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ROYAL COURT

127.

16th September, 1991

Before: The Deputy Bailiff, and Jurats
Coutanche and Vibert

The Attorney General

- v -

Stuart Robert Moffat

Police Court Appeal: Appeal against a sentence
of three months' imprisonment on one charge of
criminally receiving.

W.J. Bailhache, Esq., Crown Advocate;
Advocate Miss D.M.C. Sowden for the appellant.

JUDGMENT

DEPUTY BAILIFF: The first appellant, Moffat, appeals against a sentence of three months' imprisonment imposed by the Police Court on the 22nd August, 1991, for a single offence of receiving a stolen wristwatch of the value of approximately £30. The appellant pleaded guilty to the charge. The sole ground of appeal is that the sentence is manifestly excessive.

The facts, so far as it is possible to ascertain them, are that during the night of the 18th/19th July, 1991, the café at the German Underground Hospital was broken into; some 40 watches were stolen. The second appellant, Lelliott, was arrested; he was in possession of a watch; he pleaded guilty to a charge of receiving the watch, knowing it to have been stolen; during interview Lelliott implicated Moffat as the person who gave him the watch.

Moffat says that he received the watch from a person unknown in the car park of the Inn on the Park on the evening of the 20th July, and gave it to Lelliott almost immediately. In default of contrary evidence Moffat has to be sentenced on the basis of his admissions, i.e. that he received the watch on the evening of the 20th July, had it in his possession for only a minute or two, and gave it to Lelliott; Moffat knew that it was a "bit bent" (i.e. stolen). He would not have kept it because he did not want it and does not "deal in bent stuff". He described, probably fictitiously, the person from whom he had received the watch.

He gave two stories. In a question and answer interview he said that the person from whom he received the watch asked him for £20, then went down to £5. Moffat did not pay him any money because he had none, nevertheless he took the watch and was quite willing, in his own words, "to smack him in the mouth if he didn't like it". Moffat gave the watch to Lelliott and received nothing for it. Thus there was no gain.

The second story lay in the instructions he gave to his counsel for the Police Court proceedings. There he said that he was shown the watch and jokingly offered £1 for it. He had the suspicion it was stolen. The owner said "No, £10". Moffat then

took the watch in his hand to have a look at it and gave it to Lelliott. The owner made no effort to have the watch returned and did not seem bothered by this.

The police view was that the appellant was co-operative and passive, though an obvious liar. That is borne out by the different stories. Nevertheless Moffat must be sentenced for a single act of receiving and not on suspicion of being implicated in the theft. There is nothing to indicate that the Magistrate was in any way influenced by the theft.

Although the appellant was only 22 years of age at the time of being sentenced, he has an appalling record of 17 previous convictions, five of them being for offences involving dishonesty. Thus he is not entitled to any mitigation.

The only question which we have to answer is whether three months was too long a sentence for a single act of receiving. The sole ground of appeal is that the sentence is manifestly excessive. We support the learned Magistrate in his view that receiving jewellery knowing it to be stolen is a serious offence and that this offence must be met by a custodial sentence having regard to the previous record. There is nothing in the authorities cited to persuade us otherwise. Indeed there is support for our view in Thomas: Principles of Sentencing (2nd Ed.) at p.170:

"....while the usual sentence for an isolated act of handling will in practice be a fine, a sentence of imprisonment will not be inappropriate where the offender has no mitigation to offer".

That citation applies to the present case. Three months is not excessive. The appeal is dismissed. Advocate Miss Sowden will have her legal aid costs.

Authorities

Thomas: "Principles of Sentencing" (2nd Ed.) pp. 29-48;
168-170.

Encyclopedia of Current Sentencing Practice: pp. 2351-2353.

A.G. -v- Lelliott (16th September, 1991) Jersey Unreported.