

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION**

**2024
CRI/vbi/93/3/**

B E T W E E N

THE DIRECTOR OF PUBLIC PROSECUTIONS

The Respondent

**v
STANLEY DEVEAUX**

AND

RAYNEL SAINT-VIL

The Convicts

Before: The Honourable Madam Senior Justice Mrs. Cheryl Grant-Thompson

Appearances: Ms. Abigail Farrington- Counsel for Director of Public Prosecutions along with Mrs. Karine MacVean of The Director of Public Prosecutions Office

**Pro Se- for Mr. Stanley Deveaux
Mr. Gary Russell – Counsel for Mr. Raynel Saint-Vil**

Hearing: October 1st 2024; October 4th 2024

SENTENCING JUDGMENT

Convicted for Prohibited Commercial Fishing By Non- Bahamian Citizens contrary to Section 32(1)(a), 32(2)(a) and 32(3) of the Fisheries Act, Chapter 244; *Patrick Reves v. The Queen (Privy Council Appeal No. 64 of 2001)*; *R v. Francis [2007] 1 BHS J No. 21*; *Bello v Commissioner of Police [1988] BHS J. No. 92- Guilty Plea*

GRANT-THOMPSON SNR. J

BACKGROUND

1. On Wednesday 1st October, 2024, the Convict was arraigned before this Honourable Court and pled Guilty to one (1) count of **Prohibited Commercial Fishing By Non- Bahamian Citizens contrary to Section 32(2)(a) and 32(3) of the Fisheries Act, 2020, Chapter 244**. The matter was adjourned to open Court on the 4th of October, 2024. The Crown was to present and read the facts upon which they relied.
2. The Court asked the Convict after the facts were read, if he accepted those facts. The Defendant indicated that he did accept them. He was then formally convicted of the charge of **Prohibited Commercial Fishing By Non- Bahamian Citizens**.

THE FACTS

3. The facts as posited by the Crown and accepted by the Convict reads as follows:
On the 30th of September, 2022, officers of the Royal Bahamas Defence Force while on their routine patrol of the Exuma Cays, observed the occupants of a red fishing skiff engaged in conch diving. They were located off the Northeastern portion of Long Cay in the Exuma chain of islands. Upon closer investigation, the officers observed the Defendant, Mr. Stanley Deveaux, along with another male diving with the use of an air compressor harvesting conch. The Defendant, Mr. Raynel Saint-Vil, a non-Bahamian, along with another male was working the boat. Mr. Saint-Vil received the conch from the divers while the other male served as a keep up man.

Officers instructed these males to cease diving activities and exit the water at which point a further inspection of the skiff was carried out. During the inspection, officers observed that they had approximately forty (40) juvenile, undersized conch

on board. The captain, Mr. Stanley Deveaux, was then advised that they were in breach of two (2) violations of the Fisheries Act, 2020, namely; being in possession of juvenile, undersized conch and having a non-Bahamian engaged in commercial fishing.

The skiff was then put in tow and taken to the mother ship Lady J, Registration Number NP10834. Upon arrival to Lady J, the ship was searched in the presence of the Defendants. The Defendant- Mr. Stanley Deveaux- confirmed that he was the owner of the Lady J and presented officers with his licenses. Officers were also provided with a work-permit for the Defendant-Mr. Raynel Saint-Vil. The Defendants were thereafter cautioned, arrested and taken to the Royal Bahamas Defence Force Base for further investigations.

During the record of interview, the Defendant- Mr. Stanley Deveaux- admitted that he was the owner of the Lady J fishing vessel and that he was a fisherman for over forty (40) years. He further admitted to having a non-Bahamian on board, stating that Mr. Saint-Vil helps him around the house and the boat because it is difficult to find Bahamian guys to work. Mr. Deveaux stated that he was not aware that Mr. Saint-Vil could not be on the boat.

4. THE LAW

Prohibited Commercial Fishing By Non- Bahamian Citizens

Section 32(2)(a) of the Fisheries Act, Chapter 244 reads as follows:

“(2) No operator of a commercial fishing vessel shall-

(a) allow a person who is not a citizen of The Bahamas to engage in fishing in Bahamian fisheries waters or use the vessel other than for charter sportfishing ...”

Section 32(3) of the Fisheries Act, Chapter 244 provides that:

“(3) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty thousand dollars (\$250,000) or to imprisonment for a term not exceeding four (4) years or to both”

In this matter the Court was invited to consider the principle established in the case of **R v. Francis [2007] 1 BHS J No. 21** at paragraph 17, as quoted from the Privy Council case of **Patrick Reves v. The Queen (Privy Council Appeal No. 64 of 2001)**. The case of R v. Francis stated the following:

“in order to be rationally and judicially exercised, the discretion should be informed and guided by, for example, the gravity of the offence, the character and record of the offender, the subjective factors that might have influenced the offender’s conduct, the design and execution of the offence and the possibility of reform of the offender.”

Additionally, this Honourable Court is also guided by the Court of Appeal case of **Bello v Commissioner of Police [1988] BHS J. No. 92**. In this matter Dominican citizens were found in possession of undersized crawfish during the closed season, along with Three Thousand Four Hundred Ninety-Six pounds (3,496 lbs) of scaled fish, Thirty (30) conch and Four Hundred Eighteen (418) crawfish. Here the Appellate Court reduced the fine of Twenty Thousand Dollars (\$20,000) or a year imprisonment to a fine of Ten Thousand Dollars (\$10,000) or one (1) year imprisonment in relation to a boat captain who was found guilty of illegal fishing under the now repealed Fisheries Resources Jurisdiction and Conservation Act 1977.

AGGRAVATING FACTORS

5. The aggravating factors against the Defendant namely **Mr. Stanley Deveaux** is:
 - i. The Defendants were found in harvesting and in possession of undersized conch.

MITIGATING FACTORS

6. The Defendant- Mr. Stanley Deveaux- is a Seventy-Two (72) year old, male (at the time of the committing this offence he was Seventy (70) years old). The following can be identified as **Mitigating Factors**:
 - The Convict plead guilty at the earliest opportunity;
 - The Convict has no previous convictions of this nature; and
 - The age of the Convict.

CROWN'S SUBMISSIONS ON SENTENCING

7. Under all of these circumstances, applying the principles of sentencing, the guidelines from the cited authorities along with balancing the mitigating and aggravating factors in the instant case, the Crown submitted that the Defendant receive a fine of Ten Thousand dollars (\$10,000) and be placed on a probationary period of three (3) years. During this period the Defendant is to keep the peace and be of good behaviour. Failure to do so would result in a term of two (2) years imprisonment.

RECOMMENDATION FROM THE PROSECUTION & PLEA IN MITIGATION

8. It was humbly recommended that the Convict receive a fine of Ten Thousand dollars (\$10,000) and be placed on a probationary period of three (3) years for the offence of **Prohibited Commercial Fishing By Non- Bahamian Citizens contrary to Section 32(2)(a) and 32(3) of the Fisheries Act, 2020, Chapter 244**. The Convict in Mitigation expressed remorse. He asked the Court for leniency. He made no comment on any sentence.

Differentiating Factors

9. In support of the Crowns submission they rely on the case of **Bello v Commissioner of Police (supra)**. In this matter the Defendants were found in possession of undersized crawfish during the closed season, along with Three Thousand Four Hundred Ninety-Six pounds (3,496 lbs) of scaled fish, Thirty (30) conch and Four Hundred Eighteen (418) crawfish. Here the Appellate Court reduced the fine of Twenty Thousand Dollars (\$20,000) or a year imprisonment to a fine of Ten Thousand Dollars (\$10,000) or one (1) year imprisonment in relation to a boat captain who was found guilty of illegal fishing under the now repealed Fisheries Resources Jurisdiction and Conservation Act 1977.
10. Having reviewed both the provided authority and the submissions of the Crown, the Court finds that although the precedent of **Bello v COP (supra)** is a useful guide under these circumstances, it should not be relied upon slavishly. As shown in **Bello** the Defendants were found in possession of some Three Thousand Four Hundred Ninety-Six pounds (3,496 lbs) of scaled fish, Thirty (30) conch and Four Hundred Eighteen (418) undersized crawfish. For this breach in law a fine of Ten

Thousand Dollars (\$10,000) and a period of one (1) year probation was imposed upon the captain of the vessel.

11. Comparatively, in the current case the Defendant was found in possession of approximately Forty (40) juvenile, undersized conch. Considering this the Court is of the view that the Ten Thousand Dollar (\$10,000) fine along with the three (3) year probation, submitted by the Crown is inappropriate given the current circumstances. It cannot be reasonable for a Defendant to receive the same fine as an individual who was found in possession of more prohibited items than him.

12. Moreover, throughout the Convicts submission to the Court he reiterated that he was a man of little means. As a result, he would not be able to satisfy a Ten Thousand Dollar (\$10,000) fine. As shown in **Bello v COP (supra)** at paragraph 8:

“It is a well-established principle as far as assessing punishment is concern that where a fine is to be imposed the sentencer ought to investigate the means of the accused person so that the fine would offer a realistic option to the term of imprisonment fixed as the alternative. There can be very little point in imposing a fine if it is clear that it is a sum which the accused persons could not possibly meet”

13. In addition, to the fact that the Convict was caught with a significantly lesser number of fish than what was shown in the case of **Bello v COP (supra)**, this Court also considers the fact that the Convict is of an impecunious nature. Further, the Convict has also informed the Court that he constantly travels out of The Bahamas to be seen by medical professionals. Considering these factors this Court is of the view that a fine of **Five Thousand Dollars (\$5,000)** with a period of **two (2) years’ probation** is more than reasonable given the circumstances.

SENTENCING PROVISIONS

14. Section 185 of the Criminal Procedure Code, Chapter 91 (“the CPC”), provides as follows:

“The Court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the sentence proper to be passed and may hear counsel on any mitigating or other circumstances which may be relevant.”

SENTENCE OF THE OFFENDER

15. In determining the seriousness of the offence, the Crown submitted that the range of sentence should be as follows:

- (i) The **most serious** of offence are those in which a weapon is used resulting in serious injury;
- (ii) The offence which are of **medium seriousness** are those in which a weapon is used, however, there is either no injury or very minor injury; and
- (iii) The **least serious** of offences are those in which no weapon is used, or despite there being a weapon, mere threat or minimal force it used.

This offence is of least seriousness.

16. PURPOSE OF SENTENCING

Sentencing must always be proportionate to the gravity of the offence and promote a sense of responsibility in the offender for the offence committed. The object of

sentencing is to promote a respect for the law and order, maintain a peaceful and safe society, and discourage crime by the imposition of sanctions. Sentencing should also be aimed at the rehabilitation of the offender so that he may reform his ways to become a contributing member of society. Such sanctions for breach of the law are provided by law for the means of sentencing.

17. The Court is guided by the four (4) classical principles of sentencing namely retribution, deterrence, prevention and rehabilitation.

- (i) **Retribution** - In recognition that punishment is intended to reflect society's and the legislative's abhorrence of the offence;
- (ii) **Deterrence** – to deter potential offenders and the offender himself from recidivism;
- (iii) **Prevention** – aimed at preventing the offender through incarceration from offending against the law and thus protection of the society; and
- (iv) **Rehabilitation** – aimed at assisting the offender to reform his ways so as to become a contributing member of society.

18. The Court is of the view that the Convict should be deterred from this type of offence - and other members of society who are like minded should also be deterred. However, having said that the Court believes that this Convict is capable of rehabilitation.

19. In these circumstances, applying the general principles of sentencing and the Court of Appeal guidelines as stated above along with balancing the mitigating and aggravating factors in the instant case, the Court finds that a fine of **Five**

Thousand Dollars (\$5,000) with a period of two (2) years' probation, is appropriate.

20. The Court intends that the sentence will send a strong message to the community that justice is tempered with mercy. The Court will balance the need for society to have some retribution by the Convict serving some sentence for this serious indictable offence but yet ensuring that he receives the professional assistance he requires.

SENTENCE

21. Mr. Stanley Deveaux, you are hereby ordered to pay the fine of **Five Thousand Dollars (\$5,000) and be placed on a probationary period of two (2) years.** Thereafter to keep the peace and be of good behaviour or he will serve an additional Two (2) years imprisonment. This sentence is to run from the date of Conviction which was the 1st day of October, 2024.

22. The Court hereby finds that:

- i. The Convict, Mr. Stanley Deveaux, pays a fine of **Five Thousand Dollars (\$5,000).** The Convict is expected to pay the aforementioned fines in accordance to the following agreed schedule;
 - a. **Wednesday 30th April, 2025 – Two Thousand Dollars (\$2,000);**
 - b. **Wednesday 30th July, 2025- Two Thousand Dollars (\$2,000);**
 - c. **Wednesday 29th October 2025- One Thousand Dollars (\$1,000).**

- ii. The Convict be placed on a Two (2) years probationary period, thereafter a failure to keep the peace and be of good behaviour will result in him serving an additional Two (2) year imprisonment;

23. The Court promised to put its reasons in writing this it now does.

Dated the 30th day of October A.D., 2024.

The Honourable Madam Senior Justice Mrs. Cheryl Grant-Thompson