In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 27 of 2021

BETWEEN:

THE KING

-and-

TYRONE SYLVESTER QUINN

Before: **The Hon. Mr. Justice Juan P. Wolffe JP**

Appearances: Mr. Alan Richards for the Prosecution
The Defendant unrepresented

Dates of Hearing: 26th and 27th February 2024
Date of Sentence: 22nd March 2024
Date of Reasons: 7th June 2024

SENTENCE
(Reasons)

Theft – Defendant was a lawyer and in a position of trust at the time of the commission of the offences – Defence of Duress – Consecutive sentences – Totality principle – Confiscation Inquiry under the Proceeds of Crime Act 1997

WOLFFE J:

1. On the 6th November 2023 a Jury unanimously found the Defendant guilty of three (3) counts of Theft contrary to sections 331 and 337(1) of the Criminal Code Act 1907 (the "Criminal Code"). The theft involved the Defendant, who at all material times was a

practicing barrister and attorney of the Bermuda Bar, stealing from three (3) separate clients at three (3) separate times the sums of $300,000, $96,000, and $87,000 respectively.

2. On the 22nd March 2024 I sentenced the Defendant to a total of 15 years imprisonment for the three offences.

3. The Prosecution stated that it is their intention to eventually make an application for a confiscation order pursuant to section 10 of the Proceeds of Crime Act 1997 ("POCA"). As a precursor to making such an application the Prosecution requested the Court to make an order under section 14 of POCA requiring the Defendant to give information which may assist the Court in making a confiscation order. I acceded to the Prosecution's request and ordered that the Defendant must disclose a completed statement of his current assets.

4. Set out herein are my reasons for sentencing the Defendant as I did and for making the order under section 14 of POCA.

Evidence at trial

5. It should be said from the outset that most of the underlying facts upon which the Prosecution hinged its case were not disputed by the Defendant. The Defendant accepted that he appropriated his respective clients' monies but it was his defence that he did so for the purpose of self-preservation i.e. that he was at the material times under duress (a defence which was open to him under section 48 of the Criminal Code). It is therefore unnecessary for me to go into considerable detail in respect of the Prosecution's case against the Defendant.

6. Basically, the Prosecution's case, which the Jury comprehensively accepted in a relatively short amount of deliberation time, was that the Defendant was the sole owner and proprietor of the law firm known and operated as "DV Bermuda Ltd" (hereinafter referred to as DV Bermuda), and, that he was the sole signatory on DV Bermuda's bank account. For ease of reference it may be beneficial to set out the Prosecution's evidence as it related

to each complainant separately, and for the sake of anonymity I will only refer to them by their initials i.e. Victim LB, Victim JR, and Victim JT.

Victim LB (referable to Count 1 on the Indictment)

7. On the 29th March 2019 he was involved in a road traffic accident in which he received serious injury to his right side and toes as well as lacerations to his right heal. After surgery he remained in the hospital for two weeks. He was not the cause of the accident and at some point his son advised him to seek legal advice from the Defendant in respect of a civil suit against the person who caused the accident. He explained that he knew the Defendant since the Defendant was in primary school and that the Defendant would often come to his residence. He [Victim LB] was like the neighbourhood father.

8. In December 2019 he contacted the Defendant who later attended his residence where he gave the Defendant instructions and thereafter he had telephone calls and met with the Defendant about the progress of the matter. In one of these conversations he was told that the sum of $300,000 was offered as a negotiated settlement by the other person's insurance company. He accepted this offer on or about 12th May 2020 and in this regard he executed a "Final Release and Discharge Form" (which was adduced into evidence). After signing the form he and the Defendant did not have much communication and it was his thought that the process was by law justifiably taking long. So he did not pursue it much.

9. However, considerable time had elapsed without him hearing from the Defendant and so in March 2021 he made contact with the insurance company which had made the settlement offer. One of the insurance company's employees informed him that the payment had been settled in May 2020 (i.e. when he accepted the negotiated compensation amount). This prompted him to try and contact the Defendant about this but it was to no avail. Persistently contacting the Defendant but receiving no reply eventually reached a tipping point and so Victim LB reluctantly decided to report the matter to the police.

10. A review of DV Bermuda's bank account by an expert in financial crime investigation revealed that on the 14th May 2020 (a mere two days after Victim LB signed the Final Release and Discharge Form) the $300,000 was deposited and that on the same day the significant sums of $178,000, $110,000, and various smaller sums were withdrawn. By the 20th May 2020 i.e. six days later, Victim LB's $300,000 was virtually depleted. Prior to the deposit of the $300,000 the balance of DV Bermuda's bank account stood at a measly $100.78.

11. To this day, Victim LB still does not have a clue where the $300,000 went and by the date of sentencing he had not received any of the sums from the Defendant although there were multiple promises made by the Defendant, at trial and during the sentencing hearing, that he would receive the $300,000 in full.

Victim JR (referable to Count 2 on the Indictment)

12. On the 31st January 2020 she was involved in a road traffic accident in which she sustained a very bad break of her ankle which had shattered in small bits and pieces. As a result, she has lost rotation in her ankle, she has two metal plates on each side of her ankle, and she cannot stand for long periods of time. Unfortunately, although over the years she has had multiple surgeries she still has complications with the healing of her ankle.

13. In February 2020 she decided to consult a lawyer and the Defendant was recommended to her. She did not know the Defendant prior and he agreed to represent her.

14. From March 2020 to April 2020 the insurance company of the driver who caused the accident made payments of $1,711.12 and $9,910.86 directly to her. Thereafter, she was in regular contact with one of the Defendant's employees and it was in November 2020 that she had a meeting with the Defendant. At that meeting she reluctantly accepted the sum of $89,000 in full and final settlement of her claim for compensation. In this regard, on the 20th November 2020 she signed a "Letter of Acceptance" which was adduced into evidence.

15. The Defendant told her that she would see the sum in a matter of weeks. However, weeks elapsed and despite trying to contact the Defendant she did not receive any response from him. She then took it upon herself to communicate directly with the insurance company and that is when she learned that on the 26th November 2020 (i.e. six days after meeting with the Defendant and accepting the settlement offer) that the $89,000 was sent to the Defendant's offices. She was also made aware for the first time that an earlier payment of $16,000 had also been paid into the Defendant's offices for her.

16. On the 23rd December 2020 she received a payment of $9,000 from DV Bermuda but she did not know how or why this payment had come to be made. Although she spoke to an employee at DV Bermuda about this she never received an explanation as to this $9,000 and she did not receive any further payments. When she called DV Bermuda again she was informed by an employee that the Defendant had closed up his legal practice and that all of the client files were transferred to another law firm. It was then that she decided to make a police complaint.

17. She explained that she later found out that her medical expenses had not been paid. This made her distraught as she needed, and still needs, the $89,000 to pay for past, ongoing, and future hospital bills (she is supposed to have another surgery). She further explained that because of the surgeries that she has had to have that she lost her job and that she has been unable to secure additional employment because of her inability to stand on her feet for reasonable periods of time.

18. A review of the DV Bermuda bank account by the same financial expert revealed that on the 4th August 2020 the sum of $16,000 of Victim JR's settlement amount was deposited and that on the same day the sum of $2,718.75 was withdrawn from it. By the 14th August 2020 larger sums of $3,000, $7,000, $2,000 and $8,000 of her settlement monies were withdrawn. Prior to the $16,000 being paid the balance of DV Bermuda's bank account was $3,250.57.

19. Further, that on the 2nd December 2020 when the $89,000 was paid into DV Bermuda's bank account it had a balance of MINUS $59,515. Hence, the $89,000 brought the balance of DV Bermuda's bank account to a POSITIVE $29,684.05. Of that balance, the sum of $15,000 was withdrawn on the same day of 2nd December 2020, and on the 4th December 2020 (two days later) the sum of $20,000 as well as smaller sums were withdrawn. By the 7th December 2020 the balance of DV Bermuda's bank account was $76.10.

20. By the date of sentencing she had not received the $96,000 from the Defendant despite promises from the Defendant that he would make payment to her.

Victim JT (referable to Count 3 on the Indictment)

21. On the 26th May 2019 she had a slip and fall accident while she was patrolling the grounds of a local company as a security guard. She later underwent an MRI examination and it was discovered that she injured a disc in the back of her neck. This required her to receive extensive treatment and on one occasion after a surgery she ended up in the Intensive Care Unit of the hospital for 10 days. By the time the trial had rolled around she was in need of further treatment.

22. As a result of all of this she decided to go to DV Bermuda in order to pursue a civil suit for compensation. Once there she spoke to the Defendant, whom she did not know before, and as far as she knew legal steps were commenced thereafter towards receiving her compensation. After a while she was informed that the sum of $100,000 was offered to her by the company and although at first she did not want to accept it she eventually did. She felt that the Defendant had her best interest at heart and so she signed a "Release in Full" document which in her mind was required for her to receive the money. It was also her understanding that she would receive the $100,000 within 30 days of signing the document but this did not happen. She asked the Defendant about this and he told her to be patient.

23. Victim JT asked the Defendant again about the compensation in February 2021 and he told her that the money had arrived into DV Bermuda's bank account. She in turn told him that she needed the money to pay her rent and medical expenses. Arrangements were made for her to meet the Defendant at a local bank in order for her to receive the compensation. However, the Defendant only handed to her the sum of $13,000 in cash and he told her that the remaining $87,000 would be transferred to her bank account but that it would take two (2) days for this to happen. Two days later the balance of her compensation was not in her bank account and so she persistently called the Defendant. She was unable to reach him.

24. A review of DV Bermuda's bank account by the same financial expert revealed that on the 29th January 2021 that the balance was $0.00 and that on the 1st February 2021 when Victim JT's settlement amount of $100,000 was deposited into it that the sums of $38,000, $14,000, and $14,000 were withdrawn. Then, from the 2nd to 8th February 2021 (a six day period) the sums of $14,000, $15,000, $5,000, and $13,000 were respectively withdrawn from the bank account (no other monies were deposited into the bank account). After the said withdrawals were made the balance of DV Bermuda's bank account on the 8th February 2021 stood at $673.00.

25. Thereafter she had no further contact with the Defendant and to the date of sentencing she still had not received her $87,000 despite promises by the Defendant that he would reimburse her.

26. In support of the victims' evidence the Prosecution also adduced evidence that:

- DV Bermuda had only one bank account held at a local bank, that the Defendant was the sole signatory on the account, and, that the Defendant was the only one who had access to the account.

- DV Bermuda did not have a separate trust account into which client funds and settlement monies should be paid into, and that it only had an operating account

which was used to pay salaries and other expenditures. All law firms are expected to maintain both a trust account and an operating account.

- DV Bermuda did not send out monthly invoices to clients and although the Defendant was advised by his then Litigation Director and Senior Attorney that he should do so this was never done by the Defendant.

27. The Defendant did not dispute taking the monies belonging to Victims LB, JR and JT but as I said earlier he relied on the defence of duress. In this regard, he said that:

- In late 2019 he discovered that an employee of one of his companies had formed unholy alliances with some unsavoury and unnamed individuals and that these same individuals approached him and made threats to him. He said that these individuals also found out where he lived and they frequented his premises daily. He was confused and dumbfounded by this and questioned his employee about this.

- These unnamed individuals started off demanding small amounts of money and that they would say to him that he better handover the money or else they would kill him and his family. The Defendant said that he had a gun pulled on him on numerous occasions by these unnamed individuals and that on another occasion they sent to him pictures of his son's school and his son's mother's house.

- Each time he tried to resist the unnamed individuals they "doubled down" and their demands became even more arduous to meet and they wanted more and more money. He said that he thought about leaving Bermuda but that the unnamed individuals said that they would do harm to his family members who remained.

- When the threats were made by the unnamed individuals he could not think straight and that he was no longer himself. He was fearful and that he was relieved when the police contacted him because he wanted the nightmare to end.

- At no time were any of the monies used for shopping, excursions or leisure, and nor did he have a substance abuse problem or was involved in any illegal activity.

- He admitted that $110,000 of Victim LB's compensation had nothing to do with any duress and nor did $30,000 of Victim JR's monies.

- He apologized to each of the complainants.

28. The Defendant, in his police statements and in Court, failed or refused to name the employee who had supposedly built affiliations with these individuals of questionable character, and, he failed or refused to name or provide any adequate descriptions of these supposed individuals who threatened him. He said that he did not tell the police, and nor was he able to tell the Court, the names of the individuals who threatened him because he was getting messages that he should not say anything. As to their descriptions he only said that the unnamed individuals were black.

Sentencing Guidelines

29. Section 337(1) of the Criminal Code stipulates that a person convicted of theft is liable to receive a maximum sentence of a fine of $100,000 and/or 10 years imprisonment.

30. Mr. Alan Richards for the Prosecution submitted that the Defendant should receive: 8 years imprisonment for the theft of Victim LB's $300,000; 5 years imprisonment for Victim JR's $96,000; and, 4½ years imprisonment for Victim JT's $87,000. Further, that each sentence should run consecutively thereby arriving at a total of 17½ years imprisonment.

31. For his part, the Defendant submitted that he should receive: 4 years and 2 months imprisonment for the theft of Victim LB's monies; 1 year and 2 months imprisonment for the theft of Victim JR's monies; and, 2½ years imprisonment for the theft of Victim JT's monies. The Defendant submitted that the sentences should run concurrently and therefore he landed on the sentence of 4 years and 2 months imprisonment as being appropriate.

32. To all of this I refer to my authority of ***R v. Nancy Vieira [2023] SC (Bda) 53 Cri. 21 June 2023***. The circumstances of ***Vieira*** were that the defendant, who was a lawyer and therefore in position of trust, appropriated monies from her quadriplegic client. Specifically: by way of obtaining a money transfer by deception in the sum of $50,000; stealing the sum of $28,615 by making unauthorized automatic teller machine ("ATM") withdrawals from her client's bank account; and, stealing the sum of $7,601.06 by making unauthorized debit card transactions from her client's bank account. I sentenced the defendant to 5 years imprisonment, 3 years imprisonment, and 2 years imprisonment respectively for the offences and they ran concurrently. In reaching these sentences in ***Vieira*** I was guided by the still leading UK authority of ***R v. Barrick (1985) 7 Cr.App.R.(S) 142*** in which the following facts were set out:

> *"The fourty-one (41) year old appellant in Barrick was employed to manage a finance company so that the owner could concentrate his attention on other business ventures. The attractive credentials of the appellant was that he was a former police officer and a security guard employed by a Government Department. Once employed the appellant had a clear run of the company as to how the finance company should be managed, and, the owner allowed the appellant to have money as the appellant so required. The owners implicitly trusted the appellant. However, after some time it became clear that the appellant was misappropriating funds from the company's accounts, and, upon closer scrutiny it was revealed that a great number of the accounts were bogus. An accountant examined the books and discovered that the company lost about £9,000 (and possibly more). The money was stolen from private individuals who could not afford to take the loss…..*
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> *The appellant was charged with false accounting, theft, and obtaining property by deception offences and after a trial before a jury he was convicted of the offences. At his sentencing hearing his lawyer, in mitigation, pointed to: his good character; his age at the time of the offence; no previous convictions; and, that he served as a police officer and that any term of imprisonment would be extremely deleterious and unpleasant for him. The appellant was sentenced to two (2) years'*

imprisonment on each count to run concurrently and he subsequently appealed this sentence to the Court of Appeal."

33. Describing the offences committed by the appellant as *"mean"*, Lord Lane CJ said:

> *"The type of case with which we are concerned is where a person in a position of trust, for example, an accountant, solicitor, bank employee or postman has used that privileged and trusted position to defraud his partners or clients or employers or the general public of sizeable sums of money. He will usually, as is in this case, be a person of hitherto impeccable character. It is practically certain, again in this case, that he will never offend again and, in the nature of things, he will never in his life be able to secure employment with all that that means in the shape of disgrace for himself and hardship for himself and also his family."*

and,

> *"In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide. Where the amounts involved cannot be described as small but are less than £10,000 or thereabouts, terms of imprisonment ranging from very short up to about 18 months are appropriate……..Cases involving sums of between £10,000 and £50,000 will merit a term of about two to three years' imprisonment. Where greater sums are involved, for example those over £100,000, then a term of three and a half years to four and a half years would be justified."*

34. Instructively, Lord Lane CJ also set out the factors which should be taken into consideration when sentencing for this species of cases. He said that:

> *"The following are some of the matters to which the Court will no doubt wish to pay regard in determining what the proper level of sentence should be: (i) the quality and degree of trust reposed in the offender including his rank; (ii) the period over which the money or property dishonestly taken was put; (iii) the use to which the money or property dishonesty taken was put; (iv) the effect upon the victim; (v) the impact of the offence on the public and the public confidence; (vi) the effect on fellow-employees or partners; (vii) the effect on the offender himself; (viii) his own history; (ix) those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like; where, as*

sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police."

35. In *Vieira*, I referred to the usage of *Barrick* in the UK authority of *R v. Clark [1998] 2 Cr.App.R. (S.) 95* and the Bermuda Court of Appeal authority of *R v. Clayton Albert Busby [2004] Bda L.R. 29*. In particular, I stated the following in paragraphs 29 to 31 of *Vieira*:

> *"29. ……..Clark was a case in which the appellant was a bursar of a charitable body and a treasurer of a local church and he stole £400,000 from his employer and £29,000 from the church over a period of 4 years. In reducing his initial sentence of 5 years imprisonment to one of 4 years imprisonment Rose LJ said that:*
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> > *"The offences were aggravated by the degree of trust reposed in the appellant, by both his employers and the church, by the period of four years over which the offense were committed, and by the fact that the proceeds were spent on personal expenditure, partly of an extravagant kind. The appellant's good character, to which three written references before the Court speak, and his frankness, co-operation and pleas of guilty at the first available opportunity, all mitigate sentence in this case. It is also significant that he has repaid some £120,000 to those who have suffered from his depredations. We bear in mind that the appellant's family are now living in much reduced circumstances, and that there have been other reasons for distress in the family."*
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> *30. Clark also represented an inflationary increase in the guidelines enunciated by Lord Lane CJ in Barrick and to this Rose LJ in Clark, noting the increased scale and complexity of white-collar theft and fraud, commented that:*
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> > *"In light of all these circumstances, we make the following suggestions. We stress that they are by way of guidelines only and that many factors other than the amount involved may affect sentence. Where the amount is not small, but is less than £17,500, terms of imprisonment from the very short up to a 21 months will be appropriate; cases involving sums between £17,500 and £100,000 will merit two to three years; cases involving sums between £100,000 and £250,000, will merit three to four years; cases involving between £250,000 and £1 million or more will merit between five and nine years; cases involving £1 million or more, will merit 10 years or more. These terms are appropriate for contested cases. Pleas of guilt will attract an appropriate discount. Where the sums are exceptionally large, and not stolen on a single*

occasion, or the dishonesty is directed at more than one victim or group of victims, consecutive sentences may be called for."

31. *In Busby the appellant pleaded guilty to 10 counts of theft totaling $159,493.37 from the Bermuda Government when he was employed as a Medical Claims Assessor in the Accountant General's Department. In essence the appellant facilitated the payment of fraudulent claims to himself over a period of 15 months. Ward JA found that the sentence given to the appellant was unduly lenient and in doing so commented that the guidelines of Barrick "still carry much weight and substantial terms of imprisonment are still required to mark the gravity of certain offences."*

36. I then went on in *Vieira* to suggest the following guidelines sentences for persons who have been convicted of like offences and when in a position of trust:

Less than $20,000	6 months to 2 years' imprisonment
$20,000 to $50,000	2 to 4 years' imprisonment
$50,000 to $100,000	4 to 6 years' imprisonment
$100,000 and over	6 to 10 years' imprisonment

37. To be explicit, I do not accept the sentencing ranges proffered by the Defendant in his written submissions as they do not align with the trajectory of prevailing jurisprudence.

38. Guided by the above paragraphs I will now transition to the reasons for sentencing the Defendant as I did.

Sentencing Decision

39. As the evidence steadily and compellingly unfolded during the course of the trial a multitude of questions repeatedly permeated throughout the courtroom. Questions such as: Why did the Defendant steal from his victims who were, and still are, physically and mentally vulnerable (one of whom treated him [the Defendant] as a son)? Why did the Defendant compel the Prosecution to bring his victims into the glare of the courtroom to give evidence thereby compounding their obvious emotional pain? Why didn't the Defendant make any efforts to pay his victims over the years, in full or partially, well-

knowing that they needed the monies to pay for exorbitant medical and household expenses? Why did the Defendant tell bull-faced lies to the Jury, and to his victims, that he stole their compensation monies because he was under duress when it was clear that there was no or insufficient evidence of any nexus between any of the thefts and any duress (the Defendant admitted that $110,000 of Victim LB's monies and $30,000 of Victim JR's had nothing to do with any threats)?

40. There is only one answer to all of those questions. It is because the Defendant was and still is intent on exhausting every legal and procedural mechanisms available to him, and not available to him, in order to escape criminality (which included a baseless abuse of process application and an equally unsubstantiated application for me to recuse myself from this matter). He used his extensive knowledge of the criminal justice system and of the jury trial process to try and absolve himself (a) of any blame for what he unambiguously did to his victims; and (b) of having to pay any of his victims who had put their endearing trust and faith in him to relieve them of what must have been and probably still is excruciating physical, emotional and financial pain. He had coldly abused and continues to abuse that trust and faith in order to selfishly line his own pockets.

41. Fortunately, through its expeditious unanimous guilty verdicts on all counts the Jury must have concluded that the Defendant's defence was absolute hogwash, and no amount of times that the Defendant repeats *ad nauseum* that his claims of duress were "substantiated" alters that reality. Disturbingly, in his Social Inquiry Report dated 15th December 2023 ("SIR") and at the sentencing hearing the Defendant maintained his concoction of lies as to being under duress and it appeared that he did so with even more gusto than he did at trial (see virtually every paragraph of his written submissions he referred to at the sentencing hearing – which included the inapplicable authority of ***R v. Winston Paynter [2023] SC (Bda) 33 Crim. 12***). Yet, the Defendant did not produce one scintilla of credible or sustainable evidence to the police, to the Jury, or to me at the sentencing hearing which would satisfy the requirements of section 48 of the Criminal Code or which was necessary for him to avail himself of the defence of duress in relation to the monies which he stole from Victim LB, Victim JR and Victim JT.

42. In particular, there was no or insufficient credible evidence as to: any threat of immediate death or grievous bodily harm; exactly who existed and was in a position to execute any threats against him; why he believed himself to be unable to escape those threats; or, why he did not avail himself of any opportunity which may have been open to him to render any threats ineffective (he made no complaints to the police). The Defendant also did not provide any or any sufficient credible evidence (documentary or otherwise) as to how and when he would have paid persons who supposedly threatened him i.e. in what cash denominations, what direct deposits went into which various accounts, what were the amounts of any money drafts, etc. Any evidence which the Defendant may have uttered in this regard was riddled with inconsistencies and implausibility.

43. All of this blindingly illustrated that the trial was a monumental waste of the Court's and the Jury's time.

Mitigating features

44. Having prompted a fully contested trial the only mitigating factor which the Defendant may be able to muster up is his previous good character. I accept that his character referees were speaking from the heart when they described him in the SIR, but clearly his loved ones and friends did not know that he was living two lives, one as a family member and friend and the other as a criminal who was stealing from his clients.

45. The Defendant has also urged that I take into consideration that as a businessman and lawyer that he has hired and trained numerous person in the community, and, that he has helped numerous people both past and present with their legal problems. Whilst the Defendant should be given credit for having no previous convictions, and I do give him such credit, I decline his invitation to give credit to what he may or may not have done in his capacity as a businessman and lawyer. This is because it was most likely this veneer of good character (particularly as a lawyer) which allowed him to exploit the trust which Victims LB, JR, and JT had in him to take care of their legal needs. As I commented in

the case of *R v. Diedre Woolgar, Case No. 25 of 2018, The Supreme Court of Bermuda (10th September 2020)* (which was cited in *Vieira*):

> *"….it could be said that it is by reason of the appearance of such erstwhile good character that offenders such as the Defendant and the appellant in Barrick are placed in a position of trust and authority and are then able to carry out their criminal acts. To be clear, the Defendant having no antecedent conviction history is a factor to which I will have due regard, but not to the extent that heavy weight would be applied to it given the nature of the offences committed."*

46. I additionally wrote in *Vieira* that:

> "*This is because when one commits offences whilst in such a trusted position as a lawyer then their previous good character should have less weight than if they were not a lawyer. It is most likely due to their positions as lawyers, and the public's ingrained perception and expectation that lawyers will always act with honesty and in accordance with the Bermuda Bar Code of Conduct when representing their client's, that corrupt lawyers are able to have access to confidential information, such as bank accounts. It is then that they have the means and the opportunity to effectively carry out their nefarious deeds on their clients. It would therefore be grossly unfair for offending lawyers to rely heavily on their previous good character during sentencing when it was their "supposed" good character which allowed them in the first place to commit offences upon their unsuspecting and trusting clients."*

47. I also take heed to my own words in the recently decided matter of *R v. Kamal Worrell [2024] SC (Bda 22 Crim (27th May 2024)* in which I made it clear that lawyers should not be imbued with good character simply because they carried out their jobs as lawyers. Further, and similar to what I also said in *Worrell*, it was because the Defendant was a lawyer that his victims put their trust in him to get and give to them the compensation which they deserved. Further, it was likely because the Defendant was a lawyer and had knowledge about how the legal and banking process works that he was able to devise a conniving scheme to steal the money from his victims. It would therefore be ridiculous for this Court, when sentencing the Defendant, to give him credit for being a businessman and a lawyer when he used his commercial and legal skills to still a significant amount of money from his clients. In any event, any good deeds which the Defendant may have done

when a businessman and lawyer are totally obliterated by the fact that he stole close to half a million dollars from Victims LB, JR and JT.

48. Moreover, the Defendant has shown absolutely no genuine regret or remorse for what he did to his three victims and for what he is continuing to put them through. What he expressed remorse for was "what this ordeal had done to the Complainants" (see paragraph 8 of his written submissions and page 3 of the SIR). In doing so he has attempted to remove himself from the equation and he refuses to accept any ownership that it was he who caused the "ordeal" to his victims. Quite bizarrely, in his written and oral submissions to the Court he repeatedly referred to "the Defendant" and the "offender" as if he was making submissions on behalf of one of his clients and not himself. This is indicative of the Defendant attempting to absolve himself of any culpability or blame for what he did and is still doing to his three victims.

49. Equally egregious was the Defendant's attempt at trial and at the sentencing hearing to convey that he was and still is the actual victim in this sordid tale which was orchestrated by him. In his written submissions he audaciously writes *"I humbly submit that this also established that the Defendant though on trial in this case was also a victim"* and *"It is submitted that there were 5 victims in this case: the 3 Complainants, the Defendant and the Defendant's witness"*[1]. I also have no understanding whatsoever of when the Defendant says that the Courts should *"show the community that it understands that men can be victims too"* and that the Court should mete out a sentence which *"shows compassion to the Defendant who is also a victim…."*.[2] In paragraphs 32 to 35 of his written submissions the Defendant goes on to list how his life has been *"affected in the worse way"*. Not as a consequence for the crimes that he committed, but by what he says happened to him.

50. In common Bermudian parlance: "The nerve of him". The Defendant trying to shift victimization onto himself is beyond the pale and it is demonstrates that the Defendant

[1] Paragraphs 9 and 14 of the Defendant's Written Submissions (undated).
[2] Paragraph 28 of the Defendant's Written Submissions.

does not have one iota of regret or remorse in his body for what he did to his three victims. His sad attempt to minimize his guiltiness and paint himself as a victim are factors which I took into consideration in sentencing him.

51. Having said all this, I do take into consideration in the Defendant's favour that the report writer of the SIR concluded that based on identified risk factors and protective factors that the Defendant appears to be of very low risk of reoffending and of very low need for rehabilitative services. This informs me that when released from incarceration that there is a low chance that the Defendant will commit any further offences. However, although I am hopeful that the report writer is correct, I am not as optimistic about their conclusions. At no time whatsoever has the Defendant admitted that he was wrong in taking his clients' compensation or even accepted that he victimized his clients. This leads me to ponder whether the Defendant has learned his lesson because if he has not then surely this could result in him committing further offences when released from custody. Of course, only time will tell.

Aggravating features

52. In comparison to the paucity of mitigating features, many of the aggravating features listed by Lord Lane CJ in ***Barrick*** are present. In particular:

The nature and seriousness of the offence: This was undoubtedly a very serious offence which has caused significant emotional turmoil for each of the Defendant's victims. Further, while the Defendant did not cause any direct physical harm to his victims his past and current abject refusal to give them their money so that they could receive much needed medical treatment for the injuries has indirectly caused, and is still causing them, considerable physical pain. This was evident as each of the Defendant's victims separately hobbled into the courtroom to give their oral evidence. Their physical and mental anguish must have also been evident to the Defendant in his office when they each sought legal respite from him for their suffering.

Adding salt to the literal and proverbial wounds of his victims the Defendant repeatedly throughout the trial and the sentencing hearing attempted to deflect any blame away from him and onto fictitious thugs who he says threatened him. Make no bones about it, the Defendant was the sole mastermind and beneficiary of these serious crimes and all of the blame rests squarely on his shoulders.

The quality and degree of trust reposed in the Defendant: As I mentioned in multiple paragraphs above, each of the Defendant's victims went to him and placed their trust in him to ease their sorrow and pain for what happened to them. For Victim LB, who was like a father to the Defendant, it must have been extremely comforting for him to go to the Defendant who he must have seen as having trusting and safe hands to handle what eventually became a whopping $300,000 settlement. Ultimately though, it was this deep trust which Victim LB, Victim JR, and Victim JT had in the Defendant which likely led to them giving the Defendant a pass when he was not returning their calls over an unreasonable period of time, and, which likely kept them from seeking the intervention of the police authorities much sooner. Even when they were in the witness box giving their evidence there was the sense that they still had lingering hope and trust that the Defendant would pay them their compensation. But alas, their trust in the Defendant, albeit understandable, was and still is unwarranted because the Defendant was and still is prepared to exploit their respective good natures.

The damage or loss caused by the Defendant (including the effect of the Defendant's conduct on each of the victims): On top of the Defendant's victims' considerable pain and suffering sustained in their accidents the Defendant's criminal conduct only exacerbated their pain and suffering. One only need to look at the victim's Victim Impact Statements which tell empathetic accounts of the prolonged unhappiness which the Defendant had put them through and still puts them through. As the Defendant was clandestinely using their much needed money for his own selfish desires his victims were belabouring under agonizing physical, mental, and financial pain. As a lawyer, and as any normal compassionate person would, he must have seen their deep distress. Yet, not only

did he do nothing to ease the pain of Victim LB he then went on to exert pain on Victim JR and Victim JT.

As said earlier, the Defendant's victims are still suffering from what he did to them. They all still need medical attention to address their ailments but they do not have the finances to do so. In relation to Victims JR and JT, their personal incomes have taken a severe hit due to their inabilities to maintain gainful employment and so their compensation would have gone a long way to relieving their financial and emotional stress.

Finally, the Defendant's comment that he *"has committed to making full restitution"*[3] to his victims rings hollow. Firstly, at the time of sentencing he had not made any restitution, and secondly, the Defendant has had ample time and opportunity to pay his victims even partially but he refused to do so even though he was still operating several businesses. On page 2 of the SIR he lists four businesses which he has owned since 2018 and he said that since his incarceration his conviction his businesses are still making money. At trial the Defendant spoke, and even bragged, about a million dollar contract which he had secured with the Bermuda Government. He also filed a sworn affidavits from attorney Mr. Jaymo Durham on the 12th March 2024 and a Mr. Denzil Nelson dated 15th March 2024 stating that the Defendant has instructed them to collect monies owed to the Defendant by other clients and that these sum are to be used to pay Victims LB, JR, and JT. Yet, at the time of the sentencing hearing no amounts whatsoever had been paid to the Defendant's victims.

But even if the Defendant paid his victims the entirety of their compensations owed I would have only given it slight consideration in my sentencing. As I stated in ***Woolgar***:

> *"……persons who have committed offences of theft and fraud whilst in a position of trust should disabuse themselves of the notion that by simply paying back the money which they have stolen that their likely sentence, whatever it may be, will be significantly reduced. Restitution should not be used as a significant restorative tool to evade a far less [sic.] harsh sentence than that which the offender would have received had they not made the restitution. This is because while*

[3] Paragraph 18 of the Defendant's Written Submissions.

restitution may refill the coffers emptied by the offender, it does nothing to restore the breach of trust by the offender."

The period over which the money was taken by the Defendant: The Defendant commenced his criminal journey on or about the 14th May 2020 when he withdrew $178,000, $110,000, and smaller amounts from Victim LB's $300,000. By the 20th May 2020 almost all of Victim LB's money vanished.

Having taken and used Victim LB's money one would have thought that the Defendant would have taken the time to reflect about what he did. But this was not to be because the Defendant, from the 4th August 2020 (less than three months after stealing Victim LB's money) to the 14th August 2020, he then stole $16,000 of Victim JR's compensation. Then, on or about the 2nd December 2020, the Defendant then stole more of Victims JR's compensation when he took her $89,000 which came into the DV Bermuda's bank account the same day.

Any right-thinking person would have expected the Defendant, seeing the error of his ways in stealing Victim LB's and Victim JR's compensation, would have had some shame and stopped stealing from any additional clients. But it would appear that getting away with stealing Victim LB's and JR's money only bolstered the Defendant thievery because two months later in February 2021 the Defendant stole Victim JT's $87,000.

So, over a period of approximately nine (9) months the Defendant stole the total astronomical sum of $480,000 from three (3) victims. This is not an insignificant factual matrix and it is one which must be taken into consideration in increasing any sentence which the Defendant may receive.

Other factors to be taken into consideration

53. The following factors are as equally important as the above-stated mitigating and aggravating factors.

Prevalence of the offence: Unfortunately, over the past five years the Courts have seen multiple lawyers being charged with misappropriating monies from their unsuspecting clients. I do not think that I would be criticized for pondering about whether there are other lawyers who may be duping their clients into handing over copious amounts of money to them but that have not as yet been caught. To be clear, I am more than satisfied that the overwhelming majority of the members of the Bermuda Bar are carrying out their duties in strict accordance with the Barristers' Code of Professional Conduct 1981. But as it is said, "One bad apple spoils the barrel".

It is also useful to repeat my words in ***Vieira*** when I spoke about "white collar crimes". I said:

> *"I commented in Woolgar that "white collar" crimes should be seen as more serious than the garden variety thefts that come before the Courts. I have also stated in another place and at another time that while white collar crimes do not capture the headlines of the print and electronic they can be as serious or even more serious than violent offences which are often splashed on the front pages of the media…….With the prevalence of white collar crime on the rise, and with the devastating emotional and financial effects which such offences will undoubtedly have on the victims, the offences committed by the Defendant, who was in a position of trust, should occupy a spot at the most severest end of the seriousness spectrum."*

Therefore, a pellucid message must be sent to any lawyer, whatever area of law they may practice, that if they engage in or even think about engaging in the criminal act of stealing from their clients then they will be treated with extreme harshness by the Court if convicted.

The use to which the $483,000 was put by the Defendant: Unsurprisingly, the Defendant chose not to fully reveal what he did with his victims' money. It bears repeating that the Jury, and nor do I, accept the Defendant's drivel that he paid out monies to unnamed individuals who threatened him. Especially since he admitted that $140,000 of the money had nothing to do with any threats.

The Prosecution's position was that the Defendant "Robbed Peter to pay Paul" i.e. he used the money to pay other debts or expenses which he had. This may have been partly correct

and in the SIR the Defendant stated that he used the money to pay other clients who were owned money, but it is also reasonable to infer that the Defendant used the money to pay for items or services in order to satisfy his materialistic wants and desires. To be clear, this is not to say that any of the monies were used to support any substance abuse issue as there was no evidence to suggest such, and equally so, there is no evidence that the Defendant had any gang affiliations or associations.

The Defendant sought to distinguish what the defendant in ***Vieira*** did with the money that she stole and what he did with the money that he stole. The problem with the Defendant's submissions in this regard is that in ***Vieira*** the Court was able to see what the defendant spent the stolen money on. However, in the case-at-bar the Court does not know definitively from the financial records where and to whom the $483,000 went to after it came into the "hands" of the Defendant, and, the Defendant has not provided the Court with any credible evidence or information whatsoever in this regard. In the absence of such I therefore reasonably infer that the money stolen by the Defendant was spent *"on personal expenditure, partly of an extravagant kind"* (as was done by the appellant in ***Clark*** which was cited by the Defendant in support of his contention that he did not use the stolen money for personal benefit).

The impact of the offences on the public and public confidence: In this regard, I repeat the observations I made in ***Vieira*** in which I wrote:

> *"The Barrister's Code of Professional Conduct (1981)("BCPC")*[4] *is, or at least should be, endorsed and slavishly followed by every member of the Bermuda Bar Association. The opening few paragraphs of the BCPC encapsulates the guiding principles as to how barristers should conduct themselves when carrying out legal work on behalf of their clients. Rules 4 to 7 of the BCPC stipulate that:*
>
> > *"4 A barrister must discharge his duties to his client, the court, members of the public and his fellow members of the profession with integrity and in accordance with this Code.*

[4] Created by the Bermuda Bar Council and confirmed by the Chief Justice under section 9 of the Bermuda Bar Act 1974 and brought into operation on 7th August 1981.

5 The conduct of a barrister within or outside the professional sphere must not be likely to impair a client's trust in him as a professional consultant.

Duties

6 It is the duty of every barrister-

(i) to comply with the provisions of this Code;

(ii) not to engage in conduct (whether in pursuit of his profession or otherwise) which is dishonest or which may otherwise bring the profession of barrister into disrepute, or which is prejudicial to the administration of justice;

(iii) to observe the ethics and etiquette of his profession;

(iv) to be competent, diligent and efficient in all his professional activities;

(v) within twenty-eight days (unless a longer period has been agreed by the Bar Council) to respond to every enquiry made of him by the Council."

7 A barrister has a duty to uphold the interest of his client without regard to his own interest or to any consequences to himself or to other person."

By committing the offences charged the Defendant surely has shaken the public's confidence in the legal system generally and in lawyers specifically. Lawyers who properly operate in the legal system zealously guard their individual and collective reputations and they do all that is humanly possible to act in accordance with the deeply engrained virtues of their honourable profession. Despite this, lawyers continuously have to confront negative and unjustified stereotypes held by some in the community. "

The same can be said of the Defendant's offences in the case at bar, but his offences are distinguishably more serious than those in ***Vieira***. The Defendant's criminal conduct involved three victims (not one) and significantly more funds were stolen by him. Moreover, in ***Vieira*** I stated, probably with a dose of idealism, that the actions of the defendant in that case was an aberration to the high standards routinely exhibited by members of the Bermuda Bar. However, with the offences committed by the Defendant and recently by other lawyers (which included one who was convicted of murder) I would not be surprised if those hundreds of lawyers in Bermuda who do carry out their legal duties with aplomb have collectively had their good reputations tarnished by the behavior of the Defendant.

Therefore, the Defendant is delusional in his thinking that even after conviction that *"to this day"* he *"is trusted by many persons and businesses to assist them with their legal problems both of civil and criminal nature"* (as stated in paragraph 28 of his written submissions). Especially since he is currently incarcerated and should not be rendering any legal, commercial or advice to anyone whether inside or outside of the Westgate Correctional Facility.

54. The Defendant has asked that I take into consideration the thirty-one (31) months which has elapsed between his arrest in March 2021 and the trial in October 2023. I decline to do so. Primarily because 31 months is not a long period of time at all for a case of this nature to be brought on given that large amounts of documentary evidence had to be obtained from the relevant banks and that those documents had to be then analyzed by financial experts. In fact, I would say that the matter proceeded with reasonable expedition.

55. Also, for some strange reason the Defendant has asked me to interpret the Jury's verdict for the purpose of sentencing him. I decline to do this as well as it is not only irrelevant to my sentencing function but it is an issue which is best left to be ventilated in a higher jurisdiction.

Sentence in respect of the theft of $300,000 from Victim LB

56. As stated earlier, the Prosecution submitted that the sentence of 8 years imprisonment would be warranted and the Defendant put forth the sentence of 4 years and 2 months imprisonment. In consideration of the above sentencing guidelines as well as the mitigating and aggravating features set out above I conclude that the appropriate sentence should be in line with the Prosecution's suggested sentence of 8 years imprisonment. I do so by recognizing that this places the sentence at the higher end of the range that I suggested in *Vieira*.

57. Accordingly, I sentence the Defendant to 8 years imprisonment for stealing $300,000 from Victim LB.

Sentence in respect of the theft of $96,000 from Victim JR

58. As also stated earlier, the Prosecution submitted that the sentence of 5 years imprisonment would be warranted and the Defendant put forth the sentence of 1 year and 2 months imprisonment. In consideration of the above sentencing guidelines as well as the mitigating and aggravating features set out above I conclude that the appropriate sentence should be in line with the Prosecution's suggested sentence of 5 years imprisonment. That is, near the higher end of the range in *Vieira*.

59. Accordingly, I sentence the Defendant to 5 years imprisonment for stealing $96,000 from Victim JR.

Sentence in respect of the theft of $87,000 from Victim JT

60. As also stated earlier, the Prosecution submitted that the sentence of 4½ years imprisonment would be warranted and the Defendant put forth the sentence of 2½ years imprisonment. In consideration of the above sentencing guidelines as well as the mitigating and aggravating features set out above I conclude that the appropriate sentence should be in line with the Prosecution's suggested sentence of 4½ years imprisonment. That is, near the lower end of the range in *Vieira*.

61. Accordingly, I sentence the Defendant to 4½ years imprisonment for stealing $87,000 from Victim JT.

Sentences to run Consecutively

62. I acceded to the Prosecution's argument that the sentences for each of the counts on the Indictment should run consecutively rather than concurrently as argued by the Defendant.

I did so primarily because not only are the offences committed in respect of each victim of the same or similar severe kind but when one looks at the overall criminality of the Defendant the running of the sentences concurrently would not sufficiently reflect the gravity of the circumstances of this case or the depths of what the Defendant did to his victims. Specifically, that which I spoke about earlier:

(i) The Defendant committed three different offences against three different persons during three different time periods.

(ii) Each individual theft by the Defendant involved multiple illicit transactions from each of his victims' compensation monies.

(iii) The Defendant could have at any time and on many possible occasions seen the error of his ways after brazenly stealing $300,000 from Victim LB. To the contrary, he then went on to steal from Victim JR and Victim JT.

(iv) The amounts of $300,000, $96,000, and $87,000 stolen by the Defendant are in and of themselves substantial and the total amount of $483,000 stolen is staggering.

(v) After he stole their monies the Defendant refused to communicate with his victims well knowing that they needed the compensation to pay for extensive ongoing medical and household expenses.

(vi) Due to the theft of their monies each of the Defendant's suffered and are still suffering from physical pain and/or financial loss.

(vii) No efforts were or are being made by the Defendant to repay his victims over the years although he was and still is earning revenue from his other businesses.

(viii) The negative impact which the offences have on the public's confidence in the legal profession.

Application of the Totality principle

63. The fundamental principle of sentencing as codified in section 54 of the Criminal Code is that a sentence must be just and proportionate to the gravity of the offences and the degree of responsibility or culpability of the offender. Such principle was applied in my determination of whether the above sentences for the separate offences in this case should run concurrently or consecutively. However, the principle should also apply once consecutive sentences are decided upon (as I did). Meaning that the sentencer should also ensure that the aggregate of all of the consecutive sentences should not exceed the point where it is no longer just and proportionate to the offences.

64. The Prosecution submitted that the total sentence for the Defendant should be 17½ years imprisonment which represents the total calculation of the 8 years, 5 years, and 4½ years imprisonment suggested by Prosecution and decided by me. However, I conclude that a sentence of 17½ years imprisonment would be excessive and therefore would not be just and proportionate to the offences committed by the Defendant.

65. In the circumstances, and applying the totality principle, I further conclude that the total sentence should be adjusted downwards to 15 years imprisonment which in my view would be just and proportionate to what the Defendant did to his victims.

Confiscation Inquiry and Disclosure of the Defendant's current assets

66. Section 14 of the POCA stipulates that for the purpose of obtaining information to assist it in carrying out its functions in relation to the making of a confiscation order under section 10 of the POCA that the Court may order the Defendant give such information in such a manner deemed appropriate. Further, that if the Defendant fails without

reasonable excuse to comply with such order then the Court may draw such inference as it deems appropriate.

67. Although the Defendant has made countless promises to pay his victims their respective compensation, by the date of sentencing he has doggedly refused or failed miserably to do so. Even at the sentencing hearing he stated that he *"has at all material times voluntarily offered to make full restitution to the Complainants"*[5], but over the years he has shown no proof whatsoever of this intention. This is even though, in his words, he is still operating four business from within the walls of Westgate, that he has instructed lawyers to collect monies owed to his businesses, and that he has a million dollar contract with Government. I do not think I would be faulted for having no faith whatsoever in the Defendant fully living up to his promises. Interestingly, although the Defendant has stated that he will pay his victims their compensation, at no time prior to, during, or after the trial has he said anything about <u>when</u> and in <u>what</u> manner he will pay them.

68. It is with this in mind that a Confiscation Order, if granted, may give the Defendant's victims far more certainty of receiving their compensation than would a Restitution Order. Chiefly because a Confiscation Order, if granted, operates without any action or inaction on the part of the Defendant whereas a Restitution Order is too dependent on the Defendant's willingness and ability to pay the compensation. It goes without saying that as long as the Defendant is incarcerated then he may not be able, even if willing, to fully comply with a Restitution Order. The same could be said when the Defendant is released from incarceration.

69. Justice therefore dictates that steps should be taken *post haste* to ensure that Victims LB, JR and JT are immediately paid that which is owed to them by the Defendant. Especially if there is any chance that the Defendant will take measures to dissipate any assets of his businesses. It is therefore for this reason that I confirm my order under

[5] See penultimate page of the Defendant's Written Submissions.

section 14 of POCA for the Defendant to provide any and all information as to his current assets, including but not limited to his the assets of his businesses.

70. Of course, whether or not a Confiscation Order should eventually be made against the Defendant may be an issue for another time. To this end, the Court which is called upon to consider whether a Confiscation Order should be made will no doubt determine whether or not the Defendant has benefitted from stealing $483,000 for his victims before making such order.

Conclusion

71. I therefore confirm the following sentence which I gave to the Defendant and the order I made on the 22nd March 2024:

(i) 15 years imprisonment

(ii) That pursuant to section 14 of POCA the Defendant shall a completed statement as to his current assets.

72. If I did not say it on the 22nd March 2024 then I will now say that time in custody should be taken into consideration.

Dated the 7th day of June, 2024

THE SEAL OF THE SUPREME COURT OF BERMUDA
SIGNED

The Hon. Mr. Justice Juan P. Wolffe JP
Judge of the Supreme Court of Bermuda