

JERSEY / JUDGMENT

AG v Smith [2004] JRC 074 (29 April 2004)

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JUDGMENT

THE DEPUTY BAILIFF: 1. Gerald Smith, over a period of some 7 years you fraudulently converted for your own use just over £1 million. These sums were stolen from a trust and company structure which was held for the benefit of a Mr Chilcott. 2. Mr Chilcott was not only a client but he was a friend. He followed you as you moved employment between various trust companies. It was a gross breach of trust committed by a person who worked in the financial services sector of the Island where trust and confidence are of the utmost importance. 3. You had the opportunity to steal the money because you were trusted both by your employers and by Mr Chilcott. You spent the money on living to a standard of living which your salary could not support. It is clear that in recent years you have become an alcoholic and this may have played a part in impairing your judgment. 4. Miss Benest has spoken eloquently on your behalf and she has put forward a strong case in mitigation. As the Court said in A. G. -v- Kirkland (24 th September

2001) Jersey Unreported; [2001/200]: "It is one of the tragedies of cases like this that there is almost invariably very powerful mitigation. We cannot put it better than it was put in Barrick itself at p. 145 when the court said this: "He (meaning the defendant) will usually, as in this case, be a person of hitherto impeccable character. It is practically certain ... that he will never offend again and, in the nature of things, he will never again in his life be able to secure similar employment with all that that means in the shape of disgrace for himself and hardship for himself and also his family."" 5. These factors are all present in your case. We have listened to everything Miss Benest said and we mention in particular your immediate guilty plea - you admitted matters from the start and this goes to your credit. The guilty plea was of real value. You are of previously good character. Your reputation is lost, you will not be employable in this field again. Your marriage is probably going to break up and the effect on your family and children and on your life generally is one of devastation. You are clearly extremely remorseful and you have been co-operative with the prosecution and in the civil proceedings to a high degree. We also note the contents of the reports and in particular the comments on your health. 6. We have to consider what is the right length of sentence. In this respect we must consider the recent decision of the Court of Appeal in Harrison -v- AG [2004]JCA046 where it was said that it was desirable to fix a starting point, although this was not a direction to the Royal Court that it must do so. 7. In response to that Court's request that the Crown should assist by suggesting a starting point Mr Whelan has taken some of the leading cases in Jersey in

relation to fraud matters and has attempted to work backwards in order to assess what the starting point might have been. 8. This Court has carefully considered all that was said by the Court of Appeal in Harrison . The Jurats remain unconvinced that the starting point mechanism is at all helpful in non-drug cases. However, in deference to the views of the Court of Appeal they have endeavoured to try and fix a starting point in this case. There is a difficulty. If one looks at the Crown's table and if one takes, for example, the case AG -v- Donnelly (13 th October, 2000) Jersey Unreported [2000/199] where they have worked backwards, they have taken a finishing point of 4 years and grossed this up for a one-third guilty plea in mitigation to 6 years. They then assumed, shall we say, 18 months for other mitigation to lead to a starting point of 7½ years. But Harrison made it clear that the one-third for a guilty plea is to be taken off the starting point. Accordingly, if one were to apply that to a 7½ years' starting point one would take off one-third to get down to 5 years and allowing 18 months for mitigation would end up at 3½ years. In other words the starting point does not match the finishing sentence because of the way the calculation has been done. That applies to all the other cases. 9. Accordingly, we do not feel comfortable with the suggested range of starting points put forward by the Crown and in the circumstances, in the absence of a suggestion by the Crown with which we are comfortable, we do not feel that we can of our own volition assess a starting point in an area where this has never been done. 10. So we have concentrated on the real issue which is what is the right sentence to pass? We have considered the cases of Donnelly , A. G. -v- Hay (10 th July, 1995) Jersey Unreported [1995/133], A. G. -v- Delaney (13 th May, 1993) Jersey Unreported [1993/62], A. G. -v- Stilwell (19 th January, 1998) Jersey Unreported; [1998/11], A. G. -v- Hanley (14 th October, 1993) Jersey Unreported; [1993/134], A. G. -v- Bellows (8 th February, 1999) Jersey Unreported; [1999/28], although the facts of course vary. 11. We have balanced the level of the breach of trust and the circumstance of the offence generally against the powerful mitigation. As you will have seen from the length of the discussion, the Court has not found this easy, and there was consideration as to whether we should reduce the conclusions but the view of the Court is that the Crown has made sufficient allowance for all these factors, and that the sentence for which it moves is correct to reflect the breach of trust over such a long period in respect of this amount of money by a person working in the finance sector. 12. Accordingly, the sentence is one of 5 years' imprisonment concurrent on each count. As to the disqualification - the Inferior Number constitutes itself with Jurat de Veulle and Jurat Quérée - we note that you do not oppose the disqualification sentence; we suspect that, in view of your age and health, it is all fairly academic, but nevertheless, in order to reflect the need to protect those who use Jersey as a finance centre, we think the Crown were right to move for the maximum period of disqualification and we therefore do impose a disqualification order of 15 years. Authorities A. G. -v Picot [1990]JLR N-19a. A. G.-v- Kirkland (24 th September, 2001) Jersey Unreported; [2001/200]. A. G. v -Congdon (12 th February 2002) Jersey Unreported [2002/38]. Thomas; Principles of Sentencing (2 nd Edn): p.210. R -v- AS (unreported 28/2/2000). R -v- Williams (unreported 13/12/2000). A. G. -v- Hanley [1993] JLR N-9. A. G. -v- Young (1998) JLR N-16. R -v- Barrick (1985) Cr. App. R (S) 142. Harrison -v- A. G. [2004]JCA046. Whelan: Aspects of Sentencing in

the Superior Courts of Jersey (2 nd Ed'n): pp. 340-367, 493-496. A. G. -v- Marsh (25 th January, 2002) Jersey Unreported; [2002/22]. A. G. -v- Donnelly (13 th October, 2000) Jersey Unreported; [2000/199]. A. G. -v- Hay (10 th July, 1995) Jersey Unreported; [1995/133]. A. G. -v- Delaney (13 th May, 1993) Jersey Unreported; [1993/62]. A. G. -v- Stilwell (19 th January, 1998) Jersey Unreported; [1998/11]. A. G. -v- Hanley (14 th October, 1993) Jersey Unreported; [1993/134]. A. G. -v- Bellows (8 th February, 1999) Jersey Unreported; [1999/28]. R -v- Clark

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Prepared on 23 October 2026 · Esheria