1986/17

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Superior Number

Sentencing of Alan Drew

and M, a minor

2nd July, 1986

DEPUTY BAILIFF: The Court is going to impose the total sentence asked for in relation to Drew with some slight variations to the conclusions which do not effect the total and will also grant the conclusions in respect of M.

However the Full Court is going firstly to take the opportunity to restate the policy of this Court in relation to breach of trust cases. The Court has said previously, and maintained, that it is the policy of the Royal Court to impose more severe sentences than the current sentences being imposed in England, and this Court has previously relied, and we do so again, on Professor Thomas's book "Principles of Sentencing" (second edition), from which I read at page 152:

"The considerable volume of cases of theft by employees or other persons in positions of trust, provides a useful guide to the appropriate sentencing bracket for cases of theft generally. The substantial mitigation often seen in cases of this kind, where a man of good character may stand to loose, as a result of his conviction, his career, pension rights and possibly his home, is often balanced by the aggravating effect of the abuse of trust which the offence constitutes. This kind of sentence appears to extend to about seven years imprisonment, but sentences in the highest bracket between five and seven years are deserved for cases involving extremely large sums of money; in House, the appellant admitted over two hundred thefts of the funds of a company, of which he was adirector and major shareholder; over £270,000 was stolen over a period of five years and the Company was eventually wound up with a deficit of £150,000. The money was spent in part to meet the appellant's grandiose living expenses. The Court held that the sentence of seven years was not excessive in relation to the facts but could be reduced to five years in view of the appellant's plea of guilty; by contrast in Cunningham, the appellant admitted 22 offences involving the misappropriation in about £13,000 belonging to his employers, and was sentenced to six years imprisonment with a suspended sentence for other offences activated consecutively. The Court observed that while precise figures were not critical it was essential to place the offences in the right perspective within offences of this type; this was not a case of a man defrauding his employer of hundreds of thousands of pounds, but it could not be equated with that of a man who appropriated a few hundred pounds. The case accordingly fell within the middle range. A sentence of three years was appropriate together with the activated suspended sentence. Many comparable cases can be found. In Albiston and others, five men all of good character were each sentenced to three years imprisonment

for conspiring to steal tyres from their employer. Goods worth about £14,000 were stolen over a period of just over a year; the Court considered that sentences of three years were not out of keeping with the sort of sentences that are passed for serious offences and dishonesty on the part of employees and upheld the sentence on the appellants who initiated the scheme. In Hunter the Treasurer and Secretary of a Club misappropriated about £10,000 of the Club's funds over a period of 15 months; almost all of the money was lost in gambling; accepting that it was in many ways a tragic case in view of the appellant's hitherto exemplary character, the Court upheld the sentence of three years with a comment that others faced with a similar temptation must be fortified by knowing that a penalty for committing a breach of trust is bound to be sentence of substantial duration".

Now insofar as counts 1 and 3 are concerned, they belong to the middle range, and therefore 3 years was the appropriate sentence as asked for by the Solicitor General. In the case of the snuff bottles valued at £300,000, clearly that is above the middle range, and therefore the four years asked for is not in anyway excessive. We believe that the change in England has been largely born out of expediency not unconnected with the overcrowding of Her Majesty's prisons, a factor which does not apply here.

We have had regard to the recent Jersey case of Preston, where, involving a theft of several thousand pounds, the Court of Appeal reduced a two year sentence to one year; but the Court of Appeal was careful to say that it did so on the facts of the particular case, and that no new principles were involved, and therefore we as I say, restate our policy, and upheld the conclusions.

There is an other point that I should make: the Court believes, in this case, notwithstanding the explanations given, that there was a strong element of financial gain; the coins were sold on several trips to England; monies were banked, Drew expected that the loss of coins would not be discovered for years rather than for months, and he would have benefited from the proceeds throughout that time. There was also the unhealthy and strong influence on a young co-accused; there is a positive duty on adult people to deter the young from crime, is not enough to say that he was a willing and active participant; there is no doubt that the crimes were initially planned, substantially planned and executed, by Drew, who was the cause of his co-accused's involvement. We do not, as was suggested by Mr Yates, increase sentences by virtue of aggravating factors, but such factors do tend to negative the mitigation that would otherwise exist. This was in the view of the Court a very sophisticated operation; it was a very carefully planned crime, into which a great deal of research went and that too must be shown by the sentences to be imposed. Both with the coins and the snuff bottles, there was a great value in the totality of the collection, and we are not persuaded by the dispute as to the actual cash value of the coin; a French

archaeologist was making a study of them which shows that they have a special value quite outside the saleable value, and as we say, the totality of the collection was affected by the dishonest activities of Drew.

I come now to count 5. The Court believes that the 2 years moved for is on the low side; in fact too low; and again I read from Thomas, this time from page 170; "Offences of arson are frequently connected with mental disturbance; the Court has recommended that a person convicted of arson should not normally be sentenced without psychiatric investigation". Now we did carefully consider whether we should in fact defer sentencing, and order the preparation of a psychiatric report. We decided not to do so, because we are satisfied that this particular fire was premeditated and planned for the deliberate concealment of a theft. It was not in any way connected with mental disturbance. It was done quite deliberately and calculatedly in order to conceal theft. Now Thomas goes on; "Where there is a sufficient basis of evidence, the appropriate sentence may be a hospital order, that is of course where there is mental disturbance or sentence of life imprisonment such sentences are generally preferable to long fixed-term sentences if the offender is likely to represent a continuing danger in the future. Where there is no psychiatric explanation for the offence, arson normally attracts a sentence of imprisonment. While sentences of 7 years and over have been upheld in a few cased involving immediate danger to life or extensive property damage, the more usual bracket is from 3 to 5 years imprisonment. Sentences of 5 years have been upheld for deliberate acts of arson not related to the emotional disturbance; examples include Cutler, where the appellant as a deliberate calculated act of revenge, set fire to a restaurant from which he had earlier been ejected, and Reynolds, where the appellant threw petrol bombs through the window of a house where a party was taking place. In Frost, a security officer deliberately set fire to his employer's premises, causing £75,000 worth of damage for no apparent reason. As there was no medical explanation for his behaviour the sentence of 4 years was upheld. A shopkeeper who set fire to his shop, with intent to defraud his insurers was sentenced to 3 years imprisonment which the Court considered appropriate to the offence. In Kirkland, a level headed young man set fire to an unoccupied house belonging to his former employerwho had recently discharged him on the grounds of redundancy; the fire caused modest damage and no danger to the neighbours; accepting that the appellant had acted on the spur of the moment without proper appreciation of what he was doing, as a result of heavy drinking, the Court upheld the sentence of 3 years imprisonment, as the minimum for this class of offence in the absence of mental imbalance". So we repeat: 3 years imprisonment as the minimum for this class of offence in the absence of mental imbalance.

Therefore the Court is of the view that this particular offence fully merited

a sentence of 3 years imprisonment, particularly having regard to the fact that gas cylinders could cause potential danger to the life, if not to anybody else, certainly to the firemen who came to deal with the fire. Nevertheless we must have regard to the totality principle and we do apply the totality principle and it is only because we apply the totality principle that we are going to grant the conclusions and impose a sentence of only 2 years for count 5.

Therefore Drew you are sentenced on count 1 to 3 years imprisonment; on count 2 to 6 months imprisonment concurrent; on count 3 to 3 years imprisonment concurrent; on count 4 to 4 years imprisonment concurrent; and on count 5 to 2 years imprisonment consecutive making a total of 6 years imprisonment.

I now go on to deal with M. We are here going to grant the conclusions and therefore you are sentenced to 3 years probation concurrently in respect of both count 4a and count 5. We do so and we certainly do not reduce the term; because of the gravity of the offence the probation period must be the longest term. We think that you need guidance for 3 years, but if it should turn out otherwise and the probation officer was perfectly satisfied then it is always possible for the Court to be asked to review and discharge the probation order earlier, so it is up to you. You are extremely lucky, if I may say so, or fortunate rather than lucky, extremely fortunate, that the Court is able to take the view that it is taking, largely because of your age. We do want to commend your employer for his responsible attitude in particular the paragraph of his reference which says "we will guarantee to provide a caring environment during his working day, in which he can continue to develop", and we also commend your brother and sister-in-law for their caring attitude in providing you with a caring and decent home, and we hope that you will realise how very fortunate you have been and how everybody is trying to help you, and we hope that you will make the very most of that opportunity because have no question in your mind that if you were to come back before us for a breach of probation because you had not complied with the terms of your probation order, you would so far as the Court is concerned almost certainly receive a custodial sentence.

And finally we make the necessary declaration that there must be no publicity with regard to the second accused, which would identify his name, having decided on the probation course it is better that he should not be hampered by publicity.