89 of 1992.

Royal Court (Superior Number),
exercising appellate jurisdiction.
Appeal against sentence of
James Thomas Goodsir.

At the request of a Member of the Bar, the attached Judgment which was delivered by Sir Frank Ereaut, Bailiff, on 29th February, 1984, is being circulated to subscribers.

ROYAL COURT

(Superior Number, exercising the appellate Jurisdiction conferred upon it by Part III of the Court of Appeal (Jersey) Law, 1961).

29th February, 1984

Before: Sir Herbert Frank Cobbold Ereaut, Bailiff, assisted by Jurats Perrée, Vint, Lucas, Simon, Myles, Dupré, Misson, Baker and Le Boutillier

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James Thomas Goodsir

- v -

The Attorney General

Appeal against sentence of two years' imprisonment passed on James Thomas Goodsir by the Royal Court (Inferior Number) on 10th February, 1984, when the appellant pleaded guilty to one count of fraudulent conversion (count 1 of the indictment), on which he was sentenced to two years' imprisonment, and to one count of possession of a firearm, contrary to Article 3 of the Firearms (Jersey) Law, 1956 (count 2) on which he was sentenced to a fine of £20, or in default one week's imprisonment, concurrent.

Advocate S.C.K. Pallot for the appellant.

The Attorney General.

JUDGMENT

THE BAILIFF: I must say at once that this appeal is dismissed, Mr. Pallot. Having said that, the Court, I know, will wish me to say very clearly that they have greatly appreciated the amount of work and the arguments which Counsel have put to us. They were put extremely well and we appreciate very much the researches that you have done, which have been extremely interesting and which of course we have considered.

There are several things that the Court would wish to say about this appeal. First, as regards the previous cases which you have researched: when we look at the facts of those cases about which we have heard from both sides, we believe it to be true to say that the decisions in all of them can be reconciled with the sentence imposed by the Inferior Number in this case, and that where there appears to be, on the face of it, any leniency, we believe that the Inferior Number was doing no more than giving weight to special factors which were present. It is always very difficult to compare the case with which one is concerned at the present time with other cases. It is an exercise that is sometimes worth doing, but one must always be careful to make sure one knows all the relevant factors which were presented to the court of trial in relation to those other cases. And it is only when one goes fully into them - and indeed the Attorney General did have the opportunity during the lunch-hour to do some research - that one knows what those factors were. In general I think that we are satisfied that there were special factors in all those cases. But having said that, let me say this, that to the extent that there might have been - and we are not saying that there was - but to the extent that there might have been any leniency in the sentencing by the Inferior Number in any particular case then that is not a matter which can be allowed to weigh with the Superior Number. The Superior Number of the Royal Court lays down the sentencing policy of the Court; it is a question of whether the tail wags

the dog or the dog wags the tail. The Full Court is the dog, and the Inferior Number is the tail, and if the Inferior Number goes wrong, being either unduly severe or unduly lenient, then it is for the Full Court to put the Inferior Number back onto the right course. And so even if it had been true that the Inferior Number had been unduly lenient, it would have been the duty of this Court, the Full Court, to say that perhaps in that particular case the Inferior Number was unduly lenient but we believe that the proper sentencing policy both in these sort of cases and in this particular case is a sentence of so and so. That is the first thing.

Secondly, we have taken into account the mitigating factors which it is not necessary for me to repeat, because we believe that they were fully in the mind of prosecuting counsel and indeed of the Court. We have also taken into account what we believe to be the aggravating factors. We believe that, notwithstanding Counsel's arguments, a landlord is in a special position when he is invited to become, as it were, a trustee of a thrift club by the customers of his public house and accepts, which is what the defendant did, and when the money is handed to the landlord, as happened in this case, and is put in the safe in the premises and he is entrusted with the task of banking the money, we believe that the landlord is in a special position because he is a man who, we have no doubt, in the average public house is looked up to as a friend, a guide and counsellor, as a man who can be relied upon more than anyone else to protect money collected for thrift purposes by the customers of his public house. And so we think, although he is not a professional man, and although it is not part of his licensing duties, when a publican accepts that situation and that opportunity, he accepts a special responsibility and we believe that he is in a special position of trust and if he breaches

that special position of trust then he must expect to be dealt with severely.

As to the way in which he is to be dealt with, we find that we are quite unable to go along with what is described in the United Kingdom cases put to us as "the new climate of sentencing policy". We do not really pretend to understand what it is; what we do believe is that the two years' imprisonment asked for in this particular case is, or appears to be, consistent with those in the pages referred to in Thomas, in the middle range of cases. If the climate of sentencing has changed in the United Kingdom for one reason or another, we do not feel that that changes our sentencing policy. If the Jersey Court of Appeal were to make remarks about it, of course we should take note; but the Court of Appeal consisting of members from the United Kingdom do in fact understand that we are a different jurisdiction, and they do say that they realise that they have to make an allowance for the fact that our sentencing policy is, in many fields, different and tougher.

We have given consideration to one of the main mitigating arguments put forward, which is that the appellant intended to repay; this is not an unusual argument, and when it is put forward, as it is impossible to look into a man's mind, one always looks to see what evidence there is. It is perfectly true that in one respect one could argue that when a person in the position of the appellant takes money, which eventually either has to be replaced before it is found to be missing or else he is going to be prosecuted; in those circumstances, one perhaps could assume that an intelligent person always intends to repay if he can, because otherwise he knows that he is on an automatic journey to prosecution. Nevertheless, whilst there may always be a general hope and belief that he will repay, one looks to see why the money has been taken and what attempts, if

any, have been made to repay it. In this particular case the money was taken, as we understand it, to enable the appellant and his wife to continue to live beyond their means; now it may be that in the early stages there was a hope that the stamp collection might fetch an amount which would enable the overdraft, which was contracted in 1982 in order to buy a Daimler, to be paid off, but we were not told exactly when the stamp collection was sold for four hundred pounds, that we assume it to have been fairly early in the year, because we cannot believe that the appellant would have continued to take money to which he was not entitled and which rendered him liable to criminal prosecution when he had a stamp collection which he believed, if sold, would get him out of his problems, so we assume that it was sold fairly early in the year. Maybe he did have, and we accept that he probably did have, a disastrous business winter during January and February. But what has counted with us is this, that during the summer, when business must have been fairly good, there is no evidence whatsoever that he started to try to repay the money he had illegally taken. Indeed there is every reason to suppose, both because of the amount taken and because of what the probation officer said in his report, that during the busy months he went on taking money, not perhaps every week because not all of it was taken, but at any rate on some of the weeks during the summer season and that must raise considerable doubt as to whether he ever had a genuine intention to repay. As we have said, this money was taken, not in order to repay perhaps a debt for which he was being sued, nor to meet some sudden unforeseen illness or emergency; no, it was taken to enable himself and his wife perhaps particularly his wife, we do not know, to continue to live at a standard of living which was well beyond their means, in other words, there was excessive spending on luxuries which I think is the phrase used in the probation officer's report. We think it essential that there should be a deterrent element in

sentencing for offences of this sort. As I said earlier today, there are two types of deterrent, there is the deterrent to the man himself, and it may well be that the appellant himself does not need to be deterred, but there is also the second deterrent element, which curiously enough is not mentioned in the two English cases cited to us, I do not know why, because they are well known to this Court, the deterrent as regards the public; and indeed the Attorney General reminded us of what the Jersey Court of Appeal said only a short time ago in one of its judgments. The words used were to fortify that is to deter others who may be tempted to do the same thing and as I have said this was a gross breach of trust and the deterrent element is essential and particularly so, when a landlord is being trusted with the money. For all these reasons we cannot say in any way at all that two years' imprisonment is manifestly excessive for this sort of offence. So, again Mr. Pallot we thank you for the arguments that you have brought, and we have listened to them most attentively, and for the work that you have put into this appeal, but we have no option but to dismiss the appeal.

As your client is on legal aid, Mr. Pallot, you are entitled to your costs, and I would add that they are very well earned.

Authorities

Thomas: Principles of Sentencing (2nd Ed.): pp.152-5:
"Theft by employees and persons in positions of trust":
Hunter (p.153: note 4).

Whiteman & McKenzie -v- A.G. (4th January, 1983) Jersey
Unreported.

R. -v- Milne (1983) Cr.L.R. 277.

Jacob (1981) 3 Cr. App. R.(S) 298.

Clarke (1982) 4 Cr. App. R.(S) 197.

A.G. -v- Noble (1979) P.C. 173.