

ROYAL COURT
(Superior Number)

94

3rd June, 1992

**Before: The Bailiff, and Jurats
Vint, Coutanche, Myles, Orchard,
Hamon, Gruchy, Le Ruez, Vibert,
Herbert and Rumfitt**

The Attorney General

- v -

Andrew John Morris

6 Counts of Larceny as a servant (Counts 1-6 of Indictment).
6 Counts of False Accounting (Counts 7-12).

PLEA:

Guilty.

DETAILS OF OFFENCE:

Motivated by a compulsion to gamble, Morris, who was Branch Manager of Thomas Cook, stole £51,000 in the period between January, 1990, and October, 1991. The total of specimen charges was £27,929.40. Nothing was recovered. Offences were revealed by an audit. He removed and concealed paperwork in an effort to avoid detection.

DETAILS OF MITIGATION:

Intelligent man with no previous convictions. As a result of offence, lost job. He assisted accountants and co-operated with police, allowing them to search his flat for the missing papers without a search warrant. Customers did not lose money, but the Company did. No particular adverse effects on fellow employees.

PREVIOUS CONVICTIONS:

None.

CONCLUSIONS:

30 months' imprisonment on each count concurrent.

SENTENCING AND OBSERVATIONS OF THE COURT:

Conclusions granted. Although the money was used for gambling habit, it was not an excuse to steal.

Miss S.C. Nicolle, Crown Advocate.
Advocate D.E. Le Cornu for the accused.

JUDGMENT

THE BAILIFF: The Court has been invited in this case by counsel for the accused, in a very full and able submission, not to impose a custodial sentence in accordance with the Principles of Sentencing because there was an exceptional circumstance as follows:

The accused was, it was admitted, in a position of trust with his employer, Thomas Cook, Ltd., first as Assistant Manager and then from November, 1990, as the Branch Manager.

According to the indictment, to which he has pleaded guilty, from January, 1990, until not very long before his arrest in November, 1991, he stole from his employer the sum of approximately £27,000. It is not necessary for us to go into the details as to how he achieved it. But counsel said that those thefts were quite contrary to his normal character and this we accept, insofar as he has hitherto been a man of good character.

Counsel pointed out that he devoted so much time to his work that his home life suffered and he and his wife had separated. He then became friendly with someone in the office and that did not work. As a result of those two personal blows he became depressed and sought medical advice. It was during this depressive period that his gambling, to which he had been addicted from an early age, got out of control and that was quite contrary to his normal character.

Counsel said that after he had recovered - and there is a medical certificate to show that the last time he was seen by his doctor was on 23rd September, 1991 - he reverted to his normal good character to such an extent that when the auditors were going to arrive he volunteered for a course in Madeira but came back to Jersey when he was summoned to do so by his employers and made a full confession.

It is those circumstances which counsel has urged upon us as grounds for substituting a sentence of probation, with or without community service, for the ordinary prison sentence which we impose in cases of this sort.

It is important, therefore, to look at the dates involved to decide if that submission could be substantiated and accepted by the Court.

The Court notes that the first taking was in January, 1990, well before, it would appear, he fell out with his wife and well before he entered into his depressive cycle, for which he had to have medical treatment.

If there had been before the Court some unequivocal medical evidence that, during a particular period, he was not only addicted to gambling - on a much larger scale of course - but

was in fact suffering, like an alcoholic, from a gambling addiction which could have been a disease, that might have been a different matter but the medical certificate or letter from his doctor indicates without doubt that the depressive period occurred in the middle or perhaps near to the end of the time when he was engaged in these dishonest activities.

Even taking into account, therefore, his co-operation, his hitherto good character, and his genuine remorse, which the Court accepts, the Court cannot find that this is a case where there should be an individualised sentence.

Turning to the question of the length of the sentence, the Court agrees with Miss Nicolle that this case is very similar to the case of AG -v- Connor (31st October, 1988) Jersey Unreported, where the accused had stolen £23,000 over a period of ten months. The figure is slightly higher here, and over a longer period.

Examining as we have had to do, the factors which were laid down by this Court in the case of AG -v- Lloyd (3rd July, 1986) Jersey Unreported, we have reached the following conclusions about those factors. There are a number of them and I list them.

First of all, the degree of trust. There was a high degree of trust placed in the accused by Thomas Cook, Ltd., and we were informed that the reason for there being only a three year audit was because of that Company's policy of trusting their Branch Managers.

Secondly, the period, we have already mentioned it, January, 1990 until November, 1991.

Thirdly the use to which the money was put. It was used for gambling and although it is true, as Mr. Le Cornu said, that that was not lavish living, it is nevertheless no excuse for stealing money.

Fourthly, the effect on the victim. None of the customers lost money, or were victims, but of course there were losses to the Company.

Fifthly, the effect on the offender. Counsel has dealt with that for us.

Sixthly, the impact on the public and on public conscience; but as the accused was not a public employee that matter does not apply.

Lastly, the effect on fellow employees. There was no particular effect on them.

Having looked at AG -v- Connor and decided that the Court could not depart from its principle, there not being the requisite special circumstances, the Court is unanimous that the proper sentence to be passed on you for these dishonest activities is one of 2¹/₂ years on each count concurrent.

Authorities

AG -v- Connor (31st October, 1988) Jersey Unreported.

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

AG -v- Pagett (1984) JJ 57.

Barrick (1985) 7 Cr. App. R. 142.