

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **HOLDEN AT GEORGE TOWN**

3 **Cause No: G487/2011**
4

5 **IN THE MATTER OF THE REHABILITATION OF OFFENDERS LAW (1998**
6 **REVISION)**



7
8 **BETWEEN:**

9 **JOSE ANTONIO GONZALEZ-**
10 **CAMACHO**

11 **PLAINTIFF/APPLICANT**

12
13
14 **AND:**

15 **ATTORNEY GENERAL**

16 **DEFENDANT/RESPONDENT**
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20 **Appearances:**

21 **Ms. Vanessa Allard of Brooks & Brooks for**
22 **the Plaintiff/Applicant**

23
24 **Mrs. Suzanne Bothwell of the Attorney**
25 **General's Chambers for the**
26 **Defendant/Respondent**
27

28 **Before:**

The Hon. Mr. Justice Charles Quin

29 **Heard:**

4th April 2012

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JUDGMENT

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1. The Applicant issued an Originating Summons on the 6th December 2011 against
35 the Attorney General for the following relief:

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i. A declaration that the Applicant is a rehabilitated person as defined by
37 the Rehabilitation of Offenders Law (1998 Revision);

1 on SC#2485/06(1). In addition, the Applicant was ordered to pay compensation of
2 US\$14,264.96 to CIBC Bank & Trust (Cayman) Ltd., to be paid at the rate of
3 \$500.00 per month, commencing on the 31st August 2006, and thereafter on the last
4 working day of each month for the ensuing 2 ½ years, or serve imprisonment of six
5 months.

6 On the third count – SC#2485/06(3) – the Applicant was sentenced to
7 imprisonment for a term of 18 months, to run concurrent with the 18 months on
8 SC#2485/06(1), with an identical compensation order to that put in place for
9 SC#2485/06(2).

10 On the fourth count – SC#2485/06(4) – the Applicant was sentenced to
11 imprisonment for a term of 18 months, to run concurrent with the 18 months on
12 SC#2485/06(1), with an identical compensation order to that put in place for
13 SC#2485/06(2). The Court notes that the Applicant complied with the terms of the
14 Compensation Order.

15 5. Counsel for the Applicant submits that the Rehabilitation of Offenders Law (1998
16 Revision) does not specifically address the rehabilitation period for persons who are
17 given suspended sentences rather than immediate custodial sentences.

18 6. Counsel for the Applicant relies on the Court of Appeal case of *R v. Scott* [2006]
19 CILR Note 22 and *Halsbury Laws of England* Volume 11(2) pages 1078, 1566 and
20 1577 and submits that exceptional circumstances allow for a suspended sentence
21 rather than an immediate custodial sentence. The Applicant submits that s.2,
22 namely the *definition and interpretation* section of the Rehabilitation of Offenders
23 Law is not clear as to whether suspended sentences are to be considered pursuant to
24 s.5 of the Rehabilitation of Offenders Law. Counsel argues that s.2 includes certain

1 definitions, but is silent on suspended sentences. Furthermore, counsel submits that
2 suspended sentences are not specifically dealt with in s.5 which covers the
3 rehabilitation periods for particular sentences. Counsel submits that the
4 Rehabilitation of Offenders Law is silent on the rehabilitation period for a
5 suspended sentence, and therefore, this silence creates an uncertainty which should
6 be resolved in favour of the Applicant. Counsel finally submits that if the
7 Legislative intent were to include suspended sentences, it would have been a
8 straightforward and simple item to include.

9 *ANALYSIS AND CONCLUSION*

10 7. S.5 of the Rehabilitation of Offenders Law is the primary section dealing with the
11 rehabilitation periods for particular sentences. S.5(1) sets out the sentences that are
12 excluded from rehabilitation under this Law, and reads:

13 “5. (1) Sentences excluded from rehabilitation under this Law are –
14 (a) a sentence of imprisonment for life;
15 (b) a sentence of imprisonment for a term exceeding 30
16 years;
17 and
18 (c) a sentence of detention under the Governor’s
19 pleasure...”
20

21 Otherwise, s.5(1) specifically states that “*any other sentence is a sentence subject to*
22 *rehabilitation under this Law.*”

23 Consequently, the four sentences of imprisonment that the Summary Court imposed
24 on the Applicant are sentences which are subject to rehabilitation under the Law.

25 8. S.5(3), (4), (5), (6) and (7) deal with persons on probation or bound over to keep the
26 peace, convictions under the Youth Justice Law and the Mental Health Law and
27 Orders made “*imposing on the person convicted any disqualification, disability or*

1 prohibition, or any other penalty other than a fine or conviction...". These
2 provisions are not relevant for the purpose of this Judgment.

3 9. S.5(2) reads:

4 "5. (2) For the purpose of this Law, the rehabilitation period
5 applicable to a sentence specified in the first three items of the first column of
6 the Schedule [and as is the case before me in relation to the Applicant] –

7 (a) in the case of a person who had attained the age of
8 seventeen years at the date of his conviction, shall be the
9 period specified in the second column of the Schedule in
10 relation to that sentence;

11 and

12 (b)

13 reckoned in either case from the date of the conviction in respect of which the
14 sentence was imposed."

15 The Schedule pursuant to s.5(2) reads:

<i>A sentence of imprisonment for a term exceeding six months but not exceeding thirty months</i>	<i>ten years</i>
<i>A sentence of imprisonment for a term not exceeding six months</i>	<i>seven years</i>
<i>A fine or any other sentence subject to rehabilitation under this Law not being a sentence to which any of subsections (3) to (8) of section 5 apply</i>	<i>five years</i>
<i>An order sending the offender to a rehabilitation school under paragraph (b) of section 20(1) as read with paragraph (a) of section 20(3) of the Youth Justice Law, 1995.</i>	<i>three years</i>

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18 10. The Applicant received four sentences of imprisonment for 18 months, which
19 amounts to a term of imprisonment exceeding six months, but not exceeding 30
20 months, and therefore the rehabilitation period as set down by the Schedule
21 pursuant to s.5(2) of the Rehabilitation of Offenders Law is set at 10 years. These
22 sentences of imprisonment are clear, and I consequently reject the Applicant's

1 argument that there is any uncertainty in relation to the term of imprisonment
2 imposed by the Summary Court.

3 11. Accordingly, it is my view that the Applicant will not be entitled to be considered a
4 rehabilitated person and to receive a record from the RCIPS Criminal Records
5 Office reflecting that the four convictions are spent until the 17th July 2016.

6 12. S.21 of the Penal Code provides for the types of punishments available to the
7 criminal courts in the Cayman Islands and states:

8 “21. The following punishments may be inflicted by a court –
9
10 (a) imprisonment;
11 (b) fine;
12 (c) payment of compensation;
13 (d) finding security to keep the peace and be of good
14 behaviour or to come up for Judgment;
15 (e) liability to probation under the Probation of Offenders
16 Law (1999 Revision);
17 (f) forfeiture;
18 (g) attendance orders;
19 (h) any other punishment provided by this or any other
20 law.”
21

22 A term of imprisonment is one of eight “*punishments*” provided for in the Penal
23 Code.
24

25 13. S.22 of the Penal Code reads:

26 “22. (1) A person liable to imprisonment for life or any other period
27 may be sentenced to a shorter term.
28 (2)
29 (3) Every sentence of imprisonment shall comply and be served in
30 accordance with the Prisons Law (1995 Revision)

1 (4) *Notwithstanding subsection (3), a court which passes a*
2 *sentence of imprisonment for a term not exceeding two years may order that the*
3 *sentence shall not take effect unless, within a period of two years from the date*
4 *of the sentence, the offender commits in the Islands another offence punishable*
5 *with imprisonment.*”

6
7 S.22 of the Penal Code gives the Court power to suspend the activation of a term of
8 imprisonment provided the term of imprisonment imposed by the Court does not
9 exceed two years.

10 14. As Deborah Barker-Roye states at paragraph 9.9.6 on page 397 in the third edition
11 of *Criminal Litigation in the Cayman Islands*:

12 *“Terms of imprisonment are normally served immediately after imposition of*
13 *sentence. However, the court does have power to order that the service of a*
14 *term of imprisonment be fully or partially suspended. In either case, it must be*
15 *remembered that the sentence is still technically one of imprisonment and ought*
16 *only to be imposed when the gravity of the offence is such that it passes the*
17 *custody threshold (See Pierson v. R [1994] 9 CILB 31)”*

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19 15. The Court notes that this period of rehabilitation is protected by the provisions of
20 the Rehabilitation of Offenders Law, in that, it cannot be extended as s.3(2)(b)
21 clearly provides:

22 “3. (2) *A person shall not become a rehabilitated person for the*
23 *purposes of this Law in respect of a conviction unless he has served or*
24 *otherwise undergone or complied with any sentence imposed on him in respect*
25 *of that conviction, but the following shall not, by virtue of this subsection,*
26 *prevent a person from becoming a rehabilitated person for those purposes –*

27 (a)

28 (b) *breach of any condition or requirement applicable in*
29 *relation to a sentence which renders the person to whom it*
30 *applies liable to be dealt with for the offence for which the*
31 *sentence was imposed or, where the sentence was a*
32 *suspended sentence of imprisonment, liable to be dealt with*
33 *in respect of that sentence (whether or not, in any case, he*
34 *is in fact so dealt with).”*

1 “I humbly pray to this Honourable Court that the Application made by the
2 Applicant be dismissed and that costs be awarded on an indemnity basis to the
3 Defendant.”

4 20. GCR O.62 deals with the questions of costs and O.62 r.4(11) reads:

5 “The Court may make an inter partes order for costs to be taxed on the
6 indemnity basis only if it is satisfied that the paying party has conducted the
7 proceedings, or that part of the proceedings to which the order relates,
8 improperly, unreasonably or negligently.”

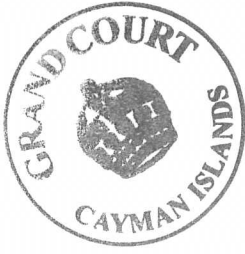

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10 21. I can find no evidence before me, either on the material put before the Court or in
11 submissions made by Crown counsel, which discloses that the Applicant has
12 conducted any part of the proceedings improperly or unreasonably or negligently. I
13 therefore decline to order that the Respondent’s costs should be paid by the
14 Applicant on the indemnity basis.

15 22. However, as costs follow the event I order that the Respondent is entitled to have
16 his costs paid by the Applicant, to be taxed on a standard basis, if not agreed.

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18 **Dated this the 12th day of April 2012**

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22 **Honourable Mr. Justice Charles Quin**
23 **Judge of the Grand Court**