

4.18.95

LEGAL DEPARTMENT  
CAYMAN ISLANDS GOVERNMENT  
AUG 09 1995  
FILE -  
COUNSEL - *Getwateh*

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

SUMMARY COURT APPEAL # 8/95

STANLEY HOWARD YORK  
TERRENCE TATER  
DARIUS S. DUBASH

V

THE ATTORNEY GENERAL

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Mrs. Banks for the Crown.  
Mr. Furniss for Tater and Dubash.  
Mr. McField for York.

R U L I N G

The substantive sentences imposed were in a sense the maximum which the Summary Court imposed. They were in York's case 2 year terms with 6 months suspended. In the cases of Tater and Dubash 2 year terms with 9 months suspended. Although the learned Magistrate was not obliged to do so, it does appear on the face of those terms that he therefore gave no reduction for the amountt of restitution which was, in fact, secured and the compensation what he ordered. The orders for compensation then proceeded on the basis that the defendants were able to meet those and to ensure that, significant terms of imprisonment were imposed in default.

Although the learned Magistrate may have been made to believe

that the defendants were able to pay compensation, that arose from the efforts they were making as represented by Mr. McField, to gather funds from their various relatives to do so.

What remains clear is that no proper enquiry was made into their ability to meet those orders.

The related facts would suggest that the missing funds had been used by the appellants and others of their accomplices to live here and to run the fraudulent scheme.

From all that is before me the appellants are now personally financially destitute.

It is wrong in principle that a compensation order should be allowed to stand when its inevitable result is that the prisoner will only serve a longer period of imprisonment because he lacks the means to meet that order. Such an order is intended to compel an offender to cough-up the proceeds of his crime, to prevent him from benefitting from his crime. It is not intended to operate inevitably as an additional term of imprisonment. Those defrauded would normally have recourse to the civil courts to regain their loss. The numbers involved fortunately show that no single victim has been defrauded any large sums of money.

It follows that the order for compensation and the terms of imprisonment in default are wrong in principle. I therefore set them aside.

As regards the principle underlying a partly suspended sentence - that principle is lost in a case such as this - as Crown Counsel has noted. It is clear from S. 23 D subsection (3) of the Penal Code that such a sentence contemplates the possibility of further offences being committed in the Islands. That is the primary mischief which it seeks to prevent. Such a mischief was inherently improbable if not impossible in this case from the outset of sentencing before the learned Magistrate. The appellants are all foreigners with no permanent connection with the Islands.

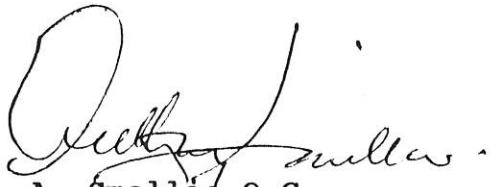
A partly suspended sentence is wrong in principle for the further reason that this is a case in which a recommendation for deportation is clearly appropriate.

Accordingly the terms of suspended sentences, following on the immediate terms of imprisonment, are respectively in each case set aside.

The deportation of each appellant is recommended upon the completion of his sentence of imprisonment.

In all other respects the appeals against sentence are

dismissed and the sentences upheld.



A. Smellie Q.C.  
Judge of the Grand Court

Dated this: 4th August 1995