

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP P (AG)
THE HON MISS JUSTICE SIMMONS JA
THE HON MR JUSTICE BROWN JA (AG)**

PARISH COURT CRIMINAL APPEAL NO COA2022PCCR00001

SHERYL WILSON v R

Charles Williams for the appellant

**Ms Paula Llewellyn QC, Director of Public Prosecutions, and Roneiph Lawrence
for the Crown**

23 March and 8 April 2022

MCDONALD-BISHOP P (AG)

Background

[1] The appellant, Mrs Sheryl Wilson, was charged on an indictment containing six counts for the offences of making a false declaration (count 1), obtaining passport by forged documents (count 2), and uttering forged documents (counts 3 – 6).

[2] Based on the background information offered by the appellant and the facts outlined by the prosecution, the facts are that on 14 December 2010, the Passport Immigration and Citizenship Agency ('PICA') issued the appellant with a Jamaican passport with an expiry date of 13 December 2020. The passport was issued in her legal name, "Sheryl Suzette Pretrenia Wilson". After she was issued said passport, she travelled to the Bahamas in 2010. Whilst in the Bahamas, she secured employment in that country and resided there for several years. However, as a result of overstaying her visit in the Bahamas, the appellant returned to Jamaica in 2014. In October 2014, the appellant

obtained another passport from PICA under the name "Sherika Simone Murray", which she used to regain entry into the Bahamas. The appellant travelled on this passport to the Bahamas on multiple occasions: 30 October 2014, 22 August 2015, 18 September 2016 and 27 November 2016. The appellant secured a work permit from the Bahamas under the fictitious name "Sherika Simone Murray". She subsequently returned to Jamaica after being unsuccessful in obtaining a further work permit in the fictitious name from the Bahamian authorities. As a result, she re-entered the Bahamas using her legitimate passport issued in her legal name, "Sheryl Suzette Pretrenia Wilson". Thereafter, the appellant obtained employment in the Bahamas and has resided there since.

[3] In December 2020, the appellant sought to re-new her legitimate passport. Upon review of the appellant's application, by way of their facial recognition software, PICA discovered that the photograph submitted by the appellant matched an existing photograph in the passport issued in the name "Sherika Simone Murray". This discovery led to an investigation, resulting in the appellant being subsequently arrested and charged.

[4] On 20 August 2021, in the Corporate Area Parish Court - Criminal Division, before Her Honour Mrs Dennis-McPherson ('the learned Parish Court Judge'), the appellant pleaded guilty to all six counts on the indictment. On 23 November 2021, she was sentenced to six months' imprisonment on each count. The sentences were ordered to run concurrently.

[5] The appellant appealed against the sentences imposed on her, and on 23 March 2022, this court, having heard and considered the submissions of counsel for both parties, within the framework of the applicable law, made the following orders:

- "(1) The appeal is dismissed.
- (2) The sentences of six months' imprisonment at hard labour for each count on the indictment to run concurrently are affirmed.

(3) The sentences are to commence forthwith on 23 March 2022.”

[6] Although the court had orally indicated its reasons during its discourse with counsel at the hearing, it was considered useful to reduce them to writing at a later date. These are the written reasons for the decision of the court.

The appeal

[7] In her notice and grounds of appeal, dated 6 December 2021, the appellant set out the following grounds of appeal:

- “(a) The Judge misdirected herself when she said that a suspended sentence is inapplicable because the Appellant resides in the Bahamas;
- (b) The Judge ignored section 6 of the Criminal Justice (Reform) Act;
- (c) The Judge failed to give herself directions as to why the substantive points raised in the Social Enquiry Report were not considered favourably.
- (d) The Judge failed to take into account the dicta of the Honourable Justice Dennis Morrison of the Court of Appeal of Jamaica in his opinion that a custodial sentence should be the last resort, particularly when the accused pleaded guilty and had no previous convictions.
- (e) The sentence of imprisonment was manifestly excessive in all the circumstances of this case.” (Punctuations as in original)

[8] However, during his oral submissions, Mr Williams, counsel for the appellant, indicated that he was not contending that the sentences were manifestly excessive. He said the appellant is asking the court to impose a suspended sentence under section 6 of the Criminal Justice (Reform) Act (‘CJRA’).

[9] In his written submissions, counsel stated that the court is being asked to consider the following:

- “(i) Whether the learned Judge erred by not considering suspended [sic] sentence under Section 6 of the Criminal Justice Reform [sic] Act?
- (ii) Whether the learned Judge erred in not taking into account several important factors?”

[10] In consideration of these questions, we bear in mind the principle from **R v Ball** (1951) 35 Cr App Rep 164, where Hilbery J, at page 165, stated that:

“In the first place, this Court does not alter a sentence which is the subject of an appeal merely because the members of the Court might have passed a different sentence...**It is only when a sentence appears to err in principle that this Court will alter it.** If a sentence is excessive or inadequate to such an extent as to satisfy this Court that when it was passed there was a failure to apply the right principles, then this Court will intervene.” (Emphasis added)

(i) Whether the learned parish court judge erred by not considering a suspended sentence under section 6 of the CJRA

[11] Mr Williams argued that the learned Parish Court Judge erred in sentencing the appellant by failing to consider section 6 of the CJRA. Counsel further argued that the learned Parish Court Judge erred when she directed herself that a suspended sentence is inapplicable as this was based on an incorrect conclusion that the appellant resided in the Bahamas. He contended that the appellant is not a resident of the Bahamas and that even if she were, a suspended sentence could be imposed on a foreign national.

[12] Mr Lawrence, on behalf of the Crown, agreed with Mr Williams that the learned Parish Court Judge was incorrect in her determination that the appellant was a resident (at least a legal one) of the Bahamas. In his written submissions, he submitted that as gleaned from the facts, the appellant is a Jamaican citizen who was periodically employed in the Bahamas. Counsel also submitted that section 6 of the CJRA is not restrictive or limited to persons who reside in Jamaica and, therefore, the learned Parish Court Judge erred in two respects when she did not give adequate and due consideration to a suspended sentence.

[13] Section 6 of the CJRA states that:

“6. –(1) A court which passes a sentence of imprisonment on any offender for a term of not more than three years for any offence, may order that **the sentence shall not take effect unless, during a period specified in the order**, being not less than one year or more than three years from the date of the order (hereinafter referred to as the ‘operational period’), **the offender commits in Jamaica another offence punishable with imprisonment for a period exceeding six months** (hereafter in this section and sections 7 and 8 referred to as a ‘subsequent offence’) and thereafter a court having power to do so orders under section 7 that the original sentence shall take effect:

Provided that the above provisions of this subsection shall not apply where the offence involved the use, or the illegal possession of, a weapon referred to in the First Schedule, a firearm or imitation firearm.

(2) A court shall not deal with an offender by means of a suspended sentence unless the case appears to the court to be one in respect of which a sentence of imprisonment would have been appropriate in the absence of any power to suspend such a sentence by an order under subsection (1).

(3) A court which passes a suspended sentence on any offender for an offence shall not make a probation order in the offender's case in respect of another offence of which he is convicted before that court.

(4) Where a court passes a suspended sentence on an offender in respect of an offence and a term of imprisonment in respect of another offence the court shall direct that the suspended sentence be concurrent with the term of imprisonment.

(5) On passing a suspended sentence the court shall explain to the offender in ordinary language his liability under section 7, if during the operational period he commits a subsequent offence punishable with imprisonment.”
(Emphasis added)

[14] Accordingly, there is no question that the court is empowered under section 6 of the CJRA to impose a suspended sentence within the circumstances specified under the CJRA. However, a judge is not obligated to do so as this sentencing option remains solely within the judge's discretion.

[15] It is clear from the learned Parish Court Judge's reasons that she considered a suspended sentence under section 6 of the CJRA but found it to be inappropriate in the circumstances. In expressing her reasons for imposing a term of imprisonment on the appellant, the learned Parish Court Judge stated, in part, that:

"The reason for the custodial sentence is to serve not only as punishment for you but as a deterrence to other [sic] who may have similar intent. This type of offence is one of deception and has implications not only locally but on the International [sic] sphere, where persons, who enter countries illegally from Jamaica cause our country's image to be sullied.

Furthermore, as it relates to you, based on the background information provided by you and the facts presented by the Crown, your intention to deceive the Jamaican and Bahamian Immigration was clear and calculated, it was not a mistake.

...

This is a crime of deception and such criminal activity is prevalent in our society. Such criminal acts have open [sic] the floodgates for corruption and our citizens need to understand that they MUST engage the proper means of obtaining a passport. Therefore, the sentence, I am minded to impose is one to punish you, the offender and deter others of like mind.

Based on the circumstances aforesaid, I am of the view that a fine would not be an appropriate deterrence and could only serve as a slap on the wrist. **Furthermore, because you now reside in the Bahamas, a suspended sentence would not have the desired effect of deterrence and or punishment.**

You must be reminded that this is something that you should never do again. Hence, a short, sharp, shock in the form of a custodial sentence is best suited for you.” (Emphasis added)

[16] I have noted that para. 3.1 of the Sentencing Guidelines for use by Judges of the Supreme Court of Jamaica and the Parish Courts, December 2017 (‘the Sentencing Guidelines’) refers to a suspended sentence as a non-custodial sentencing option. However, it is important to note that a suspended sentence is a custodial sentence that is suspended. Therefore, it remains a sentence of imprisonment and should not be passed unless the case appears to the court to be one where a sentence of imprisonment would have been appropriate. In **R v Kara Baldwin** [2021] 4 WLR 73, the England and Wales Court of Appeal noted at para. 22 of the judgment that “a suspended sentence of detention is still a custodial sentence which ... should have been [a] sentence of last resort ...”

[17] Therefore, reference in the Sentencing Guidelines to a suspended sentence being a “non-custodial sentencing option” must be read to mean that a suspended sentence is a sentencing option that does not require the offender to be immediately incarcerated to serve the stipulated period of imprisonment. However, the offender could be incarcerated to serve the period of imprisonment if, during the time the sentence is suspended, he commits (and is convicted of) an offence in Jamaica punishable with imprisonment for a period exceeding six months. A court, which has the power to order a suspended sentence to take effect may (if it does not order the sentence to take effect in full) order it to take effect with the term reduced, extend the operational period or make no order (see Archbold Criminal Pleading Evidence & Practice 1992 Volume 1 para 5-185).

[18] When one considers the four “classical principles of sentencing” (retribution, deterrence, prevention and rehabilitation), it is apparent that the main objective of a suspended sentence is to promote the rehabilitation of an offender. In **Dwayne Strachan v R** [2016] JMCA Crim 16, the court noted at para. [28] that:

“[The CJRA] has since broadened the application of non-custodial sentencing options; introduced a new form of

custodial sentences [sic]; and provided for more flexible arrangements for the service of sentences of imprisonment. **All this was geared, largely, at reducing the burden on the overcrowded prison system, while at the same time promoting the rehabilitation of offenders within the context of community-based justice.**" (Emphasis added)

[19] In **Franklin E Hamilton, JR v Commonwealth of Virginia** 217 Va. 325 (Va. 1976) the Supreme Court of Virginia noted that:

"The true objective of suspended sentencing is to rehabilitate and to encourage a convicted defendant to be of good behavior. To accomplish this it is necessary that good conduct be rewarded. It is important that a defendant know that good conduct on his part will expedite his complete restoration to society."

[20] Though this case is from the United States of America and, thus, is not binding within our jurisdiction, the Supreme Court of Virginia's observation is highly persuasive and is one that we see fit to adopt.

[21] In the light of the preceding review of the applicable law, we formed the view that for a suspended sentence to have any effect in rehabilitating and encouraging an offender convicted in Jamaica to be of good behaviour, the offender would have to be resident in Jamaica during the operational period of the suspended sentence. Without this requirement, the effect of a suspended sentence would be akin to admonishing and discharging the offender, as he would have nothing hanging over his head because an offence committed overseas would not trigger the Jamaican courts' jurisdiction to activate the suspended sentence. It would, thus, become a meaningless method of dealing with an offender in circumstances where the court had determined that a custodial sentence was warranted.

[22] This view is fortified when one also considers, by way of illustration, section 9 of the CJRA. When one examines the provisions of that section, the following is made clear concerning the application of a suspended sentence supervision order:

- (1) Where the court determines that a suspended sentence is appropriate, it may, in addition to passing a suspended sentence, also make a suspended sentence supervision order (section 9(1)).
- (2) A supervision order places the offender under the supervision of an authorized officer for such period as may be specified in the order not exceeding the period during which the sentence is suspended (section 9(1)).
- (3) A supervision order shall specify the place of residence of the offender (section 9(2)).
- (4) The authorized officer shall be the authorized officer appointed or assigned to the area in which the offender resides (section 9(2)).
- (5) The offender shall keep in touch with the authorized officer in accordance with such instructions as may from time to time be given to him by that officer (section 9(3)).
- (6) The offender shall notify the authorized officer of any change of address (section 9(3)).
- (7) If, at any time while a supervision order is in force, it appears on information provided by the authorized officer to a Justice of the Peace ('JP'), that the offender has failed to comply with nos (5) and (6) above, then the JP may issue a summons requiring the offender to appear before the Parish Court of the area in which the offender resides, or may, if the information is in writing and on oath, issue a warrant for his arrest (section 9(4)).

- (8) If the offender fails without reasonable cause to comply with any of the requirements of the supervision order, he may be subjected to a fine (section 9(5)).

[23] The power of the court to make a suspended sentence supervision order, therefore, only arises where the court passes a suspended sentence. It is evident from the provisions of section 9 of the CJRA that the proposed enforcement of a suspended sentence supervision order is premised on the notion that the offender's place of residence is within Jamaica. This is simply because the court would not have extraterritorial jurisdiction. Therefore, the offender must be within Jamaica for the exercise of the court's oversight jurisdiction.

[24] Consequently, if a suspended sentence were to be passed on an offender who is not resident within Jamaica, then the court's power under section 9 of the CJRA to make a suspended sentence supervision order would be rendered nugatory.

[25] The court also finds that there was sufficient reason for the learned Parish Court Judge to have come to the view that the appellant resided in the Bahamas. In the background information offered by the appellant, she stated that, having been denied a work permit for the Bahamas, she utilised her valid passport in her correct name, "Sheryl Suzette Pretrenia Wilson", to re-enter the Bahamas and that, thereafter, she obtained employment in the Bahamas and has since resided there.

[26] We, therefore, find no fault with the learned Parish Court Judge's reasoning that because the appellant resides in the Bahamas, a suspended sentence would not have had the desired effect of deterrence and punishment. It was for the learned judge to balance the objectives of sentencing and to determine which would be accorded greater weight in the circumstances of the case. She demonstrably conducted that enquiry, and concluded that the need for retribution and deterrence, both personally and generally, should be accorded significant weight given the circumstances of the commission of the offences, the fraud perpetrated on immigration authorities in Jamaica and the Bahamas,

the possible effect of this type of offending on the reputation of Jamaicans, and the personal circumstances of the appellant. The learned Parish Court Judge could not be faulted for concluding as she did that immediate incarceration, in the form of a short, sharp, shock", was warranted.

[27] Even more importantly, we do not find that the learned Parish Court Judge failed to consider a suspended sentence under section 6 of the CJRA as contended by Mr Williams.

[28] This ground of appeal, therefore, failed.

(ii) Whether the learned Parish Court Judge erred in not taking into account several important factors

[29] Mr Williams submitted that the learned Parish Court Judge erred in sentencing the appellant in that she failed to consider that the appellant had pleaded guilty, had no previous conviction, and that the social enquiry report was very favourable. Counsel also argued that the learned Parish Court Judge did not take into account the dicta of Morrison P, in **Meisha Clement v R** [2016] JMCA Crim 26, that a custodial sentence should be the last resort. This, he said, is applicable, especially where the appellant pleaded guilty and there had been no previous convictions.

[30] Mr Lawrence argued that it is clear the learned Parish Court Judge took into account that a custodial sentence should be of last resort as she made direct references to the authority of **Meisha Clement v R** and the comments made by Morrison P in that case. Counsel contended that it was the serious nature of the offence and the circumstances of the case that led the learned Parish Court Judge to consider a custodial sentence. He highlighted that the appellant perpetrated fraud on the Jamaican and Bahamian authorities. He further argued that the fraud was a continuing act, demonstrated by the appellant travelling multiple times on different dates under a fictitious name. There was an intent to continue the illegal activity since she was still in possession of both passports until one expired. Crown Counsel submitted that, given

these facts, the learned Parish Court Judge was correct in her determination that a custodial sentence was appropriate to meet the objectives of punishment and deterrence.

[31] The “record of decision for sentencing”, signed by the learned Parish Court Judge on 20 December 2021, shows that she did consider alternatives other than imprisonment. She stated that:

“Section 3(1) of the Criminal Justice Reform Act states that where the punishment for the offence allows for a sentence other than imprisonment, the court passing the sentence must deal with the offender in that way unless certain conditions apply. The most relevant of these would be section 3 (2) (a) where the court is of the view that no other sentence than imprisonment is to be imposed.

In the case of **Meisha Clement v R**, Justice Dennis Morrison, (then President of the Court of Appeal of Jamaica) enunciated that a custodial sentence under statutory [sic] scheme is a sentence of last resort. Therefore, I am duty bound to consider other alternatives other than imprisonment, unless I am of the view that the circumstances warrant it. In your case, I am of the view that a custodial sentence is most fitting.

I have formed this opinion after giving due consideration to the aggravating and mitigating factors of your case.”

[32] The aggravating factors noted by the learned Parish Court Judge were that the appellant’s actions were acts of deception, that she benefitted from criminal activity, at the time of the commission of the offences, she was of an age where she would have been expected to understand the consequences of her actions and to appreciate that what she was doing was wrong. The learned Parish Court Judge also opined that the commission of the offences was deliberate because when the appellant obtained the fraudulent passport, she still had in her possession a valid passport.

[33] As mitigating factors, the learned Parish Court Judge considered that the appellant did not waste the court’s time and that her guilty plea may be deemed an indication of her remorse for her actions. She also noted that the appellant, up to that time, had an

unblemished criminal record. She also considered the content of the social enquiry report and the plea in mitigation made on behalf of the appellant.

[34] Having reviewed the reasons of the learned Parish Court Judge for concluding that the threshold was met for a custodial sentence to be imposed, we could not agree with the submissions of Mr Williams that she failed to consider the appellant's guilty plea, that the appellant had no previous convictions, and that the social enquiry report was favourable. Mr Williams was also not on solid footing with his submissions that the learned Parish Court Judge failed to take into account that a custodial sentence should be of last resort. It was after explicitly setting out her reasons for selecting the custodial sentencing option as the most appropriate that the learned Parish Court Judge then determined the length of the sentences by applying the established methodology laid down by the authorities. She made no error of law in arriving at the sentences she imposed.

[35] Therefore, this ground of appeal also failed.

Conclusion

[36] The appellant could not establish that the learned Parish Court Judge had erred in law or principle in imposing the sentences she did. When the sentences are viewed in the round, having regard to the totality principle, it could not be said that they are disproportionate and harsh. Once the sentences are not found to be manifestly excessive to lead this court to the view that a different sentence ought to have been passed, there is no justifiable basis for this court to interfere with the sentences imposed by the learned Parish Court Judge. Accordingly, the appeal could not succeed.

[37] For the foregoing reasons, we made the orders detailed at para. [5] above.