

JERSEY / JUDGMENT

AG v Whelan [2000] JRC 82 (12 May 2000)

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JUDGMENT

THE LIEUTENANT BAILIFF: 1. Darren James Whelan is before this Court on three counts of obtaining money by false pretences. These all stem from obtaining sickness benefit from the Department of Employment and Social Security by claiming he was unable to work during three separate periods in 1999 when he was actually self-employed though not working at his main occupation as a member of the Airport Fire Service. 2. In January, 1999, Whelan had taken over the franchise of Service Master, a carpet cleaning business, in order to earn more money. At that time his fire service pay was around £22,500 per annum which later rose in June by about £750. However, by then he was on half pay and later in the year had no pay at all due to his lengthy sickness periods. 3. In early July Whelan registered two businesses both involving the sale of carpets. We were given evidence that on several occasions while receiving sickness benefit Whelan had worked both the cleaning franchise and carpet selling business and has admitted fully that this was the case. However, we also accept that for some of the time covered he was genuinely incapacitated. 4. In total some 29 cheques were issued by Social Security and payments amounting to £4,780.36 were cashed by the Defendant. He admitted during police interviews that he knew that it was an offence to claim benefit while working. Indeed he knew it well because he had previously made false claims between September, 1997, and January 1998, had been found out and been interviewed by the Social Security Department. Having made a repayment of the defrauded sum of £274, he was fortunate that no further action was taken. In the present case, Whelan benefited fraudulently to a total of £2,983.96. 5. Mr. Le Cornu has asked this Court to impose a custodial sentence. Although Whelan has no record of any note at all, it is obvious that he did commit a previous offence that was not prosecuted so his good character is not unblemished. His guilty plea has been taken into account, as has his remorse and the fact that the money has been repaid. Nevertheless, Mr. Le Cornu showed us the case of - A. G. -v- Payne (17 th December, 1999) Jersey Unreported where the Bailiff said in a similar case - and this is a paraphrase of what was said - : "You were given a chance on a previous occasion but on a second occasion this cannot be met with the same indulgence." 6. Even taking into account the report of Mr. Berry, the Psychologist, and the Probation Department, the Prosecution moves for a custodial sentence of six months on each count, concurrent. 7. Mr. Winchester has said everything that could be said on Whelan's behalf and we have read the letters of reference, and Mr. Whelan's own letter, also the reports of the Probation Service and of Mr. Berry, all of which give us a very good picture of the stress that events have placed upon the Defendant. We have also looked carefully at

the cases of A. G. -v- Payne, A. G -v- Harris (27 th March, 1997) Jersey Unreported and others where even when greater sums of money were involved and non-custodial sentences were imposed. 8. Whelan, you have escaped a custodial sentence by a very narrow margin. We are going to impose a term of probation of 1 year, but we do feel that the Crown's conclusions regarding the length of what they proposed as a custodial sentence were on the lenient side. We now impose 140 hours of Community Service to be completed within the probation year and you will, of course, be under the supervision of a Probation Officer throughout that time. 9. We fully realise that a financial sanction is not realistic because you are in difficulties already but we hope very much that you will make an effort to repay in due course your parents and others who have supported you throughout this time. Any further breach of the law in any direction at all will mean this Court has little sympathy with you, so kindly do all that your Probation Officer requires of you. Authorities A. G. -v- Payne (17 th December, 1999) Jersey Unreported. Livingstone Stewart & Ors. (1987) 9 Cr. App. R.(S) 135. A. G. -v- Harris (27 th March, 1997) Jersey Unreported. A. G. -v- Hallsall (9 th December, 1996) Jersey Unreported. Whelan: Aspects of Sentencing in the Superior Courts of Jersey: p.p. 18-19; 21-22. Page Last Updated: 19 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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