



[2021] JMSC Crim 4

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIRCUIT COURT FOR THE PARISH OF ST. JAMES**

**HOLDEN AT MONTEGO BAY**

**INFORMATION NO. ST. J35/2018 (1)**

**BETWEEN**

**REGINA**

**CROWN**

**AND**

**EVERETTE O’GILVIE**

**DEFENDANT**

**Mrs. Kimberley Dell-Williams, Mrs. Kemiesha Johnson-O’Connor and Mr. Hodine Williams instructed by the Director of Public Prosecutions for the Crown**

**Mr. Adrian Dayes for the Defendant Everette O’Gilvie**

**IN OPEN COURT**

**HEARD: March 23, 2021**

**Sentencing after trial - Offence of knowingly possessing identity information-  
Section 10(1) of the Law Reform (Fraudulent Transactions) (Special Provisions)  
Act, 2013**

**STEPHANE JACKSON-HAISLEY, J**

**BACKGROUND**

[1] The accused man Everette O’gilvie was convicted before me for the Offence of Knowingly Possessing Identity Information contrary to section 10(1) of the Law Reform (Fraudulent Transactions) (Special Provisions) Act, 2013 (“the Act”).

[2] The particulars of the offence were that:

*“Everette O’gilvie on the 14<sup>th</sup> day December 2015 in the parish of St. James knowingly possessed identity information of persons in circumstances which give rise to a reasonable inference that the information has been used or is intended to be used to commit an offence”.*

[3] His conviction followed upon a trial which commenced on October 5, 2020 and ended on December 15, 2020. The sentencing took place on March 23, 2021.

## **FACTS**

[4] On December 13, 2015 police officers were on mobile patrol in the Quarry area of Salt Spring, St. James when they stopped a vehicle being driven by the accused man. They carried out a search of the accused man as well as his vehicle. The search of his person revealed a silver and black iPhone. An onsite analysis of this phone revealed that it contained identity information. The accused was arrested and taken to the Freeport Police Station. Thereafter the police asked him to take them to his house and so armed with search warrants the accused man led the police to a house in Quarry. A search of the house was carried out and on the dresser in a bedroom was found a lead sheet and a scan disc. The scan disc when later examined was found to contain identity information as well as information relating to sweep stakes. Further examination of the iPhone proved to be impossible.

## **SENTENCING**

[5] The Sentencing Guidelines for Use by Judges of the Supreme Court of Jamaica and the Parish Courts of 2018 (“Sentencing Guidelines”) provide the Court with a guide as to how to approach the task of sentencing. A useful starting point is to look at the penalty associated with section 10(1) of the Act. The Act by virtue of Item 8 of its Schedule lists the offences and the penalties. The penalty for a breach of the relevant section is stated as such:

*"Fine or imprisonment not exceeding fifteen years or both such fine and imprisonment". A person convicted under section 10(1) of the Act shall be liable to pay a fine or to imprisonment for a term not exceeding fifteen year or to both such fine and imprisonment."*

Section 13(2) of the Act also makes provision for factors that a Court in imposing sentencing may consider which includes *"any other matter which the Court considers relevant"*. It is therefore important to carefully examine all available material which is placed before the Court.

- [6] A Social Enquiry Report ("SER") and an Antecedent Report were prepared on behalf of the accused man. The SER portrayed him as having been gainfully employed since he was eighteen years old. For the most part he worked as a public transport operator and was so engaged up to the time of his arrest. He has maintained his innocence.
- [7] According to the SER for the past ten years he has been residing in Hanover but prior to that he resided in Salt Spring in the parish of St. James. Further, that he resides with his partner with whom he has had a long standing relationship. He has four children dependent on him, two biological and two non-biological.
- [8] His Hanover community reports that while he is not known to be mischievous and does not associate with delinquent individuals, he shares an unsatisfactory relationship with his family and if he is provoked he will retaliate. He is not known to be involved in 'lotto scamming' and does not pose a threat to the community.
- [9] The community of Quarry in Salt Spring confirmed his account that he does not reside there but had relocated to Hanover some years prior. They described him as a good youth, quiet and expressed sentiments about his innocence. He was also described as "ignorant".
- [10] In the Antecedent Report, the subject is depicted as someone who was not a favourite person in his community as he is in constant confrontation with members which results in the intervention of the police from time to time. He has

three convictions recorded against his name. They are as follows: Assault Occasioning Actual Bodily Harm and Malicious Destruction of Property both in 2018 and Possession of Identity Information in 2019.

## **PLEA IN MITIGATION**

- [11] Counsel pointed out that the first two convictions were in the Hanover Parish Court and arose from the same incident and the same complainant and it resulted from an argument between the accused and his sister. Both the accused and his sister pleaded guilty to the offences. Despite the two convictions counsel argues that he is not a violent person. He submitted that these do not add to the circumstances of his other previous conviction as they are unrelated and do not speak to the current offence and his probability to re-offend.
- [12] He stressed that the accused is someone who keeps to himself and that this is evident from the SER. He asked the Court to counter balance the allegations of constant confrontation in the Antecedent Report against the more detailed SER which highlights that he is not known to be mischievous, does not associate with delinquent individuals but shares an unsatisfactory relationship with his family and it is only when provoked that he will retaliate.
- [13] He pointed out that both reports depict an industrial perusal of his employment as a taxi driver and that speaks to the commitment of the accused not to maintain himself or his dependents by fraudulent or similar means but rather to put his nose to the grind stone and commit himself to the difficult job of operating a taxi. Both communities described him as being a hard working taxi driver and he therefore would have distinguished himself from the normal person appearing before you for these kinds of matters. Any leniency given to him will be utilized to further pursue his career as a taxi driver. There no evidence of a benefit obtained by him or any benefit to him from his previous conviction for this offence.
- [14] Counsel explained that the previous conviction resulted from an incident which occurred after the time of this offence, and so, at the time of this offence, he did

not have the previous conviction. He therefore asked the Court not to view him as someone who had a previous conviction for this offence, then went and committed the offence at Bar, but rather, at the time of the commission of this offence there was no such previous conviction to his record.

[15] He explained that although from the SER there is no indication of remorse and there is a maintenance of innocence he asked the Court not to use this against him. From 2016 until now he would have lived with some anxiety and fear and great anticipation as to what will happen to him in this case. The conviction has result in the loss of a visa, new careers and brighter and greener fields.

[16] He joins with the community in asking the Court to be lenient and to consider favourably his overall circumstances.

### **SENTENCING REMARKS**

[17] The accused has been convicted of a serious offence, a very prevalent one in this part of the county. This is a conviction that followed upon a trial. Among the facts accepted by the Court was that the police stopped the accused and when he was searched they saw on his phone what they described as identity information, although when the phone was examined by the expert this was unsupported. They took him to a house which I accepted that he told the police he occupied and therein was found a lead sheet with identity information and a san disc which also contained identity information.

[18] For this offence the accused could be sentenced to up to fifteen years' imprisonment. In addition, a fine could also be imposed. I have had the benefit of the SER and the Antecedent Report. I have considered the plea in mitigation. The normal range, there being a previous conviction for this offence is between six and twelve years with the usual starting point being seven years.

[19] The aggravating factors to be taken into account are the type of offence and its prevalence. In addition, this conviction followed after a trial. It does not appear

from the SER that there is any remorse on the part of the accused who had maintained his innocence which I will not hold against him however, the fact of the lack of remorse is to be taken into account.

**[20]** The circumstances of the case are aggravating as there were three different items containing identity information. He has a previous conviction for the same offence in addition to two other convictions for other offences. This added to the fact that he does not get along with community members speaks to his general character as being a negative one.

**[21]** By way of mitigating factors, having considered the reports it is evident that the accused is not beyond redemption. He is relatively young and will benefit from rehabilitation. What stands out a lot is that he has been gainfully employed, since age eighteen. The SER although mixed, does contain some redeeming features about him. He has been described as a good person and a hard worker. He has two biological children as well as two non-biological children dependent on him. He has even assumed responsibility for his spouse's twelve years old child and that is commendable.

**[22]** When the factors are weighed, the aggravating factors outweigh the mitigating ones. Taking into account the usual range for this offence where an accused has a previous conviction and the suggested starting point, I am prepared to start at seven years. The fact of the previous conviction would have already been taken into account. When all other factors are weighed based on the positive features of the SER and the plea in mitigation, I find a period of six years to be an appropriate one. The accused has spent over four months in custody and so I am prepared to reduce the sentence by six months.

**[23]** The sentence of the Court is five years and six months' imprisonment at hard labour.