

IN THE HIGH COURT OF JUSTICE

BRITISH VIRGIN ISLANDS

(CRIMINAL JURISDICTION)

CRIMINAL CASE NO. 15 of 2006

THE QUEEN

and

COURTNEY ANDERSON

Appearances: Mr. Terrence Williams, DPP for the Prosecution
Mrs. Tana'ania Small-Davis for the Defendant

2006: July 6th, 11th and 12th

Judgment on Sentencing

(Criminal law – sentencing – Guilty Plea – Conspiracy to Forge a Passport – Criminal Code 1997 S. 312)

[1] **Joseph -Olivetti J:** The Defendant, Courtney Anderson pleaded guilty on Thursday 6th July 2006 to the offence of conspiracy to forge a passport contrary to section 312 of the Criminal Code 1997 of the Laws of the Virgin Islands. A sentencing hearing was deferred to the 11th July and he was sentenced to nine months imprisonment. I now give my full reasons.

FACTS AS GIVEN BY THE CROWN AND AGREED TO BY DEFENCE

[2] During the month of April, 2004, 57 passports were reported stolen from the Passport Office of the Government of the British Virgin Islands. On 30th June, 2004 Mr. Alrick Gilbert a native of Jamaica and a resident of the British Virgin Islands reported to the Royal Virgin Islands Police that he was aware of and had personal knowledge that one Courtney Anderson, also a native of Jamaica and resident of the British Virgin Islands, was selling or reportedly being able to sell British Virgin Islands Passports.

- [3] As a result of this information, and with the cooperation of Mr. Gilbert, Superintendent of Police, Alwyn James, along with other members of the Royal Virgin Islands Police Force set up a sting operation, whereby they were able to document by video, audio and still photos, transactions for the sale of BVI Passport between Mr. Gilbert and the Defendant.
- [4] After meeting with Mr. Gilbert on a number of occasions at Police Headquarters, from where telephone calls were made to the Defendant from a privately listed cellular phone, the Police were able, with the permission of Mr. Gilbert, to record the conversations between Mr. Gilbert and the Defendant for the sale and purchase of the BVI passport.
- [5] On 8th of September, 2004, as a part of the sting operation, Mr. Gilbert visited Police Headquarters in Road Town where he was outfitted with a covert recording device and given a total of \$2,000.00 in cash. This money was used as the purchase money for Mr. Gilbert to obtain the passport from the Defendant. Members of the Royal Virgin Islands Police Force later that day recorded the conversation, interaction and exchange of the \$2,000.00 between Mr. Gilbert and the Defendant for the sale and purchase of the BVI Passport.
- [6] After further investigations and upon obtaining this further evidence, on 28th February, 2005 the Police obtained a search warrant from the Magistrates Court and carried out a search at the residence of the Defendant. They found therein, in a pants pocket belonging to the Defendant, a Riteway Flyer, with the name of Mr. Gilbert and his telephone number written on the back of the flier.
- [7] The Defendant initially denied any knowledge of the conspiracy to forge and/or sell BVI passports. However, when the Police confronted him with the evidence which they had compiled, the Defendant confessed to the offence of conspiracy to forge a passport.

Mitigation

- [8] The Defendant called ten character witnesses, including his fiancée, and the Court admitted in evidence (AI) three written testimonials from witnesses who were unable to attend. The import of all this testimony was to the effect that the Defendant enjoyed a

good reputation in his community and was well known for his generosity and kindness and had an unusual rapport with children.

[9] The Defendant also spoke on his own behalf. He is the father of four children who all live abroad in Jamaica and he supports them. He said that he was sorry, and that he would never become so involved again. A potential dispute arose as to the facts as he purported to give a different version from that given by the Crown. However, this was resolved subsequently by his Counsel (after consultation with the DPP and the Defendant) agreeing that the Court should proceed on the Crown's version.

[10] In her plea in mitigation Counsel stressed the Defendant's prior good character and the fact that he had pleaded guilty. Further, that no passports or other evidence was found during the search indicating limited involvement in the unlawful dealings with passports. Counsel also asked the Court to take into account the fact that the Defendant had attempted to return the money, albeit by cheque, and that it was refused. Counsel accepted that the Court did not have to consider the issue of agent provocateur. With respect to authorities Counsel relied on the English case of **R v Boyan Yossifov Siliavski** [2000] 1 Cr. App. R. (S.) and sought to distinguish the local case of **R v Noreen Verna Simon** Case No. 12 of 2000 relied on by the Crown.

Crown's submissions

[11] The DPP relied on his written submissions, in which he made reference to a related case of **Commissioner of Police v Howard Stephens**, to the English case of **R v Dominic Makarachuma Walker and Simon**.

[12] The Crown submitted in effect that the aggravating factors outweighed the mitigating factors which it identified as being one, the guilty plea, and enumerated the aggravating factors as follows:

- (1) Well Organized System
- (2) Connected to Public Servants Acting in breach of trust

(3) For profit and did not repay money taken

Court's consideration

- [13] The maximum sentence for this offence is two years imprisonment and or a fine of \$2,000.00. See sections 312 and 239 of the Code. The aggravating factors I consider are those identified by the Crown and I agree that they outweigh the mitigating factors of the guilty plea and the prior good character of the Defendant. I have not taken into account his three prior convictions as they all relate to minor traffic offences.
- [14] I note much emphasis was put on the Defendant's generous nature or his willingness to help others and that he seems to put that forward as an excuse for having committed the crime. However, I have no doubt that the Defendant knew that what he was engaged in was contrary to law and that every adult which the Defendant undoubtedly is, being aged 38, knows that it is wrong to engage in a criminal act in aid of friendship. To permit this as an excuse would be opening the door to anarchy.
- [15] In any event, I reject this explanation as the evidence clearly shows that the Defendant was fully involved in the conspiracy and was not merely a "do gooder". And, one cannot overlook the fact that this was, on the Crown's case, a conspiracy for profit which was linked to the thefts of the passports and that money (\$2,000.00) was given to the Defendant which was never recovered.
- [16] The English authorities relied on by both sides establish that offences of this sort are regarded as serious and merit a custodial sentence even for a first offender with a prior good character.
- [17] In **Siliavski** the Defendant pleaded guilty **in the Magistrate's Court** to possessing forged Greek passports – four were found on him on his arrival at Heathrow. He claimed he was transporting an envelope for someone but on finding the passports rather than drugs in the envelope that he was relieved but conceded that he thought something illegal was going on. The Magistrate sentenced him to 12 months imprisonment which was reduced by the Court of Appeal to six months. **Garland J** said at page 1:

“In our judgment, cases involving the use of false passports will almost always merit a significant period of custody. Taking account what this Court said in Ollerenshaw (April 23, 1998) this will usually be within the range of six to nine months, even on a guilty plea by a person of good character.”

[18] In **Walker**, the Defendant pleaded guilty to making an untrue statement for the purpose of obtaining an English passport. He had been born in Zimbabwe and had come to England with a work visa which had subsequently expired. He was aged 31, was of previous good character and had given evidence for the prosecution in a serious criminal trial. He was sentenced to 18 months imprisonment, the maximum being 2 years. On appeal this was reduced to nine months. **Mr. Justice Keene** had this to say at page 3:

“There is no doubt that offences involving passport applications are to be treated seriously. They have the potential to undermine the system of immigration control and, in our judgment, a custodial sentence was appropriate in the present case, even for a first offence.”

[19] I respectfully adopt these sentiments and add that offences involving illegal dealings with passports would be viewed even more seriously in the present climate where the world is becoming increasingly more concerned with international terrorism and trans-border crimes.

[20] The Crown also relied on the case of **Simon**. However, I agree with learned counsel for the Defendant that this case is easily distinguished on its facts. The crime was different, the maximum penalty was 14 years and breach of trust (employer/employee) was involved.

[22] The final case, **Stephens** was for theft of passports and it was dealt with by the Magistrate and a passport was apparently recovered from Stephens unlike in the instant case. **Stephens** received 4 months from a maximum of 2 years. However, matters before the High Court invariably attract higher sentences. If that case had been in the High Court the Court would have had to consider a maximum penalty of 10 years.

[23] On consideration of all the foregoing factors a custodial term is appropriate and I hereby sentence the Defendant to nine months imprisonment; time spent in custody awaiting sentence to be taken into account.

Rita Joseph Olivetti
High Court Judge
British Virgin Islands