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S.C.A. # 16/98

1. Notes  
2. 75

John Anthony Reynolds v Regina

1620/98 Theft  
1621/98 False Accounting

Before Murphy J.

23 October, 1998

Appearances:

J. Rowley, for Crown  
J. Furniss, for Appellant

REASONS FOR DECISION

Immediately after this appeal was argued, I delivered brief oral reasons.

I now amplify those somewhat in written form.

The appellant is a 35 year old US citizen. He commenced employment in January 1998 for a local trust company as a salesman of mutual funds.

The appellant has no local convictions, and one driving while intoxicated conviction dating from 1985 in the U.S.



In March 1998 a friend of the appellant gave him US \$10,000. \$3000 of that was to be a loan to the appellant and the remaining \$7000 was to be invested with the trust company for which the appellant worked. The appellant completed a client subscription agreement application to reflect the fact that the \$7000 was meant to be an investment on the books of the trust company.

The appellant, recently divorced, was financially strapped and decided to apply the entire \$10,000, rather than just the \$3000., to his personal bills.

The theft came to light when the friend made inquiries of the trust company in April. The appellant had resigned by this point.

The appellant has made no restitution.

The appellant confessed and pleaded guilty at an early opportunity. The magistrate sentenced him to 18 months imprisonment on each charge ( to be served concurrently), in addition to recommending deportation.

In reviewing this sentence I take into account the guilty plea, the appellant's personal circumstances, the relatively small amount and the " one-off" nature of the offence.

On the other hand I cannot ignore that this is a crime committed by a person in a position of trust. Such crimes of dishonesty, however small, are magnified somewhat in this unique financial community.

I have had regard to the guidelines in R. v. Barrick (1985) 7 Cr. App. R. (S) 142, as commented upon ( and arguably updated to take account of inflation) in R. v. Clark [1998] 2 Cr. App. R. (S.) 96. I tend to agree with Crown Counsel that the gloss put on Barrick by Clark may not have much impact on thefts where the amounts involved are at the low end of the scale.

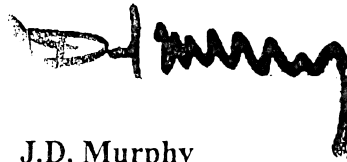
I have canvassed local authorities with some care. I respectfully confess to some uncertainty as to guidance given by the Court of Appeal in this area. For example, on the one hand, in McLaughlin ( Ind. 47/94 6 December, 1995) the amount involved was CI \$7,622. The accused trust officer pleaded guilty. The Court of Appeal upheld a sentence of two years ( 15 months suspended). ( I observe parenthetically that the device of a partially suspended sentence was not properly available to the magistrate in the present case, on the authority of York et al. v A.G. [1994 - 5] C.I. L.R. N-20.)

On the other hand, in Nicoletta (C.I.C.A. No. 31/98), a position of trust situation where the sum involved was \$1,200 and the accused was found guilty ( and presumably disbelieved) , the Court of Appeal reduced a nine month sentence to six months.

I have reviewed English cases at the low end of the sentencing bracket where breach of trust is involved. In Patel (1986) 8 Cr. App. R. (S.) 67, 12 months was held to be proper for an accounts clerk who stole £ 9000 over three months. In Mason (1986) 8 Cr. App. R. (S.) 226, 18 months was reduced to 12

months to give proper effect to a guilty plea in the case of an offender who stole a cheque book from his employers and cashed two cheques to the value of £ 10,000.

There is no doubt that in cases of this kind the offender must be incarcerated. However, in my view a sentence of 18 months here is excessive. In particular it does not adequately reflect the plea of guilty. I would allow the appeal and substitute sentences of 12 months to run concurrently.



J.D. Murphy  
Judge of the Grand Court

