

ROYAL COURT
(Samedi Division)

59.

30th April, 1990

Before: The Deputy Bailiff, and
Jurats Coutanche and Vibert

The Attorney General

- v -

Jane Elizabeth Reucroft,
Nadine Elaine Middleton,
Rebecca Jane Mason
and
Leslie Georgina Wainer

Fraud (5 counts)

The Attorney General.
Advocate S. Fitz for Reucroft.
Advocate R.G.S. Fielding for Middleton.
Advocate S. Fitz for Mason.
Advocate A.D. Robinson for Wainer.

JUDGMENT

DEPUTY BAILIFF: There are a number of points to be made.

In this case the prosecution has moved for an order for
Community Service in two of the four cases and we have been urged

by counsel to impose Community Service in lieu of imprisonment in the other two cases. We therefore adopt the procedure set out in AG -v- Perkins (1985-86) JLR N.21 which reads: "The correct approach to the making of an order for community service is for the court to consider whether a custodial sentence would be appropriate in the case before it. If it would not, the court should impose a fine; if it would, the court should then consider whether it can avoid imprisonment by making a community service order. The method of making such an order in the Island is to make a probation order, one of the conditions of which is that work should be done for the community during a specified period of time" (The remainder of the note is not relevant to the present case).

In this case three of the four defendants are first offenders. However, they are all aged twenty-one and over. We must make it clear therefore that there is no principle of sentencing which prevents the Court from imposing custodial sentences on first offenders. Imprisonment is not to be used for offenders under twenty-one unless exceptional circumstances really require a custodial sentence - but that principle has no application here. What the Court has said is that a first offender should not normally be sentenced to imprisonment without the assistance of a social enquiry report. But in the present case we have very full background reports and we have also read the references submitted by each of the defendants.

Having said that we, of course, agree that a previous good character has a powerful mitigating effect. An offender with only a few previous convictions may still expect the appropriate sentence for the offence to be reduced to reflect a relatively good character. And a gap in an offender's record also carries weight as a mitigating factor - as in the present case, in the case of Middleton, where there is a gap of over six years since her last conviction for an offence involving dishonesty. Also youth continues to be a mitigating factor up to the middle twenties. Other important mitigating factors are the co-operation of the defendants with the police, their remorse and pleas of guilty, their intention to repay and the occurrence of the offences over a relatively short period of time. These factors are all present

in one degree or other in these four cases and we have taken them all into account.

We should also say something about the scale to be applied for Community Service.

There is in existence a suggested scale prepared by the Probation and After-Care Service which, inter alia,, equates three months' imprisonment to 90 hours of community service, four months to 100 hours, five months to 110 hours, and six months to 120 hours.

The scale has been the subject of criticism by me and I believe that the learned Bailiff has not felt bound by it when imposing Community Service Orders in this Court. Nevertheless, since proposed changes have not been embodied in any enactment we feel that we should apply the scale to which I have referred.

Although the system at A. de Gruchy & Co was undoubtedly lax, we do not support the degree of criticism expressed by counsel for the defence. The lax system is no excuse at all for the frauds perpetrated by the defendants. They are all intelligent young women, and they knew exactly what they were doing and they went about doing it because they thought they would get away with it. In effect they were opportunist thieves.

Now applying those principles we have no hesitation in saying that in the case of all four defendants, a custodial sentence would be appropriate. These were substantial frauds, the smallest amount involved was over £1,000, the goods obtained were mainly luxury items; as the learned Attorney said, this was pre-Christmas shopping spree on a grand scale, and it was motivated by greed. Therefore we start at the point where a custodial sentence is appropriate in all four cases and we go on to consider in each case individually, whether we can avoid imprisonment by making a Community Service Order.

The fact that we have spent several hours both on Friday and today in considering sentence is an indication of the difficulty we have faced. We share the regret expressed by the Attorney General but at

the end of the day we have found it impossible to disagree with his conclusions in respect of Reucroft and Middleton.

This was a blatant fraud. It was initiated by Reucroft. Whether or not she applied for her card before she left de Gruchy's service there was an element of breach of trust. Whether or not she suggested the scheme to others, certainly at the very least she told both Middleton and Wainer. On the very day of apprehension, Wainer was buying goods for Reucroft. Thus, there was an element of breach of trust, and an element of conspiracy, although obviously not a full conspiracy. Reucroft had no need for money and in her words her previous employers were there to be taken. It is a fact, whatever their share of responsibility, that without Reucroft, none of the other three would have been here today. Therefore applying the principles to which I have referred the Court cannot in this case find it possible to avoid imprisonment and impose Community Service. As to the term of the sentence we are satisfied that the Attorney has given full and proper weight to the mitigating factors and that we should grant the conclusions.

Reucroft on Count 1 of the Indictment you are sentenced to six months' imprisonment.

We considered next the case of Middleton - again we cannot fault the conclusions. The amount obtained was very substantial, it exceeded the total value of the other defendants. She does have previous convictions indicative of a dishonest character, albeit relatively unimportant. But when she, as she thought, lost her first card, she did not hesitate to apply for and obtain a second card. This was a premeditated scheme to defraud the company. She introduced Mason to the scheme. She did not give full co-operation in the recovery of the goods. We consider that she is more culpable than Reucroft and that the sentence asked for gives full weight to all the mitigation.

Therefore Middleton - on Counts 2 and 3 of the Indictment, you are sentenced concurrently to nine months' imprisonment - making nine months in all.

In the cases of Mason and Wainer, applying the same principles, we do find that, although a sentence of imprisonment would be appropriate, we can avoid imprisonment by making a Community Service Order. The involvement of these two is clearly less. It is unnecessary for me to go into detail. Because of that which I said earlier about the scale we have had to consider the appropriate term of imprisonment. Because they are less culpable than Reucroft we have come to the conclusion that the appropriate term would be four months which on the scale equates to 100 hours of Community Service.

Accordingly, Mason, on Count 4 you are put on Probation for a period of six months on the usual conditions that you will be of good behaviour, will live and work where directed by your Probation Officer and with the additional condition that you will perform 100 hours of Community Service as directed by the Community Service Officer.

Wainer, on Count 5 you are put on Probation for a period of twelve months again on the usual conditions that you will be of good behaviour throughout that time, that you will live and work where directed by your Probation Officer and with the additional condition that you will perform 100 hours of Community Service as directed by the Community Service Officer.

Authorities

AG -v- Hamon (8th January, 1990) Jersey Unreported.

R -v- Barrick (1985) 81 Cr. App. R. 143.

Thomas: Principles of Sentencing (2nd Ed'n): p.p. 53-56, 64-71.

AG -v- Perkins (1985-86) JLR N.21.