

BRITISH VIRGIN ISLANDS

(CRIMINAL JURISDICTION)

CRIMINAL CASE NO 21 of 2007

THE QUEEN

and

AKEEM SEBASTIAN

**Appearances:**

Mr. Terrance Williams, Director of Public Prosecutions and Ms. Tiffany Scatliffe, Crown Counsel for the Prosecution

Mr. Herbert McKenzie for the Prisoner

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2007: October 24<sup>th</sup>, 25 and 29<sup>th</sup>

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**Judgment on Sentencing**

(Perjury – Conviction – Criminal Code 1997 s.95 – principles to be considered on sentencing)

- [1] **Joseph -Olivetti J:** The Prisoner, Akeem Sebastian was charged with perjury, contrary to section 95 of the Criminal Code 1997 as amended (“the Code”). The particulars of the offence were that the Prisoner on the 20<sup>th</sup> June, 2006 having been lawfully sworn as a witness in a judicial proceeding namely Criminal Case No. 1 of 2006 at the Assizes entitled **The Queen v. Akeem Sebastian**, for unlawful sexual intercourse, willfully made a material statement when he was giving evidence in his own defense which he knew to be false, namely that he was single and had never been married.
- [2] The Prisoner was convicted on 25<sup>th</sup> October, 2007. A sentencing hearing was held on the 29<sup>th</sup> October 2007 and sentence pronounced on the same day. These are my full reasons.

**The Facts**

- [3] The gist of the facts as found by the jury by their verdict is as follows. The Prisoner was lawfully sworn as a witness in Criminal Case No. 1 of 2006 - **The Queen v. Akeem Sebastian**. Although he gave evidence to the effect that he was single and had never

been married in fact he was married at the time and therefore the statement was untrue and amounted to a material statement. (The materiality of the statement was a matter of law and the jury was directed by the court to find that the statement was material).

- [4] At that trial the Prisoner was found guilty of two counts of unlawful sexual intercourse and during mitigation his counsel stated to the court that the Prisoner was married and his wife was financially dependent upon him.

### Mitigation

- [5] The following facts about the Prisoner were gleaned from Mr. McKenzie's plea in mitigation. The Prisoner is 22 years old, a construction worker. He lived with his mother. He has no children but is married – a marriage of convenience only. The Prisoner was sorry for his act and did not realize the gravity of it and the possible consequences of perjuring himself. The thought of going back to Prison is overwhelming.
- [6] We also heard from Mr. Reynard Hamm who conducts religious services at the Prison. He testified to the effect that the Prisoner wishes to amend his ways and has conducted himself at Her Majesty's Prison without any cause for concern.
- [7] Learned Counsel for the Prisoner emphasized that the Prisoner has conducted himself well in prison and that since his release he has shown improvement. He also pleaded with the court not to impose a custodial sentence as he had just been released from prison in relation to the case in which he committed perjury.

### The Crown's Submissions

- [8] The Crown submitted several authorities that did not number among them any local or regional cases, testament, no doubt, to the difficulty inherent in obtaining convictions for such offences. They included **R. v. Jeffrey Howard Archer**<sup>1</sup>, **R. v. William Dunlop**<sup>2</sup>, **R. v. Kenneth David Yates**<sup>3</sup>, **R. v. Colin Charles Knight**<sup>4</sup> and **R. v. John Davies**<sup>5</sup>.

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<sup>1</sup> [2003] 1 Cr. App. R. (S.) 86

<sup>2</sup> [2001] 2 Cr. App. R. (S.) 27

<sup>3</sup> [1989] 11 Cr. App. R. (S.) 451

<sup>4</sup> [1984] 6 Cr. App. R. (S.) 31

<sup>5</sup> P1974] 59 Cr. App. R. 311

[9] The Crown contended in essence that the aggravating factors outweighed the mitigating factors. Ms. Scatliffe identified the aggravating factors as the prior convictions of the Prisoner, the seriousness of the offence being one against the administration of justice, the fact that although the Prisoner did not plead guilty he admitted the offence during examination-in-chief and stated that he did so as he did not know he could have been charged for the falsehood and the offence was committed in an attempt to discredit a prosecution witness and possibly affect the outcome of the proceedings. No mitigating factors were alluded to.

### Court's Considerations

[10] This offence attracts a maximum penalty of 7 years imprisonment. However, the law has invested a wide discretion in the court on sentencing to ensure that the punishment imposed reflects the justice of the case having regard to the particular facts of each case. In sentencing an offender one is guided by the aims of sentencing, the primary goals being punishment, deterrence, rehabilitation and the protection of the society.

[11] First I will review the authorities and attempt to glean from them some guiding principles. In **R v. Kenneth David Yates** the English court of appeal reduced a three year sentence for perjury to 2 years on a guilty plea. The court ruled that in considering a sentence for perjury all the circumstances of the falsehood should be reviewed in addition to why the perjury was committed. In that case it was committed to aid an alibi put forward by two defendants who were on trial for robbery. They were both convicted and sentenced to 5 years imprisonment.

[12] In **R. v. Colin Charles Knight** the English Court of Appeal upheld a sentence of 3 years for perjury on a guilty plea from a defendant of good character. He committed the offence to aid a defendant who committed the robbery of an armoured van carrying substantial sums of money. The court in reviewing the sentence considered that perjury is difficult to detect and more difficult to prove and that when it occurs it demands an instant prison sentence. In perjury cases it is important to show that the offender was punished and it should send the message that if any person contemplates or considers giving false evidence, such an action would always be met by immediate punishment. This was

- reiterated in **R. v. John Davies** where a father was sentenced to 12 months imprisonment when he perjured himself to assist his two children.
- [13] The authorities cited establish that perjury is a serious offence against the administration of justice and that it would invariably attract a prison sentence and that all the circumstances of the case must be looked at including why the offence was committed.
- [14] I have considered the Crown's submissions and what was said in mitigation by the Prisoner's counsel. However, I accept the Prisoner's explanation from the witness stand that part of the reason he committed a falsehood is that he was embarrassed by his marriage which was to a woman 14 years older than himself and that he had not even told his mother of his nuptials. Further it is clear that he did not tell that falsehood deliberately to undermine the Crown's witness as was alleged although in finding the statement material the court found that the statement could have had that effect if believed by the jury. I say this because I recall the trial which I presided over and to my mind no questions were asked of that witness based on the falsehood that is borne out by the transcript. This is further bolstered by the fact that the then counsel for the Prisoner in mitigation submitted without any show of reluctance whatsoever that he had just discovered that the Prisoner was married. It is doubtful whether counsel would have made that statement if the plan was to discredit the witness during the trial on the basis of the Prisoner's marital state. I also take into account that the Prisoner was found guilty of that offence and that he was incarcerated and has served his sentence and has only just been released.
- [15] I note his prior convictions which can all be regarded as serious. The authorities indicate that a custodial sentence is warranted as punishment to bring home to the Prisoner and to those who might be minded to commit like offences that offences against the administration of justice strike at the very heart of our justice system and cannot be treated lightly. However, I am of the view that the Prisoner is young (he is only 21) and was misguided and that he has learnt his lesson on the need to abide by the laws which govern this society. He has just completed a period of incarceration for the offences during the trial of which he committed this offence and I do not think that sending him back again so soon will achieve any useful purpose other than to crush him. This is not the intention of the law as one of the chief, nay, some may say the most important, aim of sentencing is rehabilitation. Accordingly, in my judgment a suspended sentence of imprisonment will

meet the justice of this case. Therefore, I hereby sentence you, Akeem Sebastian to three months imprisonment suspended for one year.

**Rita Joseph-Olivetti**  
High Court Judge  
British Virgin Islands