HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 23RD DAY OF FEBRUARY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/320/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA **COMPLAINANT**

AND

SAMUEL JOHNNY (ALIAS BRYAN WILLIAMS & BIGITINO) DEFENDANT

JUDGMENT/SENTENCING

By an Amended Information, the Defendant was brought to this Honourable Court on a 1-count charge of attempt to cheat contrary to section 97 (obviously, this is an error on the part of the Prosecution, as section 97 provides for the punishment for criminal conspiracy; the correct section for attempt to commit an offence is section 95) of the Penal Code Act CAP 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under section 324 of the same Act. According to the particulars of the offence, the Defendant, on or about the 27th day of January, 2021 within the jurisdiction of the High Court of the Federal Capital Territory while representing himself to be one Bryan Williams, a military personnel with the United States of

American army and as Bigtino on his Instagram page, did attempt to cheat Lasher Manuel, Janice Lee and Clark Pauline all of New Orleans, USA by sending fraudulent messages to them *via* his iPhone 6-Plus in facilitation of his attempt to obtain money from them.

The Amended Information was supported by a number of documentary exhibits retrieved from the email accounts of the fictitious 'Bryan Williams' and other documents obtained from the Facebook page of the Defendant. There was also the extra-judicial statement of the Defendant which he made to the operatives of the Economic and Financial Crimes Commission on the 27th of January, 2021.

The Defendant was arraigned on the 9th of February, 2022. He pleaded guilty to the charge read to him after confirming that he understood the charge and its contents thereof. Upon his plea of guilt, the Prosecution proceeded to urge this Court to convict the Defendant accordingly.

In order to prove the case of the Prosecution on the minimal of proof, the Prosecution called its first witness, designated as PW1. Ogbaji Paul Oko, the PW1 was affirmed. He confirmed that he was a Detective Assistant and the Investigating Officer (IO) in the case, that he worked with the Economic

and Financial Crimes Commission and that his place of posting was the Commission's Zonal Headquarters at No. 5 Fomella Street, Wuse II, Abuja.

He testified that the Commission received an intelligence report about the activities of a syndicate of fraudsters operating at No. 6 Mbaka Street, Karu, Nasarawa State. This report led to a search which resulted in the arrest of the Defendant on the 27th of June, 2021. He added that the statement of the Defendant was immediately taken under word of caution. In the statement, the PW1 added, the Defendant admitted of committing the crime under the assumed names of Bryan Williams and Bigtino on his Instagram page.

The witness further swore that the Defendant's iPhone 6-Plus was accessed in his presence and the document used for the crime printed, with the Defendant signing same. The PW1 identified the phone and same was tendered in evidence. The Defence did not raise any objection to the admissibility of the exhibit. The Court, accordingly admitted same in evidence and marked it as Exhibit 1.

The Defence did not cross-examine the PW1; and, of course, there was no re-examination. The Court, thereupon, discharged the PW1. Since the Defendant had already pleaded guilty to the charge, the Court, therefore,

adjourned the case to the 23rd of February, 2022, that is today, for Judgment.

At this juncture, the question before me is whether this Court can summarily convict the Defendant based on his plea of guilty and the evidence adduced by the Prosecution. To answer this question, I must briefly expound on the concept of attempt to commit an offence under our criminal jurisprudence. Section 95 of the Penal Code Act provides for the offence of attempting to commit offences punishable with imprisonment. The said section provides thus:-

> "***Whoever attempts to commit an offence punishable with imprisonment or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence shall, where no express provision is made by this Penal Code or by any other Ordinance or Law for the time being in force for the punishment of such attempt, be punished with imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both***."

This provision, it must be noted, is a general provision dealing with attempts to commit offences not made punishable by any other section. It is also limited to attempts to commit offences punishable with imprisonment. The following steps constitute the stages of the commission of a crime: (a)intention to commit it;(b)preparation to commit it, and(c)attempt to commit it.If the third stageis successful, then the crime is complete.To prove attempt to commit an offence, the prosecution must be able to prove an intention to commit the offence and a preparation to commit the said offence. This preparation must be an act done with intent to commit a crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted.

This principle has been accorded judicial recognition in a number of cases.In ***Sanni v. The State (1993) 4 NWLR (Pt. 285) 99 CA at p. 119 paras C – E,***the Court of Appeal per Mahmud Mohammed JCA (as he then was) held that,

> "***It is the law that in every crime, there is***
>
> ***(a) intention to commit it;***
>
> ***(b) preparation to commit it, and***
>
> ***(c) attempt to commit it.***

If the third stage that is attempt is successful, then the crime is complete. The test for determining whether the acts constitute attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress, the acts already done would be completely harmless. But where the thing done is such that if not prevented by an extraneous cause, would fruitify into commission of the offence, it would amount to an attempt to commit an offence."

In ***Aminu v. The State (2005) 2 NWLR (Pt. 909) 180 CA at p. 197 paras B – C*** the Court of Appeal per Galadima, JCA (as he then was) held that "***The act that amounts to an attempt is one that must be immediately connected with the possible commission of the substantive offence. There must be a clear and unequivocal*** *nexus* ***between the overt act of attempt and the substantive offence***."

In ***Okafor v. The State (2016) 4 NWLR (Pt. 1502) 248 SC***, the Supreme Court per Kekere-Ekun JSC succinctly held ***at p. 265, paras G – H*** that "***In order to constitute an attempt to commit an offence, the act must be immediately connected with the commission of the particular offence***

charged and must be something more than preparation for the commission of the offence." Speaking further on how to prove an attempt to commit an offence, the apex Court continued ***at p. 267, para B*** that "***To prove an attempt to commit an offence, the act must be immediately connected with the commission of the offence***."

On when a Defendant in a criminal trial may be convicted for attempt to commit an offence, Okoro, JSC, speaking the mind of the Supreme Court held in the case of ***Ofordike v. The State (2019) 5 NWLR (Pt. 1666) 395 SC at p. 422 paras B – C*** that "***Where an accused person is prevented from committing the complete offence, a conviction for attempt to commit the offence may be sustained. The last act by the accused person immediately before the main act that would have resulted in the commission of the offence is an attempt to commit the offence***."

I have reviewed the charge before me in the light of those and other numerous pronouncements of the Court of Appeal and the Supreme Court on this matter and I am of the firm belief that a case of attempt to commit the cheating has been established – not by the Prosecution – but by the plea of guilty of the Defendant. This plea of guilty to the offence charged is evinced from the records of this Honourable Court. The Courts have made

unequivocal pronouncements on the legal effect of a plea of guilty in a criminal trial.

In ***Timothy v. FRN (2013) 4 NWLR (Pt. 1344) 213 SC at p. 236, paras F – G***, the Supreme Court held that

> "***By virtue of section 218 of the Criminal Procedure Act, if an accused person pleads guilty to any offence with which he is charged, the court shall record his plea as nearly as possible in the words used by him and if satisfied that he intended to admit the truth of all the essentials of the offence of which he has pleaded guilty, the court shall convict him of that offence and pass sentence upon or make an order against him unless there shall be sufficient cause to the contrary*.**"

The Supreme Court lucidly explained the dynamics of the plea of guilty in the case of ***Orji v. F.R.N. (2019) 4 NWLR (Pt. 1663) 480 SC Pp. 488-489, paras. H-C*** when it heldper Rhodes-Vivour JSC held that

> ***"A plea of guilty in a criminal trial is made by an accused person who does not contest the charge. This arises where an accused person having committed a crime is simply saying by pleading guilty that he is responsible for the crime.***

A plea of guilty to a charge is conclusive evidence that the accused committed the offence. When an accused person is represented by counsel and the charge is read and explained to him to the satisfaction of the court, the court can proceed to convict forthwith. There is no better evidence than a plea of guilty. It is better than eyewitness evidence. In the instant case, the fact that the accused person (appellant) was represented by counsel and the charge was read and explained to him in English language without any protest from the accused/appellant or objection from his counsel is conclusive evidence that the accused/appellant understands English language and was satisfied pleading guilty to the charge. The appellant was convicted on his plea of guilty. Thereafter any exhibits tendered are surplusage as the plea of guilty is conclusive proof that the accused person (the appellant) committed the offence. [*Akpav. State* ***(2008) 14 NWLR (Pt.1106) 72;*** *Jua v. State* ***(2010) 4 NWLR (Pt.1184) 217 referred to.]****"*

I have purposely reproduced the above dictum *in extenso* in the last case in order to draw a parallel between it and the instant case. In the case before

me, the Defendant was represented by Counsel. He confirmed he understood the English language and comprehended the import of the charge when it was read to him. Thereupon, he pleaded guilty to the charge as read to him. The Prosecution proceeded to give evidence and tendered a certain iPhone 6-Plus which was used allegedly as the instrument of the offence. There was no objection to this and the iPhone 6-Plus was admitted in evidence and marked as **Exhibit A1**.

There is nothing in **Exhibit A1** to ground the offence of attempt to commit cheating. Yet, no further exhibit was tendered by the Prosecution. This is notwithstanding the fact that several documentary exhibits were attached to the charge as proof of evidence. In addition to this prosecutorial nonchalance, the Defendant was charged under a wrong section. As I have noted earlier, section 97 of the Penal Code Act provides for the offence of criminal conspiracy. The appropriate section to charge the Defendant should have been section 95 which deals with the offence of attempt to commit an offence punishable with imprisonment. That was why I held earlier in this Judgment that a case of attempt to commit an offence has been established – not by the diligence of the Prosecution - but by the plea of guilty of the Defendant. By virtue of the decision of the Supreme Court in ***Orji v. FRN (2019) Supra***, adducement of evidence in proof of an offence

for which the Defendant has pleaded guilty is a surplusage. I therefore hold that the Defendant's plea of guilty is conclusive proof that he committed the offence of attempt to cheat contrary to section 95 of the Penal Code Act. Accordingly, I hereby convict him of the said offence.

Apparently, the Prosecution amended the Information pursuant to a plea bargain it had with the Defendant. This is deducible from the facts of the Amendment Information which saw the Prosecution charging the Defendant under the Penal Code Act which makes for lighter punishment as against the original Information by virtue of which the Defendant was charged under the Advanced Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 which makes for stiffer punishment.But, as far as this Court is concerned, there is no plea bargain agreement before this Honourable Court.

Yes, I have meticulously perused the Information and the proof of evidence and list of witnesses annexed thereto. It was in the process of this meticulous perusal that I came across an application for plea bargain addressed to the Head, Legal Unit of the Economic and Financial Crimes Commission from the Counsel to the Defendant and a plea bargain agreement made on the 8th of February, 2022 between the Prosecution and

the Defendant. This plea bargain agreement was not filed in this Court. Furthermore, and in contravention of the duty incumbent on it under section 270(9) of the Administration of Criminal Justice Act, 2015, the Prosecution did not deem it fit and expedient to bring the fact of the plea bargain agreement to the attention of this Court on the day the Defendant was arraigned or on any other day for that matter. This Court will not condone such lax and slipshod approach to administration of criminal justice from the Prosecution which ought to approach its assignment with a great sense of responsibility and solemnity.

For the avoidance of doubt, section 270(9) of the Administration of Criminal Justice Act, 2015 provides thus:

> ***"Where a plea agreement is reached by the prosecution and the defence, the prosecutor shall inform the court that the parties have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement."***

The Court of Appeal gave effect to this provision in ***Agbi v. FRN (2020) 15 NWLR (Pt. 1748) 416 CA at pp. 449 – 450, paras G – D*** where it held per Ige, JCA thus:

"By virtue of section 270(9) and of the Administration of Criminal Justice Act 2015, where a plea bargaining agreement is reached by the prosecution and the defence, the prosecutor shall inform the court that the parties have reached an agreement and the presiding judge or magistrate shall then inquire from the defendant to confirm the terms of the agreement. The presiding judge or magistrate shall ascertain whether the defendant admits the allegation in the charge to which he has pleaded guilty and whether he entered into the plea bargaining agreement voluntarily and without undue influence and may where – (a)he is satisfied that the defendant is guilty of the offence to which he has pleaded guilty, convict the defendant on his plea of guilty to that offence and shall award the compensation to the victim in accordance with the term of the agreement which shall be delivered by the court in accordance withsection 308 of the Act; or, (b)he is for any reason of the opinion that the defendant cannot be convicted of the offence in respect of which the agreement was reached and to which the defendant has pleaded guilty or that the agreement is in

conflict with the defendant's right referred to in section 270(6), he shall record a plea of not guilty in respect of such charge and order that the trial proceed."

The Prosecution has not informed this Court, either by way of a correspondence or by means of submission before the Court that there is a plea bargain agreement between it and the Defendant. Attaching an application for plea bargain from the Defence Counsel and a copy of the plea bargain agreement to the proof of evidence annexed to the charge does not satisfy the mandatory obligation incumbent on the Prosecution by virtue of section 270(9) of the Administration of Criminal Justice Act, 2015. In fact, it does great disservice to the honour and integrity of the Court. That provision is quite explicit and definitively obligatory when it states that "***the prosecutor shall inform the court***". There is nothing in the processes before me and the records of the Court that indicates that the Prosecution informed this Court of the existence of any plea bargain agreement. It is therefore my considered view, and I so hold, that there is no plea bargain agreement before this Honourable Court.

Having found the Defendant guilty of the offence of attempt to cheat, I shall proceed to sentencing. Section 95 provides that "***whoever attempts to***

commit an offence punishable with imprisonment… shall… be punished with an imprisonment for a term which may extend to one half of the longest term provided for that offence or with such fine as is provided for the offence or with both." Section 324 provides that "***whoever cheats by personation shall be punished with imprisonment for a term which may extend to five years or with fine or with both.***"

In view of the foregoing provisions of the Penal Code Act, I hereby sentence the Defendant to six months imprisonment or an option of fine of ₦100,000.00 (One Hundred Thousand Naira) only. The Defendant shall also depose to an affidavit of undertaking to be of good behaviour and become an apostle of change among his peers.

This is the Judgment of this Court delivered today, the 23rd day of February, 2022.

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HON. JUSTICE A. H. MUSA
JUDGE
23/02/2022

APPEARANCE:

For the Prosecution:
HadizaAfegbua Esq.

For the Defendant:

H. M. Nuhu Esq.
Ruth Joshua Mamza Esq.