

ROYAL COURT  
(Samedi Division)

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10th July, 1995

Before: The Bailiff, and Jurats  
Coutanche, Bonn, Orchard, Gruchy, Le Ruez,  
Herbert, Rumfitt and Potter.

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The Attorney General

- v -

Jonathan Christopher Hamish Hay

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Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 26th May, 1995, following guilty pleas to:

13 counts of fraudulent conversation of property (counts 1, 3, 5, 7, 9, 11, 13, 14, 15, 17, 19, 21 and 24 of the indictment).  
11 counts of fraud (counts 2, 4, 6, 8, 10, 12, 16, 18, 20, 22 and 23).

AGE: 37.

DETAILS OF OFFENCE:

The accused was an investment adviser in business on his own account. Abstracted client funds to the value of some £839,000 over a six year period, and spent the money on luxuries and the maintenance of an affluent lifestyle for himself and his wife. He disguised the defalcations by a system of forgery, sending bogus statements to the victims. As well as overseas corporations the victims included individual local investors of comparatively modest means.

DETAILS OF MITIGATION:

Poor business sense led initially to the confusion of client money with his own in a single account. Overspending led him inadvertently to use client funds in the first instance, thereafter he could find no way back and became consciously dishonest. Good character; remorse; co-operation; plea of guilty.

PREVIOUS CONVICTIONS:

Speeding offence disregarded.

CONCLUSIONS:

5½ years' imprisonment on each count, concurrent.

SENTENCE AND OBSERVATIONS OF THE COURT:

Court has considered the case against the *Barrick* criteria and accepted the principal heads of mitigation advanced on behalf of the accused. Court adopts the conclusions and sentences the accused to 5 years and 6 months' imprisonment.

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C.E. Whelan, Esq., Crown Advocate.  
Advocate D.E. Le Cornu for the accused.

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JUDGMENT

5 **THE BAILIFF:** This accused has pleaded guilty to a large number of counts involving fraudulent behaviour. Large sums of money passed through his hands and he manipulated the accounts so as to enable him to defraud his clients of substantial amounts. Some individuals have suffered grievous losses. A total, we were told, of some £839,000 was obtained over a period of six years and that money was used in supporting a life-style which his genuine income could not afford.

10 The Crown Advocate characterised the expenditure as being largely paid out on luxuries and that appears to the Court to be accurate. It may be that part of the expenditure was consumed by his wife, but that behaviour by his wife was innocent and Hay must have known what he could and could not afford.

15 The Court has taken careful account of the factors itemised in the English case of *Barrick* (1985) 7 Cr.App.R.(S.) 142 which was adopted by this Court in the case of *A.G. v. Delaney* (13th May, 1993) Jersey Unreported.

20 We have accepted in mitigation the expression of remorse on the part of the accused and his co-operation with the police. It is to his credit that he did not run away from his problems but remained to face the music. Hay is of previous good character and the Court acknowledges that that good character includes some charitable work carried out for different organisations.

25 The Court has given careful consideration to the allegation of delay, but in the judgment of the Court that is not a factor to be taken into account in this case. Any complicated case will

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take time to unravel and the complexity in this case was brought about by the actions of the accused himself. In the context of this case there was no unreasonable delay and we note also that there was no protest by or on behalf of the accused at any time prior to the interview with the police taking place.

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Hay, you have ruined your marriage; you have betrayed your clients and your family; and you have disgraced yourself. The Court has taken into account all the mitigating factors, very ably urged by your counsel on your behalf, but the Court considers that they have been amply taken into account by the Crown in its conclusions. The conclusions are, therefore, granted and the sentence of the Court is that you will serve 5½ years' imprisonment on each of the counts on the indictment concurrently, making a total of 5½ years' imprisonment.

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Authorities

A.G. v. Delaney (13th May, 1993) Jersey Unreported.

Delaney v. A.G. (28th September, 1993) Jersey Unreported CofA.

Hanley (14th October, 1993) Jersey Unreported.

Hayden (10th July, 1985) Jersey Unreported CofA; (1985-86) JLR  
N.23.

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

Pagett-v-A.G. (1984) JJ 57 CofA.

Aucott & Penn (1989) 11 Cr. App. R. (S). 86