

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 INDICTMENT NOs: 99/16; 102/16 &50/17
5
6

7
8 THE QUEEN
9

10 v.
11

12 WAYNE CARLOS MYLES
13
14
15



16 **Appearances:** Ms. Kerri-Ann Gillies Crown Counsel for the
17 Crown
18

19 Mr. Oliver Grimwood for the Defendant

20 **Before:** Justice Marlene I. Carter (Actg.)

21 **Sentence Hearing:** 20th February 2020
22

23 **Delivery of Decision:** 6th March 2020
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28 **HEADNOTE**

29 *Criminal Law – Living on the Earnings of Prostitution –*
30 *Attempting to live on the earnings of Prostitution*
31 *- Sentence following Trial by Judge Alone -*
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35 **SENTENCE JUDGMENT**
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- 1 1. The Defendant was convicted of six (6) counts as follows:
- 2 i. Counts 1, 2 and 11 – Living on the earnings of prostitution; and
- 3 ii. Counts 3, 6, and 8 – Attempting to live on the earnings of prostitution.

- 4
- 5 2. Section 139(1)(a) and (2) of the *Penal Code* (2013 Revision) reads:

6 “139. (1) Every male person who -

7 (a) knowingly lives wholly or in part on the earnings

8 of prostitution;

9 or

10 (b) ...,

11 commits an offence.

12 (2) Where a male person is proved to live with or to be habitually in

13 the company of a prostitute or is proved to have exercised control,

14 direction or influence over the movements of a prostitute in such

15 manner as to show that he is aiding, abetting or compelling her

16 prostitution with another person, or generally, he shall, unless he

17 shall satisfy the court to the contrary, be deemed to be knowingly

18 living on the earnings of prostitution.”

19



- 20 3. The defendant has been convicted of three counts contrary to s.139(1)(a) of the *Penal Code*,
- 21 (2013 Revision)

- 22 i. Count 1 for an offence during the period 18th – 26th November 2014;
- 23 ii. Count 2 for an offence during the period 16th – 17th September 2015;
- 24 iii. Count 11 for an offence during the period 11th – 12th September 2015.
- 25

- 26 4. The defendant has also been convicted of three offences contrary to s.139(1)(a) and
- 27 s.139(2) of the *Penal Code*, (2013 Revision)

- 28 i. Count 3 for an offence during the period 22nd September 2015;
- 29 ii. Count 6 for an offence during the period 25th – 26th July 2015;
- 30 iii. Count 8 for an offence during the period 18th – 19th September 2015.
- 31

- 32 5. The Court found in relation to the offences for which the defendant was found guilty
- 33 that during the period November 2014 to September 2015, the defendant knowingly

1 attempted to live off the earnings of prostitution, or in fact did live off the earnings of
2 prostitution in the Cayman Islands, in that, he exercised control, direction or influence
3 over the movements of prostitutes in such a manner as to show that he was aiding,
4 abetting or compelling their prostitution with another person.

5
6 6. The evidence presented and accepted by the court came in the form of numerous
7 documented conversations and arrangements made in telephone communications
8 through the use of WhatsApp or SMS text messaging. The defendant offered prostitution
9 services by sending promotional messages and photos. He agreed pricing and locations
10 for prostitutes to work and these led to the inference and inescapable conclusion found
11 by this the court that he took a monetary cut of their earnings.

12
13 7. I don't intend to record in this judgment the specific facts going to each offence which
14 are set out extensively in the judgment of this court of 22nd May 2019. I pause to note
15 here that sentence is delivered today only because the defendant and the crown thought
16 it prudent that other matters before the summary court be concluded before this court
17 should move to sentence. Those matters were concluded in February 2020.

18
19 **THE LAW**

20
21 8. There is no specific penalty prescribed under s.139 of the *Penal Code* (2013 Revision)
22 and thus s.38(1) of the *Penal Code* (2013 Revision) applies. This section provides as
23 follows:

24 *"When, in this Law, no punishment is specially provided for any offence it*
25 *is punishable with imprisonment for four years and with a fine."*
26
27
28



1 **SENTENCING GUIDELINES**

2
3 9. The Cayman Islands Sentencing Guidelines do not contain any guidelines pertaining to
4 the offences of Living on the Earnings of Prostitution and Attempting to Live on the
5 Earnings of Prostitution. They are however, instructive to the extent that they provide
6 guidance on the approach to sentencing. The guidance is similar to the approach of the
7 Sentencing Council of England and Wales (the United Kingdom Sentencing Council
8 Definitive Guidelines.)

9
10 10. In the United Kingdom, the offence of Controlling Prostitution for Gain (*under section*
11 *53 of the UK Sexual Offences Act, 2003*) is analogous to the offences of Living and
12 Attempting to Live on the Earnings of Prostitution in the Cayman Islands *Penal Code*.
13 With respect to the offence of Controlling Prostitution for Gain, the maximum sentence
14 for that offence in the United Kingdom is seven (7) years, whilst the maximum penalty
15 for the analogous offence in the Cayman Islands is four (4) years

16
17 11. The Crown and Defence invited the court to view the UK Sentencing Council Definitive
18 Guidelines (“UK Guidelines”) for assistance in determining the appropriate sentence in
19 this case. In line with the categories set in those Guidelines, the Crown submits that the
20 Harm and Culpability are as follows:

- 21
22 i. Harm: Category Two (2) Harm - Factors in category 1 not present
23 ii. Culpability: Category A - Causing, inciting or controlling prostitution on
24 significant commercial basis and Expectation of significant financial or
25 other gain.
26



1 12. The Crown therefore submits that this offence therefore falls within Category Two (2)
2 Harm and Culpability (A)

3
4 13. For the crown, counsel submitted that there was sufficient evidence for this court to infer
5 that there was a significant commercial basis at the heart of these offences and that there
6 was clearly an expectation of significant financial gain. The factors that the court should
7 consider, counsel argued, are the evidence of the number of potential customers, that
8 there appeared to be up to thirty-two (32) individual females being offered during a
9 significant portion of the period within with the periods these offences were committed
10 – underscoring the size and nature of this enterprise, the variety of services offered, and
11 the duration of the period over which these offences were conducted. The Crown submits
12 that all these are factors pointing to the expectation of significant financial gain.

13
14 14. Counsel for the defendant in his submissions to the court agreed that the offences were
15 at Category 2 harm. However he submitted that culpability should be at Category 2C.
16 Counsel for the defendant argued that the accepted payments scale for the services
17 offered relating to the offences varied between 150—400 dollars and that there was no
18 evidence that the vast majority of those payments went to the defendant as facilitator to
19 support a factor of causing or controlling prostitution on a significant commercial basis,
20 or of the expectation of significant financial gain. Counsel for the defendant therefore
21 submitted that there was insufficient evidence to take these matters into that Category
22 2A. Accordingly, counsel offered that a Category B categorization was not made out -
23 citing the control aspect and whether or not this defendant exercised that level of control
24 sufficient to take his actions within that category. He concluded that no features of either
25 category A or B culpability was present.



1 15. Having heard these submissions I am satisfied that these offences should properly be
2 Culpability A offences. I do not find that there is evidence controlling prostitution on a
3 significant commercial basis. However, there is clearly evidence of the expectation of
4 significant financial gain for this defendant. The offences are therefore Category 2
5 Harm, Culpability A offences.

6
7 16. In order to account for the difference in maximum sentence between the Cayman offence
8 of Living on the earning of Prostitution and the UK offence of Controlling Prostitution
9 for Gain, Crown Counsel presented a table showing the mathematical calculation to take
10 account of a twenty-nine percent adjustment downward for the difference in maximum
11 sentences. Utilising such calculations it is agreed that the starting point for the
12 substantive offences is 1 year and 5 months, with a range of 1 year and 2 months to 2
13 years and 10 months.

14
15 17. I remind myself that UK Guidelines related to a 'like' offence but not the same offence
16 and, for this reason, this court must be careful not to follow such guidelines too slavishly
17 - having regard to that fact, and always remembering, that guidelines are only that, and
18 the court's discretion is not entirely curtailed thereby.

19
20 **AGGRAVATING FACTORS**

21
22 18. The commission of these offences over a significant period of time – that is, between
23 November 2014 and September 2015 – is the only relevant aggravating factor. I note
24 that, while this defendant does have a record of previous convictions, there is nothing in
25 the nature of those offences and the present offences for which he is to be sentenced for
26 them to be considered statutory aggravating factors in this case.

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1 **MITIGATING FACTORS**

2
3 19. No relevant convictions.
4

5 **REPORTS**

6
7 20. At the end of the trial, no Social Inquiry Report (SIR) was sought by Counsel for the
8 Defendant. However, Counsel for the Defendant did refer the court to a Home
9 Background Report filed on the 23rd January 2019. This report was prepared of the
10 Conditional Release Board by the Department of Community Rehabilitation. Counsel
11 highlighted various aspects of that report for the Court's consideration. The court has
12 considered this report and notes in particular the following.

13
14 21. The defendant's childhood was in his words "rough". He suffered physical abuse at the
15 hands of his mother and stepfather and left the family home at the age of seventeen
16 because of a deterioration in his relationship with his mother. The defendant did not
17 complete his secondary education but returned to school in adulthood and successfully
18 completed a number of courses. The defendant had a long and varied employment
19 history, but it is noted that he was almost always gainfully employed in his adulthood.

20
21 22. The report was deficient only because it was not the usual Social Inquiry Report ordered
22 by this court and for this reason did not record the defendant's attitude to the offences
23 for which he is to be sentenced. Although the Report assessed the Defendant as having
24 a high overall risk or reoffending, the court notes that this assessment was not in relation
25 to the offences for which the court is now concerned.

26
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1 23. Apart from the report counsel for the Defendant submitted the Defendant is obviously
2 intelligent and business minded and in possession of what counsel referred to as
3 “entrepreneurial flare”. At one time the defendant owned three small businesses in the
4 Cayman Islands.

5
6 24. The defendant is presently serving a term of imprisonment of 13 years, imposed for a
7 series of drug offences.

8
9 25. With regard sentence, Counsel for the defendant submitted that the court should order
10 concurrent sentences for all offences and that the further order of the court should be that
11 any sentence imposed run concurrently to that 13-year term because, he submitted, these
12 offences took place over the same period as the drug offences and in line with the
13 principle of totality. Counsel for the Crown submitted that a sentence that was
14 consecutive to the drug offences should be imposed.



15
16 **COURT’S CONCLUSIONS**

17 26. It has been highlighted during the sentencing exercise that this defendant is an
18 enterprising man. It is always unfortunate when persons with “entrepreneurial flare”
19 and certainly “a head for business” turn these talents to unlawful purposes as in this case.
20 The essence of the crime committed by this defendant is the exploitation of women. It
21 is the protection of women against exploitation, by the use of their bodies for the
22 financial gain of men with ‘entrepreneurial flare’, that is at the heart of this court’s
23 concern. While it is true, as counsel stated to this court, that there is no evidence of
24 coercion in the many messages submitted to the Court in evidence, the evidence does
25

1 display a sense of manipulation of vulnerable women for which this defendant should
2 be very ashamed.

3
4 27. The maximum sentence for this offence is 4 years' imprisonment. There are no factors
5 that take these offences outside of the range for a Category 2 Harm, Category A
6 culpability offence for which the Guidelines state that a sentence range up to 2 years and
7 10 months is appropriate.

8
9 28. The defendant is at present serving a sentence of 13 years' imprisonment. The present
10 offences do not arise out of facts related to the drug offences, nor can they be considered
11 of a similar kind, and, they were not committed against the same victim. The nature of
12 these offences is also a further factor for this court's attention. These are the first
13 offences of this kind that have been prosecuted in the Cayman Islands. The deterrent
14 factor must be dominant and must be registered by this court's sentence.

15
16 29. In all the circumstances a consecutive sentence is appropriate in this case. This court is
17 mindful that when a court imposes a consecutive sentence, the combined sentence should
18 not be unduly long or harsh. For this reason, the sentence of the court on Count 1 for
19 Living off the earning of prostitution is 2 years' imprisonment. The sentence of the court
20 on each of Counts 2 and 11 is also 2 years' imprisonment, each to run concurrent to the
21 sentence on Count 1. For each of the offences on Counts 3, 6 and 8 of attempting to live
22 on the earnings of Prostitution the sentence imposed is one of 16 months' imprisonment,
23 each to run concurrent to the sentence for Count 1.

24
25 30. The final sentence is therefore 2 years' imprisonment consecutive to the total period of
26 imprisonment to which the defendant is already subject.

27



1 31. There is to be no deduction for the time that the defendant has spent in custody awaiting
2 sentence for these offences since these have all be taken account of in the previous
3 sentences before the summary and the grand court for the drug offences. There is no
4 curfew or remand time to be deducted from the sentence.

5
6 32. Had this court not imposed a consecutive sentence the defendant's sentence would have
7 been somewhat higher. For the counts of Living off the earnings of prostitution the
8 sentence of the court would have been concurrent periods of 2 years imprisonment and
9 for each of the offences on Counts 3, 6 and 8 of attempting to live on the earnings of
10 Prostitution the sentence of 18 months imprisonment, each to run concurrent to the
11 sentences for the substantive offences for Count 1 would have been appropriate.

12
13 33. The sentences of this Court are therefore as follows in the disposal summary below:

- 14
15 i. Count 1 – Sentenced to 2 years' imprisonment.
16
17 ii. Count 2 – Sentenced to 2 years' imprisonment concurrent.
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19 iii. Count 3 – Sentenced to 16 months' imprisonment concurrent.
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21 iv. Count 4 – Not Guilty
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23 v. Count 5 – Not Guilty
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25 vi. Count 6 – Sentenced to 16 months' imprisonment concurrent.
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27 vii. Count 7 – Not Guilty
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29 viii. Count 8 – Sentenced to 16 months' imprisonment concurrent.
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31 ix. Count 9 - Not Guilty

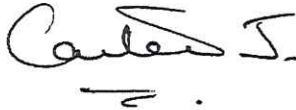


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x. Count 10 – Not Guilty

xi. Count 11 - Sentenced to 2 years' imprisonment concurrent.

Dated this 6th March 2020.



**Justice Marlene I. Carter
Judge of the Grand Court (Acting)**

