

JERSEY / JUDGMENT

AG -v- Fleming [2015]

JRC 132 (19 June 2015)

[2015] JRC 132

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JUDGMENT

THE DEPUTY BAILIFF: 1. You are to be sentenced today in respect of a single count of supplying false and misleading information to the Jersey Financial Services Commission, contrary to Article 28(1) of the Financial Services (Jersey) Law 1998 . Although this is a single count, it relates to a continuous set of actions over a period of approximately one month, between 25 th June and 25 th July, 2013. It is not necessary for the Court to set out the detail of your offending at length; this has been explained by the Crown, and the Court has had the opportunity to review the documentation contained in the Crown's bundle, which supports the characterisation of your offending by the Crown. 2. The context of this offending is your attempt to acquire a local trust company. The Jersey Financial Services Commission was involved as part of that process. Your lies included that you had amassed a substantial personal wealth to the effect that you could afford to buy the trust company in question from your own resources; that such was your wealth that you and your family had been at risk of kidnap and you had employed professionals to remove your internet profile as a result; that you had never been subject to bankruptcy proceedings and that you were of good character in that you had no previous convictions. None of those things were true. 3. In furthering your attempt to purchase the trust company you duped professionals into acting for you and, as you were challenged from time to time as to why information that was required or more funds that you promised were not forthcoming, you came up with excuses seeking to account for this, which were of course also untrue. It would be possible for the Court to go on at some length, detailing the individual lies and deceptions that you perpetrated in the course of your attempted acquisition of the trust company in your dealings with the Commission. 4. The Court notes that you have one previous conviction. In 2008 you were convicted at Ayrshire Sheriff's Court of one offence of breaching disqualification and acting as a company director in respect of which you were sentenced to 80 hours' of community service. 5. You have pleaded guilty and you are entitled to credit for that. However, the Court has had the benefit not only of the very detailed explanation of the facts provided by the Crown, but also the opportunity to review some of the evidence contained in the Crown's bundle, and it is clear that the evidence against you is very strong. Furthermore, you did not plead guilty at the earliest opportunity but allowed the matter to progress to a significant stage in the trial process before you accepted your guilt and entered a guilty plea. Accordingly, we cannot give you the full credit

that we would otherwise have been able to had your guilty plea been entered on the first possible occasion. 6. We have considered carefully all of the mitigation put forward on your behalf by your counsel and, in particular, the letters both from you and your family and friends. They paint a very different picture of you than that painted by the detail of your offending. 7. This is the first occasion on which the Court has been called upon to impose a sentence under Article 28 of the Financial Services (Jersey) Law 1988 . The maximum penalty permitted by statute is one of 5 years' imprisonment. It has been pointed out to us that this is rather higher than the equivalent offence in the United Kingdom but that does not surprise us. The finance industry in Jersey is an important part of the economy of the Island and for Jersey to operate as the leading financial services centre it is, requires that the integrity of the financial services industry is maintained. Had you been successful in your ploy to acquire the trust company in question, and had provided funding from sources undisclosed to the Commission, Jersey's reputation and the integrity of the industry would have been severely undermined. 8. The lies told in this matter were not reckless, they were deliberate and part of a concerted effort to produce the result that you sought. In the circumstances the Court considers that, as accepted by your counsel, the custody threshold is passed. This matter can only be met by a sentence of imprisonment. However, we are not entirely satisfied that the cases of AG-v-Michel

[2011] JRC 093 and AG-v-Lewis Christmas Foot and Cameron

[2012] JRC 177 are sufficiently comparable to provide a very clear guide to the Court. They are, as your counsel has said, different in many ways, although they do in our view provide some assistance. 9. In the view of the Court the correct sentence is one of 12 months' imprisonment and that is the sentence we impose. 10. We also order the confiscation of your laptop as one of the instrumentalities of the offence. This order was not opposed. Authorities Financial Services (Jersey) 1998. AG-v-Michel

[2011] JRC 093 . AG-v-Lewis Christmas Foot and Cameron

[2012] JRC 177 . Page Last Updated: 27 Sep 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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