

7th April, 1986. 46

Court of Appeal

Application by Brian George Preston
for leave to appeal against sentence.

Judgment.

D.C. Calcutt, Esq., Q.C. (President): On the 2nd January, 1986, this applicant pleaded guilty to one count of an indictment charging him with larceny as a servant. On the 13th January, 1986, he was sentenced by the Royal Court to a term of imprisonment of two years. He now applies for leave to appeal from that sentence, the Deputy Bailiff having refused leave to appeal. I intend to deal with the facts extremely briefly, they are these: the applicant was employed at the Jersey Recreation Grounds, and his work involved him in the handling of various sums of money. Between the dates and I give the dates which were outlined in the indictment, 1st December, 1983, and the 8th October, 1985, he stole sums of money from his employers, as he admitted to the police, and as he was subsequently charged in the indictment, with the sum which was not less than seven thousand pounds. So far as the breakdown of those figures are concerned, it was urged upon us that a large amount of that money was stolen in December, 1984, upwards of some four thousand pounds, and that later on a sum of something over one thousand pounds was also stolen, but as it also appears from the papers before us, he did, to use words which have been used in this case, steal in dribs and drabs. So it was a period of stealing of some considerable period of time. The reason, which I can put in broadly comprehensive terms, which he gives for this stealing, was that he had been financially over stretched.

Now there are a number of matters which have been drawn to our attention in an admirably prepared address by his Counsel, Mr. Renouf, and I hope I do not do an injustice to them if I summarize what appear to me to be the most important, and they are these: first of all, it was drawn to our attention that this applicant was in trouble with the police, but that that was a long time ago; he was before the Portsmouth Magistrates in 1956, Chester in 1959, Birkenhead in 1961, in each case for offences of dishonesty. The point of reciting that is not to add a burden to this man's record but to point out that since that time he has not only built up a family, but has also managed to keep out of any kind of dishonesty, and so there is therefore a period of some twenty-five years when this man has not been involved in offences of dishonesty. That, we take the view, goes to his credit. He is now, as I indicated a man of fifty years, and he has a family. The second matter which was dealt with by Mr. Renouf, which I take in my own order, is this: that although he was in a position to take his employer's money, and so, it was said, and rightly said, he was to that extent in a position of trust, it would, in our view, be wrong to over emphasise that factor, because, to a certain extent, anyone who commits this offence must be in that position in order to be able to commit the offence itself. It is right to connect with that the fact that his remuneration was comparatively modest and his rank comparatively lowly. The

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third factor urged upon us was this: that at all stages he was a man who cooperated with the police. He may be said, in one sense, to have done more than to cooperate, because it was he who volunteered some of the information of which perhaps the police might otherwise not have become aware. It is right also to point out that at no stage did this man seek to cast any blame on any of his fellow employees. It was also drawn to our attention that there was no destruction of any of the documents which might have made the detection of these offences more difficult. Further, it has been urged upon us that this man's family circumstances were such that they put a strain on his financial resources. It was drawn to our attention that at no stage did this man use the money which he stole for his own luxurious purposes, or indeed for similar purposes for his wife, but in order to assist his strained family circumstances. There is no element of luxurious living in this case.

Our attention has been drawn to several cases, firstly the case of Barrick (1985) 81 Cr. App. R. 78, where certain factors were set out in the course of the judgment to which the Court should properly have regard. We also considered several cases decided in this Island, Harrington, Pagett and Goodsir. Our attention has also been drawn to the probation officer's report and to the reference which has been written by the Reverend Baker. We have to make up our minds what is the correct sentence, having regard to the whole of these circumstances in this case. We do not believe that this is a case which can lay down any principles, but we do take the view that the sentence of two years' imprisonment was excessive in this case. In our view, the correct sentence of imprisonment would be one of twelve months' imprisonment. Therefore the course which we propose to adopt is to allow this application for leave to appeal, treat this hearing as the hearing of the appeal, to set aside the sentence of twenty-four months' imprisonment and to substitute therefore a sentence of twelve months' imprisonment.