

27th June, 1986

A.G. -v- Philip Jack Mitchell

Deputy Bailiff: The sentencing policy of the Royal Court in breach of trust cases has been made abundantly clear in the past, and it is not for the Inferior Number of this Court to alter that policy.

The Superior Number has said that it has regard to the sentencing practice in England up to and including the Second Edition of Professor Thomas' book on the Principles of Sentencing, but does not take into account the more recent English cases which are based on expediency having regard to the overcrowded prisons in England.

It may be that on appeal, subsequent to Preston, the Full Court should review that policy, but it is not a matter for the Inferior Number.

The Court has, however, considered the case of Preston, which is the Jersey Court of Appeal, and has obtained a copy, which we have looked at very carefully. It is easy to distinguish the present case from that of Preston because Preston had kept out of any kind of dishonesty for a period of twenty-five years, and he was a man of fifty.

Although it is possible to explain away, to some extent, as Mr Bailhache has sought to do, the conviction of 1982, it nevertheless is quite a recent conviction, and involves the fraudulent alteration of invoices. In other words, it bears a remarkable similarity to that which the accused did on this occasion. There were also two other factors in Preston which we think do not apply here. Preston had volunteered information which the police might not have otherwise have become aware of. Although Mitchell co-operated very fully with the police, we don't think that there is any suggestion that he volunteered fresh information, and in Preston there was no destruction of any of the documents at all.

Whilst we accept the explanation with regard to the stocktaking of the van, so far as the invoices were concerned, it appears that they either destroyed or returned marked "cancelled".

Furthermore, the Court of Appeal went out of its way to say that "we do not believe that this is a case which can lay down any principles".

Nevertheless, we feel that we must have some regard to the decision in Preston, and bearing in mind the fact that the present accused might feel a sense of grievance if he were to receive the same sentence as Preston did, having regard to the substantially larger amount involved in the Preston case.

In all the circumstances, we propose to reduce the conclusions by a small amount, and we impose a sentence in total of nine months imprisonment, that is, 9 months imprisonment on Count 1 and 9 months on each of the remaining counts, all concurrent with each other and with the sentence on Count 1, making a total of 9 months imprisonment.

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