



# The Court of Appeal for Bermuda

## CRIMINAL APPEAL No 4 of 2014

Between:

**XAVIER DOUGLAS**

Appellant

-v-

**THE QUEEN**

Respondent

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**Before: Baker, President**  
**Kay, JA**  
**Bell, JA**

**Appearances:** Mr. Bruce Swan and Mr. Mandela Fubler, Apex Law Group, for the Appellant  
Ms. Nicole Smith and Ms. Karen King, Department of Public Prosecutions, for the Respondent

**Date of Hearing & Decision: 11 March 2015**

**Date of Reasons: 11 March 2015**

### REASONS

#### PRESIDENT

1. This Appellant pleaded guilty to 1 offence of theft contrary to section 337(1) of the criminal code. On the 17<sup>th</sup> of March of last year, he was sentenced to 6 years imprisonment by Mr. Justice Greaves who ordered that time spent custody should be taken into consideration. He appeals against that sentence.
2. The offence involved fraudulently persuading the Capital G Bank to give him a bank draft for \$70,000 drawn on the joint account of Kasmin Richardson and Vincent Richardson her husband. At the time, Vincent Richardson age 75 was in

hospital suffering from a severe stroke. He has sadly since died. It does not require much imagination to appreciate the stress and anxiety caused in particular to Kasmin Richardson.

3. She was eventually repaid by the bank but that was not for a substantial period of time during which they went through their investigative procedures. The offence required considerable planning and persistence on the part of the Appellant who pretended on different occasions to be a lawyer, the son of Vincent Richardson and indeed Mr. Richardson himself.
4. One of the serious features of this case is the background of the Appellant. Attention has been drawn to his criminal record. It is unfortunately a very bad record for dishonesty. In 1994 and 1995 and 1996 he appeared before the Court for making false documents, uttering false documents and false pretences. He received a short imprisonment sentence on the 3<sup>rd</sup> May 1996 and was back again before the Court in 2002 when he was convicted of withdrawing \$38,000 from the very same victim as in the instant case albeit at a time when they banked with the Bank of Butterfield. On that occasion the Appellant was sentenced to 2 years imprisonment concurrently in respect of his various offences of dishonesty. He was released from prison on the 9<sup>th</sup> January 2003 and since that time there has been no further conviction until the present case.
5. So, the background is a very bad record for dishonesty including dishonesty involving the same victim. Our attention was drawn to a number of authorities. In particular the case of *Outerbridge* where the defendant was sentenced of 9 months imprisonment, increased to 2 years imprisonment. Also *Docentos* where a sentence of 9 months imprisonment was upheld. The striking features about each of those two cases is that neither of the defendants had any previous convictions and they involved different types of offence.
6. In our judgment, they are of no value in assessing the right level of sentence for the present case.

7. Indeed this is a case that is particularly on its own facts and therefore there is no authority to which we have been referred or of which we are aware that is of assistance. The Court has to go back to the ordinary principles of sentencing and take those matters to account, the starting point is that the offence in this case carries a maximum penalty of 10 years.
8. Mr. Swan, for the Appellant, contends that credit should be given for the Appellant's plea of guilty. That indeed is in the view of this Court the only relevant mitigation in the case. But, it wasn't a plea of guilty at the earliest opportunity and we accept the submission of Ms. Smith for the Crown that it would only have attracted a discount of a modest nature perhaps in the region of 10 percent.
9. We have to ask ourselves whether the sentence of 6 years imprisonment was manifestly excessive or wrong in principle. It was not wrong in principle and as to whether it was manifestly excessive Mr. Swan relies on the fact that part of the stolen money, a substantial part, was used to buy an expensive vehicle. Following the trial that vehicle came into the hands of the bank because the Judge ordered it to be handed over to the bank who by the date of trial were the people who had lost the figure of \$70,000.
10. This, in our Judgment, is only of marginal relevance. It is not a case where the Appellant put his hand into his own pocket and found money to make reparation. This was something that happened by Order of the Court and the only relevance that it has is that it reduces by some degree albeit quite a substantial degree, the ultimate financial loss suffered as a result of the Appellant's criminal activity.
11. Weighed against that, this was a case where vulnerable victims were selected by the Appellant and it was not the first occasion on which he had committed dishonesty against them. In these circumstances, we have to ask ourselves whether the sentence passed by the Learned Judge of 6 years imprisonment was

manifestly excessive. Whilst we think that it is very much at the top of the bracket that he might have imposed, we cannot say that it falls into the category of being manifestly excessive.

12. This Appellant is, as he has been shown to be, a persistent fraudster and on the facts of this case we cannot say that a sentence of 6 years was not warranted.

13. The appeal will therefore be dismissed.

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Baker, P

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Kay, JA

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Bell, JA