COURT OF APPEAL

171.

29th September, 1992.

Before: J.M. Collins, Esq., Q.C., (President),
R.D. Harman, Esq., Q.C.,
E.A. Machin, Esq., Q.C.

Application of **Andrew John Morris** for leave to appeal against concurrent sentences of 2½ years imprisonment passed on him by the Royal Court (Superior Number) on 3rd June, 1992, on each of 12 counts in the indictment laid against him following a guilty plea before the Inferior Number on 15th May, 1992, (Counts 1-6, inclusive: larceny as a servant; Counts 7-12, inclusive: falsification of accounts).

Leave to appeal was refused by G.M. Dorey, Esq., a Judge of the Court of Appeal, on 6th August, 1992.

Miss S. C. Nicolle, Crown Advocate.
Advocate R.G.S. Fielding for the applicant.

JUDGMENT.

HARMAN, J.A: On the 15th May, 1992, this applicant, who is 40, and who was then a man of previous good character, pleaded guilty before the Royal Court Inferior Number to an indictment containing six counts of theft and six counts of falsification of accounts.

These were specimen charges totalling almost £28,000. We understand the total sum involved to have been approximately £51,000. The offences were committed between January 1990 and October 1991, and none of the monies have been repaid.

On 3rd June, 1992, he was sentenced by the Royal Court Superior Number to two and a half years imprisonment on each count, the sentences to run concurrently.

On 6th August leave to appeal against these sentences was refused by the single judge, and he now makes further application to the full Court.

The applicant at the material time was first assistant manager from 1988, and then manager from November, 1990, of the branch of Thomas Cook Limited at 14 Charing Cross, St. Helier. His method was simple. His course of dishonesty was systematic. He operated from a position of trust and it would appear that his thefts averaged out at almost £500 a week. Where a customer paid by cheque or credit card he put the cheque or voucher in the till and removed the equivalent amount of cash. He then took the paper work away to conceal what he had done. Because he was acting as cashier in the foreign exchange section he had access to cash and cheques. At this time there was only a three year audit, the reason being that Thomas Cook Limited followed a positive policy of trusting branch managers. This was, of course, something which the applicant must have known because it gave him the opportunity to avoid detection for nearly two years. When these matters came to light and he was interviewed he told the authorities that all the paper work was at home, which it proved to be, and he said: *"I wish to say that I am very sorry for what I have done. I knew all along it was wrong. All the money I stole was used by me to gamble on local racing. I lost or spent all of this money*".

At one stage the mitigation involved the proposition that his gambling addiction was tantamount to a disease and the Court was referred to Thomas on Sentencing at page 210, where the distinction is drawn between the Courts' different approaches to

mere drunkenness as a mitigating factor as distinct from alcoholism. We have also seen a psychologist's report by a Mr. Hollywood, dated 13th May, 1992, which speaks of a long history of regular but reportedly non-problematic gambling prior to the circumstances surrounding his present serious offences. The report suggests that a recent onset of serious gambling means that the prognosis for effective intervention or help is better than it would have been if it had occurred when he was a teenager or in early adult life. The report also speaks of the need for support and help from the probation or other services. This report was before the Royal Court at the time the applicant was sentenced and it does not in fact, as it is now recognised, suggest that this is a case for immediate medical treatment.

We have been referred to a passage on page 3 of the judgment in Lloyd -v- A.G. (23rd September, 1986) Jersey Unreported C. of A., where Mr. Desmond Fennell, as he then was, made this statement: ***"We do not believe that an obsession for gambling is a mitigating feature at all. If there had been proper medical evidence, the Court might have been able to look at the matter in a different way but we see no reason to distinguish between a man who is a compulsive gambler and someone who for example buys a substantial yacht or spends a fortune on lady-friends. We repeat we do not believe that there was any mitigation here".***

The applicant in his outline argument accepts that in November, 1990, when he was promoted to the position of branch manager, his gambling stopped although the offences of larceny and false accounting continued thereafter in order to cover his tracks.

A complaint is made before this Court that the Royal Court in sentencing misunderstood the chronology of events, and it is pointed out to us that the Bailiff said that the Court had noted

that the first taking was in January, 1990, well before the time that he fell out with his wife, and well before he entered into his depressive cycle for which he had to have medical treatment. In fact, of course, his wife left him according to the evidence in March or April, 1989, and medical treatment was between March and September, 1991, in other words after his girlfriend left him.

It has been urged on this Court that the Royal Court followed too closely the tariff principle in the United Kingdom to which the Jersey Courts are not bound. It has also been argued that the Court felt itself bound to follow, and did follow, too slavishly the case of A.G. -v- Connor (31st October, 1988) Jersey Unreported. It is submitted to us by way of mitigation that we should take into account the plea of guilty, the full and frank admission, the fact that he diverted attention from others who but for his openness would have been placed under suspicion although entirely innocent. We have been referred to the case of R -v- Barrick (1985) 7 Cr.App.R. 142 at p.p. 146-7, where nine matters are set out to which the Court would wish to pay regard in determining what the proper level of sentences should be. In the case of Hamon, (8th January, 1990) Jersey Unreported and, as is pointed out to us, the first case to involve computer fraud in Jersey and which was said to call for a deterrent sentence, there was no actual deprivation. The sum involved was some £30,000, and the defendant was sentenced to fifteen months.

The question which we have to determine here, in all the circumstances, is whether the sentence of two and a half years was excessive. We are satisfied that it was not excessive. It seems to this Court that the sentence falls within such available guide-lines as may be helpful to the Court and we deem it to have been a fair sentence. In those circumstances this application is dismissed.

Authorities

A.G. -v- Connor (31st October, 1988) Jersey Unreported.

A.G. -v- Lloyd (1985-86) JLR N23; (3rd July, 1986) Jersey Unreported.

Lloyd -v- A.G. (23rd September, 1986) Jersey Unreported C.of A.

A.G. -v- Pagett (1984) JJ 57.

Barrick (1985) 7 Cr. App. R. 142.

Thomas: Principles of Sentencing (2nd Ed'n):
pp. 8-14: The Primary Decision.
pp. 153-5: Thefts by employees and persons in positions of trust.
pp.209-11: Drink.

Tait -v- A.G. (3rd August, 1987) Jersey Unreported.

A.G. -v- Perkins (23rd May, 1986) Jersey Unreported;
(1985-86) JLR N.21.

A.G. -v- Hamon (8th January, 1990) Jersey Unreported.

A.G. -v- Parkinson (29th May, 1992) Jersey Unreported.

A.G. -v- Harkins (10th April, 1992) Jersey Unreported.

A.G. -v- McGough (26th June, 1992) Jersey Unreported.