

ROYAL COURT  
(Samedi)

77

22nd April, 1996

Before: the Deputy Bailiff and  
Jurats Bonn and Vibert

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Police Court Appeal: The Relief Magistrate, T.A. Dorey Esq.

Robert Charles Sutton

-v-

The Attorney General

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Appeal against a total sentence of 4 months' imprisonment, passed on 18th March, 1996, following guilty pleas to:

- 2 Counts of criminally hiding or withholding stolen property:
  - Count 7: (a Ford Escort motor vehicle), on which count a sentence of 4 months' imprisonment was passed.
  - Count 9: (a Ford Sierra motor vehicle) on which count a sentence of 4 months' imprisonment, concurrent, was passed.

(No evidence was offered on counts 1-6, 8 and 10 of the Charge Sheet, and these charges were dismissed on 15th March, 1996.)

Appeal dismissed.

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Advocate P.C. Sinel for the Appellant  
Advocate P. Matthews on behalf of the Attorney General

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JUDGMENT

5 THE DEPUTY BAILIFF: We have considered this matter most anxiously. Mr. Sutton was originally charged with 10 counts. In Chambers there was a plea bargaining of which Mr. Sinel took a careful note. As a result of that meeting at which Mr. Sinel, Centenier Paton, Judge Dorey and the Greffier of the Magistrate's Court were present only two counts were proceeded with and to both these counts (which dealt with withholding) the Magistrate accepted a plea of guilty.

10 During the course of the meeting Mr. Sinel's note says that the Magistrate apparently inferred that he should have a Probation Officer present in Court when the matter was dealt with. But, no further reference was made to a social enquiry report. On that basis we have to say this: we are satisfied that the Magistrate

had a very detailed background from Mr. Sinel who addressed him at some length and in that regard we have considered the authorities. From the passages in Halsbury recited to us by Advocate Sinel (4 Halsbury 11(2) paras 1191, 1204) it appears that a social enquiry report would normally be ordered in the case of a first offender and Mr. Sutton was certainly a first offender for these purposes. But, even then in England, which is governed by statute, the Court has a discretion as it says, and I am citing from p. 1204:

*"The above provision does not apply if in the circumstances of the case the Court is of the opinion that it is unnecessary to obtain a social enquiry report."*

And, it is clear from Jersey cases such as the A.G. -v- Wickenhauser (23rd October, 1987) Jersey Unreported; (1987-88) JLR N. 20, Young -v- A.G. (20th December, 1989) Jersey Unreported and the well known case of A.G. -v- Lelliott (29th November, 1989) Jersey Unreported; (1989) JLR N.13, that while a social enquiry report is desirable the Magistrate has a discretion and is able to exercise that discretion as he thinks fit. In this case, with a man of 46, and with the background that had been provided to him, we think the Magistrate was quite able to exercise his discretion and to decide as he did.

Mr. Sinel makes some point of the fact that the Magistrate had all the facts of all the charges before him when he came back into Court. We are satisfied, although we have considered that matter in great depth, that the Magistrate was well able to exercise a discretion in dealing with only two. In fact he says so in his delivery of the Judgment and in his Summing Up. He says *"in these two particular cases I am quite satisfied that Mr. Sutton ..."*.

The facts are very clear and although Mr. Sinel disputes the fact that 6 months elapsed before the Police were informed by Mr. Sutton of the facts as he had them available to him - and there may be something in that, we are not quite certain about it - we feel nevertheless that the Magistrate was justified in saying that the conduct of Mr. Sutton constituted blatant dishonesty. Now, if the Magistrate felt that there was blatant dishonesty, on the facts as he heard them it seems to us that a prison sentence was inevitable. There is, we have to say, nothing in the argument that because Mr. Sutton has suffered financially or in his personal life that could prevent him from receiving a prison sentence. The Court said as much in A.G. -v- Duffy (9th August, 1993) Jersey Unreported and that was a Superior Number case:

*"..it is not a mitigating factor that hardship will result on an accused person's family because of that person's activities, or, as in Sambor's case, on a girlfriend. The Court in Sambor said: ..."it is not a matter to be taken into account by a sentencing Court". The Court also added: "It is a matter which Sambor should have reflected upon before he embarked on his offences".*

Mr. Sinel has said everything, that can possibly be said on behalf of his client but this Court is not able, in the circumstances, to interfere with the decision of the learned Magistrate and we find that the decision of the Magistrate was safe and satisfactory in the circumstances.

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The appeal is dismissed.

Authorities

4 Halsbury 11 (2): paras 1191, 1204: Social Enquiry Reports.

R. -v- Khemlani (1981) Cr. App. R.(s) 208.

McEwan -v- A.G. (18th May, 1992) Jersey Unreported.

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey": pp. 75-6.

A.G. -v- Wickenhauser (23rd October, 1987) Jersey Unreported; (1987-88)JLR. N.20.

Young -v- A.G. (20th December, 1989) Jersey Unreported.

A.G. -v- Lelliott (29th November, 1989) Jersey Unreported; (1989) JLR N.13.

A.G. -v- Duffy (9th August, 1993) Jersey Unreported.