IN THE GRAND COURT OF THE CAYMAN ISLANDS

HOLDEN AT GEORGE TOWN, GRAND CAYMAN

IN COURT, BEFORE THE HON. MR. JUSTICE HULL

SUMMARY COURT APPEAL NO: 67/85

BRIAN JOHN OLIVER V. REGINA

19-11-85

The appellant in person.

Mr. Sharman for the Crown.

REASONS FOR JUDGMENT

This was an appeal against conviction and sentence. With respect, I do not consider that there is evidence to support the following findings:

(a) that on 25th June 1985, Mr. Howells required the appellant to hand over his cheques for destruction and told him he was only to deal thereafter in cash;

(b) that Mr. Stressner was only to pay $100 and that Mr. Ed-Shayeb knew nothing of an agreement that Stressner would pay any further money;

(c) that when he presented the cheques to which the charges relate, the appellant knew he did not have sufficient funds in his account to meet them.

There is, however, evidence to justify the following conclusions:

(a) The appellant knew when he presented the cheques that he had no authority to overdraw his account.

(b) He also knew then that if he did, the cheques would be dishonoured by the bank.

(c) He also knew then that there was a very real likelihood that the cheque for $800 could already have been presented for payment, ie. at some time after 2 p.m. on Friday 28th June, and in any case that its presentation for payment was imminent.

(d) He made no adequate arrangements to ensure that funds would be available to meet the cheques complained of.

(e) He drew and presented the cheques recklessly, not caring whether or not they would be honoured on presentation, and without any reasonable cause for believing they would be honoured.

(f) In doing so he acted dishonestly.

On this basis, I dismissed the appeal against conviction but I have referred to these points because I consider that they are relevant to sentence.

It was said in the course of the appeal that the fact that the Magistrate at first overlooked the question of mitigation was itself a ground of appeal, though this was not pursued. In any case, I do not agree with that. The Magistrate allowed the opportunity for a plea in mitigation as soon as it was brought to his notice. He is entitled to the co-operation of counsel. The failure to make submissions in mitigation thereafter was the responsibility of the appellant's legal advisers. There can be no doubt that the Magistrate would have taken them into due consideration. As it was, when none were made, he had no choice but to stand by the sentence that he thought appropriate.

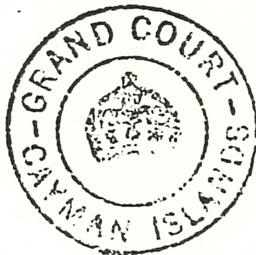
However, I do think that the sentence was excessive. I am in fact not in agreement with the kind of sentence that was imposed.

The appellant was a man of 26, but he was also a first offender. It is clear that having run himself into financial difficulties by an irresponsible lack of financial discipline, he recklessly sought to tide himself over after banking hours, gambling that he would not be called to account. When he knew that the cheques had been dishonoured, he returned to the Cayman Islands and went to see his bank. There is evidence that he has endeavoured to settle the debts he incurred.

Not every offence of dishonesty by an adult calls for imprisonment, nor does it follow that in such a case a suspended sentence is the proper alternative. It is, after all, a kind of custodial sentence. The range of sentencing options is wide and every case must be considered on its particular merits. The circumstances of this one are such that it is clearly on (or rather just beyond) the threshold of criminal liability. The conviction itself is a serious stigma. Some time ago, a mature woman who was a first offender was given a substantial fine for theft, which is well inside the door. Similar considerations apply in this case. Probation is inappropriate. The interests of justice are met by a fine.

I therefore quashed the sentence of imprisonment and substituted total fines of $500, to be paid within one month, with three months imprisonment in default of payment.

I also quashed the orders for restitution of $84 that were made in respect of two of the payees. I did this because although restitution will often be appropriate, prosecutions are brought for reasons of public policy. In the particular circumstances of this case, I wanted to emphasise that the sanction is imposed for these reasons. Those payees who may not have been re-imbursed will have to rely on their civil remedies on this occasion.



D. Hull.

David Hull
Puisne Judge

19th November, 1985.