7 pages.

ROYAL COURT
(Superior Number)
(exercising the appellate jurisdiction conferred upon it by Part III of the Court of Appeal (Jersey) Law, 1961).

24th July, 1991

105.

Before: The Bailiff, and
Jurats Blampied, Bonn, Orchard,
Hamon, Le Ruez and Herbert.

Her Majesty's Attorney General

- v -

Gary Thomas Lynch

Application for leave to appeal against sentence of 9 months' imprisonment passed by the Royal Court (Inferior Number) on 21st May, 1991, following guilty plea to one count of breaking and entering and larceny.

Leave to appeal refused by Deputy Bailiff on 24th June, 1991.

The Attorney General.

Advocate R.J. Renouf for the applicant.

JUDGMENT

BAILIFF: We have decided to grant leave to appeal and to treat the application for leave to appeal as the appeal itself.

When dealing with this case it appears to us that the Inferior Number reached the conclusion that Lynch was equally to blame with Barclay, his co-accused, but that Barclay's record equalled that degree of blameworthiness. Be that as it may, that is not what the Court said; they talked of mitigation and we think inadvertently the Court misled itself. The proper approach to a case of this nature is to ask what the appropriate sentence would be. We have no doubt that a sentence of twelve months is the appropriate sentence for breaking and entering at night in this way and stealing from a jeweller's shop. Indeed, it is on the lenient side. We would have thought possibly without expressing ourselves too forcefully that perhaps eighteen months is more appropriate. However, at least twelve months would be the figure.

Having arrived at that figure, the Court then asks itself: what are the mitigating factors? In the case of Barclay there are clearly none; he had a long record. In the case of Lynch he was to all intents and purposes a first offender - except for two minor offences in 1984 - and therefore there was a mitigating factor. Further the Court had before it (as you have produced today, Mr. Renouf) the excellent army record of the appellant.

In Thomas' "Principles of Sentencing" 2nd Ed'n, p.72, he says this: "In some cases the Court is confronted with an appellant whose sentence appears to be correct in every respect, but whose co-defendant has received a sentence which is in the Court's view unduly lenient". That is exactly the position here because counsel quite clearly conceded that had the appellant

been sentenced alone, nine months would have been proper and he could not have appealed against it.

The author goes on: "The Court has no power to increase the co-defendant's sentence, whether or not he has appealed, and is therefore faced with the choice between upholding the sentence and leaving the appearance of injustice or reducing the sentence to what it considers an inappropriate level. In such a case the practice of the Court is to reduce the more severe sentence only if there is "such a glaring difference between the treatment of one man as compared with another that a real sense of grievance would be engendered"."

We are satisfied that there would be a real sense of grievance on the part of the appellant and therefore although the sentence which we are going to substitute for that imposed is totally inappropriate for what he did, we are going to reduce it to one of six months' imprisonment. Mr. Renouf, you shall have your legal aid costs.

Authorities

Thomas: Principles of Sentencing (2nd Ed'n): p.72: The Principles of the Tariff.