

JERSEY / JUDGMENT

AG -v- Garraway and Hamon

[2014] JRC 120 (29 May 2014)

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JUDGMENT

THE commissioner: 1. The defendants stand to be sentenced for thefts committed against their employer in breach of trust. Although not fully qualified as an accountant, Garraway held himself out as a qualified accountant. He came to Jersey from South Africa in January 2005 and in April 2007 set up his own business, Active Accounting Limited ("Active"), which offered cost-effective book-keeping services to small businesses within the Island. Goldford is a business specialising in commercial and domestic interior refurbishment and shop-fitting, set up in August 2000 by its current owner and managing director Mr Michael Lotherington with financial backing from a local wealthy resident. 2. Garraway started work for Goldford on a part-time basis in May 2007, becoming a full-time employee in September 2007 when he had sole responsibility for the accounts and the company's credit card. He continued in his own time to run his business Active. He made his first dishonest payment in relation to Goldford using its credit card on 18 th March, 2008 in the sum of £1,550.65 to settle an invoice from the JEP for advertising Active's business. Further dishonest payments then continued made either to Active or to other parties until 16 th December, 2010, in the total sum of £235,352.90. These thefts were concealed from Mr Lotherington by the provision of false spreadsheets. Of this total sum, £171,863.42 was transferred to Active to discharge its debts and the balance was used predominately to fund his lifestyle and that of his family. Between May 2007 and January 2012 he had transferred £134,946.74 from Active to his personal account, transfers that would not have been possible without regular transfusions of cash from Goldford. 3. Whilst these offences were being investigated Garraway then went on to provide accounting services for a dental business run through a company by Dr Pollard and his wife from whom he stole or defrauded a further £7,184.43. 4. Civil proceedings were commenced by Goldford against Garraway for the return of the funds taken in 2010 in which he filed both an answer and a counter-claim. In interview Garraway repeated and maintained a determined, elaborate and entirely dishonest account that the money received by Active was subject of a verbal agreement between himself and Mr Lotherington. Garraway also continued to maintain that the other payments identified were payments in kind for overtime that had been approved by Mr Lotherington. He also stated that there was corroborative documentation in respect of all the work that had been carried out. He said that the reason why so much extra accountancy work had been needed was that Mr

Lotherington's accounts were in a mess and that Mr Lotherington asked him to spend whatever time was needed to sort them out and to do it in such a way that the silent business partner would not find out how much was being spent by their joint business on putting their accounts in order.

5. This defence was finally abandoned by the entering of guilty pleas but in the view of the Prosecution, with which we agree, it remains an aggravating feature that Garraway repeatedly tried to escape conviction by accusing Mr Lotherington, his victim, of conspiring to mislead his business partner and attempting to divert the police investigation partly towards the victim.

6. Quite apart from the quantum of the monies taken, the personal impact on the proprietors of these relatively small businesses, and their staff and their families, is made clear from the victims personal statements. The deception practised by Garraway was on a grand scale. The concluding paragraph of Mr Lotherington's victim personal statement begins with observations that one cannot do other than sympathise with:- "In conclusion; I believe that Garraway is not only a thief but a compulsive liar and is liable to be extremely dangerous when dealing with other people's finances. Garraway has not only abused my trust during the period he was stealing from the company but he also managed to do the same to our bankers, credit card provider and our auditors, all of which has caused unnecessary work, heartache and disputes. The effects of his actions have not only caused financial loss, they have also caused stress, numerous sleepless nights for me, my family and employees. The total costs of his actions are incalculable and he should in my opinion never be allowed to work in any areas of finance again."

7. Garraway's denials and his counter-allegations against Mr Lotherington led to an extended investigation in which a number of innocent people fell under suspicion. According to the Prosecution more than 140 statements were taken and over 400 exhibits generated in the matter. Mr Lotherington alone had to be troubled to give no less than 6 witness statements and his staff taken away from their duties on numerous occasions. Whilst the police were engaged in that exercise Garraway set about, as the Prosecution put it, "fleecing Dr Pollard's business". It is an aggravating feature of the Pollard offences that they were committed whilst the defendant was under investigation for the Goldford offences. Garraway also caused active employees to become innocently involved in preparation of documents that he used to conceal the theft.

8. In addition Garraway alleged that Dr Pollard had made the complaints against him maliciously because Garraway had uncovered, within the practice accounts, £70,000 of income that Dr Pollard had failed to declare on his tax returns and Garraway had told him that he would report him. This serious allegation had to be investigated and was found to be entirely false.

9. Garraway also stands to be sentenced for assisting Hamon in her thefts. She was a long-term employee of Goldford working as an office administrator. Over a period of two years and four months, using the company's credit card, she stole £4,031.35 making some 32 purchases for what might be described as luxuries rather than the necessities of life. She also stands to be sentenced for assisting Garraway in concealing his thefts in the later period between 1 st September, 2010 and 3 rd March, 2011, when he stole some £27,000.

10. As Whelan says in Aspects of Sentencing in the Superior Courts of Jersey taking thirty years as a sample span, a reading of the cases reveals an absolute consistency of policy on the part of the Court where offences involve a breach of trust, namely that they will be punished by custodial sentence in all but the most exceptional circumstances. It is, he says, one of the sentencing principles most resolutely observed by the courts.

11. In assessing the gravity of

offences in this area it has long been the practice of this Court to apply the checklist criteria set out in R-v-Barrick

[1985] 7 Cr App R (S) 142. Those are set out in the Crown's conclusions and we will not repeat them here but we have taken them into account. It has also been long-noted in this jurisdiction as in that of Barrick that these types of cases:- "Seem invariably to involve offenders of excellent previous character, who cooperate fully with the police, who employ a not especially sophisticated modus operandi who intend to make a restoration (and sometimes do, wholly or in part) who plead guilty who evince a more or less inadequate personality, either generally or in response to the configuration of problems which have led to the offence, who have lost employment, professional status and prospects as a result of the offence, who have suffered severe damage to family life suffered genuine remorse and who has often as not suffer in some personal way that makes a genuine emotional appeal. Unsurprisingly, the Court has felt unable to treat these circumstances as exceptional; they are, in the context of these cases, in fact sadly commonplace." Much of that applies to the two defendants before this Court, both of whom are of good character and have been assessed at a low risk of re-offending. 12. The Crown moves for a total sentence of 12 month custody for Hamon and 4 years custody for Garraway, comprising 3 years for the Goldford offences and 1 year, consecutive, for the Pollard offences. The Crown also seeks Garraway's disqualification under Article 78(1) of the Companies (Jersey) Law 1991 for a period of 10 years. 13. In terms of mitigation, taking Garraway first, he has pleaded guilty thus avoiding what might have been a complex trial and he has shown insight into his offending saying as he did to the Probation Department when they interviewed him, " I had complete financial control and I totally abused it. I was a fool, I was greedy and stupid to have thrown away every bit of integrity I had and the more I had the more I wanted. It became too easy." 14. We have considered the mitigation put forward on Garraway's behalf by Advocate Hall very carefully and all of the letters that have been produced to us. It is very painful to read these moving letters received in particular, for example, from his daughter. This is as Barrick says a case where his conduct has caused severe damage to his family. We have considered the issue of delay and, although there has been a delay, as is often the case in cases of this kind, we do not think this constitutes mitigation for Garraway. This was not a straightforward investigation. It was carried out in circumstances in which he was denying the offences, actively defending the civil claim and counter-claiming in those proceedings, and making allegations against innocent parties which had to be investigated. The affairs of all of his other clients had to also be investigated and the case was further complicated by the involvement of the prosecution against his co-accused Hamon and Powles. 15. In terms of disqualification we do not regard AG v Nelson 2002/199 put to us by Advocate Hall as a case giving any guidance as to the period of disqualification and in the light of the very serious nature of Garraway's conduct, we think that ten years suggested by the Crown is entirely appropriate. 16. Turning to Hamon, she has pleaded guilty and she has repaid all the money stolen as soon as it was discovered. It would seem, as the Prosecution has said, that in reality her

assistance of Garraway was primarily motivated by hope that he would be able to conceal her frauds rather than to assist him in concealing his frauds. 17. We have considered all of the points put forward by Advocate Nicholls but all of it barr one matter in our view comes within the circumstances that Barrick says are "unexceptional". The one matter which might not is the assertion that the police had indicated to her that if she maintains her guilty plea the Crown would be unlikely to seek a prison sentence. She felt, he said, that she had been "kicked in the teeth" by the police. It is important to note that the defence do not assert any impropriety on the part of either the police or the Crown in this respect. We did not feel it necessary to hear again from Advocate Hopwood on this assertion, of which we believe he had no notice, as it is clear to us that her cooperation with the police when investigating the case against Garraway was at a time when she had not volunteered and the police were unaware of the assistance that she had given Garraway towards the end of his offending and we think it entirely right that she has now been charged both with her own thefts and the assistance she has given to Garraway. There has been, in our view, no abuse of process and nothing has happened which constitutes exceptional mitigation justifying a departure from the Court's policy. 18. Turning to the sentences to be imposed we regard the conduct of Garraway as despicable constituting a most serious breach of trust against two small companies for which we think a sentence of 3 years is too low. However, we accept the remaining conclusions of the Crown. 19. Mr Garraway, on Count 1 you are sentenced to 3½ years' imprisonment, on Count 2; 2½ years' imprisonment which will be concurrent to Count 1. On Count 3; 12 months' imprisonment, Count 4; 12 months' imprisonment, Count 5; 12 months' imprisonment, Counts 3, 4 and 5 will be concurrent with each other but consecutive to Counts 1 and 2. For Count 6 you will be sentenced to 6 months' imprisonment, concurrent to all other charges, which makes a total of 4½ years' imprisonment. With the consent of the Defence and reconstituting ourselves as the Inferior Number, we disqualify Mr Garraway under Article 78(1) of the Companies (Jersey) Law 1991 for a period of 10 years. 20. Ms Hamon, on Count 7 you are sentenced to 12 months' imprisonment, on Count 8; 6 months' imprisonment, concurrent, which is a total of 12 months' imprisonment. Authorities Aspects of Sentencing in the Superior Courts of Jersey. R-v-Barrick [1985] 7 Cr App R (S) 142. Companies (Jersey) Law 1991. AG-v-Nelson 2002/199. AG v Morgan

[2006] JRC 176 . AG v Dauny

[2010] JRC 141 . AG v Donachie

[2009] JRC 229 . AG v Donnelly 2000/199. AG v Speck

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