

10th April, 1985.

85/31

IN THE ROYAL COURT OF JERSEY

H M Attorney General -v- David John Bates

BAILIFF: The Court was unanimous in refusing the application for leave to appeal; perhaps the argument on behalf of the applicant can be put in two ways - firstly, that the reasons given by the Deputy Bailiff on behalf of the Court for imposing a sentence of twenty-one months' imprisonment do not appear - this is the argument - do not appear to show that the Inferior Number, in considering the length of sentence, had regard to whether there were any special circumstances. The second argument is that there were such special circumstances to which they should have had regard which ought to have caused them to reduce what might otherwise have been the normal length of sentence. Well, so far as the first point is concerned, did the Inferior Number have regard to the special circumstances in relation to the length of sentence, did they have regard for that? The answer is that we are satisfied that they did. It is true that it appears from the words used that the Deputy Bailiff had regard to ... that the circumstances only in relation to whether or not there should be a sentence of imprisonment, it is true that <sup>that</sup> might have appeared ... but if one looks very carefully, we agree with the Attorney General that the Deputy Bailiff then goes on to say, "Bearing in mind the previous cases which have been mentioned and with which we are familiar, we do not think that the amount, in other words, the length asked for, is excessive." Now in all those previous cases, there were ... apart from possibly the (indistinct) case ... things in common; the appellant or applicant was a person of good character; he was also a person who, by virtue of his offence, was going to lose his employment and to ruin his career; in many cases, he'd answered to bail; in many cases, if not in all, he'd expressed regret, and so on. Now, those in a normal way, are mitigating factors, there was nothing exceptional about them, but those were all present, apart, possibly, from Paget, in the other cases and so where the Deputy Bailiff says, "Bearing in mind the previous cases which have been mentioned and with which we are familiar ...", that was a shorthand way of saying that we have had regard to those cases in which the persons concerned were

of previous character etcetera, etcetera, we take all that into account in considering whether there are exceptional circumstances in this particular case, and I might add that if one looks at the report which I know the (indistinct) hasn't had, there is a reference there to the Court being aware that the applicant is a first offender. Secondly, as to whether there are any special circumstances, counsel mentioned five and the Court does not consider any of those five merits the description of exceptional circumstances. The five were the fact that he was a first offender; his co-operation with the police - well, the co-operation was somewhat muted; that there ... again, in all previous cases, there was a reluctant co-operation; expression of regret is not exceptional; on bail, kept conditions of bail - that, again, is not exceptional; and the opportunity to start again with finance from a friend - that, again, is ... may be slightly exceptional but it is not ... I cannot find, in any way whatsoever exceptional enough to, in the view of this Court, to have merited any deviation from what is the ... has been the normal sentencing policy. Indeed, it is the view of this Court that if there were any exceptional circumstances at all, those exceptional circumstances were on the aggravating side and not on the mitigating side. To summarise, therefore, this Court has a consistent sentencing policy; it is a policy which has been approved of by the Court of Appeal in the Paget case; of course, it is for the Court to look at the facts of each case to see whether there are exceptional circumstances. There are, of course, in these cases, always mitigating factors such as good character and so on, balanced up, however, by the aggravation of the <sup>gross</sup> breach of trust which is involved in these sort of cases. Those mitigating factors to which I've referred are present in all these cases except, possibly, the Paget case, therefore what one is looking for is the exceptional circumstance; we looked at the facts of this case as, of course, we must look at the facts of every case and we find no exceptional circumstances and we are quite satisfied, therefore, that the Inferior Number correctly decided that there were no exceptional circumstances and therefore the application is dismissed.

ADVOCATE: (indistinct) application for legal aid costs.

BAILIFF: Very well, that application is granted. Thank you.