

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

4 INDICTMENT NO: 58 of 2018
5



10 THE QUEEN

11 -v-

12 HERMINE STONEY

13 Appearances:

Ms. Toyin Salako for the Crown

14 Mr. Alex Davies of McGrath Tonner, Attorneys for Defendant
15

16 Before:

Hon. Justice Marlene I. Carter (Actg.)
17

18 Sentence Delivered:

9 January 2020
19

20 HEADNOTE

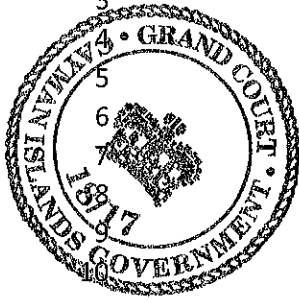
21 *False accounting; Section 41 of the Penal Code*

22 SENTENCE JUDGMENT
23

24 1. The facts are not in dispute. In July 2019 the defendant entered a guilty plea to Count 3 of the
25 Indictment, a charge of False Accounting contrary to *Section 255(1)(b) of the Penal Code*. The
26 particulars of the offence were that:
27

28 *“...between 26th day of February 2014 and the 10th day of April 2015 within the*
29 *jurisdiction of the Cayman Islands, dishonestly and with a view to gain for yourself*
30 *or others or with intent to cause loss to another falsified documents required for*
31 *an accounting purpose namely, the Department of Children and Family Services*
32 *Needs Assessment Forms, by making entries therein which were or may have been*
33 *misleading, false or deceptive in a material particular in that it purported to show*
34 *that she had an income limited to KYD250 per month and no other assets.”*
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36 1. The basis of plea is as follows:

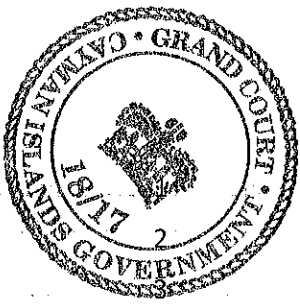


1 *"I Hermine Stoney wish to plead guilty of False accounting contrary to section 255*
2 *of the Penal Code (2019 Revision) on the following basis:*

- 3 1. *I accept I received the proceeds of sale of a property which was in my sole*
4 *name, which closed on 26th March 2019, around the time that I was*
5 *applying for assistance from the NAU. At the time, however, my intention*
6 *was to completely ring-fence this money for my son Duane Thompson Jr,*
7 *who had a scholarship to study at Columbia University in the USA, and*
8 *afterwards at Cambridge University in England. He is presently in*
9 *attendance at Durham University in England, reading Law.*
- 10 2. *I accept that I did use a small amount of the money myself, when I was*
11 *desperate, to buy food and sundries, and that I should have declared the*
12 *money as part of my applications for assistance from the NAU.*
- 13 3. *My priority was to give the best start for my son, and I felt the money was*
14 *held on trust for him at all times. This is reflected in my Butterfield*
15 *account being marked "ITF Duane Thompson" – meaning "in trust for*
16 *Duane Thompson", I also accept that by failing to disclose the extra*
17 *income, I gave false information to the assessor, and in hindsight this*
18 *should have been disclosed.*
- 19 4. *I have very little memory of the period of time in question, as I was*
20 *recovering from multiple strokes (which happened in 2013), and suffered*
21 *cognitive impairment, memory loss and anomia (speech loss) where I*
22 *would struggle to form words.*
- 23 5. *I am sorry for my actions, I have nothing left now, as my son has the money*
24 *for his education, and I have no source of income. I remain unable to*
25 *work and reliant on assistance from family.*
- 26 6. *I make this decision of my own will, on the weight of the evidence."*

27 2. The defendant did not have an income but she did have an asset which she did not disclose to the
28 Needs Assessment Unit ("NAU"). The Defendant is before the Court for that unlawful omission.
29 The value of the asset or the amount that the Defendant ultimately received when the asset was
30 sold does not form the basis of the charge before the Court.

31 3. However, for the purpose of sentence, as rehearsed by Mr. Davies, Attorney on behalf of the
32 Defendant, it appears that the Defendant gave most of the money, realized from the sale of the



asset, to her son. Whatever she may have kept appears to have been spent to satisfy the arrears of utility bills.

4 4. The Crown does not dispute the Defendant's medical history, that she had suffered two strokes in
5 2013. Counsel for the Defendant submits that as a result of those strokes the Defendant has some
6 cognitive impairment and it was suggested, although counsel could not put it higher, that the
7 Defendant also experienced memory loss and that this may have been a factor in her omitting to
8 provide the relevant information to the NAU. The detailed Social Inquiry Report records her
9 memory loss, confusion, decreasing ability to read and write or to pronounce words and how this
10 has directly affected her speech.

11

12 5. The Defendant is 66 years old. She is unemployed and has been for some time. She has no fixed
13 place of abode and no income. She is of previous good character and has been gainfully employed
14 for most of her adult life. She has one son who cannot support her as he is himself a student.

15

16 6. The offence is serious. However, perhaps recognizing the position in which this Defendant finds
17 herself, the NAU, the complainant in this matter, has indicated that no repayment of any monies
18 that the Defendant was granted during the period set out in the offence, i.e. between 26th February
19 2014 and 10th April 2015, is being sought. It is clear to this Court that whatever may have been
20 the defendant's motivation in wanting to ring-fence monies for her son's education, to her mind
21 thereby depriving herself, this cannot excuse her actions and does not take away from the offence
22 committed against an organisation tasked with assisting the most destitute and needy in our society.

23

24 **Court's conclusions**

25

26 7. As the Crown has stated, there are no current sentencing guidelines for this offence. I agree that it
27 is very fact specific. The maximum penalty is seven years imprisonment.

28

29 8. After consideration of all the circumstances of this case, I find that the custody threshold has not
30 been reached. With regard to other options in which this matter could be disposed of, the Defendant
31 is in no position to pay a fine and is not a suitable candidate for a community based penalty or
32 community service due to her medical condition.

33

1 9. *Section 41 of the Penal Codes* states: “(1) *Where in a trial a court thinks that the charge is proved,*
2 *but is of the opinion that, having regard to the character, antecedents, age, health or mental*
3 *condition of the accused,...., it is inexpedient to inflict any punishment, the court may, without*
4 *proceeding to conviction, make an order... discharging the accused absolutely.*”
5

6 10. I am satisfied that the appropriate order in this case, in consideration of the defendant’s age, health,
7 character, antecedents and medical condition, is that she be discharged absolutely.
8

9 11. Counts 1 & 2 of Indictment 58 of 2018 are to be left on file.
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Justice Marlene Carter

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Acting Judge of the Grand Court

