

IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

APPEAL NO 11 OF 2010

BETWEEN:

THE HONOURABLE ATTORNEY-GENERAL

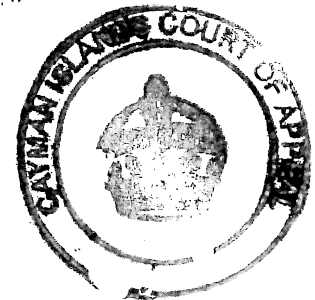
Appellant

- and -

Lanisia Barnes

Respondent

BEFORE: THE RT. HON. SIR JOHN CHADWICK, P.
THE HON. JUSTICE E. MOTTLEY, J.A.
THE HON. DR. A.O. CONTEH, J.A.



CHARGES: FALSE ACCOUNTING
THEFT

APPEARANCES:

On behalf of the Appellant: Ms. K. Gunn
On behalf of the Respondent: (in person)

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1 TUESDAY, AUGUST 10TH, 2010

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CICA 11-10 AG v Lanisia Barnes (oral transcript)
The law in this jurisdiction has been set

9
10 out by this Court in the Crown against Scott
11 and Fyne against the Crown [2007] CILR 175.
12 The Courts have consistently emphasised that
13 offences of this nature are serious and should
14 be recognised as serious; and that it will only
15 be in circumstances which can truly be regarded
16 as "exceptional" that an offender can expect to
17 receive a sentence other than an immediate
18 custodial sentence.

19 As I have said, the judge - and counsel
20 for Mrs. Barnes - recognised that principle.
21 The judge was addressed, therefore, on the
22 question whether there were in this case
23 exceptional circumstances which should lead him
24 to pass a sentence on Mrs. Barnes other than an
25 immediate custodial sentence.

(R v L. Barnes 2010AUG10 kam)

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(CHADWICK, President: Reasons for Judgment)

1 One of the factors that was put before the
2 judge was the medical condition from which
3 Mrs. Barnes suffered; which, it was said, was
4 likely to be exacerbated by a period of
5 incarceration.

6 The judge, as one would expect, asked her
7 advocate for medical evidence to support that
8 proposition. The evidence to which the Court
9 was taken is found in two documents:

10 The first is a letter dated 30th
11 September, 2009, from the General Practice

12 CICA 11-10 AG v Lanisia Barnes (oral transcript)
Clinic at George Town Hospital signed by

13 Dr. Fiona Robertson. That letter refers to the
14 patient by a different name - "Lanisia
15 McLaughlin" - but it has not been suggested
16 that the patient under that name is not indeed
17 Mrs. Barnes. The letter contains these
18 sentences:

19 "This is to certify that the above-named
20 person is a patient of the General Practice
21 Clinic of the George Town Hospital. She has a
22 seizure disorder which is only partially
23 controlled on her current medication.

24 On the 22nd of September 2009 she was
25 unwell and had come to the doctor and could not

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(CHADWICK, President: Reasons for Judgment)

1 attend Court. Her condition is chronic and can
2 be exacerbated by stressful conditions. A
3 recent increase in her medication should
4 improve her situation".

5 The doctor invited the reader to make
6 contact should there be any queries or
7 clarification needed.

8 As appears on the face of that letter, it
9 was not written as a medical report for the
10 purposes of consideration at the point of
11 sentence. It was written to explain why
12 Mrs. Barnes had not appeared at Court on 22nd
13 of September 2009; a date which was before she
14 was arraigned or had pleaded guilty.

18 CICA 11-10 AG v Lanisia Barnes (oral transcript)
19 position than the normal person because one of
20 the things...". He was unable to complete that
21 sentence because the judge intervened to say:
22 "Mr. Murray, mind, you make me change my mind
23 you know". Counsel indicated that he would
24 like the judge to look at a further report; but
25 the judge was not prepared to do so. The judge
observed:

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(CHADWICK, President: Reasons for Judgment)

1 "The effect on the offender will be
2 that it may well turn out to have
3 disastrous consequences on her
4 health. We can't take it any
5 higher".

6 There was really no further argument or
7 submission about the point. A few sentences
8 further on in the transcript the judge is
9 recorded as saying: "Okay, I've heard enough,
10 I'm not going to send her to prison".

11 The further document to which her advocate
12 may have intended to refer the judge is a
13 letter dated 16th April, 2010, which confirmed
14 that she had been admitted to the critical care
15 unit of 20th April 2009; and that, at the time
16 she was admitted, she was in an unresponsive
17 state with a diagnosis of "status epilepticus".
18 By the 23rd of April she was noted to be
19 rational and alert and was finally discharged
20 for home on 24th April, 2010.

24 CICA 11-10 AG v Lanisia Barnes (oral transcript)
this nature should attract an immediate
25 custodial sentence; and no basis on which to

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(CHADWICK, President: Reasons for Judgment)

1 pass the sentence which he did. That is to
2 say, a non-custodial sentence of probation
3 linked to community service of 240 hours, was
4 not properly open to him in the circumstances.

5 That sentence was plainly wrong. The
6 appropriate sentence in this case would have
7 been a sentence of immediate imprisonment for
8 at least two years. That term gives credit for
9 the guilty plea which was entered by the
10 offender; but takes account of the serious
11 nature of the offence committed by an employee
12 in a senior position within a bank, exploiting
13 her position for her own advantage.

14 This Court takes yet another opportunity
15 to emphasise that cases of this nature will
16 usually attract an immediate custodial
17 sentence. This is not a case in which there
18 was any reason to depart from that principle.
19 The sentence passed was plainly unduly lenient;
20 and the appeal under section 30(1) of the Court
21 of Appeal Law must succeed.

22 In those circumstances, the Crown's appeal
23 must be allowed.

24 The question, then, is what sentence
25 should this Court impose at this stage?

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(CHADWICK, President: Reasons for Judgment)

1 Section 30(1) provides that, in a case in which
2 this Court is satisfied that the sentence
3 passed at trial was unduly lenient, the Court
4 may, in place of it, pass such sentence as they
5 think appropriate for the case. That requires
6 us to consider what sentence is now
7 appropriate, having regard to what has
8 occurred.

9 The events since sentence include the
10 completion of some 94 hours of community
11 service. A further factor which we may
12 properly take into account, in deciding what
13 sentence now to pass, is that Mrs. Barnes was
14 given the opportunity on 23rd April 2010 to put
15 this offence behind her and to rebuild her
16 life. She has taken that opportunity. This is
17 an offender who destroyed her life by the
18 offences which she committed. She sold her
19 house to repay the monies which she
20 misappropriated from the bank. She, of course,
21 lost her job at the bank. Her marriage, it
22 seems, has broken up: in that (we were told)
23 that she and her husband are now separated.
24 Nevertheless, she continues to care for her
25 four children, aged between nine and 16, all of

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1 whom are living with her and her mother. Her
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2 mother has the additional obligation of caring
3 for a disabled grandmother. Of the four
4 children, only the youngest is the child of the
5 offender's husband. The other three would have
6 nowhere to go if she could not care for them.
7 The offender has obtained employment with
8 Cayman Rehab Services. She has been working
9 there for some 18 months. And there is no
10 reason to think that she will not be able to
11 continue that employment. She has fulfilled
12 her obligations under the community service
13 order to the extent that I have indicated; and
14 there is no reason to think that she will not
15 continue to serve the community in the way that
16 she has been doing, by assisting with youth
17 camp and a youth football team.

18 Is there, in those circumstances, any need
19 now to send her to prison: in circumstances
20 where she had been led to, by the sentence
21 passed on her on 23rd April 2010, that she
22 would not be going to prison?

23 That is a question which we have found
24 difficult, but we have come to the conclusion
25 that it is not necessary for her now to be sent

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1 to prison. The message that the sentence
2 passed on 23rd April 2010 was the wrong
3 sentence can be emphasised without that step
4 being taken.

8 response to the particular circumstances of
9 this case. Had the appropriate sentence been
10 passed, as it should have been, on the 23rd of
11 April 2010, this offender would now find
12 herself in prison serving a sentence of some
13 two years. The circumstances have favoured
14 her; in that the appropriate sentence was not
15 passed at the time.

16 It is important to emphasise, again, that
17 those who commit offences of this nature can
18 expect to go to prison. We have considered
19 whether it is necessary to underline that
20 principle by sending this offender now to
21 prison, despite what has happened. We are
22 satisfied that that step is not necessary. We
23 make it clear by our judgment that an immediate
24 term of imprisonment was appropriate and that
25 it is only because of the events since the 23rd

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1 of April that we now take the view that the
2 sentence should be suspended.

3 Accordingly, the appeal is allowed, the
4 community service order is set aside. The
5 probation order is left in place. We
6 substitute a sentence of imprisonment of 12
7 months which we suspend for 12 months.

8 MS. GUNN: Thank you My Lord.

9 THE COURT: Thank you Ms. Gunn. Thank you
10 Mrs. Barnes.

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11 THE DEFENDANT: Thank you.

12

13 (PROCEEDINGS CONCLUDED AT 1:01 P.M.)

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A. Bodden

Registrar

1st September 2010

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