

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CRIMINAL DIVISION

Indictment No. 7/2020

BETWEEN:

THE QUEEN

Prosecution

v

AARON FRANCISCO JOSEPH

Accused

Before: The Honourable Carlisle Greaves, Judge of the High Court

Date of Hearing: 2020 August 10

Date of Judgment: 2020 October 30

Appearances:

Mr. Rudolph Burnett for the Prosecution

Accused Self-Represented

DECISION

Fraud - Forgery Act, Cap. 133, p. 10 and 23. Sentence 9 years imprisonment after discounts, bad and long criminal record; 16 similar offences taken into account.

CARLISLE GREAVES J:

INTRODUCTION

[1] On 10th August 2020, the accused plead guilty to a two count indictment dated 29th April 2020 that he: 1. On 8th January 2018 uttered a forged bill of exchange to First Caribbean International Bank for the sum of \$8,3000.00 payable to one Michael Cox with intent to defraud and 2. That on the same

date with intent to defraud he endeavoured to obtain from the same bank the same sum of \$8,3000.00 by a forged cheque drawn on the account of Michael Cox, payable to Aaron Joseph. These offences are contrary to **section 10 and 23** of the *Forgery Act, Cap. 133* respectively. The accused also asked that several other outstanding similar matters be taken into account with his sentencing.

- [2] The accused gave an elaborate story as the reason for commission of these crimes, which this court can only qualify as a real conman story and will therefore not tarry to repeat it at this time.
- [3] He submitted to a presentencing report which turned out to be unflattering at best. His mother expressed frustration, exasperation tremendous emotional stress at his continuous criminal behaviour, since his school days, including thefts from his relatives, father and mother, bad behaviour, love of quick money without working for it, use of drugs, bad company, failure to respond to counselling, broken promises to change after repeat prison sentences. A relative spoke of his aggressive and uncontrollable behaviour upon use of marijuana, a community member described him as tricky, dishonest, a threat to their community, embedded in criminal activity, thefts, burglaries in the community.

- [4] He admitted involvement in crime, drugs and alcohol since age 7, how his behaviour spiraled out of control, his expulsion from home as a result at 17 and his living on the streets, his failure to complete drug treatment programs.
- [5] His school reports indicated trouble from primary school through secondary school, gambling, truancy, stealing, drug use, on the school compound, disruptive behaviour, expulsion, persistent deviance, a graduation to the institution from which he attempted to escape with his peers.
- [6] There were also reports of sporadic employment which never lasted because of his delinquency, bad attendance and drug use on site.
- [7] He has approximately 29 previous convictions from 2011 to 2018, 19 for burglary, 6 for fraud, some for theft, loitering and cannabis possession. He has had sentencings from probation to imprisonment.
- [8] In his probation report he alleged he wanted the money to open a business and couldn't get a loan so he turned to fraud.
- [9] The probation officer rated him as having a high risk of reoffending.
- [10] There are an additional 16 counts of various frauds committed through 2018 to 2019, committed against a plethora of businesses, including banks, gas stations, stores, credit unions, restaurants, for small hundreds of dollars through thousands and tens of thousands he has requested and assented to be taken into account.

SUBMISSIONS

- [11] The prosecution submits this accused to be a professional fraudster just as some are referred to as professional burglars in *Shelan Joseph v The Queen* Crim App. No 1A of 2005, where **Sir David Simmons CJ**, following **Lord Bingham** in *Brewer v R* [1998] 1 Cr. App. R(S) 181 reasoned that a distinction between the occasional domestic burglars who may receive a lesser sentence and the professional burglars whose records establish them as predators from a young age and who return to their crimes almost as soon as they are released from prison. Such offenders should receive substantial sentences.
- [12] I accept these submissions. This accused with his long record, cunning ways and stories has made himself into a professional con man from whom society must be shielded for as long as legally possible.

MITIGATION

- [13] The only mitigating factor is his early guilty plea and he shall be awarded the full 1/3rd discount off his sentence therefor.
- [14] The accused who is self represented has had the opportunity to peruse his own probation report and the written sentencing submissions of the prosecutor.
- [15] He has been served with a copy of this draft decision for his comment before sentence and he has indicated that he has no issue with it. He has expressed

himself in his allocutos extensively and has expressed his remorse which this court has taken into account.

DISPOSAL

[16] The penalty for an offence under **section 10** and **23** of the *Forgery Act, Cap. 133* is life imprisonment and 14 years respectively.

[17] I have considered **section 35** of the *Penal System Reform Act, Cap. 139* and conclude that in these circumstances there is no alternative but a custodial sentence.

[18] The prosecutor has submitted a sentence of 15 years was appropriate in these circumstances. He has drawn no distinction between the two counts.

[19] This court considers, having regard to the above factors, namely the terrible record of the accused which clearly demonstrates him to be a professional predator with a real likelihood of reoffending and no foreseeable prospect of rehabilitation, an appropriate sentence for the section 23 offence should be 14 years less a 1/3rd discount for his guilty plea which would require him to serve 9.4 years. The court shall round that off at 9 years.

[20] In respect of his section 10 offence and for the same reasons together with the fact that 16 additional matters are taken into account, this court considers that an appropriate sentence should be 15 years less 1/3rd discount for his guilty

plea and further discount of his 227 days in custody at 9th October 2020 in respect of these offences.

[21] Consequently the accused must now serve an additional time rounded off at 9 years imprisonment from 9th October 2020. These sentences shall run concurrently.

Carlisle Greaves
Judge of the High Court