

ROYAL COURT  
(Samedi Division)

79.

25th April, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and  
Jurats Quérée and Le Brocq

The Attorney General

- v -

Joyce Hall Morrow

4 counts of fraudulent conversion of property (counts 1-4).

3 counts of larceny as a servant (counts 5-7).

Age: 54.

Plea: Guilty.

Details of Offence:

Defendant was manageress of her employer's shop and, over a period of approximately three years, defrauded her employer of £12,943.87 by informing customers that she would put the company stamp on cheques provided by customers for goods and subsequently inserting her name as payee and paying the amounts into her own bank account. The three counts of larceny as a servant related to test purchases carried out by a private detective on the instructions of the employer where the defendant diverted the cash from the till into her own pocket. The offences were discovered as a result of the test purchases.

Details of Mitigation:

Counsel contended that there were exceptional circumstances, failing which the Court could show mercy. Mitigation included no previous convictions and exceptionally good character. She had been a member of the Salvation Army and was involved with caring activities. She immediately admitted the offences and had been extremely co-operative by going through credit slips and identifying honest and dishonest transactions. She showed deep remorse and had lost her good name. Her position had made it easy to commit the offences and she felt she had not been sufficiently rewarded for her length of service (30 years) and the responsibilities given to her. She had not used the money for a lavish lifestyle. She would like to offer restitution but was unable to do so. She was now unemployed and she and her husband lived off her husband's invalidity benefit. She had no pension from her employer which she could cash in. She suffered from health problems and her husband also suffered from health problems and was entirely dependant on her for caring. He required constant care and attention and imprisonment would operate particularly harshly in such circumstances.

Previous Convictions: None.

Conclusions:

Count 1 : 12 months' imprisonment.

Count 2 : 12 months' imprisonment.  
Count 3 : 12 months' imprisonment.  
Count 4 : 12 months' imprisonment.  
Count 5 : 6 months' imprisonment.  
Count 6 : 6 months' imprisonment.  
Count 7 : 6 months' imprisonment.  
All concurrent : Total : 12 months' imprisonment.

Sentence and Observations of the Court:

Three years' Probation, with 240 hours' community service, to be performed within twelve months. There was strong mitigation but it was not exceptional. The conclusions were correct in principle but the fact that the husband needed twenty-four hour care enabled the Court to exercise mercy.

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The Attorney General.  
Advocate D.M.C. Sowden for the accused.

JUDGMENT

5 THE DEPUTY BAILIFF: It has been difficult for us to understand the reasons leading to such a substantial fraud to the value of £12,943.87 particularly when it is clear that the pattern of dishonesty has - on the defendant's own admission - been consistent for twenty years, although the seven charges (four of fraud and three of larceny) relate only to the last three years.

10 It was said by the defendant, when asked for an explanation by her Probation Officer, that had she been given a reasonable wage rise, she would not have continued in her dishonesty. That seems to us to be an implausible explanation to an unanswerable question.

15 There is from the Court's point of view, and to use the words of Whelan's "Aspects of Sentencing in the Superior Courts of Jersey" at pp.55-63: "*a classic breach of trust*".

20 She was only discovered after a carefully prepared surveillance operation, for, although there appears to have been no stock control in the shop, she was preparing a daily return sheet and faxing this to her new employers in England.

25 In AG -v- Sproule (10th January, 1992) Jersey Unreported the Court said: "...*fraud by any person placed in a position of trust ... is exacerbated if there is an easy way of defrauding the employer without his finding out. That in fact makes the offence worse not better*".

Mrs. Morrow is 54 years old; she has no previous convictions; she has admitted her guilt, which is not surprising in view of the fact that she was virtually caught red-handed; but she has given very considerable assistance to the police in identifying from her bank statements most of her defalcations. That has been of no great assistance to her employers because there is no question of any of this money being repaid.

Miss Sowden has told us that this case shows exceptional circumstances. What were they? She listed six: 1) that Mrs. Morrow has cared for people over many years and worked devotedly in The Salvation Army; 2) that she admitted her guilt and was exceptionally co-operative; 3) that she has suffered deep remorse; 4) that it was very easy to commit these offences; 5) that she had not been sufficiently rewarded in her employment; 6) that whilst she is now employed she has existed previously on her husband's invalidity benefit.

We cannot regard any of these matters as being exceptional, although they may well be matters of strong mitigation. In law the conclusions of the learned Attorney are absolutely correct and a prison sentence in such circumstances would normally be inevitable and right.

We wish to stress that Mrs. Morrow has avoided prison by the skin of her teeth. It is only because of her sick husband. The Probation Service Report states: "*Dr. Smith also informed me that Mr. Morrow is not able to be left on his own for any period of time and basically requires twenty-four hour care due to the potential consequences if he was to experience an episode of confusion*".

We have questioned Miss Ormesher as to how the defendant can work and yet, apparently, look after her husband, and we are told that there is regular telephone contact throughout the day. It is for this reason and this reason alone that we feel able to exercise mercy.

Will you stand up, please, Mrs. Morrow. We are sentencing you to three years' probation and you will also complete 240 hours' community service within twelve months.

Authorities

AG -v- Picot (29th May, 1990) Jersey Unreported.

AG -v- Strzelecki (2nd February, 1996) Jersey Unreported.

AG -v- Sproule (10th January, 1992) Jersey Unreported.

AG -v- Bates (10th April, 1985) Jersey Unreported.

AG -v- Warn (26th July, 1996) Jersey Unreported.

AG -v- Allen & Ors. (16th February, 1996) Jersey Unreported.

Whelan: Aspects of Sentencing in the Superior Courts of Jersey:  
pp:55-63.

Ibid: Noter Up May 1994-95: p.28.

Ibid: Noter Up May 1995-96: pp. 19-20.