

JERSEY / JUDGMENT

AG v Nicholls [2017]

JRC 093A (15 June 2017)

[2017] JRC 093A

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JUDGMENT

THE BAILIFF: 1. The defendant is here to be sentenced on an Indictment involving three counts, one of fraud, one of fraudulent conversion and one of larceny. The total sum involved is some £231,000. The offending took place over a period of some 4 years. It was not a moment of madness because there were some 396 transactions for the defrauding of the Jersey United Services Club alone and a series of further transactions in relation to the Royal British Legion. 2. In both cases there seems to have been some lack of controls on the part of those responsible for running the clubs or charities and we wish to say two things about that. The first is that there is a responsibility on the part of those who are running clubs and charities to make sure that they have a proper process for dealing with money which is ultimately trust money held for that club or charity as the case may be. And that is something that is a duty which is incumbent on all those who are running clubs or charities. The second is that the lack of controls does not in any sense excuse dishonesty on the part of the person who has breached the trust of those clubs or charities in taking funds from them. 3. Here there was a serious breach of trust because, as the defendant well knew, he had access to very large sums of money which he could take and did take, as I say, over a significant period and it is the nature of that breach of trust, the period over which the money was taken and the amount of money taken combined, which puts this case in a different category from those such as AG v Reeves

[2013] JRC 119 . Certainly the breach of trust in Reeves was a very different form of breach of trust. Here there was escalating criminality over the period. The defendant got himself into a hole, no doubt in the early part of his offending, intended to put money back, but it must have been apparent to him as time went on that he could not possibly do so, he got in deeper and deeper and the fact that he did not have a job which produced a regular amount of income for him must have made it obvious to him that he was unable to repay the monies that he was taking. 4. The Court has looked closely at the nature of the offending which was relatively unsophisticated and we have also looked very closely at the letters of support which the defendant has put before us, support from his wife and his daughter and stepdaughter. The defendant is extremely fortunate to have that support as we are sure that he knows. But, nonetheless, as was said by the English Court of Appeal in Mitchell

(1987) 11 Cr. App. R. (S) 562:- "It must not be thought that people who fail to consider the effect that their actions may have upon the own family are to be treated in any more sympathetic way than others. We do not like having to do it but it seems to us that it is essential to make these matters clear." 5. Here larceny or fraud in breach of trust results in a custodial sentence unless there are exceptional circumstances and it is agreed by the defendant that there are no exceptional circumstances here and so the question is simply one of deciding what is the appropriate length of sentence? We take into account his good character, we take into account his guilty plea and the references and the apology which he has made to his victims, indeed we have listened carefully to a very good mitigation speech by Advocate Grace and we accept that he is now remorseful for what he has done. Having said that it was a prolonged and calculated breach of trust, prolonged offending and a deliberate fraud. 6. We think it is right to impose concurrent sentences. We think the total sentence ought to be 4½ years' imprisonment and we therefore sentence the defendant to 1 year's imprisonment on Count 1; 4½ years' imprisonment on each of Counts 2 and 3 and they will all run concurrently, making a total of 4½ years' imprisonment. 7. The Court is pleased to note that the defendant has taken advantage of the different courses which are available in the prison and hopefully the results of those courses will help him when he comes out of custody in due course to get a job and to continue to support his family. 8. We also make a compensation order in the sum of £7,000 in favour of the Royal British Legion and £9,000 in favour of the Jersey United Services Club. That is a total of £16,000, £4,490 is payable immediately. £11,510 is payable within 2 years and there will be a sentence of 12 months' imprisonment in default which will run consecutively to the prison sentence which we have imposed on this Indictment. Authorities AG v Reeves

[2013] JRC 119 . R-v-Mitchell (1987) 11 Cr. App. R. (S) 562. AG v Barnett-Roberts

[2013] JRC 042B . AG v Oliveira

[2012] JRC 018 . AG v Self

[2010] JRC 022 . Whelan on Aspects of Sentencing in the Superior Courts of Jersey. Page Last Updated: 13 Dec 2017 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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