

Creed fined US\$1million

4th June, 2006

By CAROL WINKER / Cayman Free Press Ltd.

Raymond Frank Creed was sentenced on Friday to pay a fine of US\$1 million for money laundering. He was also recommended for deportation when it can be effected humanely.

The fine is separate and apart from the confiscation order for US\$500,000 made two days earlier (see *Caymanian Compass*, 2 June).

Chief Justice Anthony Smellie said that if the \$500,000 were not paid, the sentence would be 18 months imprisonment. If the fine of \$1 million is not paid, the sentence would be three years and these default terms would be consecutive.

Creed, 71, was convicted of four counts of money laundering after a jury trial that concluded on 20 April. The offences took place in 1998–99 and related to funds sent to Cayman by American citizen Kenneth Taves. Taves later pleaded guilty in the US to credit card fraud, was imprisoned and ordered to pay restitution of US\$37.5 million.

The amount of cash Creed was found to have laundered was US\$6.2 million. But that figure rose to more than US\$9 million when a property transaction was included, along with a transfer of funds from Cayman to Vanuatu.

Creed was found to have personally benefited by US\$500,000 – the amount confiscated.

The Chief Justice made it clear that the sentence of a fine was not to be considered as a general precedent in future cases of this kind.

He cited a doctor's report that showed Creed to be suffering from serious heart and kidney problems. The doctor's opinion was that prolonged incarceration would be detrimental to the defendant's health.

Sentencing took place in Court 3 because it is on the ground floor. Creed, who recently underwent knee replacement surgery, attended in a wheelchair.

The Chief Justice revealed that he had discussed with the Director of Prisons what facilities are available to cope with the needs of an inmate in Creed's condition.

He quoted the director as saying there are "basic makeshift facilities" including a rudimentary wheel chair access to the sanitary facilities that are at the moment being used to accommodate a number of prisoners who are not well enough to be kept with the general population. The director indicated that a space could be found for Creed.

However, there are no full-time medical facilities. Emergencies would have to be dealt with as they are for the rest of the island – by awaiting the arrival of an ambulance and medical personnel from George Town Hospital.

There is a nurse on staff who works days. But the nurse also attends the women's prison at Fairbanks and the youth facility, so is not always available during the day. At night there is no medically trained person on hand.

Given this reality and the risks presented by the precarious condition of the defendant, the Chief Justice said he was obliged to consider whether justice would compel the imposition of an immediate term of custody.

One approach to sentencing suggests that a medical condition is not a reason for not imposing immediate custody. In such a case, if the condition subsequently affected life expectancy or the prison authorities' ability to treat the prisoner satisfactorily, early release could be allowed.

But that approach did not fit Creed's case because the deterioration of his health was already a reality, the Chief Justice indicated.

In cases like this, the courts have developed the principle that a non-custodial or reduced sentence may be justified not merely because the medical condition may be difficult to manage in prison, but also because the defendant's life expectancy was likely to be impacted upon.

It was in this context that the Chief Justice said he felt compelled to impose an alternative sentence.

Deterrence

This had been a most difficult case for sentencing, the Chief Justice observed, because he had to balance Creed's health issues with the need to deter others from offending.

Earlier, he pointed out that the laundering of the profits from crime is itself a serious crime and almost invariably attracts a prison sentence. Offences such as fraud or drug trafficking would not have been successfully committed unless the criminal got the benefit of his illegal activity.

"Thus the money launderer not only assisted in putting the proceeds of crime at the disposal of the criminal, he also encouraged the commission of the predicate crime itself," the Chief Justice said.

He explained this was why sentencing courts have developed the practice of considering what would be the appropriate penalty for the crime from which the profits were made. That penalty would then be used as a guide for the sentencing in the money-laundering offence.

In the case of Taves, the fraud was on a massive international scale and so were the structures and methods used for the laundering of the proceeds, the Chief Justice said.

Taves and those who assisted him, including Creed, developed a scheme " that infiltrated in a most pervasive manner institutions of the financial services industry of this jurisdiction – the use of the many corporate vehicles, banks accounts at different banks, the involvement of the personnel at many different levels and capacities.

"This was as elaborate and sophisticated a money laundering scheme as one could expect to see and of the sort which the Proceeds of Criminal Conduct Law is most designed to deter and punish because of the threat it poses to the stability and integrity of the Cayman Islands as a financial centre," the Chief Justice said.

He described the defendant as a wealthy man of already considerable means who was "not motivated by need but by greed" and who in a most cynical way abused his position as a long-time resident in carrying out his part of the scheme.

Being deprived of lawfully obtained property can be an effective deterrence, the Chief Justice noted.

In assessing the amount of a fine, courts should exact increased financial penalties from those who are wealthy, in an attempt to produce equal impact in terms of deterrence, he said.

As reported at the confiscation hearing, Creed's realisable assets totalled US\$2,696,378.11. This included his home at Rum Point, a boat, a vehicle and bank accounts in the sum of US\$1,983,931.92.

Reach reporter Carol Winker at carol@cfp.ky.

Copyright © 2006 Cayman Free Press Ltd.