

ROYAL COURT
(Poursuites Criminelles)

16th June, 1989

Before: The Bailiff and
Jurats Myles and Le Ruez

Her Majesty's Attorney General

- v -

Alister Nicholas Kerr

Fraud (1 count).

No previous convictions; previous
impeccable character.

Guilty plea.

Advocate C.E. Whelan, Crown Advocate
Advocate J.G. White, for the accused.

JUDGMENT

THE BAILIFF: This is a case where the Court has had to have regard to the principles which it has enunciated both in the Inferior Number, which we are at the moment, in the Superior Number and in the Court of Appeal. Those principles are not disputed by Mr. White having been enunciated very carefully and fully by Mr. Whelan for the Crown. They are that cases of this nature involving fraud normally carry with them a sentence of imprisonment unless there are exceptional circumstances. We have approached this case

from that angle because it is not a question of searching for fresh principles, or even re-interpreting those principles, but applying the facts of this particular case to those principles. We are grateful for Mr. White in setting out the detailed number of principles to which the Court can have regard and which were recited in the case of A.G. -v- Lloyd (3rd July, 1986) Jersey Unreported. We went through the numbers and paragraphs of the items which we had to take into account and having looked at them most carefully, we came to the unanimous conclusion that this was a case which we could distinguish from 'the run of the mill' dishonesty cases.

There are, we think, exceptional circumstances particularly as to how the offence came to be committed. It is conceded by the Crown that the original investment—and they were speculative investments, there is no dispute about that—were in fact debited to Hacienda's account in error. Exactly how that error arose we were not told. There is obviously an area there which is not clear. It was only after that and in an effort to recover the money for Hacienda, knowing that he could not draw any money from the account because even if profit was made he could not withdraw it unless he could persuade his brother-in-law to let him do it which would be highly unlikely, that the accused embarked on the purchase of other shares at a time when of course, although he did not know it, the market was shortly to collapse around his and many other peoples' ears.

We think of course that he cannot be totally absolved from a feeling which was abroad certainly in 1987 that one could make money very easily by investing in the stocks and shares market here and elsewhere and we feel there was a tinge of greed attached to his actions in that month of August. Having said that and having looked at the other matters urged upon us by Mr. White very fully and carefully, and having taken into account the family background and the result that a prison sentence would have on it and also on the offender himself, we think this is a proper case when we can exercise our discretion. Certainly that has to bring in an element of compassion in a case of this nature having regard to the length of time that this case has been hanging over the accused.

Therefore, these are particular circumstances relating to this particular case and I want to make it quite clear that we are not departing from the general principles of this Court, but in imposing the sentence we do, we do it because of the number of items Mr. White has urged upon us and which we have examined in the light of the facts.

Therefore you placed on probation for three years and we order you perform the maximum community service order of 240 hours.

Authorities

A.G. -v- Prisk (5th August, 1988) Jersey Unreported.

A.G. -v- Shadbolt (1st November, 1988) Jersey Unreported.

A.G. -v- Bates (10th April, 1985) Jersey Unreported.

A.G. -v- Foster (22nd December, 1988) Jersey Unreported.

Archbold: p.1181; para. 17-27; sub para (iii).

A.G. -v- Lloyd (3rd July, 1986) Jersey Unreported.

A.G. -v- d'Avoine (23rd October, 1987) Jersey Unreported.

A.G. -v- Preston (7th April, 1986) Jersey Unreported.