

**IN THE EASTERN CARIBBEAN SUPREME COURT
HIGH COURT OF JUSTICE
MONTSERRAT
Case MNIHCR 2016/0016**

REGINA

V

KESTON RILEY

APPEARANCES:

Mr Oris Sullivan, the DPP, appeared for the Crown.

Mr David Brandt for the defendant.

10 April 2017

- 1 **Morley J:** Keston Riley faces sentence on a single count of fraudulent evasion, contrary to the s117(1)(a)(i) *Customs (Control and Management Act Cap 17.04* for which the maximum is 2 years. On 20.03.17 he pleaded guilty to unlawfully removing with fraudulent intent four tires from a customs warehouse.

- 2 He is 25, without previous convictions, and a tally clerk at the Montserrat Port Authority, where he has worked since 2009. He is in a position of trust. His job involves tallying arriving goods against paperwork so that inventory can be taken as to what has arrived, compared to what is supposed to have arrived, so that duty may be payable as required.

- 3 On 08.08.16, four tires arrived for his car, imported by his friend Jervain Greenaway, who imported 20 others. Riley had paid Greenaway already, and on unstuffing the relevant container, and seeing the batch, removed his four tires, resealed the batch, casually walked the tires out of the bonded warehouse, paid EC\$25 to a friend named Antwan Lee to drive them out of the port in his car, lied to security the tires had been cleared by Customs, and was later found at the public works department to be fitting them to his vehicle.
- 4 In mitigation it was said the system at the port authority has become lax and this case is being monitored by all there. The MPA is the largest source of revenue in Montserrat. By reason of his conviction Riley has lost his job. I am told by defence counsel that many are surprised he was prosecuted. It is not uncommon for goods to be taken out of the port without proper procedures being followed, which may explain how casually he walked the tires out. It is an important defence feature that the duty on the tires of EC\$337 was paid the next day, by Greenaway, and for the purposes of sentence I accept it was always going to be paid. The fraud has been articulated as dishonestly acquiring the tires for his own benefit, namely earlier than was rightful, in flagrant breach of the port rules.
- 5 Riley has two children, aged 2 and 1, to whom he is close, though he does not live with them, and the youngest suffers an illness which may need treatment in the UK. His father to whom he was also close, sadly died last week in the UK.
- 6 As to starting point for this offence, in light of the breach of trust, though not committed specifically to evade the EC\$337 duty, I consider it to be six months. As to aggravating features (having already considered the breach of trust), I find none. As to mitigating features, I find his young age, absence of previous convictions, ill young child, and recent loss of his father reduce the offence to three months. Giving credit of the plea reduces it to two months.
- 7 Considering the purpose of sentencing, in a case such as this, where there has been a laxity arise at the port, and mindful of the leading case on sentencing of *R v Baptiste*, I must weigh the need for deterrence against rehabilitation. If the latter prevails, a community service order requiring unpaid work for the community might be appropriate, as noted in the helpful PSR of Beverly Reid of 30.03.17. However, weighing matters carefully, I am of the view that this case

requires a deterrent sentence, and in particular because in the PSR at para 12.1 where it is observed *'Mr Riley continues to minimize his actions....to some extent I wonder if he fully understands the impact that offences of this nature have on the revenue of the country when individuals who are placed in a position of trust and authority are expected to conduct themselves in a manner which demonstrates an understanding and respect for the rules.'* It seems Riley may not be alone at the port in minimizing responsibility and that a broader message needs to be sent in this case.

- 8 In these circumstances, in my judgment the correct sentence is one of a short sentence of imprisonment, being not so long as to interfere with his family circumstances, but equally it will set an example to him and to others.

The Hon. Mr. Justice Iain Morley QC

10 April 2017