Defendant’s planned and deliberate effort to  
15             abscond some four months after his admissions to the trustees of the Chamber  
16             Pension Plan and the RCIPS.

17       57.     I find this to be one of the most serious breach-of-trust cases to come before this  
18             Court. The Defendant stole the very pension funds he was paid to control and  
19             administer. It was not a one-off incident. The Defendant systematically stole the  
20             monies from the Pension Fund for a sustained period of over two years. I have to  
21             balance these factors against the guilty plea. When I take everything into  
22             consideration, including the Defendant’s thwarted attempt to escape, I find I cannot  
23             impose a sentence of less than five years. This incorporates a discount of 25% on  
24             account of the Defendant’s guilty plea. In my view five years imprisonment  
25             properly reflects the punishment required to meet the gravity of this prolonged

1 breach of trust and to act as an effective deterrent to others who might contemplate  
2 committing offences of this nature.

3 58. Accordingly, and for all the aforesaid reasons, I impose a sentence of 5 years, with  
4 time spent in custody to be deducted.

5 59. I have received no application for costs or compensation. I have considered some  
6 form of compensation order. However, I find it would be unrealistic to expect that  
7 the Defendant would be granted a work permit to work again in the Cayman Islands  
8 and I cannot envisage how this Court could properly oversee any repayment plan  
9 when the Defendant is no longer in this jurisdiction. Accordingly, and for the above  
10 reasons, I make no order for compensation.

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14 **Dated this the 4<sup>th</sup> day of December 2012**

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A handwritten signature in black ink, appearing to read "Charles Quin". The signature is fluid and cursive, with a large initial "C" and a long horizontal stroke at the end.

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