In The Supreme Court of Bermuda

CRIMINAL JURISDICTION
Case No. 11 of 2021

BETWEEN:

THE QUEEN

-and-

DAVID CURLEY

Before: **The Hon. Mr. Justice Juan P. Wolffe, Puisne Judge**

Appearances: Ms. Yanique Gardener Brown for the Prosecution
Mr. Mark Pettingill for the Defendant

Date(s) of Hearing: 8th December 2022
Date of Sentence: 25th January 2023

SENTENCE

Official Corruption – Section 111(a) of the Criminal Code

WOLFFE J.

1. On the 14th July 2022 the Defendant pleaded guilty to the sole count of Official Corruption contrary to section 111(a) of the Criminal Code. At the time of offence the Defendant was a Major in the Royal Bermuda Regiment (the "Bermuda Regiment") and then he became the Commanding Officer ("CO") of the Bermuda Regiment.

2. It is important to note that initially, on the 8th February 2021, the Defendant was charged in the Magistrates' Court of Bermuda together with a Damian Justin Williams (who is now deceased), a Christopher Clarke, and a Gareath Adderley for the offences of: Official Corruption (the Defendant and Mr. Williams only), Compounding Felony contrary to section 129 of the Criminal Code (Mr. Williams, Mr. Clarke and Mr. Adderley only), Possession of a Firearm contrary to section 3(1)(a) of the Firearms Act 1973 (the "FA")(Mr. Williams only), and Storage of a Firearm contrary to section 21(2) of the FA (Mr. Williams only).[1] Mr. Williams did not appear in Court and Ms. Yanique Gardener Brown (for the Prosecution) indicated that while the Prosecution were aware of the whereabouts of Mr. Williams it was unknown whether he had been served with proceedings. I do not think that it would be inappropriate for me to take Judicial Notice of the fact that it was eventually discovered that Mr. Williams was out of the jurisdiction residing in Palm Beach, Florida in the United States and that he became ensconced in extradition proceedings seeking to have him brought back to Bermuda. Unfortunately, in or around November 2021 Mr. Williams passed away after several weeks of being in a hospital.

3. As the matter journeyed through to the Supreme Court of Bermuda various amendments to the charges that were laid in the Magistrates' Court occurred. In particular, the original Indictment dated the 31st March 2021 reflected that Mr. Williams was no longer joined as a defendant and the charges that related to him, notably the firearm offences, were removed. Then, on the 27th October 2021, the Indictment was severed to the effect that the Defendant was charged singularly with three (3) counts of corruption. Mr. Clarke and Mr. Adderley were left charged together with the offences of compounding a felony (Mr. Clarke only) and conspiring to pervert the course of justice contrary to section 128 of the Criminal Code (Mr. Clarke and Mr. Adderley).

4. After a few mentions and/or case management hearings the Defendant plead guilty to one count of corruption and the remaining two were not proceeded with by the Prosecution.

---

[1] The relevant Information was assigned Case No. 21CR00026

5. The above chronology is important because I am made to understand by Ms. Gardener Brown that but for the firearm offences which Mr. Williams was charged with the corruption offences for which the Defendant faced could have been dealt with in the Magistrates' Court as they are "either way" offences. However, it would appear that once Mr. Williams and his offences were removed from the Indictment that no application was made by either party for the matter to be remitted to the Magistrates' Court for resolution (whether for trial or plea). There is also no indication from the Court file that the matter remained in the Supreme Court because the Defendant elected to be tried by a jury. The fact that the matter could have been remitted back to the Magistrates' Court where the sentencing tariffs are lower than in the Supreme Court is a factor that I will take into consideration in sentencing the Defendant.

Summary of the Evidence

6. As stated earlier, at all material times the Defendant held the rank of Major and then CO of the Bermuda Regiment. It is also important to highlight that at all material times Mr. Williams was a lawyer of the Bermuda Bar Association and a former Commissioner of the St. John's Ambulance.

7. On the 9th November 2019 the Bermuda Police Service ("BPS") executed search warrants at the home of Mr. Williams located at #12 Point Shares Road in Pembroke Parish and several digital devices were seized. Extracted from these devices were several email exchanges between the Defendant and Mr. Williams in respect of the Defendant receiving a "Medal of the Order of St. John" (the "Medal"). This Medal is awarded to members of the public to recognize both meritorious and long service of at least ten (10) years with the St. John's Ambulance. Moreover, the Order is signified as being an "order of chivalry" with her Majesty Queen Elizabeth II (as she then was). There was a confidential nomination process in place for those who are deemed worthy of receiving what appears to be this prestigious Medal, and in fact the nominee is not even aware that they are being nominated. The Order is divided into the following five (5) grades: Bailiffs or Dames

Grand Cross (Grade I), Knights or Dames of Justice or Grace (Grade II), Commanders (Grade III), Officers (Grade IV), and Members (Grade V).

8. Essentially, the said emails revealed that on the 15th July 2015 the Defendant, who at the time held the rank of Major, emailed Mr. Williams to inquire about how he could receive the Medal as he was looking for unique medals to wear as CO (obviously once he received that rank). The Defendant expressed a willingness to commit time and training to St. John's Ambulance and that he hoped to use his rank to become an honorary member or to simply make a donation to St. John's Ambulance. Mr. Williams responded that this was possible and that he [Mr. Williams] wanted to follow-up on being the *pro bono* legal advisor for the Bermuda Regiment.

9. At Mr. Williams' request the Defendant sent further details about himself but Mr. Williams, after receiving advice from others, later informed the Defendant that his case for nomination for the Medal was not compelling. Despite this, on the 16th October 2015 Mr. Williams nominated the Defendant for admission to the Order of St. John's as an Officer (Grade IV). The nomination application form erroneously stated that the Defendant had been associated with St. John's for over ten (10) years when in actuality the Defendant had little or no association with St. John's Ambulance (Bermuda). In his caution statement to the police on the 15th October 2019 the Defendant stated that his first association with St. John's Ambulance was as a training officer which commenced in 2014 or 2015. In a further police interview on the 13th December 2019 the Defendant stated that he had been with St. John's Ambulance since the 1990's, had been their liaison officer, and had been on its board for a few years.

10. On the 19th October 2015, three (3) days after he nominated the Defendant, Mr. Williams emailed the Defendant inquiring about the possibility of purchasing "plugged up rifles" from the Bermuda Regiment. "Plugged up rifles" is a reference to decommissioned weapons which I am made to understand are made inert and therefore cannot be discharged. There was no evidence put before me at the sentencing hearing as to whether decommissioning a weapon is a permanent condition.

11. On the 20th November 2015 Mr. Williams informed the Defendant that he was promoted to "Brother Officer" ahead of others. The Defendant expressed his gratitude to Mr. Williams and stated that he could not wait to officially wear the Medal.

12. On the 23rd December 2015 the Defendant emailed Mr. Williams asking about a potential nomination for the Queen's Badge of Honour medal ("the QBOH") and he ended the email with the promise that once he is in the chair as CO that he *"will sort out the Rugers and RBR* [Royal Bermuda Regiment] *legal advisor position"*.

13. On the 20th January 2016 the Defendant writes to Mr. Williams about the QBOH nomination and also telling him that he has set aside a couple of Ruger mini rifles and possibly an UZI Sub Machine Gun (collectively referred to as the "weapons") and an Enfield rifle. The Defendant said that the weapons would be decommissioned before being handed over to Mr. Williams. He reiterates that Mr. Williams will be given the weapons and also be given the legal advisor post once he [the Defendant] takes command of the Bermuda Regiment as CO. As to the legal advisor post Mr. Williams said that he is not "too fussed" about the rank of "titular major" which comes with the post but that he would like one as *"the quid pro quo"*.

14. On the 15th February 2016 the Defendant is officially informed that he had been admitted as Officer (Brother) in the Order as at 3rd February 2016.

15. On the 27th February 2016 the Defendant was promoted from Major to Lieutenant Colonel and appointed CO of the Bermuda Regiment by His Excellency the Governor Mr. George Ferguson.

16. On the 4th March 2016 the Defendant emails Mr. Williams stating that a mini ruger and uzi would be gifted to him, and that he [the Defendant] will look into getting Mr. Williams a Beretta firearm soon. On the 15th March 2016 Mr. Williams discusses the decommissioning of the weapons with the Defendant and he informs the Defendant that he

was advised by the Bermuda Police Service ("BPS") that the weapons would need to be decommissioned and that several firearms license applications would need to be filled out before he gets the weapons into his possession. The BPS has the authority to grant firearms licenses.

17. On 4th October 2016 the Defendant enquired of Mr. Williams the possibility of obtaining a St John's Ambulance Queen's Certificate and Badge of Honour. This was followed by an email on the 17th October 2016 in which the Defendant relayed that he was trying to secure a Remington Shotgun (presumably for Mr. Williams).

18. In emails between the 14th and 16th November 2016 Mr. Williams enquires of the Defendant about the weapons and the Defendant responds that once the BPS signs off on the firearm license applications that the weapons will be in the possession of Mr. Williams. Mr. Williams then responds that he has a letter from the Cabinet Office regarding the Defendant's nomination for the Queen's Certificate.

19. On the 5th April 2017 Mr. Williams is gifted a decommissioned ruger mini rifle and a decommissioned uzi by the Defendant. Apparently, this had only been the second occasion on which decommissioned firearms had been gifted by the Bermuda Regiment and the only time that they had been supplied to a member of the public. On the previous occasion a decommissioned weapon was gifted to the Bermuda Defence Museum at Dockyard.

20. During their investigations the BPS obtained witness statements from Bermuda Regiment staff who stated that the Defendant pressured them into expediting the decommissioning process and that the Defendant was told that what he was doing was not a good idea.

21. On the 20th June 2017 the Defendant writes to Mr. Williams enquiring about receiving the St. John's Long Service award and whether there were any other awards that year or the next. In that same email the Defendant also advises Mr. Williams that he had come across a weapons supplier that produces replica firearms which look authentic and which have working parts. The Defendant also listed several types of weapons and he asked Mr.

Williams if he [the Defendant] wanted him to order any weapons for him. Mr. Williams responded that there were upcoming awards and he asked the Defendant to order him a "MP40" weapon. The next day on the 21st June 2017 the Defendant states to Mr. Williams that he will get a price on the MP40 and that he knows of the *"delicate issue ref medal, but evidenced through long service"*.

22. During the months of August and September 2017 a series of emails flowed between the Defendant and Mr. Williams in respect of: the Defendant trying to obtain for Mr. Williams the Queen's Diamond Jubilee and Queen's Golden Jubilee Medals; both of them being entitled to receiving a new St. John's medal as "Commanders"; and, that they should work towards the Queen's Certificate and the US Order of St. John Esquire award.

23. In the later part of October 2019 His Excellency John Rankin suspended the Defendant as CO of the Bermuda Regiment which continued until the completion of his four (4) year tenure.

24. At the search of Mr. Williams' home on the 9th November 2019 the mini Ruger and Uzi were seized. I am informed by Mr. Pettingill that the photo handed up by the Prosecution depicts the said firearms displayed at Mr. Williams' home.

Sentencing Guidelines

25. Section 111(a) of the Criminal Code states the following:

"Official corruption

111 (1) Any person—

(a) who, being employed in the public service, or being the holder of any public office and being charged with the performance of any duty by virtue of such employment or office (not being a duty touching the administration of justice) corruptly asks, receives, or obtains, or agrees, or attempts to receive or obtain, any property or benefit of any kind for himself or for any other person on account of anything already done or

omitted to be done, or to be afterwards done or omitted to be done, by him in the discharge of the duties of his office;……..

is guilty of a misdemeanour, and is liable on summary conviction to a fine of $50,000 or to imprisonment for five years, or both; and on conviction on indictment to an unlimited fine or imprisonment for 15 years, or both."

26. Whether a person is to be sentenced in the Magistrates' Court or in the Supreme Court, it is crystal clear that Parliament intended to send an unequivocal message to offenders and would-be offenders that if they engage in corrupt behaviour that a significant period of incarceration or a hefty fine may be visited upon them. Unfortunately, but not surprisingly, local jurisprudence is not abundant with cases from which precedence on how persons convicted of official corruption should be sentenced. All is not lost however as the Criminal Code does provide comprehensive statutory assistance and the relatively recent Court of Appeal matter of *R v. Kyle Wheatley [2020] CA (Bda) Crim 9* is very instructive.

27. Of course, the first port of call when determining what factors are to be taken into consideration when sentencing a person for any criminal offence would be Part IV of the Criminal Code which is entitled "Purpose and Principles of Sentencing". Specifically, section 55(2) which provides that:

"(2) In sentencing an offender the court shall have regard to—

(a) the nature and seriousness of the offence, including any physical or emotional harm done to a victim;
(b) the extent to which the offender is to blame for the offence;
(c) any damage, injury or loss caused by the offender;
(d) the need for the community to be protected from the offender;
(e) the prevalence of the offence and the importance of imposing a sentence that will deter others from committing the same or a similar offence;
(f) the presence of any aggravating circumstances relating to the offence or the offender, including—
(i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factors;

(ii) evidence that the offender, in committing an offence, abused a position of trust or authority in relation to the victim;

(fa) the presence of any aggravating circumstances relating to a serious personal injury offence as defined in section 329D, or an offender where the victim is a child, including—

(i) evidence that the offender seriously wounded, maimed or disfigured another person or endangered the complainant's life;

(ii) evidence that the offender preceded or accompanied the offence with acts of torture or serious violence;

(iii) evidence that the offence was committed against a particularly vulnerable victim;

(iv) evidence that the offence was committed against a member of the family, against a child cohabiting with the offender or while abusing his position of trust; 10

(v) evidence that there were one of two or more persons jointly committing the offence; (vi) evidence that the offender was acting within the framework of unlawful gang activity as defined under section 70JA;

(vii) evidence that the offender has previously been convicted of offences of the same nature;

(g) the presence of any mitigating circumstances relating to the offence or the offender including—

(i) an offender's good character, including the absence of a criminal record;

(ii) the youth of the offender;

(iii) a diminished responsibility of the offender that may be associated with age or mental or intellectual capacity;

(iv) a plea of guilty and, in particular, the time at which the offender pleaded guilty or informed the police, the prosecutor or the court of his intention so to plead;

(v) any assistance the offender gave to the police in the investigation of the offence or other offences;

(vi) an undertaking given by the offender to co-operate with any public authority in a proceeding about an offence, including a confiscation proceeding;

(vii) a voluntary apology or reparation provided to a victim by the offender.

28. It goes without saying that I will have regard to the relevant parts of section 55(2) of the Criminal Code which are pertinent to the facts of this case.

29. In relation to *Wheatley*, I am well aware of this matter as I was the first instance Judge who sentenced Mr. Wheatley to 2½ years and it was this sentence that the Prosecution appealed

on the ground that it was manifestly inadequate. The defendant in *Wheatley* pleaded guilty to an offence of Conspiring to Defeat Justice contrary to section 128 of the Criminal Code. The offence of conspiring to defeat justice, like the offence of official corruption under section 111 of the Criminal Code, falls within those categories of corruption-type offences found within Part VII of the Criminal Code (under the heading "Offences Against Public Authority, Public Order, The Administration of Justice, Personal Liberty etc."). The facts of *Wheatley* were summarized by the Court of Appeal as follows:

> *"Mr Wheatley was at the time of the offence employed as a Police Constable with the Bermuda Police Service (the "BPS") and was attached to the Court Liaison Unit (the "CLU"). In that capacity he had the means of access to traffic tickets issued by police officers. The copy portion of the ticket is forwarded to the CLU. The information from the ticket is entered into the Judicial Enforcement Management System and the ticket remains in a secure drawer at the CLU until the Court date. The ticketholder appears in Court and is dealt with, after which the ticket is filed. Someone who, like Mr. Wheatley, has access to the system, can pull tickets from it, i.e. withdraw the ticket from the administrative and Court process. The result of doing that is that the ticket is never put before the Court and the person to whom it is issued escapes prosecution for the traffic offence set out in the ticket.*
>
> *For a period of about 2 years between early 2016 and January 2018 Mr. Wheatley pulled tickets in return for cash. Two other people acted as "brokers" for him by identifying people who had received traffic tickets and obtaining cash for him, from which they received a commission, in order for their traffic tickets to be pulled. It appears that in total at least 61 traffic tickets never resulted in Court proceedings as a result of Mr. Wheatley's activities. The prosecutor estimated that he received about $10,700 in return for pulling these tickets and that the actual loss to the Government was in the region of $ 29,675, being the sum that would have been received if the relevant members of the public had appeared in Court and been convicted and fined. Not all the tickets were pulled for cash but the exact number that were is unknown."*[2]

30. Dismissing the Prosecution's appeal and upholding the 2½ year sentence the Court of Appeal referred to various authorities and guidelines created by the Sentencing Council for England and Wales' for offences committed under the UK Bribery Act 2010 (the "Guidelines"). In her submissions, Ms. Gardener Brown invited me to adopt the reasoning of a document entitled "Sentencing Council – Fraud, Bribery and Money Laundering

---

2 Paragraphs 2 and 3 of *Wheatley*.

Offences, Definitive Guideline" which would appear be similar to, if not the same as, the Sentencing Council Guidelines that were before me when I sentenced Mr. Wheatley and when the appeal was heard before the Court of Appeal.[3] While the Guidelines do offer some assistance I will follow the eminent directions of the Court of Appeal and be cautious in adhering to them too slavishly in the context of Bermuda. Speaking about the limited applicability of the Guidelines to Bermuda law the President of the Court of Appeal Sir Christopher Clarke stated that:

> *"The Guidelines are not part of Bermuda law and we do not think that the Bermuda Courts should feel constrained to adopt the approach and the step by step process laid down in them. The Guidelines are the product of much work and consultation by the Sentencing Council; but such work has not been carried out from a Bermudian perspective, and it is not self-evident that identical considerations would apply, and identical conclusions would result, if Bermuda were, itself, to appoint a Sentencing Council to construct guidelines for use in Bermuda. The Criminal Code lays down in some detail the matters to which the Courts must have regard when sentencing an offender. But it contains nothing like the specificity or the process of the Guidelines, and we do not think it appropriate to treat them as, in effect, mandatory or close thereto.*
>
> *In saying this we do not mean that the Guidelines are without utility or assistance. They will, self-evidently, reveal the approach that an English Court is likely to take; and they contain indications of the factors which will, or may, increase or reduce the culpability of the offender, or the harm or loss that he has caused, which may well be relevant and applicable in the case of Bermudian offenders. In determining whether, in all the circumstances, any proposed sentence is appropriate the judge may wish to take into account whether, or to what extent, it would tally with the level of sentence indicated by the Guidelines and he may find it of assistance to do so. But, at the end of the day, the judge in Bermuda must reach his or her decision as to the correct level of sentence by reference to what he or she regards as appropriate having regard to the considerations which the Bermudian Legislature has laid down, even if the result differs from what the Guidelines might suggest."*[4]

31. As can be seen, while the Court of Appeal discouraged a wholesale application of the Guidelines to the Bermudian sentencing landscape it did not discard them outright. The Court of Appeal were of the view that there was still "utility" in the Guidelines in Bermuda law, particularly in respect of assessing the "culpability" of the offender and "harm" caused

---

3 Both documents came into force on the 1st October 2014.

4 Paragraphs 28 and 29 of *Wheatley*.

by the offender in corruption-type offences. In this regard, the Guidelines state that culpability *"is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out"*, and that harm is *"in relation to any impact caused by the offending (whether to identifiable victims or in a wider context) and the actual or intended gain to the offender"*.

32. In more granular detail the Guidelines have formatted the following table as to degrees of culpability:

*"**A – High culpability***
- *A leading role where offending is part of a group activity*
- *Involvement of others through pressure, influence*
- *Abuse of position of significant power or trust or responsibility*
- *Intended corruption (directly or indirectly) of a senior official performing a public function*
- *Intended corruption (directly or indirectly) of a law enforcement officer*
- *Sophisticated nature of offence/significant planning*
- *Offending conducted over sustained period of time*
- *Motivated by expectation of substantial financial, commercial or political gain*

B – Medium culpability
- *A significant role where offending is part of a group activity*
- *Other cases that fall between categories A or C because:*
  - *Factors are present in A and C which balance each other out and/or*
  - *The offender's culpability falls between the factors as described in A and C*

C – Lesser culpability
- *Involved through coercion, intimidation or exploitation*
- *Not motivated by personal gain*
- *Peripheral role in organised activity*
- *Opportunistic 'one-off' offence; very little or no planning*
- *Limited awareness or understanding of extent of corrupt activity"*

33. As to the degrees of harm the Guidelines provide the following:

*"**Category 1***
- *Serious detrimental effect on individuals (for example by provision of substandard goods or services resulting from the corrupt behaviour)*

• Serious environmental impact
• Serious undermining of the proper function of local or national government, business or public services
• Substantial actual or intended financial gain to offender or another or loss caused to others

Category 2
• Significant detrimental effect on individuals
• Significant environmental impact
• Significant undermining of the proper function of local or national government, business or public services
• Significant actual or intended financial gain to offender or another or loss caused to others
• Risk of category 1 harm

Category 3
• Limited detrimental impact on individuals, the environment, government, business or public services
• Risk of category 2 harm

Category 4
• Risk of category 3 harm"

34. To this, Sir Clarke P opined:

"The Sentencing Council's guidelines ("the Guidelines") require the Court to determine the degree of culpability of the offender and the harm which he has caused, and provide starting points and ranges for sentences according to the degree of harm and the degree of culpability in any given case. The level of culpability is to be determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. The Guidelines indicate that a "High" degree of culpability (Category A) can be demonstrated by one or more of, inter alia, (i) "A leading role where offending is part of a group activity"; (ii) "Abuse of position of significant power or trust or responsibility"; (iii) "Sophisticated nature of the offence/significant planning"; (iv)" Offending conducted over a sustained period of time"; (v) "Motivated by expectation of substantial financial, commercial or political gain".

"Harm" is assessed in relation to any impact caused by the offending, and the actual or intended gain to the offender. It is divided into three Categories. In relation to Category 1 harm can be demonstrated that falls within this category if there is "Serious undermining of the proper function of local or national government, business or public services" or "Substantial actual or intended

financial gain to offender or another or loss caused to others". Harm can be demonstrated that falls within Category 2 if there is "Significant undermining of the proper function of local or national government business or public services" or "Significant actual or intended financial gain to offender or another or loss caused to others". Having determined the degree of culpability and the degree of harm the court is to use the starting points set out in the table provided in the Guidelines and determine the appropriate starting point for sentence for the case in question, before any discount for plea, in the category range specified. It does so by considering potential aggravating and mitigating factors, which will or may increase or diminish the starting point chosen. In the latter category fall (1) no previous convictions; and (2) good character."[5]

35. Marrying the categories of culpability and harm set out in the Guidelines with the facts of *Wheatley* the Court of Appeal took the following route to sentencing Mr. Wheatley, particularly as it related to the setting of a starting point. Sir Clarke P said:

"It would, however have been possible to reach a starting point of circa 4 years in terms of the Guidelines either by (a) treating the harm as in Category 2 and taking 1 year below the starting point of 5 as the sentence before discount; or (b) taking the harm as between Category 1 and Category 2 (i.e. between significant and serious) and adopting 4 years before discount, being the midpoint between the lowest figures of the category range for Categories 1 and 2 (i.e. between 3 and 5).

As to course (a), whether the undermining of the police and Court service was "serious" or "significant" and whether the financial gain or loss was "substantial" or "significant" depends on exactly what interpretation one gives to the relevant adjectives. In one sense any pulling of tickets is serious and the receipt of over (say) $5,000 (or depriving the Crown of that amount) is substantial. But, having regard to the range of activities which may undermine the public interest, and the amounts that corrupt officers may gain, it seems to us that category 1 could appropriately be reserved for offences which inflict more harm or produce more gain than occurred in this case.

As to course (b), taking the midpoint between the lowest figures in the two category ranges might be thought generous, particularly given the fact that at [22] the judge thought that Mr Wheatley's 14 years of service without incident was only a small mitigating feature. But he may not, when saying that, necessarily have been downplaying the good character and absence of criminal record which he had previously said he had taken into consideration. Further, in determining which starting point to adopt in any given category range the absence of previous convictions, previous good character, and remorse are, under the Guidelines, all

---

5 Paragraphs 8 and 9 of *Wheatley*.

relevant considerations. We would, also, not accept that the previous good character of a man who has been a police officer for 14 years (and whose good character in any event goes back beyond 14 years) is to be entirely disregarded under the Guidelines because all (or at least most) police officers are of good character. Contrary to views expressed in O'Leary [8], it is plainly something to which section 55 (2) (g) (i) of the Criminal Code requires the judge to have regard. The Crown points out that Mr Wheatley's remorse took some time in expression since he did not resign until the day of the hearing. We take that point, but the judge regarded his expressions of regret and remorse as genuine. We also bear in mind that Mr Wheatley has lost not only his job but his pension (save for what may have accrued to him)."[6]

36. Keeping the above firmly in mind, in sentencing the Defendant it would be appropriate for me to primarily focus on the factors set out in section 55(2) and to use the Guidelines as "guidelines" and not as "tramlines" (as prosecuting Counsel Alan Richards put it in *Wheatley*).

Sentencing Decision

37. Returning to my opening paragraphs, it would appear that the Defendant was dragged to the Supreme Court by virtue of the indictable only firearm offences which his then co-defendant Mr. Williams was charged with. Once Mr. Williams' name was severed from the Indictment, and certainly before entering a plea to the counts on the Indictment (the Defendant was not required to enter a plea in the Magistrates' Court), the Defendant (through his Counsel) could have, and probably should have, invited the Court to remit the matter back to the Magistrates' Court for determination. The fact that he did not should not be held against him and therefore I will sentence him as if he was appearing in the Magistrates' Court where the sentencing maximum on summary conviction is a fine of $50,000 or imprisonment for five (5) years, or both (as opposed to the maximum of an unlimited fine and fifteen (15) years imprisonment on conviction on indictment).

38. May I say from the outset that the nature of this case is extremely serious. Whilst corruption type offences do not capture the media headlines as frequently or as

---

6 Paragraphs 35 to 37 of *Wheatley*.

sensationally as violent or drug related offences the effect which they have on the community can be as devastating. By his corrupt behavior the Defendant delivered a piercing blow to the democratic operation of civil society. Medals and awards, whether they be in the professional or sports arena, are supposed to be an acknowledgement of citizens who have provided stellar service and/or performance at the most highest levels over a significant period of time. They should only be awarded to those who are the most deserving. The same can be said for being appointed to the legal advisor post at the Bermuda Regiment which has the national security of the entirety of Bermuda within its daunting but extremely important remit (whether or not the legal work was going to be carried out *pro bono*). For medals and legal posts to be traded away as part of a "You scratch my back, I scratch your back" relationship, as was the one between the Defendant and Mr. Williams, not only tarnishes the medal and the post but it also brings into disrepute the entire process by which they are awarded or granted.

39. There is no way of sugarcoating what the Defendant did. The Defendant bartered away guns and a legal position for medals and awards which he did not earn nor deserve. The Medal of the Order of St John's is a prestigious medal which signifies meritorious service over a long period of time by those who have been so fortunate to have been awarded one. Likewise, being the legal advisor of the Bermuda Regiment carries with it an awesome responsibility and the post should only be given those who have unequivocally proven themselves to be a leading member of the Bermuda Bar. The Defendant and Mr. Williams may have singlehandedly denigrated the necessary processes of awarding the Medal and legal advisor position and may have simultaneously brought into question the worthiness of those who most likely would have deserved such accolades in the past (or any other medal or award).

40. Having said that, I am not of the view that the Defendant is someone who the community as a whole needs to be protected from. The Social Inquiry Report dated the 19th September 2022 ("SIR") indicates that the Defendant *"is of very low risk of reoffending and of very*

low need for rehabilitative services"[7] and therefore I am persuaded that the Defendant will not commit similar offences in the future.

41. I will now turn to the mitigating features of this case.

Mitigating Circumstances

The Defendant's guilty plea: The Defendant first appeared in the Supreme Court on the 1st April 2021 to answer to the Indictment but it was not until the 14th July 2022 that the Defendant pleaded guilty to the offence for which he is now being sentenced. On the surface it may appear that the approximately 14 months that had elapsed between the Defendant's first appearance in the Supreme Court and his entering of a plea of guilty is substantial. However, I will take into consideration that over that period of time there were hearings in relation to the Defendant being severed from his then co-defendants Mr. Clarke and Mr. Adderley, disclosure obligations being fulfilled by the Prosecution, and the exigencies of the Court diary.

Therefore, I see no reason why the Defendant should not be entitled to the normal 30% discount in his sentence.

The Defendant's expression of regret and remorse: It is reported in the SIR that the Defendant believed that he had done nothing wrong. Further, the report writer was of the view that the Defendant *"expressed limited remorse for his actions based on his assertion that he did not agree to an exchange of any kind with Mr. Justin Williams and they merely had a conversation"*. She also noted that the Defendant stated that *"he could no longer afford to fight for his innocence and chose to plead guilty"* and that the Defendant *"denied that any promises were made in exchange for any awards"*.[8]

---

7 Page 4 of the SIR.
8 Pages 3 and 4 of the SIR.

From this it would appear to me that the Defendant, at least at the time of speaking to the report writer, did not accept any culpability in the commission of the offence and saw nothing wrong with what he did. This is somewhat consistent with the tone and content of what Defendant said in his allocutus at the sentencing hearing. Initially, the Defendant did not come across to me as accepting what he did was entirely criminal. Eventually however, when the Court asked the Defendant further questions there did appear to be some acceptance that he committed a criminal offence but it never really amounted to a full throated acceptance.

I will say this though, the Defendant was clearly regretful and remorseful for the distress that has been caused to his family, particularly his teenage sons. I have no doubt that this had played quite heavily on his mind.

Therefore, while I accept that the Defendant is genuine in his expressions of regret and remorse I am not totally persuaded that he unreservedly accepts his criminality.

The Defendant's good character including the absence of any criminal record: There is no doubt that prior to the commission of this offence that the Defendant was of impeccable character and that he made valuable contributions to the community. His decorated movement through the ranks of the Bermuda Regiment since 1989 is nothing short of remarkable and his positions of leadership are commendable. His curriculum vitae is certainly one to be admired.[9] His erstwhile good character is definitely a factor that I will take into full consideration.

The Defendant also stated that as a result of him being arrested and now convicted of the offence that he has been treated as a pariah by most of his friends and colleagues who do not want to be tainted by any association with him. This has left him with little or no prospects of ever being gainfully employed in an area in which he could use his extensive

---

[9] Details of the Defendant's military background were sent to the Court on the 30th December 2022 which was after the sentencing hearing date.

skill set i.e. in the military or regimental arena. Basically, it would appear that the Defendant will be compelled to retrain and rebrand in order to secure employment.

While it can be sustainably argued that the loss of social and/or professional connections is a normal (and probably necessary) consequence of committing a criminal offence I am obliged to consider the Defendant's precipitous fall from grace. It is said that the higher that one rises the harder that one will fall. There is no doubt that the Defendant reached the pinnacle of the Bermuda Regiment but with the nature of the offence that he committed it is unlikely that he would be able to cultivate or regain the social and/or professional connections which he once had. It is therefore unlikely that the Defendant would ever be able to lead the social and/or professional life that he once had. This is a fact that I will take into consideration albeit to a minimal degree.

42. I address the aggravating circumstances as follows:

Aggravating Circumstances

A leading role where offending is part of a group activity: To the extent that a group could be comprised of two or more people it could be said that the Defendant and Mr. Williams were involved in group activity. However, it is obvious that the Defendant was not part of an extensive network of individuals who were carrying out corrupt transactions. It was just he and Mr. Williams who were equally persistent in getting what they wanted. Therefore, I place minimal weight on this as an aggravating element of the offence.

Involvement of others through pressure: Whilst the Defendant did not put pressure on others to knowingly engage in corrupt behavior he did, according to witness statements, put pressure on others to decommission the weapons. By doing so the Defendant used others to expedite his and Ms. Williams' corrupt objectives. This is something that I will consider although I will apply minimal weight to this as there was no evidence that this pressure occurred over a long period of time or that it involved any threats, veiled or otherwise, to those who made the weapons inert.

Abuse of position of significant power or trust or responsibility: The Defendant would not have been able to offer and then gift the weapons to Mr. Williams if he was not in the position of Major and then CO of the Bermuda Regiment. This is blatantly obvious in the Defendant's own promises to Mr. Williams, on more than one occasion, that once he is in the position of CO then he will sort out the rugers and the legal advisor positions for Mr. Williams. As Major, and definitely as CO, the Defendant had the highest authority and power within the Bermuda Regiment of getting the weapons to Mr. Williams, and the fact that the Bermuda Regiment had not previously gifted weapons to any member of the public is indicative of the substantial extent to which the Defendant abused his power as CO.

Sophisticated nature of offence/significant planning: Mr. Pettingill is correct that the Medal for guns scheme hatched up by the Defendant and Mr. Williams lacked sophistication and was not carried out in proverbial dark alleys but instead over email exchanges. Even the contents of the emails were quite unambiguous as to the Defendant's and Mr. Williams' mutually beneficial objectives. There was nothing cryptic about the emails.

Mr. Pettingill also submitted that Mr. Williams actually getting the weapons into his hands did not involve any clandestine handover of the weapons from the Defendant to Mr. Williams. Mr. Williams did, it would appear, go through the proper process to be granted a firearms license for the weapons and so the BPS were well aware that Mr. Williams had the weapons in his possession.

I will take into consideration in the Defendant's favour that the level of sophistication executed by he and Mr. Williams was not high and that Mr. Williams properly applied to the BPS for a firearms license. The extent to which I do will be limited because what the Defendant did to facilitate and expedite the weapons being in Mr. Williams' possession definitely required a level of sophistication and "know-how". I say this for a couple of reasons. Firstly, the corrupt interplay between the Defendant and Mr. Williams involved

them manipulating various institutional and procedural levers in order for them to exchange the Medal for the weapons. The Defendant's role would surely have involved: securing access to a Bermuda Regiment armoury where the ruger and uzi were stored; putting aside the weapons; arranging for others to decommission the weapons (as said earlier he exerted pressure on others to do this); completing or directing others to complete the paperwork needed to gift the weapons to Mr. Williams; and, arranging for the handover of the weapons to Mr. Williams. It would be reasonable to say that the Defendant would not have been able to do all of this expeditiously unless he was a high ranking officer within the Bermuda Regiment or without knowing how the system worked, or did not work, at the Bermuda Regiment.

In respect of the appointment of Mr. Williams as legal advisor of the Bermuda Regiment I confess that I am not aware of the process by which a person can be appointed. One could surmise though that given the highly confidential (even top secret) work carried out by the Bermuda Regiment as it pertains to national security that there would have been a robust application process in place which would have included but was not limited to the security vetting of any potential candidates. By offering Mr. Williams the legal advisor post for the weapons the Defendant circumvented any application process that would likely have taken place for the post.

Mr. Williams' role would have likely involved: manipulating the nomination process to have the Defendant nominated for the Medal even after being told by others that the Defendant's case for nomination was not compelling; and then, fabricating the nomination application form by stating that the Defendant had been with St. John's Ambulance for 10 years when he had not been. Mr. Williams would not have been able to do this without having been the Commissioner of St. John's Ambulance and knowing how the nomination process works, especially since the Defendant's nomination was heard over the nomination of other (who most likely were deserving of the nomination).

Secondly, the saying "you cannot put lipstick on a pig……" comes to mind. The fact that Mr. Williams properly went through the firearms application process and that the BPS

knew that he was being gifted the weapons does not negate the insidious nature of the corrupt conduct employed for Mr. Williams to get the weapons in his hand in the first place. It is safe to assume that had the BPS known about the nefarious corruption between the Defendant and Mr. Williams in order for Mr. Williams to acquire the weapons then it is unlikely that the BPS would have granted the firearms license to Mr. Williams. So in essence, the Defendant and Mr. Williams fooled the BPS into thinking that there was nothing nefarious in Mr. Williams being gifted the weapons.

Offending conducted over a sustained period of time: It seems as though when the Defendant first broached the subject of acquiring the Medal with Mr. Williams back on the 15th July 2015 that it was an honest inquiry with no strings attached. It could even be said that Mr. Williams raising the possibility of being legal advisor for the Bermuda Regiment at that time was not questionable. It is unclear from the emails as to when the Defendant and Mr. Williams would have crystallized their corrupt intent but it must have been prior to the 16th October 2015 when Mr. Williams submitted the erroneous nomination form for the Defendant to get the Medal. Why else would Mr. Williams submit an untruthful nomination form were it not for the prospects of being appointed legal advisor to the Bermuda Regiment? I will say however that it is unclear as to whether the Defendant knew that Mr. Williams submitted an untruthful nomination form and therefore I will not, in sentencing the Defendant, take into consideration that he did know.

In respect of the weapons, the genesis of this corrupt arrangement would have been at least from the 19th October 2015, when Mr. Williams inquired about acquiring the weapons. In the interim period from then to 5th April 2017 (when Mr. Williams was finally gifted the weapons), and thereafter, copious emails travelled between the Defendant and Mr. Williams not only inquiring about when Mr. Williams would receive the weapons, but also in relation to what appears to be further award for guns arrangements. For example: on the 23rd December 2015 the Defendant inquiring about being nominated for the QBOH and in the same email confirming that the Ruger will be sorted out once he [the Defendant] becomes CO; the 4th March 2016 (after the Defendant was promoted to the rank of CO) the Defendant stating to Mr. Williams that he will be

gifted the mini ruger and uzi and that he [the Defendant] will look into getting Mr. Williams a Beretta firearm; on the 4th October 2016 the Defendant inquiring about being awarded a St. John's Ambulance Queen's Certificate and on the 17th October 2016 the Defendant stating that he was trying to secure a Remington shotgun; on the 20th June 2017 (after Mr. Williams was gifted the ruger and the uzi) the Defendant writes to Mr. Williams inquiring about receiving the St. John's Long Service Award and other awards which were coming up, and in the same email the Defendant tells Mr. Williams about being able to order Mr. Williams an "MP40" from an overseas supplier; on the 21st June 2017 the Defendant informs Mr. Williams that he will get a price on the MP40 and tells Mr. Williams that he [the Defendant] is aware of the delicate issue regarding the St. John's Long Service Award; and, during August and September 2017 the Defendant and Mr. Williams discussing how the Defendant could obtain for Mr. Williams the Queen's Jubilee and Gold Jubilee medals and them both receiving the Queen's Certificate and US Order of St. John Esquire awards.

So acquiring the Medal and the legal advisor post for the ruger and the uzi was not a "one-off". While I accept that the Defendant pleaded guilty to one count and that he should only be sentenced for that one offence, it would appear that the successful acquisition of the Medal set the stage or gave the Defendant and Mr. Williams the license (for want of a better word) to engage in a corrupt practice of the accumulation of medals/awards for the Defendant and guns for Mr. Williams. This fledgling corrupt joint enterprise between the Defendant and Mr. Williams went far beyond conversations as stated by the Defendant in his SIR.

Motivated by expectation of substantial financial, commercial or political gain: Mr. Pettingill submitted that it should be taken into consideration that no money passed between the Defendant and Mr. Williams. This is absolutely correct but one may benefit or gain from corrupt behavior in ways other than financially. The Defendant obviously was motivated by personal gain and having the Medal and other awards must have meant a great deal to the Defendant. The Defendant having his military uniform adorned with prestigious medals on his chest would surely have been of monumental value in the

regimental world and quite possibly could have been parlayed into the Defendant being elevated up the professional and the social stratum. I rhetorically ask: "Why else would the Defendant be so interested in acquiring the Medal and the other awards?"

43. Finally, but importantly, I am of the view that the actions of the Defendant did not detrimentally effect those who were under his charge at the Bermuda Regiment or others in the community. Moreover, whilst the weapons were displayed on a wall at Mr. Williams' home there was no evidence before me that they made their way to the streets or that there was any concern that they could potentially have been used in the commission of any criminal offences.

Starting Point of Sentence

44. Following the guidance in *Wheatley*, and taking the above mitigating and aggravating circumstances into account, I place the Defendant's level of culpability firmly in Category B of the Guidelines i.e. medium culpability, and his degree of harm firmly in Category 2 of the Guidelines i.e. significant. In *Wheatley* the Court of Appeal landed at a starting point of four (4) years imprisonment (before discount for plea) after having assessed the level of harm in that case as lying between Categories 1 and 2 (i.e. between significant and serious).[10] I find that the level of culpability and degree of harm in *Wheatley* are higher and more serious than the case at bar. Mr. Wheatley undoubtedly: was the key player of a group of three (3) individuals; had deftly manipulated the ticket computer system over which he had direct control and power; impacted the proper administration of justice by not having offending members of the public being brought before the Courts; carried out his corruptive behavior over a period of two (2) years; deprived the Government coffers of fines that would have been paid by those who committed traffic offences; and, he pocketed over $10,000 which means that he was purely motivated by financial gain. The Defendant's corrupt conduct did not reach these levels or degrees of seriousness.

---

[10] Paragraph 35 of *Wheatley*.

45. In the circumstances of this case, and considering that I am sentencing the Defendant as if he is appearing in the Magistrates' Court, I arrive at a starting point of three (3) years imprisonment before applying any discount for plea.

Applicable discounts in sentence

46. As stated earlier, the Defendant is entitled to the normal discount of up to 30% reduction in what ever sentence he may receive. I see no reason why the Defendant should not be afforded the entire 30% reduction. The Defendant could have exploited the passing of Mr. Williams and let the Prosecution's case play out without them having the presence of Mr. Williams (whether as a co-defendant or as a witness) to support its case against the Defendant. He did not and I will give him credit for that.

47. On top of the above-mentioned 30% discount the Defendant is entitled up to an additional 30% discount by virtue of The Supreme Court of Bermuda, Circular No. 6 of 2022 dated 25th April 2022 which provides for such additional discount for those who unequivocally plead guilty to specified offences prior to 3rd August 2022 (the Defendant pleaded guilty on the 14th July 2022). The Circular arose out of the Court's and other criminal justice system stakeholders' desire to clear the backlog of active indictable matters in the Supreme Court.

Conclusion

48. Taking all of the above paragraphs into consideration I hereby sentence the Defendant to eighteen (18) months imprisonment with twelve (12) of those months suspended for a period of eighteen (18) months. This effectively means that the Defendant will be required to serve a period of six (6) months imprisonment.

49. Mr. Pettingill had urged upon me that if the Defendant was sentenced to a term of imprisonment that I should suspend the entirety of the period. Ms. Brown Gardener did not raise any objections to this course of action being taken. However, I do not agree with

either Mr. Pettingill or Ms. Gardener Brown and in not agreeing I am mindful of the words of then Chief Justice Richard Ground QC in the case of *R v. Jahmeeka Ifarar Wilson [2012] SC (Bda) 13 App (29th February 2012)* who strongly stated that *"Corrupt offences like this require sentences of immediate imprisonment and that is what the court should always impose bar really exceptional circumstances"*. To not order that the Defendant should serve a period of incarceration for what he did would send a terrible message to the Defendant and to others that they could escape incarceration for committing the offence of official corruption. This is not a message that I am prepared to send.

50. However, in light of the mitigating features of this case, coupled with the Circular of the Supreme Court, I find that that there is good reason to partially suspend the 18 month of the period of incarceration in the manner that I did.

Dated the 25th day of January 2023

The Hon. Mr. Justice Juan P. Wolffe
Puisne Judge