

ROYAL COURT

14th April, 1989

Before: The Deputy Bailiff and Jurats
Coutanche and Bonn

Her Majesty's Attorney General

- v -

Peter Winning

One count of larceny involving
a total of £3,010.13

H.M. Solicitor General for the Crown
Advocate C. Scholefield for Winning.

JUDGMENT

DEPUTY BAILIFF: The Court remains bound by the policy of the Superior Number in breach of trust cases and in any event, we respectfully support that policy. There must be a custodial sentence unless there are exceptional circumstances.

Advocate Scholefield urged us to find such exceptional circumstances in the present case. Whilst he presented his case admirably, we are quite unable to accept the substance of his argument.

We have the benefit of one or other, in some cases, two of us having sat on the previous Jersey cases referred to. During our retirement, the Greffier kindly made available the papers in the cases of A.G. -v- G.F. Alderson, Jersey Unreported 18th November, 1988, A.G. -v- S.P. Blackmore, Jersey Unreported 6th May, 1988, and A.G. -v- T.L. Prisk, Jersey Unreported 4th August, 1988. In each of those cases there was the same initial intention to repay. There was the same belief on the part of the offender that he was obtaining what Mr. Scholefield described as an "unauthorised loan". There was the same gradual worsening of the situation and the ultimate realisation that repayment was impossible.

These cases can all be compared. Taking the finance industry case, there is something to be said for a bank manager being in a greater position of trust, but equally his indirect punishment by loss of career, pension and status is greater.

In the case of Prisk, there had been full restitution with interest. In Alderson, there was full restitution with the help of his family.

This case is remarkably similar to Blackmore, who was described as a financial bungler rather than schemer. He, too, did not destroy any of the financial records. Everything could be proved. The only difference is that the money was thrift club money and not his employers' money. The total was £6,000 but the sentence was fifteen months' imprisonment.

All were first offenders or treated as such. Alderson for £5,000 received fifteen months' imprisonment and he was a manager of a furniture shop - without the thrift club aggravation or the finance industry aggravation.

The sentence asked for is also supported by the English cases. In R. -v- Barrick, Lord Lane, CJ, said this:

"In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the Court should nevertheless pass a

sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide. Where the amounts involved cannot be described as small but are less than £10,000 or thereabouts, terms of imprisonment ranging from the very short up to about eighteen months are appropriate".

The case of Weston does not persuade us to reduce the conclusions. There the amount was only £1,300 and we think that the original sentence of six months was correct. The Royal Court has not applied the 'clang of the prison gates' idea to breach of trust cases and we do not propose to start now. The better way is to relate the present Jersey case to previous similar Jersey cases.

In our view the sentence asked for is both correct in principle and correct in length and fully reflects the mitigating factors. Accordingly, Winning, you are sentenced to nine months' imprisonment.

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Authorities referred to:-

Current Sentencing by D. Thomas (1982 edition) at pp 2291 to 2298 inclusive re. Theft; in particular, the case of R. -v- Barrick (1985) 7 Cr. App. R. (S) 142.

A.G. -v- G.F. Alderson 18th November, 1988 - Jersey, as yet unreported.

A.G. -v- T.L. Prisk 4th August, 1988 - Jersey, as yet unreported.

A.G. -v- S.P. Blackmore 6th May, 1988 & 12th July, 1988 - Jersey, as yet unreported.

A.G. -v- D.G. Foster 22nd December, 1988 - Jersey, as yet unreported.