

ROYAL COURT
(Samedi Division)

235.

9th December, 1996

Before: Sir Philip Bailhache, Bailiff, and
Jurats Blampied and Le Ruez

The Attorney General

- v -

Marie Halsall

1 count of fraud (count 1).

Plea: Guilty.

Age: 27.

Details of Offence:

Defendant had stated in her application to St. Helier Parish Welfare Board for welfare grant that she had no income other than Jersey sickness benefit. In fact she was also receiving UK sickness benefit. The amount obtained was £902.12 between 1st August, 1995, and 5th February, 1996. The Magistrate referred it to the Royal Court for guidance on welfare/benefit fraud cases.

Details of Mitigation:

The amount involved was not large; defendant had pleaded guilty and been co-operative throughout; she did not use the money for luxuries but for travelling to the UK in order to seek medical attention from which she had suffered and which made it difficult for her to maintain employment; she was a first offender. In addition the matter had been hanging over her for a long period because of the decision of the Magistrate to send the case up and the Magistrate had said on several occasions that he did not have a custodial sentence in mind. Indeed, he had indicated that he would be minded to pass an absolute discharge.

Previous Convictions: None.

Conclusions: 1 year binding over order.

Sentence and Observations of the Court:

Conclusions granted. It was difficult to give general guidance because of the wide variety of possible circumstances. The Court should begin by considering a prison sentence which would often be within the jurisdiction of the Police Court. Where there were strong mitigating circumstances it might be possible to deal with the matter by way of non-custodial sentence. Examples of mitigating circumstances were listed in Livingstone Stewart but they were not exhaustive. The case should not have been committed to the Royal Court.

The Attorney General.
Advocate A. Messervy for the accused.

JUDGMENT

THE BAILIFF: In our judgment, it was a pity that this case was committed by the Magistrate for trial by this Court. It was a case which was always clearly within the jurisdiction of the Magistrate's Court and the principal effect of the committal has been to prolong the period of time during which this defendant has been awaiting sentence for what is a relatively minor offence. The learned Magistrate made a number of comments in the Magistrate's Court regarding the welfare system, but we do not think it appropriate to make any observations about those comments.

We will, however, say that we were sorry to see, from a passage in the Probation Report, that this defendant was not pursuing an application for welfare assistance because she considered that there was a stigma attached to seeking financial help. We wish to say that no stigma attaches to a person who is genuinely in need and who seeks assistance from the welfare authorities. It is, of course, human to err, but our impression is that the welfare authorities generally do their best to assist those who are in need of their help.

We agree, of course, with the Attorney General that it is of vital importance that applicants should make honest and accurate statements to the welfare authorities when they make applications for assistance. The Magistrate expressed the hope that the Court might give guidance on how to deal with such cases. We think that it is very difficult to give detailed guidance, bearing in mind the wide range of conduct in which the Courts have to deal with offences of this kind. It is true that, in recent years, there has been a growing appreciation of the potential for and the cost of benefit fraud. Those who defraud the welfare system do prejudice, not only the ratepayers, but also those who are genuinely entitled to benefit. In our judgment a Court called upon to sentence a person for benefit or welfare fraud should begin by considering a custodial sentence. In some cases it will be the only appropriate sentence, although it may very well fall within the jurisdiction of the Police Court, that is to say, up to six months' imprisonment. In more serious cases, the offender will need to be committed for trial before this Court.

Where there are strong mitigating circumstances, it will clearly be possible to deal with the matter by way of a non-custodial sentence. Some mitigating circumstances were set out in the authorities referred to us by the Attorney General and they include: (1) a guilty plea; (2) the amount involved and the length

of time over which the fraud persists; (3) the circumstances in which the offending began; (4) the use to which the money was put; (5) the character and antecedence of the defendant; (6) matters special to the defendant, such as illness, disability, family difficulties, etc; and (7) any voluntary repayment of the amounts overpaid. We stress that this is not an exhaustive list of mitigating circumstances which the Magistrate should take into account.

10 Having said all that, it is clear that, in this case, there is much to be said in mitigation. We do not consider it necessary to set out the circumstances of the offence or of the defendant. Suffice it to say that we agree with the Attorney General that the appropriate disposal in this case is a binding over order. Miss
15 Halsall, will you stand up, please. The sentence of the Court is that you are bound over for one year to be of good behaviour.



Authorities

Whelan: "Aspects of Sentencing in the Superior Courts of Jersey":
pp.54-55.

Ibid: May 1995-1996 Noter up: pp.18-19.

R -v- Livingstone Stewart & Ors (1987) 9 Cr.App.R.(S) 133.

R -v- Tucker (1994) 15 Cr.App.R.(S) 349.