

COURT OF APPEAL

127.

6th July, 1995.

Before: Sir Godfray Le Quesne, Q.C., President,
R.D. Harman, Esq., Q.C., and
Miss E. Gloster, Q.C.

Gregory David Sinclair

- v -

The Attorney General

Appeal against conviction on 12th January, 1995, and against a total sentence of 3 years' imprisonment, imposed on 30th January, 1995, by the Royal Court (*Assise Criminelle*) following not guilty pleas to:

8 counts of fraudulent conversion.

Leave to appeal against sentence was granted by the Bailiff on 22nd February, 1995.

Advocate R.G.S. Fielding for the Appellant.
Advocate T.J. Le Cocq on behalf of the Attorney General.

JUDGMENT.
(Sentence appeal)

5 THE PRESIDENT: A number of matters have been urged upon us by Mr. Fielding in support of his contention that the sentence of 3 years' imprisonment was excessive. Indeed Mr. Fielding goes further and submits that a custodial sentence of any kind would have been inappropriate. As an alternative to that he submits that if there were to be a custodial sentence it should have been for a shorter period than 3 years.

10 One point which he has taken appears to us to be of importance. This is the point of the delay which has occurred in bringing the case to trial. The course of events was this: the original complaint to the police in Jersey was made in September,



1990. Before matters had progressed very far the appellant left Jersey for the United States. That was right at the end of 1990. It has not been suggested that his motive in doing this was to evade justice. We are told that he went there in order to try to find work. While he was away enquiries were continued by the police both here and in Scotland where Mrs. Sinclair was by then living. We are told that the appellant returned to Jersey in about August, 1991. Extraordinary though it seems, the police did not succeed in finding him until the end of December, 1992. He was then interviewed by the police for the first time in January, 1993. But it was not until April, 1994, that he was charged and not until January, 1995, that he was brought to trial. These are long periods of delay and Mr. Le Cocq has not been able to give us any good explanation of them.

It is clear that because of the delay between the first interview with the police and the opening of the trial, the appellant had this matter hanging over his head for two years. Such periods of delay are bound to add to the anxiety and stress of those faced with criminal proceedings. In our view this is a matter which should have been taken into account when sentence was passed and we do not find in what was said and done in the Royal Court any indication that adequate notice was taken of this situation.

In all the circumstances of this case we do not find it possible to accede to Advocate Fielding's suggestion that it was a case of such exceptional features that a custodial sentence could be avoided. We do conclude, and particularly because of the matter of delay to which I have alluded, that the sentence should be reduced. We shall therefore allow this appeal to the extent of reducing the sentence from 3 years' imprisonment to 2.

Authorities.

A.G. v. Marriott (5th February, 1987) Jersey Unreported.

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

Thomas: Principles of Sentencing (2nd Ed'n): pp. 198-9; 207-22.

R. v. Barrick (1985) 81 Cr.App.R.(S.) 143.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
Noter-Up: May, 1994 - May, 1995: pp.30-31.