

JERSEY / JUDGMENT

AG -v- Sloan [2013] JRC 033 (08 February 2013)

[2013] JRC 033

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JUDGMENT

THE commissioner: 1. The defendant stands to be sentenced for one count of larceny as a servant of cash to the approximate value of £69,000 and one count of falsification of accounts. The defendant had worked for the Post Office for 25 years; his role was serving customers for general postal services and foreign currency exchange. He was a team leader entrusted with handling substantial amounts of cash every day with access to the computers and cash drawers of the other staff members. He started taking money ten years ago to pay off gambling debts but those debts and his attempts to pay them off spiralled out of control. In April 2012 his inability to account for sterling that should have been in his till led to the management becoming suspicious and an internal audit being arranged. Knowing, we have no doubt, that his frauds were about to be uncovered, the defendant informed his shop steward that he had stolen in the region of £70,000 and he then attended Police Headquarters voluntarily stating that he wanted to admit to the offence. 2. These thefts took place over ten years. They involved manipulating the accounting system and using his seniority to ensure he was not detected when audits were taking place. 3. In Picot

[1990] JLR N 19B the Superior Number described "the first principle" as the expectation that offences committed in breach of trust will be punished by a custodial sentence, save in "very exceptional circumstances". In such cases the accused will usually be of hitherto impeccable character, unlikely ever to offend again, unlikely to be able to secure similar employment, and to have brought disgrace and hardship onto his family. The Superior Number observed that these features are usual rather than exceptional. 4. In the case of AG-v-Mumot

[2010] JRC 078 the Court said this:- "Custodial sentences would be imposed for offences such as the present involving a breach of trust, in all but the most exceptional circumstances. When considering whether the facts of a particular case were exceptional, the sentencing court would not look for factors which might in isolation amount to exceptional circumstances, but rather it would consider the facts of the case in their totality". 5. It is without doubt that the defendant's actions in this case will have had a detrimental effect and will have brought hardship on his family but as stated by the Superior Number "this is

not exceptional". 6. In the case of Mitchell

(1987) 11 Cr. App. R. (S) 562, cited with approval in the case of AG-v-Oliveria

[2012] JRC 018 , the Court said this :- "It must not be thought that people who fail to consider the effect that their actions may have upon their 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". 7. In many cases that have come before this Court, gambling is often cited as one of the reasons for the offences being committed. The Crown has referred us to this extract from Whelan quoting the case of Congdon saying:- "In our judgment the principle is that, in normal circumstances, a gambling addiction is not a mitigating factor." 8. In this case the defendant has all the powerful mitigation such as his good character, his cooperation with the police, his undoubted remorse, the injury to his family we know are present today and the loss of his employment, which the authorities show, do not amount to exceptional circumstances. We have considered carefully, all of the mitigation put forward by Mr Ingram but sadly, as in many cases of this kind, none of this can in our view, be regarded as exceptional. We do not accept that the defendant going to the police was unconnected with the steps taking place at Jersey Post and that the defendant therefore wrote his own Indictment. We do not regard the delay of two months before being charged as a matter of any criticism. The authorities are duty-bound to investigate separately and independently the amount stolen and two months for such an exercise is not, in our view, unreasonable. The Court acknowledges the strength of the mitigation but, sad though it is, none of it amounts to exceptional circumstances and we have therefore concluded that the conclusions of the Crown are correct. 9. You are sentenced to 2½ years' imprisonment on each count, concurrent, which makes a total of 2½ years' imprisonment. 10. Turning to Compensation, we do not think that this is an appropriate case to order compensation. The defendant is clearly insolvent on the cash flow basis as he has creditors in addition to Jersey Post and there is no certainty as to what assets may become available to him. Furthermore, we are concerned about making such an order without properly taking into account the impact upon the defendant's spouse, who we note in any bankruptcy would be able to apply to the Court for protection in relation to her occupation of the matrimonial home (Article 12 of the Bankruptcy Desastre (Jersey) Law 1990) . It is appropriate therefore in our view for Jersey Post and the other creditors of the defendant, should they wish to do so, to pursue their remedies through the usual civil process. Authorities Criminal Justice (Compensation Orders)(Jersey) Law 1994. AG-v-Picot

[1990] JLR N 19B. AG-v-Mumot

[2010] JRC 078 . Mitchell (1987) 11 Cr. App. R. (S) AG-v-Oliveria

[2012] JRC 018 Congdon-v-AG 2002/38. Bankruptcy Desastre (Jersey) Law 1990. AG-v-Zielinski

[2008] JRC 028 . AG-v-Sproule

[1992] JLR N11a. AG-v-Aubert

[2006] JRC 168 . AG-v-Harris

[2004] JRC 020 . Barrick (1985) 7 Cr. App. R. (S) 142. Page Last Updated: 16 Sep 2016 BAILII:
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