

JERSEY / JUDGMENT

AG -v- Butcher [2014]

JRC 144A (21 July 2014)

[2014] JRC 144A

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are here to be sentenced on ten counts of misconduct in public office as the Connétable of St John. In each case, bar one, it was asserted by the Crown that you dishonestly abused your position as Connétable in order to acquire goods for your own private benefit at the expense of the Parish. The total value of the goods obtained was less than £1,000. The offences were committed over a period of some 15 months, mid-way through your second term. The mechanisms by which this was achieved differed but the summary I have just given is a sufficient indication of the facts for the purposes of sentence. The final count on the Indictment of which you are convicted involved using the Parish trading account dishonestly in order to avoid paying GST on an item you had bought for yourself. You were convicted on these ten counts and acquitted on a further five, after a five day trial in June this year. The offences are aggravated by seeking at times to blame others for failing to spot what you had done when what you did was done dishonestly, as the Jury found, and over a lengthy period. 2. Fortunately the charges of which you were convicted are rare in this Island. However, the result is that we have little by way of direct precedent to help us as to sentence but we think these next considerations are essential for noting by all. Misconduct in public office is a serious offence particularly where the offence involves dishonesty as these offences do. The public need to feel confident that those in office have high standards of personal integrity. 3. It follows that where an office holder falls short of those standards the Court should impose a sentence which not only marks the offending which has taken place, but also is one which reflects the importance of the trust which the public should have in those who have positions of responsibility. As Connétable you were, in effect, a trustee of public funds and as the verdicts showed, that was a trust which you abused. It is for this reason that we agree with the Crown that there is a similarity with offences of larceny by employees in breach of trust. Unless there are exceptional circumstances the offence of misconduct in public office therefore attracts a custodial sentence. It is usually the case that offences involving breach of trust are committed by those of good character, those who are genuinely remorseful for what they have done, and almost invariably the chances of reoffending and indeed of gaining similar employment in the future are slim. Nearly always the shame of the conviction is very real and as the Court has said in many of the cases involving breaches of trust, none of those mitigating features qualify as exceptional circumstances whether individually or collectively. 4. Although

there is no sign of remorse here in the sense that you still do not accept that you acted with criminal intent, there is no doubt that many of the other features do apply here but they are not, as I have said, to be taken as exceptional circumstances which permits us to treat this as a case where a custodial sentence should be avoided. 5. We have given anxious thought to the question of whether or not a suspended sentence should be imposed because the usual course in the cases I have described would be a sentence which is an immediate custodial sentence. Advocate Preston who has spoken very ably on your behalf and said everything that could be said has put forward a number of features which he says would justify a suspended sentence, - in particular the delay, the amount of good which you have done for your Parish in the past, the relatively small amount involved, the fact of its repayment, the stress that you were operating under at the time, and the fact that you have been pilloried in the media, if that is a fact, and the fact that you have had a damaging financial impact in the sense of having incurred substantial legal costs in your defence. 6. We have, as I say, given particular consideration to these features and also to the fact that in breach of trust cases routinely the victims feel particularly let down and here the probability is that although some parishioners will feel that way, there will be others who simply feel sad that many years of service to the Parish have ended so badly. Your achievements for the Parish were undoubtedly the result of hard work, unpaid for by the Parish, and perhaps that puts your relationship with the victim in a slightly different light from the breach of trust cases that we have otherwise had to deal with in this Court. Nonetheless we regret to say that we do not think it is right to suspend the sentence in this case. We apply the test incidentally to that which Advocate Redgrave put before us - is there something unusual about the circumstances especially the mitigation which would drive an exercise of discretion to suspend the sentence and despite all that Advocate Preston has said we do not think that is right. On the other hand we do think the Crown's conclusions are much too high and in particular we take into account the amount of money that is involved; we take into account in particular that we think the victims will not feel quite as let down as perhaps victims normally do because there goes in the balance all that you have done for the Parish in the past; and we take into account the delay while this matter has been hanging over you as being three of the particular features which, in our view, lead to the conclusion that the submissions of the Crown as to the length of sentence should not be accepted. 7. So the sentence of this Court is that you are sentenced to 6 months' imprisonment on each count, concurrent, on the Indictment. 8. I now turn to the question of compensation. As you will have heard in the course of the argument we think that it is difficult to know how much of the accountancy fees relate to the charges of which you were acquitted and therefore we must reduce the amount of the compensation order which has been requested of us by the Parish. We order that you pay compensation to the Parish in the sum of £2,000 which you should do within one month and if you fail to do so there will be a default sentence of 3 months' imprisonment. 9. I now come to the question of costs. Advocate Preston complains that the costs which the Crown seek of £35,000 are much too high and, in particular he says that had the matter been dealt with in house, as it were, by the Law Officers, then the usual costs order would have been something in the region of £5,000. Well it is certainly true that when the Crown moves for a costs order and the Court grants it in many cases such as Health and Safety at Work infractions, that a sum of £5,000 or £10,000 is chosen by the Court as the appropriate order to make but in those cases they

are usually cases where there has been a guilty plea and here the Crown's costs are much higher as a result of the not guilty plea. 10. Taking all features into account here I order that you pay £15,000 towards the costs incurred by the prosecution and we give you three months in which to pay these costs. I particularly take into account that you were acquitted on one third of the charges on the Indictment and indeed the higher value charges on the Indictment which no doubt would have taken up a proportionately higher part of the hearing. Authorities AG v Bhojwani

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