

ROYAL COURT
(Superior Number)

134.

14th October, 1993

Before: The Bailiff and Jurats
Coutanche, Vint, Bonn, Orchard,
Hamon, Le Ruez, Herbert, Rumfitt.

The Attorney General

- v -

Nicholas Damien Hanley

Sentencing, following guilty plea before the Inferlor Number on 1st October, 1993, to 17 counts of fraudulent conversion.

CONCLUSIONS: 7 years' Imprisonment, concurrent, on each count.

SENTENCE OF THE COURT: 6 years' Imprisonment, concurrent, on each count.

C.E. Whelan, Esq., Crown Advocate.
Advocate A.J. Olsen for the accused.

JUDGMENT

THE BAILIFF: This is a sad case and has caused the Court considerable difficulty. Here is a man of talent and ability who, until he fell victim to the addiction of gambling, was, as his Counsel said, hard working and the devoted father of his family. But, having developed certain behavioural traits due to a neurotic disorder which Dr. Moran has identified in a way we can understand, he started then continued with a series of defalcations for three years.

The Court had to ask itself, after looking at the circumstances, whether they were such that special treatment was called for. The Court looked at the case of R -v- Bigby (14th October, 1993) T.L.R. where the Lord Chief Justice said "*However, guide line cases and normal tariffs are not immutable and it falls*

to the Court occasionally to consider a case which is out of the ordinary and calling for special treatment.

The Court also had regard to some observations of Lord Wolff in a speech he made recently to the Church Assembly in London also reported in "The Times", where he referred to a fundamental rule of sentencing: namely, *"Only send someone to prison if there is no appropriate alternative and then impose the shortest justifiable sentence"*. So the Court had to decide whether it was appropriate that you, Hanley, should go to prison for what you have done.

The Court was unanimous in reaching the conclusion that a custodial sentence is inevitable. As the Court of Appeal said in Hayden -v- A.G. (10th July, 1985) Jersey Unreported C. of A.; (1985-86)J.L.R. N.73, which was referred to in this Court when sentencing Christopher Delaney on 13th May, 1993. **"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"**. In Delaney the Court quoted, with approval, a passage from R. -v- Aucott and Penn (1989) 11 Cr. App. R. (S.) 86. The passage is from part of the Judgment of Watkins L.J., who said 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".

We have examined, very carefully, the medical reports and we could not come to the conclusion that your condition, Hanley, was such as to excuse your gambling to the extent of our not imposing a custodial sentence.

Accordingly, we have had to look at what would be the appropriate sentence to impose. We have had regard to what Lord Wolff said and we examined the circumstances of this case in the light of the Barrick guidelines, which were referred to in Delaney, and which are relevant to your case. There is no need for me to repeat them; they are well known in this Court. After doing that and after looking at your co-operation, and remorse, and the undoubted fact that had this matter gone to trial, the time taken would have been considerable and the cost to the public very high, and after taking account of the other matters mentioned by your Counsel, we are going to make a slight reduction in the conclusions. But I am to say this also: we do not regard the fact that you appear to have been encouraged in your addiction to gambling by a number of casinos and gambling houses as a mitigating factor at all.

Accordingly, under all the circumstances, we consider that the lowest justifiable sentence which we can impose, and I accordingly do so, is one of six years concurrent on each count.

AUTHORITIES

- A.G. -v- Shadbolt (1st November, 1985) Jersey Unreported.
- A.G. -v- Foster (22nd December, 1988) Jersey Unreported.
- A.G. -v- Kerr (16th June, 1989) Jersey Unreported.
- R. -v- Milne (1983) Cr.L.R. 277.
- Hayden -v- A.G. (10th July, 1985) Jersey Unreported. C. of A.;
(1985-86) J.L.R. N.23.
- A.G. -v- Amy (26th October, 1992) Jersey Unreported.
- A.G. -v- Morris (3rd June, 1992) Jersey Unreported.
- Lloyd -v- A.G. (23rd September, 1986) Jersey Unreported. C. of A.
- Lawrence (1988) 10 Cr.App.R.(S) 463.
- Barrick (1985) 7 Cr.App.R.(S) 142.
- Higgs (1986) 8 Cr.App.R.(S) 440.
- A.G. -v- Delaney (13th May, 1993) Jersey Unreported.
- Delaney -v- A.G. (28th September, 1993) Jersey Unreported. C. of A.
- Thomas: Current Sentencing Practice: Section B6-1: p.p.23201-3,
p.p.23212-17