1986/22

23rd September, 1986.

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COURT OF APPEAL

Her Majesty's Attorney General -v- David Jarman Lloyd

Appeal against Sentence

Judgment of the Court

President: J D A Fennell Esq., O B E, Q C.

PRESIDENT: On 3rd July, 1986, this applicant was sentenced to a period of four years' imprisonment for a series of offences, thirty-six in all, involving £146,630. The offences stretched over a period of seven years. In short, Mr Lloyd, who was first the manager and later the managing director of Prime Products Catering (Meats) Supply Company, had printed a series of bogus invoices in the name of R A Bell, Reading, Berkshire, which he then presented for payment, having typed on them fictitious deliveries. Those matters were covered by Counts 1 to 34 in the indictment.

In June, 1982, he confessed to his employers that he owed them a substantial sum of money (it was over £100,000) and was unable to pay: he had obtained the money by means of the creation of a loan account. And so his employers, knowing nothing of his earlier deceit, came to a financial arrangement with him, and he was given a new contract of £20,000 per annum, together with a share of the profits at 5%. His employers also purchased from him, for a substantial sum, some of the shares in the company. Mr Lloyd is now complaining that he was not paid a true market value.

In October, 1982, there was a special audit of the company and it transpired that an invoice in the sum of £8,858.50 on paper of John Gibbs Meat was similarly bogus. The only difference between the first and the second series of invoices was the name. That was Count 36. When he was seen, Mr Lloyd admitted what he had done and confessed that, even after the 1st July, 1982, he had continued to misapply cash takings and to take from the company money through bogus invoices. Later, when he was summoned to a board meeting, his courage failed him and he fled to England. It was against that background that he was sentenced to a total of four years' imprisonment. It was, in our judgment, a classic breach of trust case made worse, in our judgment, because, when he went to his employers in 1982 and revealed his financial difficulties,

he failed to disclose fully what he had been doing. Indeed, he compounded the matter by continuing to operate the same deceit.

Mr Le Cocq, who has appeared on behalf of Mr Lloyd, has taken three points before us. First, he says that the Royal Court was in error in saying that, in 1982, Lloyd's employers treated his with leniency. Second, he submits it was improper of the Attorney, in opening the case, to make any mention of the loan account. In this respect, he draws our attention to the English case of Anderson v. DPP, 1978, AC 964, where it was held the Court can only take into account offences in respect of which the accused person has been arraigned, tried and convicted. And, thirdly, he makes complaint that this was a case where there was no proper discount for the plea of guilty which had been tendered by Mr Lloyd.

It is perfectly true that, in the course of the reasons which were given by the Bailiff, he said, "It is fair to say that when you first confessed to your employers about unlawful borrowings, they treated you very leniently". In our judgment, the question of the loan account and the leniency go together. We believe that it was proper for the Attorney to mention the loan account by way of background: it was essential for the proper understanding of the case and the financial difficulties in which the applicant found himself. It is unfortunate, if it be the case, that there was no opportunity for the applicant's advisers to know in advance that that was to be mentioned, but we believe that if such embarrassment occurred, then there should have been an application for an adjournment so the matter could have been dealt with properly. No application was made. But when the Royal Court said, in the course of its reasons: "When you confessed to your employers about unlawful borrowings, they treated you very leniently," we have no doubt that what they really meant was this. First of all, the applicant could have been dismissed instantly because those loans were clearly unknown to and unauthorised by the company. Secondly, he never told them about the fraud which he had been perpetrating for a period of seven years and was the basis of his dishonesty. And so, accordingly, we judge that there was a lack of good faith on his part and so he can hardly say that he was not treated leniently.

The facts of this case are conveniently and shortly set out when one remembers that there are thirty-six counts, no doubt

sample counts to some extent, covering offences over a period of seven years, involving £130,000 to £140,000. We have listened with great care to what was said on the applicant's behalf but we think that there were no mitigating features. 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 compulsive gambler and someone who, for example, buys a substantial yacht or spends a fortune on lady friends. We repeat we do not believe there was any mitigation here.

The matter which has caused us some concern is the question of the discount. But we have had regard to what was said by this Court in Pagett - that it is wrong to equate developments in the sentencing policy of the courts in England with those of the courts on this Island. We do not think it is accurate to say that by reviewing, as he did, the factors in Barrie, the learned Bailiff was, in effect, adopting the sentencing policy that is current in England. What he was doing was going through the factors which the Court has said are helpful in determining where on the scale of gravity the offence falls. But we repeat that this Court and this Island is entitled, as we said in Pagett, to pursue an independent policy which it clearly has done.

We have had regard to the cases which appear to be comparable and, against that yardstick, we do not believe that the sentence of four years here was out of alignment, even allowing for the fact that the learned Bailiff made no specific discount for the plea of guilty. We are certain it must have been present in his mind for, bearing in mind the amount involved and the period of time, a contested case would have merited a higher sentence.

Accordingly, we find that there is no merit in that ground either and this appeal will be dismissed.