COURT OF APPEAL

12.

19th January, 1993

Before: Sir Godfray Le Quesne, Q.C., (President)
J.M. Collins, Esq., Q.C., and
Sir Charles Frossard, K.B.E.

Application of **Robert Christopher Dowden** for leave to appeal against two concurrent sentences of two years' imprisonment each passed on him by the Royal Court (Superior Number) on 6th August, 1992, following a guilty plea before the Inferior Number on 3rd July, 1992, to, *inter alia*, two counts of illegal entry and larceny (counts 1 and 2 of the indictment laid against him and two others).

Leave to appeal was refused by G.M. Dorey, Esq., on 7th September, 1992.

Advocate R.G.S. Fielding for the Applicant.
C.E. Whelan, Esq., Crown Advocate.

JUDGMENT

THE PRESIDENT: This is the case of a man who discovered in the first place, we understand, by chance, that it was possible to gain access in the Royal Court building to a room in which were stored a number of documents chiefly relating to events during the German Occupation of considerable interest and historical importance.

Having made this discovery, (and it included, I should have added, the fact that access to the room was not difficult because the door was not even locked) he made repeated visits - no fewer than twenty - for the purpose of removing more and more of the material which clearly he had found to have a value and a ready market.

For these offences of illegal entry - and it is right to emphasise as Mr. Fielding has emphasised that the offence charged was illegal entry because there had been no breaking as no breaking was needed - the Applicant was sentenced to two years' imprisonment.

Now it is easy to feel that better care ought to have been taken of these documents than was in fact taken. However that may be, it certainly would not be right to penalise this Applicant for any failure there may have been on the part of those responsible for the safe keeping of the things in this room. There is no sign

in the Judgment of the Royal Court that they were influenced by such considerations in passing their sentence; nor are we.

It is also easy to feel, as a member of the public, a certain amount of regret that documents of some importance for the history of the Island should have been stolen. Fortunately, I may interject, we are told that most of them have been recovered.

Here again there is no sign that the Royal Court allowed any such feeling to influence their decision; nor do we.

We approached the case on the basis which I have already indicated that this is a case of a man who discovered that easy access could be gained to a room where members of the public had no business to be. Having discovered that, he made twenty repeated visits to the room for the purpose of removing articles which he had discovered to have a value and to be readily saleable.

There has been much talk in the afternoon's discussion and also some in the judgment of the Royal Court about what is called "a benchmark". It is, of course, always important when passing sentence to pay attention to sentences which have been passed in other comparable cases and to avoid, as far as possible, any discrepancy arising between the decisions of the Court in different cases.

The difficulty in this case was that, as counsel on both sides agreed and as the Royal Court itself stated, there was really no comparable case which could be discovered. When that happens the Court, subject to any limits which may be placed upon the sentence in the particular case by Law, has simply to exercise its discretion as to what the severity of the case is and what accordingly would be the appropriate punishment.

That, as it appears to us, is what the Royal Court did, and the conclusion to which they came was that the appropriate sentence in the final result, because in fact sentences had to be passed on a large number of different counts, was a sentence of two years' imprisonment.

We have paid careful attention to everything which Mr. Fielding has urged, but we think it is impossible to say that in taking that view of the case, the Royal Court committed any error of principle. There is therefore no ground on which this Court would be justified in interfering and we must dismiss the application.

Authorities

AG -v- Drew (2nd July, 1986) Jersey Unreported.

AG -v- Aubin (1987-88) JLR N19; (14th May, 1987) Jersey Unreported.

Aubin -v- AG (6th July, 1987) Jersey Unreported C.of.A.

Marie -v- AG (11th June, 1992) Jersey Unreported.

AG -v- McDonough & Dring (25th October, 1991) Jersey Unreported.

AG -v- Saven (3rd April, 1992) Jersey Unreported.

Dring -v- AG (12th February, 1992) Jersey Unreported C.of.A.

Thomas: "Principles of Sentencing" (2nd Ed'n): p.p. 35 & 197.

Court of Appeal (Jersey) Law, 1961: Article 25(3).