



In the Supreme Court of Bermuda
CRIMINAL JURISDICTION
2019: No. 26

B E T W E E N:

THE QUEEN

-V-

JA-MAE SMITH

Before: **Justice Charles-Etta Simmons**

Appearances: Kamal Worrell, AAA Law Company Ltd., for the Defendant;
Kenlyn Swan, Office of the Director of Public Prosecutions, for the Crown

Date of Hearing: **24th October 2019**
Date of Sentence: **24th October 2019**

SENTENCE

Forgery of certificate of insurance –Guilty plea-whether fine appropriate-assessment of fine.

SIMMONS J:

1. Miss Smith, you are before the court on indictment - No. 26 of 2019 which contains a single count that of Forgery of a Certificate of Insurance contrary to section 16 (1) of the Motor Car Insurance (Third-Party Risks) Act 1943.

2. The facts reveal that someone drove your car when that car was uninsured. When that driver was stopped by the police he was issued summonses for driving an unlicensed and uninsured motor car. Your car was impounded by the police.
3. The next day you presented a forged insurance certificate to a TCD employee and successfully obtained a one day permit to remove your car from police impound. Using that same forged document you succeeded in removing your car from the police impound. It was through the careful inspection of the insurance document by a police officer, and subsequently by a representative of Colonial Insurance, that your fraud was uncovered.
4. In sentencing you the court is required by sections 53 to 55 of the Criminal Code 1907 (“the Code”) to take several matters into consideration. The Crown submits that the objective in sentencing you in this case is deterrence. The court must take into account the following:
 - a. **The nature and seriousness of the offence.** The offence is serious in the sense that a certificate of insurance ensures that at least a third party’s costs would be covered in the event of injury or damage caused by the driver of your car. In the courts judgment it is also a reminder to the owner of a car of the responsibilities that they have to other road users. The court accepts that this case falls on the low end of offending and is probably a one off offence for you.
 - b. **The extent to which you are to blame.** You are the only one to blame for the commission of this offence. You used varying degrees of fraudulent representation to achieve your personal aims; to have your car released from impound so that you could achieve your goal of repairing or selling your car within a given period of time.
 - c. **Aggravating circumstances:** Counsel for the Crown relies on the fact that you had some 6 weeks after the expiry of the licence and insurance of your car to insure it.
 - d. Further that you had the temerity to ask that one of the moving violation tickets, issued to the driver, be withdrawn.

5. Under ordinary sentencing principles, aggravating features call for a higher sentence than otherwise might be meted out.
6. The court must also consider any mitigating circumstances that might call for a discount on an otherwise appropriate sentence. In your case the court must take into account the fact that you admitted to the offence at a very early stage, that is, during your police interview. You first appeared in court on the 3rd September however you were not arraigned until the 1st October when you pleaded guilty. It is also of relevance that you have no previous convictions, and so therefore are of good character. Further you have shown contrition for your offending in the face of the court today.
7. The Crown were unable to provide the court with any guideline cases to establish a starting point for the sentence in your case. Nonetheless, Ms Swan suggests that rather than consider imprisonment, the court ought to levy a fine on you pursuant to section 56 of the Code. She suggests that the appropriate fine should be \$3,000 because the much lesser offence of driving without insurance usually attracts a fine in the Magistrates court of \$1,500.
8. Mr Worrell, speaking on your behalf, contends that taking the level of offending into account, your good character in the sense that you have a clean record and your guilty plea; further, bearing in mind the court's duty to make a sentence proportionate to the offence, that a fine in the amount of \$2,000 would achieve that.
9. Ms Smith, the maximum penalty for forgery of a certificate of insurance is 2 years imprisonment. The court has determined that imprisonment is not appropriate in the circumstances of this case, and bearing in mind that you have here before had an unblemished record, and your owning up to this offence at the earliest possible opportunity mitigates against a sentence of imprisonment. A fine is a more appropriate penalty.
10. The court considers the Crown's suggested sentence of a \$3,000 fine as the appropriate sentence, bearing in mind the aggravating features of your case. Against that, account must be taken of

your guilty plea and your previous good character. You should therefore be given the benefit of the full discount of a 30% reduction, resulting in a fine of \$2,100.

11. Ordinarily, the fine would be payable before close of business today and before you can be discharge from the custody of Corrections. However, you have persuaded this court that you are not in a financial position to pay the full fine. In the circumstances, you have indicated that you can pay in the following way for which the court now orders in the following terms:

- i. \$500 on or by the 31st October 2019
- ii. \$1,000 on or by the 30th of November 2019
- iii. The balance on or before the 31st December 2019
- iv. In default of these payments you will be imprisoned for 3 months.

That is the sentence of this court.

Dated 24th October 2019.

SIMMONS, J