

JERSEY / JUDGMENT

AG -v- Herivel [2005] JRC 093 (08 July 2005)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This defendant committed a serious breach of trust. He took advantage of his position as Transport Manager at Securicor in order to steal this money. The Court's policy is clear. For cases of breaches of trust of this nature a prison sentence must follow, unless there are exceptional circumstances. 2. Miss Juste has argued forcefully that there are exceptional circumstances in this case. She points first of all to the circumstances leading up to the offence. The defendant had marital difficulties. He was suffering from depression and had reverted to his long standing drinking habit. Shortly before the difficulties he had in fact found his wife a job at Securicor. Subsequently she had an affair with another person at work. We have heard what happened thereafter and it was clearly badly handled by the company in relation to that matter; as a result the defendant became extremely resentful, and reverted to his drinking habits and to his depression. 3. It is clear that this offence was committed on the spur of the moment. There was no premeditation, he took advantage of the moment and committed a one-off offence. We have received a psychiatric report which says this: In my opinion his actions surrounding the index offence were heavily influenced by his mental state. Whilst depressed he felt desperate and angry towards his employers and his ex-wife and new partner and the offence was committed in reaction to these feelings rather than for his own personal gain. If he was not depressed I do not consider that he would have acted that way". 4. The fact that it was an unpremeditated offence is supported by the fact that he clearly panicked immediately afterwards. He felt he had to get rid of the money and went out immediately and bought a whole lot of luxury goods which he did not need and it was obvious that he was going to be caught within a short time. The offence was always going to be discovered and the very purchase of these goods would have attracted attention. 5. Secondly, all the reports are agreed that he has made very considerable efforts in recent months to put himself back on the correct path. He has addressed both his depression and drinking. He clearly reached a low point when he took an overdose in October, but all the reports are now agreed that he is at low-risk of re-offending and that he is making very considerable progress. 6. He has no previous convictions, he is clearly extremely remorseful and was very co-operative and an additional factor which weighs in this case is the delay in this matter. The case was committed from the Magistrate's Court in early December. He had pleaded guilty throughout and yet it was not indicted until May. There is no explanation in the papers before us, for this delay, or for any further delay from May until now. We have been told by the Crown Advocate upon questioning that there were some further investigations; but we regard the delay as having

been unacceptable and this is a matter which again counts towards the defendant because this matter has been hanging over him for longer than it should have been and it is not his fault that is the case. 7. We have a number of reports in this case. We have the Social Enquiry Report, a report from Drug and Alcohol and the Psychiatric report. All of them are very detailed and all of them urge strongly that a prison sentence for this man would be counter-productive and possibly damaging and they strongly urge a non custodial disposal. In all those circumstances we have had to consider whether we regard this case as sufficiently exceptional. As we say it is a case where there was a one-off offence, committed on the spur of the moment in circumstances where he was depressed and resentful for the reasons that we have given. It was not, as is often the case, a situation where he continued to steal money over a period. 8. In all the circumstances we have been persuaded, although we have not found it easy, that this is an exceptional case and we can proceed by way of a non-custodial sentence. We are, therefore, going to place you on probation for 12 months. It is a condition of that, that you attend the Drug and Alcohol Service and act as directed by them. We also order you to carry out 240 hours community service and we say the prison sentence which we would have imposed, had we not agreed with a non-custodial disposal, would have been 18 months' imprisonment. The Court is giving you a considerable chance here and it is up to you to take advantage of it. The reports all urge that you should take advantage of it and that you are at low risk of re-offending, and we trust that that turns out to be the case. Authorities A. G. -v- Picot (1990) JRC94. R -v- Barrick [1985] Cr. App. R. (S) 142. Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n): pp. Page Last Updated: 18 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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