

ROYAL COURT
(Samedi Division)

140.

26th July, 1996

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Potter and de Veulle

The Attorney General

- v -

Margaret Warn

8 counts of Fraud (counts 1, 2, 4, 6, 8, 10, 12 & 14).
7 counts of falsification of accounts (counts 3, 5, 7, 9, 11, 13 & 15).

Age: 55.

Plea:

On 31st May, 1996, the accused pleaded not guilty and this Court ordered she be tried at an extraordinary Criminal Assize. The accused changed her plea to guilty on 5th July, 1996.

Details of Offence:

Fraud by Accounts Administrator in whom was reposed a high quality and degree of trust as she held rubber stamp of Managing Director's signature for use on company cheques. Abused trust by defrauding her employer company of £7,652.87. Sixteen months of offending. The fact fraud and false accounting was easy is an aggravating factor and not a mitigating factor following A.G. -v- Sproule.

Details of Mitigation:

Paid back £7,720.00 [only £32.87 short] - paid back after cashing in her pension scheme - but only after arrest. Co-operative with police - admission made at first question and answer. Remorse. Age. Stress of prosecution caused separation from husband. First offender. Public embarrassment due to JEP coverage. Non-selfish motives in explanation as to why she carried out frauds but admitted not an excuse for frauds.

Previous Convictions: None.

Conclusions: 9 months' imprisonment on each count, concurrent.

Sentence and Observations of the Court:

1 year's Probation, with 200 hours Community Service.

No exceptional circumstances found to avoid custodial sentence, but followed A.G. -v- Jeune in exercising mercy as prerogative of the Court.

J.A. Clyde-Smith, Esq., Crown Advocate.
Advocate S.J. Habin for the accused.

JUDGMENT


THE DEPUTY BAILIFF: This was a blatant example of dishonesty by an employee using a rubber stamp, with which she had been entrusted, and also false accounting to defraud her employer of more than £7,500 over a period of time - that is some 16 months between October, 1993, and February, 1995. On that basis alone, Crown Advocate Clyde-Smith moves for 9 months' imprisonment on each count, concurrent. But, as he said, mercy is to be exercised - if it is to be exercised - by the Court. He said - we presume on the basis of the authorities cited to us - that unless there are valid and good reasons a prison sentence will be inevitable. We cannot follow A.G. -v- Picot (29th May, 1990) Jersey Unreported; (1990) JLR N.19 because the offences cannot be said to be at the lower end of the scale, nor can £7,500 be fairly described as "small".

What can we see by way of mitigation? Margaret Warn is 55 years of age; she has apparently lost her marriage because of these offences. She repaid the monies to her employers, less some £30, within 9 days of her arrest, by cashing in her pension. She has had these matters hanging over her head since her arrest on 27th March. That delay may in part be due to administrative problems; she was first charged on 17th December, 1995; further delays may have been caused by her counsel entering a plea of not guilty while he tried to persuade the Attorney General, on a formal basis, to drop the charges.

The money - we are told in a very useful report from Mr. Jordan - was used to assist her husband (who has apparently repaid his debt of honour by ordering her from the house as he was embarrassed), and to help her son to assist the mother of her grandchild to go to Australia on two occasions. We also have the words of the Probation Officer which were read out in Court by Mr. Habin so we have no hesitation in repeating them here. Mr. Jordan said *"These offences form an unpleasant conclusion to to a long and otherwise blameless record of employment during which Mrs. Warn has constantly occupied posts involving handling large sums of cash unsupervised and responsibility for vulnerable members of society. There has never previously been a breath of complaint about her"*.

We have, therefore, a strong recommendation that a custodial sentence is not appropriate and we do not need to look at the precedents which have been cited to us because we are going to

follow the case of A.G. -v- Jeune (4th August, 1993) Jersey Unreported. In Jeune the accused was sentenced to a 3 year period of probation. In the circumstances, both because we cannot see the point of an order of that length and also because we do not wish to over-burden the Probation Service, we are sentencing you to 1 year's probation with 200 hours Community Service to be carried out within 12 months, concurrent on all counts.



Authorities

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp.55-63; 79-81.

Whelan: Ibid: May, 1994-1995: Noter-Up: pp.28.

A.G. -v- Picot (29th May, 1990) Jersey Unreported; (1990) JLR
N.19.

A.G. -v- Jeune (4th August, 1993) Jersey Unreported.

A.G. -v- Sproule (10th January, 1992) Jersey Unreported; (1992)
JLR N.11.

R. -v- Barrick [1985] 7 Cr.App.R.(S) 142.