

CR 44/12 – R v Floyd Hall

CR 38/12 – R v Clayton Greene

**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

REX

v.

FLOYD BASIL HALL,

AND

CLAYTON STANFIELD GREENE

CORAM: AGYEMANG CJ

**FOR THE CROWN: MR. ANDREW MITCHELL KC, WITH HIM, MR. QUINN
HAWKINS, MS. KATE DUNCAN, MS. ENJALEEK DICKENSEN**

**FOR THE FIRST DEFENDANT: MR. EARL WITTER KC, WITH HIM, MR. KAYODE
SMITH, AND MS. LEONA BROOKS-CAMPBELL**

**FOR THE FOURTH DEFENDANT MR. RICHARD BENDALL, WITH HIM MS
KISHANTA HALL**

DATE OF SENTENCING HEARING: 10 OCTOBER 2023

DATE OF SENTENCING: 12 OCTOBER 2023



SENTENCING

1. On 25 September 2023, this court in a judge-alone trial, delivered its judgment in the trial of the four persons including the present defendants, charged with five counts of criminal offences. The second and third defendants who were charged with Conspiracy to Defraud on Count 2 of the Information, were acquitted and discharged of the offence. The first defendant Mr. Floyd Hall (FBH) was convicted of the crime of Bribery which was charged in Count 3. The fourth defendant Mr. Clayton Greene (CSG) was convicted under s. 30(2)(a) of the Proceeds of Crime Ordinance 1998 on Count 5.
2. The court directed itself on the provisions of Rule 91 of the Criminal Procedure Rules, when learned King's Counsel Earl Witter, for the first defendant sought an adjournment in preparation for the sentencing hearing, and granted an adjournment to 10 October 2023.

ASSISTANCE TO THE COURT

3. In accordance with Rule 91(3) of the Criminal Procedure Rules 2021, the Prosecution in compliance with their duty to provide relevant information to assist the court in its duty of sentencing, filed on 5 October 2023 Sentencing Guidelines for England and Wales, an amended Note on Sentencing with authorities, a Note on Confiscation, and a Prosecutor's Statement (in the related matter of confiscations which will be dealt with separately from the sentencing).
4. On 7 October 2023, A response which dealt with both sentencing and confiscation, was filed by Mr. Bendall on behalf of the fourth defendant, Clayton Stanfield Greene.
5. On 10 October 2023 the Prosecution filed the Eastern Caribbean Supreme Court (ECSC) Sentencing Guidelines. They also filed an Addendum Note on Sentencing, in which they drew parallels between the England and Wales Sentencing Guidelines and the ECSC guidelines.

6. On 10 October 2023, Mr. Witter KC filed his severed responses on sentencing and confiscation.

Submissions:

Prosecution's Note:

7. The Prosecution assists the court with Sentencing Guidelines from the United Kingdom, as well as from the ECSC. The ECSC Sentencing Guidelines references the offence of corruption (which includes Bribery) and money laundering.

The England and Wales Sentencing Guidelines - Bribery

8. The Prosecution submit that in the absence of Sentencing Guidelines for the Turks and Caicos Islands, the England and Wales Sentencing Guidelines (EWSG) should be applicable in these islands. The applicability, they submit is manifest, for the EWSG's guidelines for the offence of Bribery includes provisions in respect of s.1 of their Bribery Act of 2010, which mirrors the common law offence of Bribery of which the first defendant has been convicted. They submit also, that s. 327 of their Proceeds of Crime Act, 2002 mirrors the provisions of s. 30(2)(a) of the Proceeds of Crime Ordinance of 1998, regarding which the fourth defendant has been convicted.
9. They rely on the said guidelines to submit that FBH's offence falls in the 'Category A - High Culpability' category, in that among other things, he abused his position of power and trust as Deputy Premier, the second highest political office, that the mode of commission was sophisticated, and was sustained over a period of two and a half years. Thus, there was no question of the existence of coercion, intimidation or exploitation in the commission, that there was a lack of personal benefit, or that it was one-off offence with very little or no planning, factors that would have brought it within the 'Category C Lesser Culpability' category.

10. Regarding the harm caused by FBH's actions, the Prosecution submit that it falls within the 'Category 1' bracket, in that they constituted an offence that undermined the proper function of the national government, and was committed for his personal benefit.
11. That would give a starting point of 7 years imprisonment with a category range of 5-8 years.

The ECSC Sentencing Guidelines

12. In the ECSC guidelines, FBH's offence for the same reasons, would be in the 'Level A Seriousness' category, and 'High Consequence' (harm). The application of the ECSC would give a starting point of 75% of the maximum sentence with a range of 60%-90% of the maximum sentence.

Other Legislation

13. The Prosecution have helpfully pointed the court in the direction of *ss. 67 and 70 of the Integrity Commission Ordinance*, which provides a maximum sentence of 5 years imprisonment for an offence which mirrors common law Bribery. They concede that the following are mitigating factors: that FBH has no previous convictions, that there was delay in the trial, and that FBH might be barred from entering the USA.

Parity

14. The Prosecution have provided the court with information regarding the sentencing of Richard Padgett who pleaded guilty to Bribery in that he gave bribes to FBH and another, and also guilty to the offence of Conspiracy to Pervert the Course of Justice.
15. Further information regarding the sentencing of Lillian Boyce who pleaded guilty to the Offence of Misconduct in Public Office, has also been furnished by the Prosecution which

contend that because the offence of Bribery of which FBH has been convicted is very different from Lillian Boyce's crime of Misconduct in Public Office, there can be no question of them being treated alike in accordance with the principle of parity.

Clayton Stanfield Greene (CSG)

Offence: Concealing or Disguising the Proceeds of Crime POCO 1998 (Money Laundering)

16. The Prosecution submit that this also is a 'Category A High Culpability' offence, in that CSG as an attorney, abused his position as a professional person. In this regard, they submit that his actions amounted to a breach of trust in that he had held the office of Speaker of the House of Assembly. They submit also, that the manner of the commission was sophisticated as it involved concealment of the money in the ledger of his firm, providing false descriptions over a period of eighteen months. They submit that the following are aggravating factors: that he dealt with money on behalf of a leading politician, that he took the funds off-record, that he disguised the funds within his practice and paid out non-transactional funds on behalf of FBH, thus lending his respectability to FBH's criminal acts.
17. The Prosecution concedes that the following are mitigating factors which the court must consider: that CSG was a man of good character who has lost his reputation of good standing, may lose his right to practise law and has suffered delay in the trial of the offence he was charged with.
18. The Prosecution cites the case of *R v. Duff*¹ which was cited in *R v. Griffiths and Patterson*². They both involved the less serious offence of 'Failing to Disclose' committed by them as solicitors, for the court's guidance. The fifteen-month sentence of Griffiths, a

¹ [2003] 1 Cr. App R (S) 88.

² [2007] 1 Cr. App. R. (S) 95.

solicitor, was reduced to six months imprisonment by the court which relied on Duff's sentence of six months for a similar offence of Failing to Disclose.

19. They argue that the level of harm for the sum of \$276,965 would be 'Category 4' which would be 5 years imprisonment with a range of 3-6 years, starting with a starting point of GBP 300,000.
20. In the ECSC Guidelines, the value of the amount (\$276,965) would be 'Category 2' with 'Consequence 2' for Seriousness. The starting point they submit, is a range of 35% to 65%. The starting point for a maximum sentence of 14 years, is therefore 7 years imprisonment with a range of 4 years 10 months to 9 years 1 month imprisonment.

Submissions for Floyd Basil Hall (FBH)

21. On behalf of FBH, Mr. Witter KC submits that there is no authority for the use of the EWSG in these islands. He grounds his argument on the fact that s. 15 of the Criminal Procedure Ordinance permits resort in the exercise of its criminal jurisdiction, to the practice in the High Court of England, but does not enable the importation of legislation which sentencing guidelines are. He therefore submits that the court pronounce the sentence for common law Bribery in its discretion, having regard to the principle of parity in relation to the sentencing of Lillian Boyce and Richard Padgett, and other matters apropos the infliction of condign punishment on FBH. Regarding Lillian Boyce's punishment, Mr. Witter KC contends that FBH received less money than Lillian Boyce, and endured a further thirty-one months of a continued breach of his constitutional right to a fair trial. He also refers to a character reference written by H.E. Professor Gilbert Morris, seeking leniency in the sentencing of FBH. Other character references provided by a Calvin Greene and Bishop Coleta Williams III were also supplied.

Submissions for Clayton Stanfield Greene (CSG)

22. On behalf of CSG, Mr. Bendall, in his response to the Crown's Note, raises pertinent matters and includes relevant case law, for the consideration of the court. He also includes a letter of reference written by Mr. Conrad Griffiths KC, seeking leniency in the sentencing of CSG.
23. Mr. Bendall insists that it will be more just to use the EWSG rather than the ECSC Sentencing guidelines which provide starting points significantly higher than the EWSG and that in any event, he had addressed the court on the EWSG before Mr. Witter KC filed his submissions belatedly and addressed the court. Thus, he argues that the sum would place it in the lower rung of Category 4 (range £100,000-£500,000)) and should have a starting point of 3-6 years.
24. Regarding the matters to be considered in the sentencing, Mr. Bendall contends that the mode of commission which was a turning of the blind eye (and not actively participating through knowledge that they were criminal proceeds) should bring CSG under the low culpability rating and not the sophistication that the Prosecution rely on to argue it into the 'A High Culpability' category. He also submits that CSG's service to the community in the various capacities of Speaker of the House of Assembly, Deputy Magistrate, Justice of the Peace, former Chairman of TCInvest, and Chairman of the Appeals Tribunal of the National Insurance Board and the fact that he did not benefit from the offence, should be mitigating factors.
25. He urges the court to have regard to the sentence meted out to Lillian Boyce following her guilty plea to the offence of Misconduct in Public Office five years into her trial. He submits that although her offence was different from that regarding which CSG has been convicted, she admitted to benefitting in the sum of \$1,256,000, which was so much more than the \$277,000 CSG is found to have received. He urges the court to have regard to proportionality and parity in sentencing CSG who was in trial for about eight years (and having regard to the finding of this court that his constitutional right to a fair trial had been breached), in the face of her sentence of 6 months imprisonment suspended for 6

months and a confiscation order of \$1,000,000, of which \$721,580.49 (her frozen pension in escrow) was to be paid forthwith with the balance within 6 months.

DISCUSSION

26. There are as yet, no Sentencing Guidelines for the Turks and Caicos Islands.
27. Rule 91(3) of the Criminal Procedure Rule 2021³ provides that ‘any sentencing guidelines’ may be used. The Prosecution in providing assistance to the court, relied on the England and Wales Sentencing Guidelines, so did Mr. Bendall for CSG. Mr. Witter KC challenges this, contending that s. 15 of the Criminal Procedure Ordinance refers to matters of “practice or procedure”, and therefore does not import sentencing guidelines into the law in these islands. I consider the argument misconceived, as sentencing guidelines are just what their name indicates: guidelines. They do not have the force of law although judges must comply with them (where they exist) in order to produce just and consistent results.
28. But although Rule 91(3) of the Criminal Procedure Rules empowers the court to have recourse to “any sentencing guidelines” for sentencing, for which reason the England and Wales guidelines are not ruled out in the appropriate case in the Turks and Caicos Islands, there does not seem to be any provisions regarding sentencing for common law Bribery in the guidelines provided: the England and Wales guidelines are based on Bribery under the 2010 statute, and the ECSC guidelines deal with corruption as an offence, and not common law Bribery. While this may appear to be a splitting of hairs, it may give cause for a grievance should FBH be sentenced with recourse to an offence for which he was not charged, tried and convicted.

³ Rule 91(3)(b)(iii) of the Criminal Procedure Rule 2021.

29. It seems to me that the safer course to adopt is to not rely on any of the said sentencing Guidelines, but to be guided as appropriate by any matter, in the exercise of my discretion in the sentencing for Bribery at common law.

FBH'S SENTENCING

30. FBH has been convicted of the following offence:

"Bribery

PARTICULARS OF OFFENCE

FLOYD BASIL HALL (FBH) between the 1st day of August 2003 and the 31st day of August 2009 accepted inducements directly or indirectly from Richard Padgett and related and connected entities by unlawful corrupt payments or other rewards (in the form of cash, credit, entertainment and other advantages), whilst serving as a Minister of the Crown in the Government of the Turks and Caicos Islands so that he would act in a way that was contrary to the ordinary rules of honesty and integrity expected of Ministers of the Crown."

31. In sentencing him, I take note of the following:

Principles of Sentencing

32. Although the principles that guide the meting out of sentences are trite, it will be helpful for me to set them out in order that I may not lose sight of them in my task of deciding the appropriate punishment of FBH.
33. While the four punishment principles: the retributive (punitive), deterrent, preventative, rehabilitative, have gained pride of place in the sentencing of many a judge (and Wooding CJ in *Benjamin v. R*⁴ expanded it to five), for the performance of my duty in the instant

⁴ (1964) 7 WIR 459.

matter, I am guided more particularly by the dictum of Hilbery J in *R v Blake*⁵: “*It is of the highest importance, perhaps particularly at the present time, that such conduct should not only stand condemned, should not only be held in utter abhorrence by all ordinary men and women, but should receive, when brought to justice, the severest possible punishment. This sentence had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others, and it was meant to be a safeguard to this country.*” [my emphasis]. I will revisit these in due course in this judgment.

The Judgment of 7 May 2021

34. In the judgment of this court of 7 May 2021, this court having been importuned by the defendants in the case of *R v. Michael Misick and Ors.*⁶ to bring the prosecution to an end following the demise of the trial judge Harrison J on the ground that a retrial would constitute an abuse of process, refused the application. This was despite its finding that there had been inordinate delay leading to a breach of the constitutional right of the defendants to be tried within a reasonable time. The court held that even so, it was still possible for the defendants to have a fair trial. In consequence, the court ordered inter alia the severance of the trial and intimated that the retrial should be conducted with reduced complexity. The court also ruled that:

“In the event of a conviction of any of the defendants, the prejudice suffered by reason of the failure of this court to try the defendants within a reasonable time must be taken into account in any sentence to be imposed, including for parity’s sake and with due consideration of proportionality, the sentence of Lillian Boyce”.

35. The defendants have rightly made reference to this, and seek that the court apply the principle of parity to their sentence, having regard to the sentence of Lillian Boyce.

⁵ [1961] 3 All ER 125, [1962] 2 QB 377.

⁶ [2021] TCASC 12.

36. The court's word, given in solemn judicial proceedings are binding on it, and cannot be retracted. However, it does appear that the interpretation placed on the principle of parity on behalf of the defendants is somewhat warped.
37. To begin with, the court made reference to three things that would guide it in sentencing:
- i. The principle of Parity.
 - ii. The principle of Proportionality.
 - iii. The Prejudice suffered through the unreasonable delay in the trial.
38. Thus, to isolate parity, without reference to proportionality or the delay in trial would be to give a skewed account of the court's ruling and intention. I will therefore have regard to all three as I consider what will be a just sentence.

Parity and Proportionality - Lillian Boyce and Richard Padgett

39. The principle of parity propounds that co-offenders should as much as possible, receive similar sentences, and that the sentencing of like offenders must not be so disparate as to give rise to a justifiable sense of grievance, on the application of the objective standard. While the two decisions *of R v. Stroud*⁷ and *R v. Fawcett*⁸ are the most oft cited regarding the treatment of like offenders, I have found the dictum in the Australian case of *Green v The Queen*⁹, at [28], which I reproduce, most insightful:

"Equal justice and the parity principle
Equal justice" embodies the norm expressed in the term "equality before the law".
It is an aspect of the rule of law.. It was characterised by Kelsen as "the principle
of legality, of lawfulness, which is immanent in every legal order." It has been called
"the starting point of all other liberties." It applies to the interpretation of statutes
and thereby to the exercise of statutory powers. It requires, so far as the law

⁷ (1977) 65 Cr. App. R. 150.

⁸ [1983] 5 Cr. App. R(S) 158.

⁹ (2011) 244 CLR 462.

permits, that like cases be treated alike. Equal justice according to law also requires, where the law permits, differential treatment of persons according to differences between them relevant to the scope, purpose and subject matter of the law. As Gaudron, Gummow and Hayne JJ said in Wong v The Queen: "Equal justice requires identity of outcome in cases that are relevantly identical. It requires different outcomes in cases that are different in some relevant respect."

40. Thus, while the court must strive to achieve equality in sentencing, it can only do so when the crimes are the same, or perhaps on occasion, that they arise out of the same facts though the charges may be different.

Lillian Boyce's Sentencing

41. Lillian Boyce pleaded guilty to misconduct in Public Office five years into her trial. It is on record that she was in need of medical attention, and had been referred for overseas medical treatment. On 14 January 2021 Lillian Boyce asked the court for a Goodyear indication, and received one. She then pleaded guilty to the offence of Misconduct in Public Office in that she received the sum of \$1,256,000 from two transactions, the North West Point transaction (which was the basis of the conspiracy to defraud charge in Count 2 of this Information), and another transaction in West Caicos, unrelated to the present Information. On 20 January 2021, she was sentenced to 6 months imprisonment suspended for six months (a sentence that learned Mr. Witter KC for FBH points out was given in error. Mr. Bendall makes a similar observation regarding the error in the sentencing). She also suffered the confiscation of her assets (with which the court is not involved in this judgment). Mr. Witter KC argues that FBH who was convicted of receiving bribes in a much less sum than Lillian Boyce must be given similar punishment.

Richard Padgett's Sentencing

42. It is also submitted, on behalf of FBH, that the sentence of 2 years imprisonment, suspended for two years for Richard Padgett for common law Bribery, for which FBH

has also been convicted, must be taken into account, for FBH, like Richard Padgett, has health challenges for which he has been receiving treatment in the USA. In response to this argument, I go ahead to consider the circumstances under which Richard Padgett was sentenced to two years imprisonment suspended for two years.

43. Richard Padgett was charged with giving the bribes for which FBH has been convicted.
44. He was convicted on his own plea for giving bribes to FBH with the very payments FBH has been convicted of, after a full trial. Mr. Padgett also confessed his crime to the Governor, which confessions were said to have been helpful to the Commission of Inquiry he had tried to deceive. Richard Padgett's guilty plea meant the saving of valuable court time and expense and was considered in his sentencing. He was a very sick man at the time of his sentencing, He had high blood pressure. He had had a kidney transplant and there was evidence from his doctor on his kidney function regarding the transplant he had had in 1999 and which was to last for fifteen years. In 2011, he suffered paralysis and Deep Vein Thrombosis. In 2012 he suffered a stroke with depression and acute anxiety. His ill-health was supported by medical evidence. He was unable to present himself physically in this court and was sentenced by Harrison J when he appeared at the Crown Court in London to be sentenced via video link.
45. In consideration of these matters, and especially of his ill-health which was supported by medical evidence, he was sentenced to a term of two years imprisonment which was suspended for two years for the offence of Bribery.
46. In the present circumstance, FBH has been convicted of the offence of Bribery on the same facts to which the giver of the bribes, Richard Padgett pleaded guilty. Regarding Lillian Boyce, what is clear is that although she was charged on the same information in the case of *R v. Michael Misick and Ors.*¹⁰ with FBH, the offence of Misconduct in Public Office with which Lillian Boyce was charged is not the same as the common law Bribery of which FBH had been convicted, nor were they founded on similar facts. On the

¹⁰ [2021] TCASC 12.

Information in which the retrial was conducted, there were three Counts of Conspiracy to Defraud. One of these (Count 2) involved three defendants: FBH the first defendant, and Jeffery Hall both Ministers of the Crown and Melbourne Wilson, an attorney (Jeffrey Hall and Melbourne Wilson have both been found not guilty). Count 2 was founded on the same facts as the offence with which Lillian Boyce was charged: the sale of land at North West Point, although Lillian Boyce was charged with the different offence of Misconduct in Public Office. The two other alleged conspiracies also involved the sale of land, at Water Cay, and also at West Caicos. There is no gainsaying that if the defendants in Counts 1,2 and 4, but particularly in Count 2 had been found guilty of the conspiracy which were on the same facts as Lillian Boyce, the parity principle would require that they be treated alike, and be given similar sentences, if that would not compound the wrongfulness of the sentence. That is the circumstance under which as was stated in *R v. Fawcett*¹¹, right thinking members of the society would not think something had gone wrong with the administration of justice. But the offence of Bribery is decidedly different from Lillian Boyce's, and not founded on the same or similar facts. Thus, it seems to me that achieving parity would not mean the same sentence for FBH.

47. Mr. Witter KC has pointed out that the court was in error for the short suspension (of six months given to Lillian Boyce), as it was *per incuriam*, the proper period being not less than one year or more than two years¹². Having regard to the difference in the offences as well as the error in the sentencing, pointed out by learned King's Counsel, it is surprising that he canvasses for parity as if that could only mean the same sentence. I have already explained that parity calls for the same treatment of the same offences although where appropriate, regard may be had of them, but sight must not be lost of proportionality which the court also took cognisance of in the judgment of 7 May 2021. As was intimated by the court, regard will be had to Lillian Boyce's sentence having regard to both the principle of parity, and proportionality, especially the fact of delay in the trial, to arrive at condign punishment.

¹¹ [1983] [5 Cr. App. R(S) 158.

¹² Section 3(2) of the Suspended Sentence Ordinance.

48. The principle of proportionality propounds that sentences must accord with fundamental justice. While it has been criticized as generally unattainable in many an academic work for such reasons as “(a) *The vague definitions and theories of proportionality in the law*, (b) *the irreconcilability of other sentencing goals with the proportionality principle*, (c) *the inherently different natures of crime and punishment*, and (d) *the underlying character of the proportionality principle as a manifestation of mere opinions and sentiments*,” it has been embraced as a means to achieve what accords with the society’s sense of justice stated in common parlance to be: “*the punishment must fit the crime*”. Thus, where parity is coupled with proportionality, it very often may have impact in so far as the offences are even vaguely similar, but not when they are this dissimilar.

Mitigating Factors and Delay

49. Having considered the application of the two principles of parity and proportionality in the sentencing of FBH for the common law offence of Bribery, I will have regard to the fact that FBH is a first offender. During the trial, he received good character references from Mr. Ariel Misick KC and Carlos Simons J (as he then was). Mr. Witter KC points out that the fact of conviction may mean that he will suffer the prejudice of not being allowed to enter the USA where he had received medical care. I do bear that in mind. FBH has suffered grave prejudice since his arrest in 2011, some twelve years ago. He has gone through trial (and retrial) cumulatively for close to eight years, under a constant cloud of a ‘never-ending trial’ that must doubtless have taken its toll physically, socially, and financially. This court has held the delay to be unreasonable. By reason of the unreasonable delay FBH’s constitutional right to a fair trial under s. 6 of the Constitution of the Turks and Caicos Islands 2011, had already been breached before the retrial was ordered. All these weigh heavily in the determination of his sentence, and especially the fact that his constitutional right has been breached, is a matter of great gravity that is taken into consideration to result in a drastic reduction of any sentence deemed appropriate for the commission of the common law offence of Bribery.

Aggravating Factors (The offence and offender)

50. But there are these aggravating factors which must also be given due consideration: FBH was an elected official in whom the constituency of Overback in Grand Turk had placed trust. He was then made the occupant of the high position of Deputy Premier, a position of trust and also of influence. The purpose was that he would serve the people of these islands. The expectation was that he would seek the good of the people of these islands. But FBH had a different motivation for being in high office: it was his own financial gain for which he committed the very serious offence of Bribery, not only one time for which he might be forgiven for succumbing to the weight of temptation, but that stained his greed over a period above two years. His commission of the offence of Bribery was by careful planning which produced sophistication in the manner in which it was done. It involved cover-ups and the disguising of the nature of the money receipts: a letter of demand of a finder's fee, a letter to request a loan, a Promissory Note to hide the truth, and the general attempt to make his pertinent activities look legitimate. As Minister of Finance, FBH should have known that his actions for which he received bribes (remission of stamp duty) would lead to loss of revenue, which would negatively impact the finances of the country. Yet, uncaring about the fortunes of the country, his motivation was greed, the expectation of personal gain. The effect of his actions as an elected official negatively impacts the integrity of elected office in these islands and must be treated with the seriousness it deserves. There is also no gainsaying that the offence of Bribery is a specie of corruption which operates as a canker in society and has ripple effect in many ways, especially when it is committed by persons in positions of trust and influence.
51. Three letters, one from a high official in the Commonwealth of Bahamas: HE Gilbert Morris, and the other from a Calvin Greene (who describes himself as a member of the Progressive National Party), and the last, a character reference from Bishop Coleta Williams III are before the court. In one of the letters, the author, wrote: *"It is very unfortunate that there were systematic weakness (sic) in our country's governance and they fell into the temptation..."*

52. I do not discountenance these pleas, and give them due weight, as I consider all pertinent matters including mitigating factors, especially the court's role in the prejudice FBH has undoubtedly suffered through a long trial.
53. Regarding the sentencing of a public official who performed his duty with an eye to filling his pockets rather than being committed to the cause of seeking the good of the country, deterrence, being one of the aims of punishment also weighs with the court. This is because it is important that this message is conveyed: that public office is public service, and not a means to enrich oneself.
54. I balance this with the mitigating factors already set out, and, while their offences were different, I find Richard Padgett's sentence for Bribery to have been based on his peculiar circumstances, and Lillian Boyce's charge which though dissimilar (and not to be relied on for parity), I will take into consideration for guidance. I have decided that FBH, a first offender regarding whom eminent persons in society have testified as to his good character, deserves the mercy of the court in the exercise of my discretion in his sentencing.
55. These are the reasons for the severe reduction in sentence for an offence as egregious as Bribery, both in the fact of it, and also in the manner in which it was committed.

FBH's Sentence

56. Having regard to all these matters, I have adjusted the sentence, and sentence Floyd Basil Hall to a term of 1 year imprisonment for the offence of Bribery.
57. I have considered the submission for a suspended sentence and I do not find it applicable in the present circumstances because there are no factors upon which such a discretion will be exercised, and it is my view that the offence for which FBH has been convicted which is serious in fact and in the mode of commission will require a sentence of imprisonment., see s. 3 of the Suspended Sentencing Ordinance.

58. Sentence to take effect forthwith.

CSG'S SENTENCING

59. CSG has been convicted of the following offence, that: *"...between the 1st day of January 2006 and the 31st day of August 2009 [he] concealed or disguised the proceeds of criminal conduct knowing or having reasonable grounds for suspecting it to represent in whole or in part directly or indirectly the proceeds of criminal conduct committed by Floyd Basil Hall, with a view to avoiding the making or enforcement of a confiscation order or avoiding prosecution for unlawful conduct."*
60. Mr. Bendall argues that CSG must be given a sentence similar to what Lillian Boyce received, for these reasons: that she was charged with a more serious offence than CSG as Misconduct in Public Office attracts a maximum punishment of life imprisonment, and besides, she admitted to benefitting so much more than CSG's \$277,000.
61. A money laundering offence under POCO 1998 is a very different offence from the Misconduct in Public Office for which Lillian Boyce received her punishment after the guilty plea. Mr. Bendall, like Mr. Witter KC, has observed that Lillian Boyce's sentence contained an error, as the suspension of six months was not according to law. He therefore seeks a suspension of one year but not more than two years.
62. He also contends that using the England and Wales Sentencing Guidelines (EWSG) in sentencing for a money laundering offence achieves a more just result for CSG than the ECSC Guidelines that were provided as an alternative. Unlike FBH's common law offence of Bribery in respect of which there are no sentencing guidelines available, CSG's money laundering offence has a maximum sentence of fourteen years.
63. Mr. Bendall incorrectly argues that the 'High Culpability Category' canvassed by the Prosecution by reason of the mode of commission be jettisoned as the court found that CSG turned a blind eye rather than participate fully in the commission of the crime with

full knowledge. This is incorrect, for that was the court's finding in connection with the \$77,000 and not the \$200,000 sent to him by Richard Padgett which he credited to the Delroy Howell Purchase of Harbour House account, knowing that Richard Padgett was a developer dealing with the Government of which FBH was a member.

64. Using the EWSG, Mr. Bendall submits that CSG's crime was a 'Category 4' given the amount involved, which is the equivalent of GBP 143,964 which would bring it within the lower range of 3-6 years imprisonment.
65. Mr. Bendall speaks of the good character of CSG and avers that even the Prosecution acknowledge that he did not benefit from the monies he received. I will not go so far as to state that he received no money from any of the transactions, seeing that he was director of Whale Watchers and the owner of Harbour House to which the money was applied, and beneficial owner of Taino Nominees which held shares for FBH, and later, one hundred percent shares in trust for the Delroy Howell and Quinton Hall who was alleged to have assumed FBH's shares.
66. Sentencing Guidelines do not have the force of law as I have already pointed out in the sentencing of FBH. In the recent case of *Misick v. R*¹³, it was held, per Stollmeyer JA *para. 17*: that "*The UKSG do not rise to the level of "persuasive". They are merely guidelines which can and should be varied to meet local conditions, a matter to which this Court has spoken previously in Isaac Gardiner v R CR-AP 16 /16 and Emanjoe Forbes v R CR-AP 32/15*".
67. But because Mr. Bendall has relied on them in his submission contending that they will lead to a more just result for CSG, and because Rule 91(3) permits the use of "any sentencing guidelines" my approach to sentencing will consider the England and Wales Sentencing Guidelines, I will do so, but bear in mind the caution expressed by the Court of Appeal in *Gardiner v. R*¹⁴:

¹³ [2018] TCACA 23.

¹⁴ [2017] TCACA 16 paras 18-19.

“In terms of identifying “category ranges”, the UK Sentencing Guidelines may prove useful in jurisdictions without their own scheme, however judges must bear in mind that these guidelines were developed after careful study of prevailing factors in that jurisdiction at a particular point in time, so that when we turn to them for guidance, particularly in respect of the band for any offence, we need to be mindful of whether local conditions and circumstances are sufficiently similar to warrant their application. One area in which they prove extremely helpful, however is in providing lists of aggravating and mitigating factors. In the absence of guidelines in this jurisdiction, there is need for a consistent, methodical, structured approach that would lend to overall consistency in sentencing, the aim being, not uniformity of sentence but uniformity of approach”.

68. These cases were decided before the Criminal Procedure Rules which by Rule 91(3) envisage the use of ‘any sentencing guidelines’ as an aid in sentencing. I will therefore use the EWSG in so far as it is relevant to local circumstances.
69. The offence of CSG falls in the ‘Category A High Culpability’ of the EWSG for whether for direct gain or not, CSG did commit the crime of laundering monies which were the proceeds of FBH’s criminal activity as charged, and he did so with premeditation and careful planning over a sustained period, and sophistication in the using his law firm to deal with, and distribute non-transactional funds. He also used of the fictitious name of John Doezer, moved monies to an off-record account opened with part of the criminal proceeds to the TCI Bank, and moved corrupt monies within ledgers in his firm: between Delroy Howell (Purchase of Harbour House) and John Doezer ledgers.
70. I will agree with Mr. Bendall that the value of the money \$277,000, equivalent to GBP 143,964.38, involved puts the harm in the lower end of ‘Category 4’, which is punishment in the range of 3-6 years using the EWSG.

Starting Point

71. I use the range of 3-6 years having regard to culpability, and harm as my starting point, guided by the EWSG. I have no information on any local matters that will impact upon that.

Mitigating Factors

72. I have regard to the money involved, which was much less than FBH's.
73. I also take into consideration the sentence of Lillian Boyce, not upon a strict application of the principle of parity, but guided by it, having regard also to proportionality, that the offence of money laundering under POCO 1998 attracts a maximum sentence of 14 years imprisonment, a fine without limit or to both.
74. I also consider to be of grave importance, the fact that CSG is a first offender, and that he has good character, as evidence was given of this by as many as fourteen witnesses for the prosecution at trial. I also have regard to the impassioned pleas of Conrad Griffiths KC, Bishop Coleta Williams III and Calvin Greene on his behalf. I note his public service in many capacities for this country. I also give due consideration to the prejudice he has suffered through the unreasonable delay in the trial which I have already held to be a breach of his constitutional right to a fair trial within a reasonable time. The prejudice he has suffered include the effect on the practice of his profession which will doubtless have financial implications. All these considerations must lead to the drastic reduction of the offence of money laundering that has a maximum of fourteen years.

Aggravating Factors

75. I balance these weighty matters of mitigation with these grave matters that CSG an attorney abused his professional through the use of his law firm, to enable FBH, a high Government official who was in a position of trust to abuse his position, and whether it was for profit or out of sentiment, the pernicious nature of his actions enabled FBH's acts to the detriment of these Turks and Caicos Islands.

CSG's Sentence

76. These serious matters to which I have given due consideration lead me to impose a drastically reduced sentence, which is, that Clayton Stanfield Greene is sentenced to a term of 6 months imprisonment.
77. I have considered the submission for a suspended sentence and I do not find it applicable in the present circumstances because there are no factors upon which such a discretion should be exercised, it is my view that the offence for which CSG has been convicted will require in view of seriousness of the offence and the manner of commission, a sentence of imprisonment¹⁵.
78. The sentence of 6 months imprisonment to be carried out forthwith.



M.M. AGYEMANG CJ

¹⁵ See s. 3 of the Suspended Sentencing Ordinance.