

ROYAL COURT  
(Samedi Division)

18th August, 1995

162.

Before: The Deputy Bailiff, and  
Jurats Coutanche and Le Ruez

---

The Attorney General

- v -

Marjorie Lorraine Blake  
(née Mahoney)

---

1 charge of fraud.

PLEA: Guilty.

CONCLUSIONS: 2 years' imprisonment.

SENTENCE: 1 year's probation with 240 hours of community service.

---

A.R. Binnington, Esq., Crown Advocate.  
Advocate J.C. Gollop for the accused.

---

JUDGMENT

THE DEPUTY BAILIFF: There has been brought before us today the largest Social Security fraud that Jersey has yet seen. Some £67,000 has been fraudulently obtained by Mrs. Blake.

5           The fraud was compounded in two ways but before analysing that, the facts of the case are relatively simple and perhaps I should very briefly set them out now.

10           Both the Defendant's parents were born in Jersey and the Defendant herself was also Jersey-born, although she moved to England when she was 19 years old. Mrs. Blake's mother retired in 1961 and her father retired in 1968. At those times both applied

for and were granted Old Age Pension rights with the States of Jersey Social Security Dept.

5 Briefly, in 1970, they lived in sheltered accommodation and then they moved to England in July, 1983, saying that they were going to live with the Defendant at her home in Wiltshire.

10 Before leaving they signed the necessary forms which gave the Defendant authority to have her parents' pension benefits paid directly to her by cheque. And thereafter these pension payments for both Mr. and Mrs. Mahoney were made on a four-weekly basis into Mrs. Blake's bank account.

15 Both the parents died and Mrs. Blake continued to draw the money which was paid direct into her bank account.

20 The compounding of the that fraud was carried out in two ways. In September, 1992, she wrote to Social Security to say that she had remarried following the death of her first husband and that she and her parents (who were now, of course, dead) were living at her new husband's address in Chapmanslade, Wiltshire.

25 The Social Security Department received in March of this year an anonymous letter bearing a local postmark to say that the parents had been dead for some 12 years. Following that letter Social Security sent Mrs. Blake two "life certificates", which are forms sent to overseas pensioners who draw a Jersey Old Age Pension, requiring them to prove that they are still alive and that their pension is being correctly paid. The forms had to be  
30 witnessed by a professional person and the forms were returned to Social Security signed in the names of Mr. and Mrs. Mahoney and witnessed by a Minister of Religion of the United Reformed Church.

35 After she was apprehended the accused admitted that she had signed the two life certificates relating to her parents; stated that she had asked the Minister to witness the signatures telling him that they had to be signed for herself. When asked if the Minister had noticed that the signatures were different, she told the officers that she had put in her name and had then rubbed it  
40 out substituting the other names afterwards.

So, there is a fraud compounded, as I said, by two gross further acts of fraudulent deceit.

45 There are mitigating factors but little by way of authority in law to help us today. Until these frauds were perpetrated, Mrs. Blake had been of good character but she has absolutely no ability to repay the amounts that were claimed.

50 She has used the money, we must point out, not on luxuries, but on necessaries for herself.

There is some guidance given to us by the case of R. v. Livingstone Stewart & Ors. (1987) 9 Cr.App.R.(S.) 135 at 136. In that Judgment the Lord Chief Justice in the Court of Appeal said this:

5           *"These cases bear little relation to the average offender in this area ..... the sentence will depend on an almost infinite variety of factors...."*

10           And he sets some of these out as considerations which might affect the decision of the court:

- 15           *"(i) a guilty plea*  
*(ii) the amount involved and the length of time over which the defalcations were persisted in (bearing in mind that a large total might in fact represent a very small weekly amount)*  
20           *(iii) the circumstances in which the offences began (there was a plain difference between a legitimate claim which became false owing to a change of situation and on the other hand a claim which is false from the very beginning)*  
*(iv) the use to which the money was put (the provision of household necessities was more venial than spending*  
25           *money on unnecessary luxuries)*  
*(v) previous character*  
*(vi) matters special to the offender, such as illness, disability, family difficulties, etc."*

30           The case of Livingstone Stewart & Ors. was considered in another Court of Appeal case, R. -v- Perry (1989) 11 Cr.App.R.(S). 58. at page 59 where the Court said this:

35           *"The appeal has been put in two ways. In the first place, referring generally to what this court said in Stewart, it is submitted that the appellant was not a professional fraudswoman, that she committed one simple*  
40           *fraud after another, albeit for a very long time, and that does not come, therefore within the category of cases in which a sentence of two-and-a-half years or more was envisaged by the Lord Chief Justice. It is said that,*  
*although the appellant committed offences over a very long*  
45           *period, and the total amount involved seems very large for that reason, it amounted to only about £66 a week. It is also said on her behalf, as the second limb of her appeal, that this was a joint enterprise, brought upon her by her financial circumstances and pursued in the interests of*  
50           *her family. It was not a case of luxurious living. She had suffered from alcoholism recurrently throughout her*

marriage because of the strains imposed upon her, but she had acted throughout in the interests of her family.

5 We have listened sympathetically to what has been said on behalf of the appellant but it is right to say at once that this was a very serious and prolonged fraud, for which she was primarily responsible in the sense that it was she who committed all the essential criminal acts."

10 In R. -v- Tucker (1994) 15 Cr.App.R. (S) 349, the Court of Appeal said this at page 350:

15 "There is no doubt, and this Court has no difficulty in accepting, that there was considerable mitigation. It is unnecessary to spell out in further detail in a public court the domestic and personal pressures under which the appellant found herself. She is a woman, as already  
20 indicated, of mature years, of previous good character, with responsibilities for her family, apparently being carried out without assistance for her family, who had pleaded guilty and started, to the best of her ability, to repay what she had dishonestly obtained".

25 The Court of Appeal went on to say, however, that the Judge had taken proper account of the mitigating factors and had then set them against the deliberate, persistent - and it must be said  
30 - systematic fraud which involved dishonest acquisition of thousands of pounds of public money.

35 With those guidelines, we have a very detailed report from the Wiltshire Probation Service. In that report, there was mention of two County Court Orders which the accused is repaying and which came about because she transferred at some stage the family home to her daughter but was unable to pay the solicitor who obtained judgment against her. That merely makes it even  
40 clearer to us that there is no possibility of any money being recouped as a result of these frauds.

45 We have also had the very able assistance of Mr. Heath, the Assistant Chief Probation Officer, in a matter which has caused us some difficulty.

It has been pointed out strongly by Mr. Gollop that the age of the accused is important. In Thomas: "Principles of Sentencing" (2nd Ed'n) at pp.195-7 it states:

50 "Recognition of age as a mitigating factor does not mean that imprisonment should never be imposed on elderly

*offenders, and the Court has upheld sentences of imprisonment on men in their seventies."*

5 We have to take all those legal considerations into account and we have - we must say at once - been greatly concerned by this case.

10 We must also say that Mr. Gollop has, in the course of his address, criticised Social Security for its laxity in imposing, until very recently, checks and safeguards. That may be surprising but it certainly does not, in any way, excuse the offences with which the accused is charged.

15 Dishonesty is dishonesty under any circumstances and the fact that a door was left unlocked does not, in our view, in any way excuse the thief.

20 Our deliberations have been considerable and I have to say at once that the Jurats are divided. One Jurat feels very strongly that while there is strong mitigation, the seriousness of the offence and the two later acts of gross deception which I have outlined make it impossible to avoid a prison sentence. That Jurat would, however, have reduced the term as a short, sharp shock and as an act of mercy.

25 The other Jurat feels that for a woman of 64, albeit in good health, to be sent to prison even for an offence as serious as this, is not appropriate when there is an alternative: to compel the accused (who, as we have said, cannot refund the monies) to give back to the community something that she needs to repay. In that regard we have the report of the Wiltshire Probation Service and there is a suggestion here made in the Probation Report that *"the matter could be resolved effectively by offering Mrs. Blake the opportunity to undertake unpaid work for the benefit of the community. Mrs. Blake is a retired State Enrolled Nurse and could possibly be placed on a number of caring projects helping children with severe learning difficulties and also working with adults with similar difficulties."* It is that suggestion that the other Jurat favours.

40 Again, I have to say this: the learned Crown Advocate is totally correct in the principles which he has enunciated to us. But I have to decide which of the two views I would support.

45 With some hesitation I will support the Jurat who varied the conclusions of an act of mercy. Stand up, Mrs. Blake. We are going, in the circumstances, to put you on probation as an act of mercy and only because of the matters outlined to us by Mr. Gollop and because of your character up to the time that you started committing these offences. It is also because you will be away from your immediate family if you were put in prison in Jersey that we are taking this course. We are placing you on probation

50

for 1 year and you are going to serve 240 hours of community service and that will be supervised by the Wiltshire Probation Service. We have heard from Mr. Heath that the Order will be rigorously enforced and any breach of it will be immediately reported to us. I have to tell you, on that basis, that if there is a breach or a failure to comply with any part of the Probation Order, you will be brought back to Jersey by warrant and you will be sentenced at that point appropriately. I think, if I may say so, that in the circumstances you may consider yourself extremely fortunate in the sentence that has been passed on you.

5

10

Authorities

R. v. Livingstone Stewart & Ors. (1987) 9 Cr.App.R.(S) 135.

R. v. Perry (1989) 11 Cr.App.R.(S) 58.

R. v. Tucker (1994) 15 Cr.App.R.(S) 349.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":  
pp.54 & 55.

Loi (1937) sur l'atténuation des peines et sur la mise en liberté  
surveillée.

A.G. v. Perkins (23rd May, 1986) Jersey Unreported; (1985-86) JLR  
N.21.

Thomas: "Principles of Sentencing" (2nd Ed'n): pp.195-7.

A.G. v. Burns (13th March, 1992) Jersey Unreported.

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

Thomas: "Current Sentencing Practice":

R.29: February, 1995: pp.23422/6-7.

R.22: 8-iv-92 : pp.23423-8.

R.28: July, 1994 : pp.23429-31.