



THE COURT OF APPEAL

[90/19]

Birmingham P.
Peart J.
McCarthy J.

BETWEEN/

THE PEOPLE [AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS]

RESPONDENT

- AND -

ALAN MOORE

APPELLANT

Judgment of the Court (*ex tempore*) delivered on the 21st day of October 2019 by Mr. Justice Patrick McCarthy

1. The appellant was found guilty on ten counts of theft committed against his employer after a five-day trial. These offences were committed over a ten-day period from the 22nd November, 2013 to the 2nd November, 2013. The appellant was sentenced on May 8th 2019 at Letterkenny Circuit Criminal Court to a term of imprisonment of twenty-one months on each count; such sentences to run concurrently.
2. The appellant was employed as the manager of Castle Interiors in Letterkenny and had been working there since 2005. He was responsible for the financial affairs of the business and enjoyed a high degree of trust, which of course he breached in the course of the offending. The offences were detected during a period of covert surveillance of the till area in the shop between the dates in question.
3. On each of those days the appellant was seen habitually failing to ring items into the till, which then left an excess of cash that he was able to take, and was seen to take, in regular small amounts and put into his pocket. The total amount referable in the charges dealt with was €440, however the period of observation has been described as a window into what the appellant himself said was the system he operated for a prolonged period.
4. He was arrested and interviewed on two occasions. The surveillance footage was shown to him. He asserted that he had his own haphazard system which he had been operating for many years which included taking money out of the till for change for purchasing small items and for banking. He further claimed that the items would not scan from time to time and that he would seek to do so later, leaving the till open in order to do so. Each claim was refuted by evidence and rejected by the jury. He had also claimed that the allegations amounted to a vindictive targeted attack on him by his employer for the purpose of avoiding an unfair dismissals claim he in fact had proceeded against his employer, even though the dismissal, it seems proper to infer, was for his criminality.
5. At sentencing the judge described the systematic nature of the theft and he said that this was a large aggravating factor: We think he was right in saying so. The judge noticed

that the appellant did not cooperate and frustrated the investigation as well as making allegations against his employer. The suggestion has been made that in making these observations it is to be concluded that the judge had regarded the fact that the appellant contested the charges, as of course the appellant was perfectly entitled to do, as an aggravating factor. We do not place that complexion on what he said. It is plain to us that he was making it clear that the mitigating factor, and any contrition which might have been present, was not present here.

6. The judge had regard to the Victim Impact Statement provided by the appellant's employer and it appears that the offences had a very negative impact on the employer and his business. The appellant of course could not benefit from the mitigating factor of a plea of guilty. The Court noted that save for one conviction for drunk driving, and it did not take that into account in sentencing, the appellant had no previous convictions and was of previous good character. It is quite clear from the Probation Report that at that time he did not accept his guilt and was without regret for what he had done.
7. The aggravating factors are of the grave breach of trust by an employee of long standing who was responsible for the management of the business' finances as well as the ill-effects upon the victims, mitigating factors which might arise such as a plea of guilty or the acknowledgement of guilt or contrition are not present, but in his favour as mitigating factors are his good record over many years, he is fifty-four, the fact that he had no relevant previous convictions and indeed as a person absent of these offences who appears to be a responsible family man of good character.
8. We think that the learned trial judge plainly had due regard to both the aggravating and mitigating factors in the case and did not take into account any factor which was inappropriate. The headline sentence was appropriate and the mitigating factors were few. We think that his conclusion that the appropriate headline sentence was one of two years' imprisonment is correct and that he had due regard to the mitigating factors by reducing that sentence to one of twenty-one months.
9. In a case where a custodial sentence was appropriate and where it was not inordinately necessary for him to elaborate further with respect to the issue of suspension, or indeed upon the consequences for the appellant of imprisonment in the light of his circumstances, we have not been persuaded then that the sentence fell outside the available range in circumstances where the mitigating factors were so limited and we accordingly dismiss this appeal.