

**ROYAL COURT**  
(Superior Number)

62.

13th May, 1993

Before: The Bailiff and Jurats  
Vint, Myles, Bonn, Orchard,  
Gruchy, Le Ruez, Herbert, Rumfitt.

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The Attorney General

- v -

Christopher Anthony Delaney

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Sentencing, following guilty plea before the Inferior Number on 23rd April, 1993, to:

1 Count of	obtaining property by false pretences (Count 1 of Indictment).
5 Counts of	fraudulent conversion of property; (Counts 2-6); and
1 Count of	forgery (Count 7).

AGE: 51 years.

PLEA: Guilty.

**DETAILS OF OFFENCE:**

Self-employed accountant; fraudulently converted just short of one million pounds to his own use. Offences charged were the culmination of 10 years teaming and lading, and involved half a dozen different corporate clients.

He also forged documents which were used to provide a defence in a much publicised Italian fraud case, and received a fee of US\$60,000 for those criminal services.

**DETAILS OF MITIGATION:**

Family man; total co-operation. No 'greed' spending in the usual sense. Rather, he had taken on too many financial commitments as a younger man (house purchase etc.) without the income to support them.

**PREVIOUS CONVICTIONS:** Nil.

**CONCLUSIONS:** Fraud con. 5 years plus forgery 2 years consecutive = 7 years' Imprisonment.

**SENTENCE AND OBSERVATIONS OF THE COURT:**

Fraud con. 5 years' imprisonment and forgery 1 year's imprisonment consecutive making a total of 6 years' imprisonment. Breach of trust within the finance sector is not a factor which justifies disproportionate sentences, but proper deterrence is necessary in this important area.

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C.E. Whelan, Esq., Crown Advocate.  
Advocate J.A. Clyde-Smith for the accused.

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**JUDGMENT**

**THE BAILIFF:** The Court has given very careful consideration to all you have urged, Mr. Clyde-Smith, and the Court is going to reduce slightly the conclusions asked for by the Crown.

Before I give our reasons, there are one or two observations I wish to make in the name of the Court.

I am going to quote from the case of R. -v- Aucott and Penn (1989) 11 Cr.App.R.(S.) 86 to which our attention has been drawn and a passage from the Judgment of Watkins L.J., which we think is apposite to today's case. He says this:

***"Industry and commerce must not be sullied by conduct of this kind and when it is the courts have a positive duty to punish the wrongdoers. What is not always a simple matter is for a judge to alight upon an appropriate and just level of punishment in any individual case".***

The second general observation relates to the position of the Island as a finance centre. As regards that the Court of Appeal in 1985 in the case of Hayden -v- A.G. (10th July, 1985) Jersey Unreported C.of.A.; (1985-86) J.L.R. N.23 had this to say at p.2 of the Judgment:

***"It would not be unfair to describe his behaviour ...." (and this is very apposite in this case) "as one of a gross breach of trust and it is undoubtedly of paramount importance that the reputation and integrity of the financial businesses on this Island should be preserved and its reputation remain untarnished".***

Those observations particularly apply not only to the defrauding of the clients of your firm, Mr. Delaney, but also to the forgery you undertook for foreigners, which turned out to have unfortunate consequences in another jurisdiction. It is not so much those consequences which concern this Court, but the fact of the forgery which you performed as a professional man.

We have also had our attention drawn to the case of Barrick (1985) 7 Cr.App.R.(S.) 142, by which this Court has been guided on previous occasions in deciding what has to be taken into account in arriving at an appropriate sentence. At page 147 of Barrick, are set out the points which the Court in England decided it was appropriate to take into account and which we have followed in the past and do so again this morning:

*"(i) the quality and degree of trust reposed in the offender including his rank; (ii) the period over which the fraud or the thefts have been perpetrated; (iii) the use to which the money or property dishonestly taken was put; (iv) the effect upon the victim; (v) the impact of the offences on the public and public confidence; (vi) the effect on fellow-employees or partners; (vii) the effect on the offender himself; (viii) his own history; (ix) those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like; where, as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police".*

Of those points we think that the first, the quality and degree of trust reposed in the offender including his rank, applies strongly in this case. You were a professional man; the Court, of course, has to take into account that you achieved your position by your own hard work when you decided that you wished to qualify. Nevertheless you were and are a professional man in whose competence and honesty clients were entitled to place their trust, and you abused it.

Secondly, the period over which the fraud or the thefts have been perpetrated; we know what that period was. Thirdly, the use to which the money or property dishonestly taken was put: it was not put, as Mr. Clyde-Smith has said and we accept it, to the maintaining of any luxurious life-style. You were struggling and we accept that you did not use it in the way Barlow Clowes did, for example. Fourthly, the effect upon the victim: that is not a strong point in this case. Fifthly, the impact of the offences on the public and public confidence: that is important, but it must not be over-stressed; it is not, as the Court has said on previous occasions, a reason for increasing a sentence. Sixthly, the effect on fellow-employees or partners: that is not applicable here. Seventhly, the effect on the offender himself: the effect

was to make you go further and further into the mire along the course you had taken when you first started stealing from your clients. Eighthly, your own history: that is set out not only in your statement but in the Probation Report. Ninthly, those matters of mitigation special to yourself: we do not think the delay was particularly excessive and it is not a matter which we felt would entitle us to reduce the proper conclusions.

Having said all that and having regard to the fact that you have been fully co-operative with the police, we think we are able to make a reduction in the sentence asked for but nevertheless it must reflect the seriousness of what has taken place and must also mark the Court's disapprobation of such actions, as well as acting as a deterrent to others from embarking on these sort of frauds.

Accordingly, the sentence of the Court is that on Counts 1 - 6 you will be sentenced to five years' imprisonment on each count concurrent with each other; and on Count 7, to one year's imprisonment consecutive, making a total of six years' imprisonment.

Authorities

McMahon -v- A.G. (30th November, 1992) Jersey Unreported C.of.A.

Thomas: "Current Sentencing Practice" (2nd Ed'n): Theft p.p.2291-2; 23201-3; 23212-17.

R. -v- Aucott and Penn (1989) 11 Cr.App.R.(S.) 86.

Barrick (1985) 7 Cr.App.R.(S.) 142.

Pagett -v- A.G. (1984) J.J. 57 C.of.A.

Hayden -v- A.G. (10th July, 1985) Jersey Unreported C.of.A.;  
(1985-86) J.L.R. N.23.

A.G. -v- Shadbolt (1st November, 1985) Jersey Unreported.

Henry -v- A.G. (30th January, 1985) Jersey Unreported C.of.A.;  
(1985-86) J.L.R. N.24.

A.G. -v- Kerr (16th June, 1989) Jersey Unreported.

A.G. -v- Godfrey (5th March, 1992) Jersey Unreported.

A.G. -v- Hamon (8th January, 1990) Jersey Unreported: (1990)  
J.L.R. (Part 1) N.11.

R. -v- Hylton (15th April, 1993) "The Times".