

81.

ROYAL COURT

(Superior Number, exercising the jurisdiction conferred upon it by Article 22 of the Court of Appeal (Jersey) Law, 1961.)

1st May, 1995.

Before: The Deputy Bailiff and Jurats
Blampied, Orchard, Gruchy, Le Ruez, Vibert and Potter,

Stephen William Benedict Ryall

- v -

The Attorney General

Applications for leave to appeal and for an extension of time within which to apply for leave to appeal against a total sentence of 2 years' imprisonment, imposed on 14th October, 1994, by the Royal Court (Inferior Number), following guilty pleas to:

4 counts of	fraudulent conversion of property:
	counts 1 & 3: on each of which counts a sentence of 1 year's imprisonment was imposed.
	count 2: on which count a sentence of 2 years' imprisonment was imposed.
	count 5: on which count a sentence of 9 months' imprisonment was imposed; and
1 count of	larceny
	count 4: on which count a sentence of 9 months' imprisonment was imposed

All the said sentences to run concurrently with each other.

Advocate P. Landick for the accused.
C.E. Whelan, Esq., Crown Advocate.

JUDGMENT

5 THE DEPUTY BAILIFF: In this case Advocate Landick applies on behalf of Stephen William Benedict Ryall for an extension of time to appeal and for leave to appeal against a sentence of 2 years' imprisonment imposed on 14th October, 1994, following guilty pleas to four counts of fraudulent conversion of property and to one count of larceny.

10 It appears that the applicant might conceivably have 6 months of his sentence only to serve and for this reason (and because Crown Advocate Whelan does not object) the application is made direct to the Superior Number.

15 Because this is an application for leave to appeal we do not need to examine the facts in any detail except to say that this was a case where the manager of Maison des Landes Hotel, a hotel that caters specifically for the needs of disabled people, had used money to serve his gambling addiction. He had obtained a considerable sum by breach of trust of the meanest kind and as the learned Court said in its Judgment: *"In addition you played upon*
20 *the heartstrings of your friends and colleagues to cheat them of substantial sums of money"*.

25 Whilst none of those facts have influenced our decision today, we have to say that Mr. Landick took some exception to this remark by the learned Court which repeated the words of the Crown in its submissions. We feel that the Crown was bound, in a breach of trust case of this nature, and particularly in circumstances as serious as this, to explain exactly how the monies were taken. We agree with Mr. Landick that the word "cheat" is perhaps a strong
30 word in the context, but we must recall that the applicant told a series of lies about his wife and his family in order to obtain the money.

35 The application is made on a variety of grounds, but basically they are headed on grounds of the worsening family circumstances of the applicant, and the claim that he was not properly represented on the day of trial. It was said by Mr. Landick that references were only handed in on the day of the trial; these were very substantial in content; and also that his
40 client was not made aware of the 10 day period in which he had to appeal and did not fully appreciate the system.

45 We were told that he was thoroughly depressed at the time and he was not made aware of any grounds of appeal that he might have and he had dwelt on the matter for several months.

50 There is of course no duty on counsel in Jersey as there may well be in England to follow the procedure whereby counsel is bound to give written advice on the merits of appeal, but we have to say this: it is clear that Ryall, at different times, saw

Advocate Morris alone and also a senior prison officer alone, and those two combinations seem to us more than sufficient.

5 We also have to say this, we have no doubt that Advocate Morris, had he felt that there were substantial grounds of appeal, would undoubtedly have brought this to the attention of his client at the time that he saw him.

10 In La Solitude Farm Ltd -v- A.G. (1985-86) JLR 1 CofA, the Court of Appeal said this:

15 *"We desire to emphasise that the rules which govern the time within which appeals must be brought are rules which are intended, like all rules, to be observed. This is of particular importance in criminal matters, as there is a clear public interest in criminal charges being decided and disposed of as quickly as possible, and certainly within the time which the statute has provided for the purpose and it should be clearly understood that leave to appeal out of time in criminal matters can only be given where special circumstances of an important character are disclosed."*

20 The application, as we have said, runs on three main lines:

- 25 1. The advice that Ryall received and we can see nothing in that.
- 30 2. The possibility of a successful appeal; and again, we have examined all the facts very carefully, but we cannot see any merits on that ground. In our view the facts were properly and clearly represented and it was a serious breach of trust.
- 35 3. The fact that references of a compelling nature were brought to the Court's attention after the conclusions of the learned Crown Advocate had been prepared, seems to us of little significance because the Court clearly retired to consider the facts and in so retiring they did consider the references. They said so, and I quote from the Judgment:

40 *"We have listened carefully to your counsel and we have read the many references from people who have been impressed by your work in the hotel over many years."*

45 The Court, of course, was not bound to follow the conclusions of the learned Crown Advocate and indeed we know from experience on many occasions they decline to follow the conclusions.

50 Perhaps the principal ground of appeal then this morning has been the letter which was put in by Mr. Landick from Mrs. Ryall, and a very sad and worrying letter it is. We will, however, have to cite from the English case of R. -v- Ingham (3rd October, 1974); Thomas: Current Sentencing Practice: Release 23: 1-vi-92: C4-2A01: p.30401, where Lord Widgery said this:

5 "So it is not altogether an easy case, but of course
this always happens time and time again that imprisonment
of the father inevitably causes hardship to the rest of
the family. If we were to listen to this kind of argument
10 regularly and normally in the cases that come before us we
should be considering not the necessary punishment for the
offender but the extent to which his wife and family might
be prejudiced by it. The crux of the matter is that part
of the price to pay in committing a crime is that
15 imprisonment does involve hardship on the wife and family
and it cannot be one of the factors which can affect what
would otherwise be the right sentence. We do not think
that this is a case which is so unusual in its individual
factors as to justify us departing from the general
principle. One cannot modify a sentence on the husband
merely because the wife and family or prospective family
will suffer."

20 We have of course carefully considered the two very useful
cases that Mr. Landick put before us, the case of Haleth (1982) 4
Cr.App.R.(S.) 178 and the case of Vaughan (1982) 4 Cr.App.R.(S.)
83, but those two cases seem to us to be totally exceptional and
not on all fours with the present situation.

25 In our view the application this morning is quite hopeless.
We must say this. We have had an opportunity to read the notes of
the Bailiff at trial. In those notes the learned Bailiff
particularly remarked that Advocate Morris made an eloquent and
passionate speech on his client's behalf and that his performance
30 was conscientious and persuasive. We do not say this in any way
to protect Advocate Morris but merely to raise to the applicant's
attention that those facts were clearly important enough to have
been noted by the learned Deputy Bailiff (as he was then) when he
made the conclusions upon which he based his judgment.

35 Accordingly therefore, despite the more than able way in
which Mr. Landick has presented his case this morning, and despite
the fact that we feel sympathy for the applicant, this application
must be dismissed.

Authorities

(on application to extend time)

Archbold: 7-186: (6) Time for appealing.

Rhodes (1910) Cr.App.R. 35.

James (1923) Cr.App.R. 155.

Cullum (1942) Cr.App.R. 150.

Lesser (1939) Cr.App.R. 69.

Rigby (1923) Cr.App.R. 111.

R. -v- Ramsden [1972] Cr.L.R. 547.

Fossey -v- A.G. (1982) JJ 223 CofA.

La Solitude Farm Ltd -v- A.G. (1985-86) JLR 1 CofA.

Boyle -v- A.G. (7th January, 1985) Jersey Unreported.

Gibaut -v- A.G. (28th January, 1985) Jersey Unreported; (1985-86)
JLR N.20.

Aubin -v- A.G. (7th February, 1985) Jersey Unreported CofA; (1985-86)
JLR N.26.

Conner -v- A.G. (27th September, 1989) Jersey Unreported CofA.

Authorities

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

Whelan: Aspects of Sentencing in the Superior Courts of Jersey:
pp: 79, 55-63, 72-3, 80.

Vaughan (1982) 4 Cr.App.R.(S.) 83.

Haleth (1982) 4 Cr.App.R.(S.) 178.

Emmins on Sentencing (2nd Ed'n): pp.66-67.

Thomas: "Current Sentencing Practice": Release 23: 1-vi-92: C4-2A01: p.30401: R.-v- Ingham (3rd October, 1974).

Thomas: "Principles of Sentencing" (2nd Ed'n): p.212: The Effect of the Sentence on the Offender's Family.