

IN THE CAYMAN ISLANDS COURT OF APPEAL  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN  
IND. NO. 47/94

BEFORE : THE RT. HON. MR. JUSTICE EDWARD ZACCA, PC., OJ., PRESIDENT  
THE RT. HON. MR. JUSTICE TELFORD GEORGES, PC., JA.  
THE RT. HON. MR. JUSTICE JAMES KERR, JA.

JUDY ANN McLAUGHLIN V. THE CROWN

Mr. Ivor Archie for the Crown

Mr. John Furniss for the Defendant

6th December, 1995

JUDGEMENT

The appellant pleaded guilty to an indictment containing three counts of theft - the total sum involved being CI \$7,622.00. The offences were alleged to have taken place on 18th February, 1995, 25th February, 1995 and on or about 11th March, 1995. She was then employed as a clerk at Cayman International Trust Company Limited and the money stolen was that of her employer.

In each case she had initiated transfers of funds from clients account without proper authorisation and relying on the trust reposed

in her by her supervisors had had the transfers authorised without careful scrutiny of the authenticity of the originating authorisation. Her financial affairs had become entangled and in each case she used the money to meet pressing claims.

Inquiries began when a client challenged a debit to his account. The relevant transfer vouchers were traced to the appellant. It is urged and not challenged that the discovery so unsettled her that she needed psychiatric help. She confided to her doctor the other two defalcations and with her consent he disclosed them to her husband and the bank. This resulted in the other two charges. Her family rallied and repaid the sum stolen.

Her problem is analysed as an inability to communicate. Instead of telling her husband and her family of her financial difficulties she resorted to using her employer's money. So great was her mental disturbance, she attempted suicide.

In imposing sentence the trial judge accepted that the appellant has suffered greatly and had lost her reputation and her job. He stressed, however, that he had a responsibility to uphold the reputation of the Cayman Islands as a reputable centre where employees of financial institutions could be depended upon to be honest. He wished to send out the message that employees who breached that trust must, save in the most exceptional and compassionate circumstances, expect an immediate prison sentence. He could find no such circumstances in this case. Accordingly he imposed a sentence of two

years imprisonment, fifteen months of which were suspended in recognition of the particular mitigating circumstances of the case which have been reviewed.

In presenting his appeal Mr. Furniss reiterated much of what he had told the trial judge. We are satisfied, however, that the trial judge had already given due weight to these matters and there was no further basis for interference.

He did mention one new fact which merits consideration. On the same day on which the appellant had been sentenced two other accused persons were sentenced by the same judge - Rivers and Powery Ind. No. 40/94. They were employees of British American bank working in the section which arranged transfers of cash by Western Union. Acting in collusion with colleagues in Jamaica they had transferred \$37,000.00 to them in Jamaica the understanding being that that sum would be returned with a profit from being used in effect in currency speculation in Jamaica. The sum was not returned and the charge of theft resulted. They pleaded guilty. Part of the sum stolen still remained unpaid and the judge ordered payment by instalment. He sentenced these two accused persons to nine months imprisonment wholly suspended for two years. Mr. Archie for the Crown accepted the correctness of this report and acknowledged that the case caused him some concern. We are also concerned.

Mr. Furniss urged that the disparity between these two sentences

is such that we can only do justice by wholly suspending the two year sentence imposed on this appellant.

In both cases the accused persons were bank employees occupying a position of trust. It may be that the present appellant took monies from the accounts of identified clients while Rivers and Powery may well have transferred money from a fund not identifiable with any particular client. The difference is immaterial. In each case the bank would be the loser if the money was not recovered - not the client. Rivers and Powery is not on appeal before us and no further comment is necessary.

We need only say that the principles on which the judge in this case sentenced the appellant are demonstrably correct. They accord with guidelines laid down by the Court of Criminal Appeal in England in R v. Barrick (1985) 81 C App. R (S) 78 at page 81

"In general a term of immediate imprisonment is inevitable save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the court should nevertheless pose a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence."

Accordingly we conclude that since the basic principle on which the judge acted was correct and the term imposed was not manifestly severe there was no basis on which we could interfere. The principle that there should, generally speaking, be reasonable parity between sentences imposed in cases the facts of which are roughly similar, should not be allowed to distort the fundamental principles which

should determine the sentences to be imposed in cases in which the sentence is aimed at the protection of an important public interest.

Accordingly the appeal is dismissed the sentence is confirmed.

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JUSTICE EDWARD ZACCA, PRESIDENT

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JUSTICE JAMES KERR, J.A.

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JUSTICE TELFORD GEORGES, J.A.