

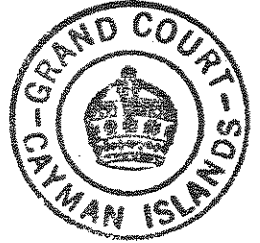
1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **IND No: 0015/2010A**

5
6
7 **REGINA**

8 **V.**

9
10 **DAVE BRYAN**



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13
14 **Appearances:**

Ms. Toyin Salako for the Crown

15
16 **Mr. Nicholas Dixey of Nelson & Co. for the**
17 **Defendant**

18
19 **Before:**

The Hon. Mr. Justice Malcolm Swift (Actg.)

20 **Heard:**

9th December 2014

21
22 **SENTENCE RULING**
23

- 24 1. The Defendant was a partner in the business Cayman Bakery together with Bernie
25 Bush. The Defendant was in day to day charge of the business. The Bakery supplied
26 bread to a number of Cayman businesses including Foster's Food Fair Airport Branch.
27 The Defendant took advantage of a less than satisfactory system at Foster's where
28 employees did not adhere to the procedure for receiving and recording deliveries and
29 checking invoices against deliveries. The Defendant was able to inflate invoices and to
30 claim for bread that had never been delivered. He was trusted not to cheat the system
31 but he did. He covered things up by interfering with the paperwork kept by Blossom
32 Bush, who was responsible for the Bakery accounts.

1 2. On the 31st May 2008, the branch manager at Foster's realized things were not as they
2 should have been. He was unable to find a substantial amount of bread products which
3 were supposed to have been delivered the previous day. On examination of records,
4 further discrepancies were found. A meeting took place on the 7th June 2008 at which
5 the defendant was present; he lied about the roles in the matter of his driver Neville
6 Sam Wright, and of Foster's employee Seymour Morgan, blaming them for the
7 problem.

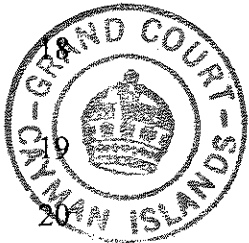
8 3. When the police investigated, it was quickly discovered that the Bakery invoices were
9 dramatically overstating the delivery amounts. There simply wasn't the space either on
10 the supermarket shelves or in the delivery vans for the volume of products listed in the
11 invoices. In short, the products had been neither baked nor delivered.

12 4. The Basis of Plea (taken together with the signed answers to the questions I asked the
13 defence) includes the following important agreed facts.

14 i. First: Offending arises out of a commercial relationship between the Defendant's
15 Bakery Company and Foster's Food Fair;

16 ii. Second: The Defendant took advantage of a deficiency in Foster's accounting
17 system to obtain payment for goods never delivered by obtaining signatures from
 Foster's employees on bogus invoices.

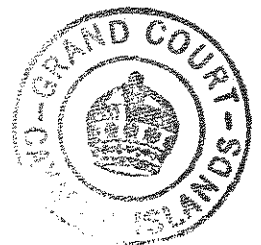
18 iii. Third: The fraud was operated by the Defendant over a period of 21 months
19 whereby he obtained from Foster's a total of US\$309,981.37. In 2012 terms, that
20 equates to £232,000. Slightly less at current day values. That is the total loss to
21 Foster's and the total profit to the Defendant.
22



1 iv. Fourth: It is accepted by the Defendant that no other employees of Foster's were
2 criminally involved in these offences (which means that Seymour Morgan lost his
3 job partly as a result of the suspicion that fell on him and that other employees
4 were investigated), and that the Defendant did try to cover up his dishonesty by
5 issuing cheques to a large number of people as set out in the statement of Blossom
6 Bush. Possibly the most iniquitous aspect of this case is the effect of the
7 Defendant's actions upon the Cayman Bakery delivery driver Sam Wright who
8 was accused wrongly of giving credit to Mr. Morgan at Foster's and, in effect,
9 blamed by the Defendant. I shall return to him later in this sentencing ruling.

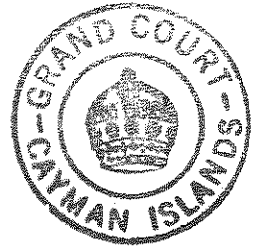
10 5. The re-trial of this Defendant was listed to take place on the 31st March 2014 but was
11 vacated earlier in March for a *Goodyear* indication. I was then asked to indicate what
12 maximum sentence I would then have imposed if the Defendant had pleaded guilty at
13 that stage in the proceedings to Obtaining a Money Transfer by Deception (Count 1).
14 In April 2014, I indicated that the maximum sentence I would then have imposed
15 following a guilty plea to Count 1 at that stage in the proceedings would have been 4½
16 years' imprisonment. Although I then had in mind a reduction in that sentence of one-
17 third to reflect the plea of guilty, I did not indicate that in open court and that course
18 was in accordance with the guidance of the Court of Appeal in *Goodyear*.

19 6. The indication I gave was not accepted. The case was therefore re-listed for trial to
20 commence on the 17th November 2014 but was put back for administrative reasons to
21 start on the 24th November 2014 with jury selection planned for later in the week
22 commencing 17th November 2014.



1 7. In the lead up to the re-listed trial, I read the sentencing remarks of Quin J. who dealt
2 with the first trial, and the judgment of the Cayman Islands Court of Appeal – both of
3 which I had deliberately not read before giving my *Goodyear* indication. I have also
4 read:

- 5 i. The Basis of Plea signed by both counsel and by the Defendant;
- 6 ii. The answers to a list of questions asked by me about the contents of the Basis of
7 Plea which (I have been informed) has been signed by the Defendant;
- 8 iii. The witness statements and exhibits;
- 9 iv. The contents of the Defence Sentence Bundle;
- 10 v. The contents of the Crown Sentence Bundle.



11 8. The original sentence imposed on this Defendant was 5 years' imprisonment on count
12 1, 12 months' imprisonment consecutive on count 5, and 12 months' imprisonment on
13 Count 2 - ordered to run concurrently to the total sentence of 6 years' imprisonment on
14 Counts 1 and 5. In addition, the Summary Court subsequently imposed a consecutive
15 12-month sentence for unrelated offences committed whilst on bail. The total sentence
16 to be served was therefore 7 years' imprisonment.

17 9. I have been informed that the Defendant served 2 years 10 months and 23 days of his
18 original sentence before being released following the decision of the Court of Appeal
19 quashing the conviction on Count 1 and ordering a re-trial. I am told that this is the
20 equivalent of having served a 4 year sentence.

21

1 10. I have now indicated on the 18th November 2014 at the request of the defence that I see
2 no reason to change the *Goodyear* sentence indication I provided in April. The
3 Defendant has pleaded guilty. In the special circumstances of this case, I have thought
4 it proper to indicate to counsel also that I take the view that there is available to the
5 Defendant even at this stage in the proceedings a discount for a guilty plea and that,
6 subject to argument, should be between 20-25%.

7 11. In assessing the starting point for sentence, it is necessary to take into account the
8 following:

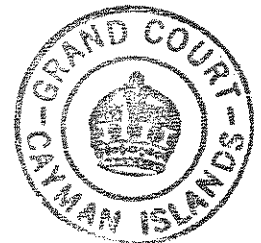
9 i. This was a commercial fraud, that is an abuse of a commercial contract rather than
10 a true breach of trust;

11 ii. This case involved a high degree of deception of those who trusted the Defendant
12 to behave honestly arising out of his position as owner of the bakery;

13 iii. The fraud occurred over a 21-month period;

14 iv. The fraud caused a loss of US\$310,000 which is the equivalent of £225,000
15 (Crown says £232,000 at 17 April 2012). The defence says it equates to £190,000
16 reduced on account of inflation. I am content to adopt the defence figure for
17 present purposes.

18 12. *The Chief Justice's Sentencing Guidelines*¹ suggest that the 4-year maximum can be
19 exceeded in serious cases of dishonesty.



¹ *Chief Justice's Statement on Tariffs and Guidelines for Sentencing* issued on the 16th January 2002

1 13. The guideline case of *Regina v. Clarke*² suggests that this case is at the upper end of
2 the bracket of 3-4 years' imprisonment for dishonesty involving a loss of between
3 £100,000 and £250,000 – even when adjusted for inflation. I have also considered the
4 general sentencing principles in this type of case as set out in the well-known case of
5 *Barrick*³.

6 14. This case is also well inside the UK Sentencing Guidelines Council Guideline of 2 to 6
7 years (UK maximum of 7 yrs.) for offences over £125,000, thus indicating a starting
8 point of 3 years imprisonment. But this case involves well in excess of that figure.

9 15. I have been referred to various authorities:

10 i. *Regina v. Thomas*⁴ – where 4 yrs. 6 months reduced to 30 months imprisonment.
11 CICA took 2 yrs. 6 months to 3 yrs. as starting point after trial. Theft was of
12 CI\$99,000. This case is clearly in a lower bracket of culpability.

13 ii. *Regina v Shultz*⁵ – in which 5 yrs. was reduced to 4 yrs. for a loss of US\$289,000.

14 iii. *Regina v Glasgow*⁶ (a decision of Quin J) in which 5 yrs. was reduced by 20% to
15 4yrs for a loss of US\$437,000 equating to £265,000 and thus at the bottom of the
16 5to 9-year bracket.

17 16. I take as my starting point a sentence of 3½ years' imprisonment – subject to
18 amendment for aggravating and mitigating circumstances.

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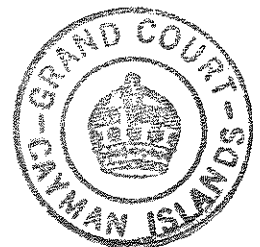
² 1998 2 Cr App R 137

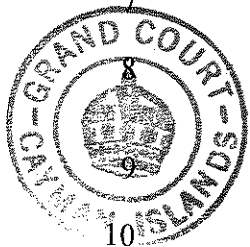
³ [1985] 7 Cr. App. R. (S.) 142 B6

⁴ CICA No 4 of 2013

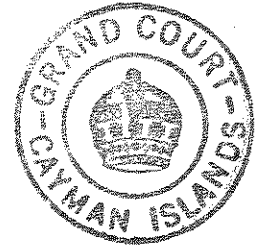
⁵ CICA No 27 of 2012

⁶ Ind. No. 21 of 2013





- 1 17. There are aggravating factors:
- 2 i. Innocent employees were implicated and damaged by the Defendant's conduct.
- 3 Neville 'Sam' Wright – a driver for the Defendant - was arrested for theft,
- 4 handcuffed, taken to the Police station, kept in custody overnight, interviewed and
- 5 deprived of his passport. He lost his job, his work permit and he was unable to
- 6 feed his family or pay his rent. He was caused damage to his good name. He
- 7 could not remain here in Cayman. The Defendant's behaviour was completely
- inexcusable and wicked.
- Seymour Morgan whose position was possibly already precarious, lost his job as a
- 10 direct result of these offences and suspicion fell on him because of his past record
- 11 and, it has to be said, his failure to spot the Defendant's dishonest scheme;
- 12 ii. The Defendant concealed his offending by other offending. He intercepted
- 13 legitimate statements prepared by Blossom Bush. He used employees' names to
- 14 cover up taking money by issuing bogus cheques in their names. He obtained
- 15 credit and wrote cheques to the tune of \$873,000. He drove the Bakery to the edge
- 16 of bankruptcy;
- 17 iii. The Defendant made a considerable profit from his activities.
- 18 18. Apart from his plea of guilty, the Defendant was previously a man of good character.
- 19 There is no other mitigation factor:
- 20 19. On account of the aggravating features of the case but taking into account the previous
- 21 good character, I raise the starting point of sentence to 4½ years' imprisonment (which
- 22 is the maximum sentence I indicated I would pass in my *Goodyear* indication.



- 1 20. I must now consider 3 matters:
- 2 i. Any reduction in sentence as a result of the guilty plea;
- 3 ii. Any reduction on account of other mitigation matters;
- 4 iii. The effect (if any) of his other sentences of imprisonment;

5 21. The prosecution case is overwhelming. Nevertheless it takes courage to plead guilty
6 after having been released from a long sentence and knowing that a court cannot,
7 before hearing argument, indicate that a plea discount will definitely be applied or to
8 change the composition of existing sentences.

9 22. I assess the discount to be applied for the guilty plea to be 20% = 10.8 months which I
10 round up to 11 months so that the sentence to be passed is reduced to one of 43 months
11 imprisonment (3 years and 7 months).

12 23. There is no other mitigation. However, it would be perfectly proper for me to re-visit
13 the consecutive sentences and, applying the double jeopardy principle, and, as an act of
14 mercy, consider making all sentences concurrent in order to achieve the practical result
15 of ensuring that the Defendant does not have to return to prison whilst preserving the
16 need to recognize the gravity of his offending by imposing a severe sentence on Count
17 1.

18 24. That I have decided to do. The sentence of 3 years and 7 months imprisonment will
19 run concurrently to all other sentences previously imposed. This is not a green light
20 for Defendants to think they can commit offences on bail and receive concurrent
21 sentences. On the contrary, it is only in these special circumstances that this course is
22 possible.

1 25. For the avoidance of any doubt, the sentence (after discount) of 3 years and 7 months is
2 to run concurrently to all other sentences on Counts 2 and 5, and concurrently to the
3 12-month sentences imposed by the Summary Court. Time served (2 years, 10 months
4 and 23 days) will be taken into account by the prison service in calculating the time to
5 be served. That will result in the Defendant not serving further time in custody and
6 that is the purpose, and intent, of the sentence imposed in this court today. This order
7 supersedes all other orders which previously resulted in the total sentence of 7 years
8 previously passed on the Defendant.

9 26. Special circumstances apply in this case and the result is that the sentence is specific to
10 this case and should not be used as a precedent in other cases, none of which are ever
11 likely to replicate these facts.

12

13

14 **Dated this the 9th day of December 2014**



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16

17 **Honourable Mr. Justice Malcolm Swift (Actg.)**
18 **Judge of the Grand Court**

