

1  
2 IN CHAMBERS

3  
4 IN THE GRAND COURT OF THE CAYMAN ISLANDS

5  
6 GRAND COURT CAUSE NO:2450/94, 2637-38/94

7  
8 GRAND COURT INDICTMENT NO: 34/94

9  
10  
11 BETWEEN: STEPHANIE NICOLETTA APPELLANT

12  
13 AND : THE HONOURABLE ATTORNEY GENERAL RESPONDENT

14  
15  
16 Appearances

17  
18 D. Lumsden for the applicant.

19 Anthony Akiwumi for the Crown.

20  
21  
22 RULING

23  
24 The appellant was convicted after a trial in this Court by Judge alone and now seeks bail  
25 pending her Appeal to the Court of Appeal.

26  
27 The guiding principles are those settled in Watton v R. 68 Cr.App. R.2293 - bail should  
28 not be granted pending an appeal unless the sentence is, at least prima facie, shown to be  
29  
30  
31 manifestly harsh or excessive or is shown likely to be substantially served before the  
32  
33 appeal can be heard.

34  
35 Implicit in these principles is the concept that as this court is not to determine the  
36  
37 outcome of the appeal, its order upon an application of this nature should not present the  
38  
39 Court of Appeal with a fait accompli.

40  
41 That concept works in at least two ways. In the first place if the sentence of  
42  
43 imprisonment is one which is not manifestly harsh or excessive, the early release of the  
44  
45

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

defendant before the sentence is served could present difficulties for the Court of Appeal in ordering the return to prison if expectations have been inappropriately raised. This of course, is to be considered in the light of the fact that there is no general principle that once an appellant has, after conviction, been released on bail, there is never any question of sending him back to prison: R v. Cullis and Nash 53 Cr. App. R. 162. and the general comments at Archbold 1998 Ed. para. 7 - 188.

Also, even if the sentence is prima facie wrong in the sense under discussion, but one of imprisonment although of a shorter period will be the likely outcome, the case law suggests that it would be inappropriate to order the release of the appellant before even that shorter period is served: R v. Neal The Times 29.1.1986.

I gather from Mr. Akiwumi's submissions that the Crown's views are that this case falls into this latter category.

Although I tend to agree, I am also of the view that this is a case in which the Court of Appeal may very well take the view that any immediate term of imprisonment was wrong in principle.

The appellant certainly has an arguable case to that effect.

She has no previous conviction . Reference by Mr.Akiwumi to certain other allegations against her were wholly improper in this context. Dispite her proven dishonesty in this case, all the indications are that she remains a viable member of society with every prospect of mending her ways and of being able to continue to secure employment. Her present employer, although aware of her conviction for dishonesty, is willing to continue to employ her in a position of trust.

1 The offence involved what, by any measure, was a small amount of some \$1240. That  
2  
3 brings the offence well within the exceptions recognised (see the case of R v Barrick  
4  
5 81 Cr. App. R. 78) as not requiring immediate imprisonment although involving a breach  
6  
7 of trust.

8  
9 The appellant has offered full restitution and although she has not yet acknowledged her  
10  
11 guilt has, through her Counsel, indicated that she will not be pursuing the appeal against  
12  
13 conviction.

14  
15 The Court of Appeal may well yet take the view that she should be afforded a locus  
16  
17 poenitentiae for making her admission. That Court may also well take the view that the  
18  
19 order for costs made against her is a significant manner of recognising that she should be  
20  
21 penalised for having wasted the Court's and prosecution's time in contesting the trial in  
22  
23 the first place, and that imprisonment in addition would be an excessive means of  
24  
25 expressing the Court's disapproval in that regard.

26  
27 I view the matter from the position that the primary objective of sentence is rehabilitation,  
28  
29 not retribution.

30  
31 With these and other factors in mind, including the recent sentence of the Court of Appeal  
32  
33 in the case of Carol Fox Seales v R - ( a suspended sentence upon an immediate plea of  
34  
35 guilty to theft of \$40000 in breach of trust) - I am of the view that there is indeed at least  
36  
37 an arguable case that the appellant ought not to have been sentenced to an immediate  
38  
39 term of imprisonment.

40  
41 Put another way, although the Court of Appeal could conclude that her lack  
42  
43 of contrition at the time justified some period of imprisonment short of 9 months, they  
44  
45 might yet conclude that the justice of her case required some still more lenient treatment.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

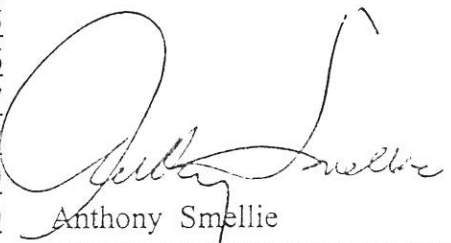
That being so, I am persuaded that any period of further incarceration pending her appeal might yet result in an injustice.

If, contrary to my view of this matter, the Court of Appeal is of the view that some substantial period of incarceration is justified they will no doubt order her recommittal to prison.

Bail pending appeal is granted on the following terms:

- (i) Appellant to surrender travel documents including her American birth certificate
- (ii) Appellant not to travel from Grand Cayman until after her Appeal is determined and to stay away from the Port and Airport
- (iii) The Court advises that full restitution to be immediately made as offered (although not a condition of bail)
- (iv) Appeal against conviction to be withdrawn (also merely advised by the court)
- (vi) Bail in the sum of \$10,000 with 1 or 2 securities acceptable to the Clerk of Courts.

The matters at (iii) and (iv) are advised to express the note this court has made of those factors and of the part they might yet play in the outcome of the appeal.



Anthony Smellie  
JUDGE OF THE GRAND COURT



Dated this 5th day of May 1998.

IN THE CAYMAN ISLANDS COURT OF APPEAL  
GRAND COURT INDICTMENT NO. 34 OF 1994

Criminal Appeal No. 31 of 1998

THE QUEEN vs. STEPHANIE MICHELLE NICOLETTA

NOTICE OF ABANDONMENT OF APPEAL AGAINST CONVICTION

TO THE REGISTRAR OF THE COURT OF APPEAL

I, Stephanie Michelle Nicoletta having been convicted of the offences of one Count of Theft and two Counts of False Accounting in the Grand Court at George Town, Grand Cayman and having been desirous of appealing to the court against my said conviction and sentence of nine months imprisonment passed upon me on my said conviction, do hereby give you notice that I do not intend to further prosecute my appeal against conviction, but that I hereby abandon all further proceedings in regard to the said conviction as from the date hereof. I intend therefore to prosecute my appeal only with regard to my sentence on conviction.

Stephanie Michelle Nicoletta *Stephanie Nicoletta*

Witness: *Danane Kumsder*

Witness address: *Quin & Hampson*

Dated this *17th* day of May, 1998.



FILED by Messrs. Quin & Hampson, Attorneys-at-Law for and on behalf of the Appellant herein whose address for service and correspondence is that of her said Attorneys-at-Law, 3rd, Floor, Harbour Centre, P.O. Box 1348, George Town, Grand Cayman, Cayman Islands, BWI.