

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA



DOM HCR2012/039

BETWEEN

THE STATE

AND

ESHANETTE JOSEPH

1 MARCH 2013

Appearances:

Mr Gene Pestaina Director of Public Prosecution with Mr Clement Joseph and
Arthlyn Nesty State Counsel for the State
The Defendant Pro Se

SENTENCING REMARKS

- [1] STEPHENSON J: The defendant Eshannette Joseph was charged with theft on an indictment filed by the Learned Director of Public Prosecutions on 8th January 2013, contrary to section 3(1) of the Theft Act¹, for that she between the 19th day of December 2010 and the 30th day of May 2011 at 18 Hibiscus Ridge, St Aroment in the parish of St George in the Commonwealth of Dominica did steal the sum of EC\$11,218.11 belonging to Mrs Linda Hill.
- [2] At arraignment, the defendant pleaded guilty to the offence as charged and by pleading guilty she has accepted that she has committed a serious offence of dishonesty.
- [3] The facts as stated by the Prosecution are as follows: That Mrs Linda Hill left Dominica on the 19th December 2010 and travelled out of state to the United States of America returning to Dominica on the 3rd May 2011.

¹ Chapter 10:33 of the Dominica Revised Laws of 1990

- [4] Upon her return Mrs Hill realized that there were a significant amount of transactions conducted on her bank account during the period that she was out of state. She did not authorize any of those transactions. There were approximately 89 transactions done to a total of EC\$11,218.11
- [5] Mrs Hill reported the unauthorized transactions to the bank and a report was made to the police. Following the investigations conducted it was found that the accused Miss Joseph stole Mrs Hill's Scotia Card and her old driver's licence. From the old driver's licence she found out Mrs Hill's date of birth which was the pin for her card. There after Miss Joseph made numerous cash withdrawals from Mrs Hill's account, she made purchases on the internet and from various merchants in Dominica.
- [6] She bought a cell phone and topped up the said cell phone a number of times, she purchased food, clothing, shoes, costume jewelry, for herself and son and she paid her rent with the money that she withdrew from Mrs Hill's account. These transactions were identified by Mrs Hill and queried by the bank.
- [7] The defendant is going to be twenty three years old on the 28th of this month having been born on the 28th March 1990. She lives at Wesley with her great grandmother who she takes care of, her infant son and maternal uncle.
- [8] Miss Joseph is unemployed and has had the benefit of secondary education. She attended the IsaiahThomas Secondary School where she graduated and attained five CXC subjects.
- [9] Upon leaving school Eshanette has been involved in the care of her 98 year old great grandmother.
- [10] The defendant was born at Wesley and was raised in Colihaut by her Paternal Grandmother who took her after her biological mother was unable to meet her needs. She was later adopted by her Paternal Uncle who resides in the United States of America and the defendant has the hope of being able to migrate to continue her education and to improve her lot in life. She has been described as a good person by her family members and persons from in her community of Wesley and the general feeling is one of sympathy towards her.
- [11] The Court is grateful to the Probation Officer who compiled a thorough report for the use of the Court in sentencing. The foregoing information has been taken from that report. Generally Eshanette is seen and known as a person of good character who acted out of character and indeed there is nothing in the present report to suggest anything different.
- [12] The defendant has expressed remorse and sorrow for her actions and she has clearly accepted responsibility for her actions. Her actions were clearly motivated by a stated desire to keep up with

her friends and to identify with them and to grieve on her part. Eshanette has also come to realize the errors of her actions and the negative impact it will have on her life and any opportunities that may be available to her.

- [13] She has indicated a willingness to express her sincere apologies to the virtual complainant in this matter and to that end she wrote a letter which was read to the Court by her Counsel in her plea in mitigation.
- [14] Section 9 of the Theft Act² states that "*A person found guilty of theft is liable on conviction on indictment to imprisonment of ten years*"
- [15] In considering the appropriateness of sentence, I must have regard to the culpability of the accused taking into consideration the seriousness of the offence. I am obligated to carry out an evaluative process as well before I arrive at the actual sentence to be imposed. It is also my duty as the presiding Judicial Officer to have regard to the principles and rules provided by statute and the common law.
- [16] In determining the appropriate sentence I must have regard not only to any guidance that obtains in other judgments and other orders of the court but additionally to the particular circumstances of the offence committed, its effect upon the victim and the record of the offender if any.
- [17] In the case at bar, Miss Joseph is a first time offender and I would hasten to say that in our jurisdiction it is unusual for the court to impose a custodial sentence on a first time offender absent any aggravating features.
- [18] The sentencing judge is required to take into consideration the characteristics of the offence and the character of the offender in making the determination of the appropriate sentence. Also, the judge must weigh the mitigating factors against the aggravating factors in determining what is the appropriate sentence.
- [19] The aggravating factors in the case at bar includes the breach of trust, not only on the part of the virtual complainant, but also on the part of her biological mother in that the Miss Joseph stole from her biological mother's employer, when the employer was out of state away from her home having left Miss Joseph's mother who was a long serving and trusted employee in charge of her home. Miss Joseph who we can assume was allowed to visit the home uplifted the bank card and driver's licence without permission. In doing so she breached whatever trust her mother would have had in her and also the trust that Mrs Hill would have had in her as a family member of a long and trusted employee. The other aggravating factor which is worth mentioning is the effect her action would have had not only on the victim but on her biological mother in that she could have lost her livelihood and means of earning a living through the actions of her offspring.

² Op cit

[20] Mitigating factors can also include the fact that the Miss Joseph has pleaded guilty at the first possible opportunity, she is a young person being just a few days short of her twenty third birthday, that she has a young son to take care of and also her elderly great grandmother who depends on her, she has no previous criminal record and she has expressed remorse and regret for her actions. Miss Joseph also cooperated with the Investigating Officers and pleaded guilty at the first possible opportunity. These mitigating factors must be weighed against the aggravating factors. In the court's view the mitigating factors outweigh the aggravating factors.

[21] It is the law that the sentence that is imposed should be proportionate to the offence. In sentencing an offender, it is a well established principle and practice of the court that a discount is given where the offender has pleaded guilty. A guilty plea coming early in the trial usually attracts a discount of one third, this is in line with sentencing guidelines which have been established in England and which have been followed by the Courts in the Eastern Caribbean Supreme Court.

[22] In *Desmond Baptiste et al v The Queen*³ Byron CJ (as he then was) stated that:

*"...the defendant who has pleaded guilty is entitled to a considerable discount and that the discount should be applied not to maximum sentence possible under the statute but rather to the notional sentence, the sentencer might have given save for the guilty plea."*⁴

[23] Chief Justice Byron also in the *Desmond Baptiste Case*⁵ also applied what is now considered to be the classical principles of sentencing as identified and stated by Lord Justice Lawton in *R-v-Sergeant*⁶ to be retribution, deterrence, prevention and rehabilitation which principles were acknowledged and applied by Chief Justice Byron and in fact have been applied by our Courts in sentencing.

[24] The decision as to what sentence to hand down can be said to involve a two step process; that is, a decision should be made as to what sentence is appropriate given the nature and seriousness of the offence committed by the defendant and then consideration is to be given as to whether that sentence should be reduced in the light of any of the mitigating circumstances affecting the case under consideration.

[25] In determining the appropriate sentence, the court will apply the above stated principles having taken into consideration all the necessary factors and also the sentences handed down by this court in the Dominica Circuit for similar offences.

[26] The sentence of the court is that the accused is sentenced to 4 years in prison suspended on the condition that the virtual complainant is compensated in the sum of EC\$11,218.11 with interest on the said sum at the rate of 4% per annum from the 20th day of May 2011 to the date of payment and that payment is to be made by the 28 February 2014. Additionally there is a fine of \$3,600.00 to be paid on or before the 30th day of June 2014 and failure to pay the fine the

³ Civil Appeal Nos. 8, 10,16,22,26,29,34,37,41 and 46 of 2003 (St Vincent & The Grenadines)

⁴ Ibid paragraph 28

⁵ supra

⁶ 60 Cr App R 74 at p 77

defendant is sentenced to one year in prison to be served consecutively to the suspended sentence. Both the suspended sentence and the fine is hereby reduced by 30% to 2 years and 8 months and \$2,400.00 and in default 9 months imprisonment in recognition of the guilty plea which was entered by the accused at the first possible opportunity.

[27] I want to take this opportunity to encourage Eshanette to learn from her experience and to take steps to move her life in a totally different direction. I have also taken into consideration in deciding what sentence to hand down to say to you that what you have done has and will be a stumbling block to going to the USA as has been indicated you were looking forward to do.



Birnie Stephenson

.....
Birnie Stephenson
High Court Judge