

COURT OF APPEAL.

7th February, 1985.

Before: Sir Patrick Neill, Q.C., (President); D.C. Calcutt, Esq.,
Q.C., J.J. Clyde, Esq., Q.C.

TURNER, James Thomas Application for an extension of time in
Advocate A. Dessain) which to give notice of application for
 leave to appeal against sentence of 2½
 years' imprisonment imposed by the
 Superior Number on the 12th July, 1984,
 (Larceny as servant) Refused by the
 Bailiff.

Judgement

The case of Turner, with which we now deal, presents a special feature, that here again there is an application for leave to appeal out of time. In the case, in which we have just given judgement - the Aubin case, we dealt with the principles which are applicable. Sufficient to say that substantial grounds have to be shown. Now what Turner says here is that after he had notice of the sentence of 2½ years he was keen to get himself transferred as a prisoner to England. He made an application to the Governor to that effect; and there is no doubt, that for the reasons which were explained to us, if that had succeeded, that would have been in his interests. He did know that there was a 10 day period, within which application for leave to appeal against sentence had to be put forward; he was aware of that, and he took no steps to protect the position in that regard. Perhaps he, quite reasonably, believed that the application to the Governor would not have been assisted, to put it mildly, had it been known that there was an appeal pending. He told us, through his Counsel,

that he received advice from two sources to that effect; that his appeal would be prejudiced. The one source, it has not been possible to confirm it, because there is nothing to support that; the other source, the prison officer, it is denied that the advice was given. It may be that there was some confusion in his mind as to what was the appropriate course to take, about leave to appeal against the sentence, with this pending application to be transferred to England. And if that matter had been the only matter in the case, we might, perhaps, have been in some doubt as to how to resolve it. We do note, however, that in the second Notice of Appeal that was put in on 19th December, the matter is put a little bit differently from the way we heard it put today. As there, it was said that the Appellant was seeking a transfer to an English prison, and that he was wrongly advised as to the timing and procedure for pursuing an appeal, which is rather different from the main thrust of what was put before us this morning. But as I have said, we might have hesitated on that aspect of the matter had it stood alone. However, Counsel quite properly and rightly said that we should have regard to the prospects of the appeal itself, and here the thrust of the argument was that the sentence of 2½ years for this series of offences of larceny as a servant under some 60 counts, totalling about £12,000 was wrong in principle. We have considered carefully the various matters that were put forward, to support that contention, but we find that the facts of this case bear a close similarity to those in Perchard, where there was a sentence of 2½ years, and although differences can be pointed as between this case and Pagett, again it is sufficiently close to the Pagett case to make that a compelling precedent. And so, when we have regard as to the probabilities of success, or the chances of an Appellate Court changing the sentence if the matter went forward, we

think that there is no prospect whatsoever that the Appellate Court would hold that the sentence was wrong in principle or manifestly excessive so for these reasons we refuse the application for leave to appeal out of time, and the main application itself.