

ROYAL COURT

8th January, 1990

JA

Before: The Bailiff, and  
Jurats Lucas and Bonn

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Her Majesty's Attorney General

- v -

Stuart Sean Hamon

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Sentencing following a conviction at December 1989  
Assizes on three counts of falsification of  
accounts involving a total sum of £30,000.

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Advocate W.J. Bailhache for the Crown  
Advocate R.J. Renouf for the accused.

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**JUDGMENT**

THE BAILIFF: This is, as far as the Court is aware, the first case of what might be called a computer fraud. The Court is entitled to take into account, and therefore has judicial knowledge of the fact that computers are very much an integral part of the commercial banking life of this Island and the opportunities for fraud we know also (I think we can take judicial knowledge of that), are immense. It is therefore of the utmost importance that where fraud is detected in using computers that a deterrent sentence should be passed.

We of course have had to examine very carefully whether we felt able to depart from the principle which is accepted by both counsel that, unless there are exceptional circumstances, where the accused is in a position of trust as he was here, a sentence of imprisonment should be imposed.

We have looked at all the matters which you, Mr. Renouf, have quite rightly stressed and which were in fact accepted by this Court in the case of A.G. -v- Lloyd (1985-86) J.L.R. N.23 which was a case heard in this Court in 1985, together with the factors which were enumerated in a similar case - the English case of Barrick (1985) 81 Cr. App. R. 143. There are a number of matters which perhaps it would help if I were to rehearse in case they should prove useful in future cases; I refer to pp.146 and 147 of the Barrick report.

Let me pause for a moment to say that the facts in that case were different from the present case. The facts of that case are contained in the headnote: the appellant was aged 41, obviously much older than the present accused, of previous good character, which applies here, was convicted on four counts of false accounting; four counts of obtaining by deception and two counts of theft. He was employed as the manager (and again Hamon was not in that position) of a small finance company and over a period of time stole a total of at least £9,000. Here there was no actual deprivation totally of the money as in the case of Barrick, who was sentenced to two year's imprisonment.

At p.146 of the judgment in Barrick the Lord Chief Justice (and indeed it was a strong court I should add, made up of the Lord Chief Justice, Farquharson J., and Tudor Price J.,) the Lord Chief Justice said this: "It is of course we appreciate dangerous to generalise where the circumstances of the offender and the offence may vary so widely from case to case. In the hope that they may be helpful to sentences generally and may lead to a little more uniformity, we make the following suggestions. In general, a term of immediate imprisonment is inevitable save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves the court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered but it may in many cases provide a useful

guide". The Lord Chief Justice then goes on to give the figures in relation to England which we do not refer to because we do not necessarily follow that guidance.

The Lord Chief Justice continues: "The terms suggested are appropriate where the case is contested; in any case where a plea of guilty is entered, however, the court should give the appropriate discount. It will not usually be appropriate in cases of serious breach of trust to suspend any part of the sentence; as already indicated the circumstances will vary almost infinitely. The following are some of the matters to which the court will no doubt wish to pay regard in determining what the proper level of sentencing should be: 1) the quality and degree of trust imposed on the offender including his rank; 2) the period over which the fraud or the thefts have been perpetrated; 3) the use to which the money or property dishonestly taken was put; 4) the effect upon the victim; 5) the impact of the offences upon the public and public confidence; 6) the effect on fellow employees or partners; 7) the affect on the offender himself; 8) his own history; 9) those matters of mitigation special to himself such as illness, being placed under great strain by excessive responsibility or the like where as sometimes happens there has been a long delay, say over two years between his being confronted with his dishonesty by his professional body or the police and the start of the trial. Finally, any help given by him to the police".

We considered each of those independently and I take them one at a time now.

Firstly, the quality and degree of trust. Well, it was quite true that the accused was not in the highest rank; he was indeed a grade 3 clerk but nevertheless, as I said in the course of the trial, any system in financial offices and anywhere else depends entirely on the trust and honesty of the staff.

Secondly, the period over which the fraud or the thefts have been perpetrated. It is quite true, as Mr. Renouf said, that the major frauds were committed over a period of 18 days in October, 1988, but the Crown took the view and the Jury accepted it that the ground had been prepared for those frauds earlier in the year.

Thirdly, the use to which the money or property dishonestly taken was put. We know that the money was transferred to the accused's account. Mr. Renouf quite rightly pointed out that the accused could have put it into a Sovereign account or another account, but he chose to put it in his deposit account where it would be found. We took that into account, but of course it would not have been found until the accounting period in November which was not reached before he was discovered.

Fourthly, the effect upon the victim. The bank did not lose money; in fact it got it all back, so I think we can take that into account; there was not actual loss.

Fifthly, the impact of the offences on the public and public confidence. I said at the beginning that this was the first computer fraud. In our opinion it is essential that offences of this nature should be punished sufficiently seriously so that the public and the public confidence in the financial institutions of this Island can be maintained.

Sixthly, the effect of fellow employees or partners. I do not think we need enlarge on that except, Mr. Renouf, to repeat what you said: that his admitting eventually that he had undertaken these entries removed suspicion from them, but it was there to start with, until he was actually seen.

Seventhly, the effect on the offender himself. We have taken this very much into account. We realise that his career as a financial assistant, or manager, or whatever he might hope to rise to is obviously for the moment certainly in ruins. We also take into account the effect that this has had upon his family who are here to support him today.

The accused's own history; we have gone into that, after looking at the probation report.

Ninthly, those matters of mitigation special to himself such as illness, or being placed under great strain by excessive responsibility. The accused did not have excessive responsibility. He bore no more than a junior clerk at grade 3 would expect to have. It is quite true that he has been under a strain for some period and it is quite true that he has been in prison for four

weeks. There has been a delay partly due to his own request, partly due to the Crown's request, but both of which were no doubt reasonable. No doubt, Mr. Renouf, there was a good reason for wishing to delay from the accused's point of view and no doubt the Crown is perfectly entitled to say that their essential witnesses were away in September; that is a matter we took into account.

Having added it all together we have come to the conclusion reluctantly - because one hesitates to send a young first-offender to prison - that this was not a case where we could say there were special circumstances. Therefore a prison sentence has to be imposed and having looked at the earlier levels of sentencing, we cannot say that the conclusions asked for in the amount of sentence are wrong. Therefore, Hamon, we sentence you, as asked by the Crown Advocate, to fifteen months' imprisonment on each count, concurrent with each other.

Authorities referred to:-

Crown -v- Barrick (1985) 81 Cr. App. R. 143 at 146 and 147.

A.G. -v- Lloyd (1985-86) J.L.R. N. 23.

A.G. -v- A.N. Kerr (16th June, 1989) Jersey Unreported.

A.G. -v- D.G. Foster (22nd December, 1988) Jersey Unreported.