

JERSEY / JUDGMENT

AG -v- Kirkum [2005] JRC 131 (23 September 2005)

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JUDGMENT

THE DEPUTY BAILIFF: 1. You had a position of some importance at the Grand Hotel and the system that you adopted, albeit doomed to discovery, was well thought out and took place over a period of some months. You were clearly living beyond your means, and you lied to the police in an attempt to cover your tracks. Fortunately, you pleaded guilty in the Magistrate's Court, albeit 14 weeks after you were charged. Mrs Pearmain has explained the circumstances of that to us. 2. Our problem is that in Picot on 29 th May 1990, the Court said that: "a person convicted of an offence involving a criminal breach of trust will receive a custodial sentence unless there are exceptional circumstances". 3. We have amongst all the other cases carefully considered Whelan on Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n) and it is quite clear that exceptional circumstances do not include good character, co-operation with the police, problems in family life or a gambling addiction. 4. We have to look at all the circumstances and decide in their totality whether there are truly exceptional circumstances in this case. Mrs Pearmain to some extent says that you were over promoted beyond your abilities, but in our opinion the term 'financial controller' is a term of art. You were, as far as we are concerned, a bookkeeper which does not require advanced accounting skills. 5. But we have to recall your extraordinary family background, particularly the details of your father dying and the total rejection by him and by your step-mother. The Probation, Psychiatric and Psychological Reports make for very sad reading. But there is not only pre-meditation in this offence, there is also its effect on other people, whom you wrongly implicated, and we feel that they will have suffered immensely. 6. You are clearly at a low risk of re-offending, and we have to recall having read the Psychiatric and Psychological Reports that Dr Harrison says in his last paragraph: "Due to his present depressive state and coping abilities, I would be concerned that a period of incarceration would lead to further deterioration in his mental state and a worsening of his depression. In my opinion, his depression should be considered when deciding on sentencing..." 7. Now we know that the money has been repaid, but those who repaid it will have to be compensated. We note that you are a first offender, we also note that you are categorised at being at a very low risk of re-offending. We have read the excellent references and we note from Mrs Pearmain that you have agreed to undertake psychiatric treatment. We have weighed everything in the balance, and this is clearly a case for imprisonment. We have to ask ourselves, having eliminated all the

alternatives, should it be immediate imprisonment? 8. We think that the request by the Crown is perfectly correct, that is you will be sentenced on Count 1 to 3 months' imprisonment, Counts 2 -11, 18 months' imprisonment, concurrent, and Count 12 - 21, 18 months' imprisonment, concurrent, but we are going to take a risk with you. We are going to suspend the sentence for 24 months. You can consider yourself very fortunate. I have to tell you this if you come back to Court for any reason whatsoever you know what will happen to you. Authorities Picot 29 th May, 1990. Whelan: Aspects of Sentencing in the Superior Courts of Jersey (2 nd Ed'n). Page Last Updated: 15 Oct 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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