

30th January, 1985

H.M. Attorney General -v- Gareth Christopher Gordon HENRY

(Appeal against sentence passed on him by the Royal Court (Inferior Number) on the 2nd November, 1984)

BAILIFF: The Court, after very careful deliberation, is going to dismiss the appeal. The Attorney General said before the sentencing Court that he thought the appropriate sentence, had there been a delay, was one of two years' imprisonment and we think, for the reasons given by the Deputy Bailiff at that time, that the Attorney General, as he himself has suggested today, was moving for a sentence which was low down in the scale of options available to the Attorney General; I think that two years in itself was, as I said, on the low point of the scale, having regard to the comments of the Deputy Bailiff, which I think is not disputed in any way, that these are substantial sentences involving cunning and deceit against an employer and against the customers and, to a lesser extent, against the British Treasury, and by those actions, had made ~~the integrity~~, the integrity of the Jersey finance industry so much less for the time being, to the detriment of the Island. The only point, therefore, and perhaps I should go on to say the next point we've had to consider was whether, in fact ... oh well, we'll now come to the delay ... we do not consider that there has been any discernible stiffening in the sentencing^{policy} of the Royal Court in or on breach of trust cases since 1979, there's been no evidence called to suggest that there has been, and therefore that aspect of the delay, we think, is not relevant because it does not, in fact, exist. The only question, therefore, is whether the reduction of what would have been the correct sentence - and we have no doubt at all that two years would have been the correct sentence if there had been no delay - whether the reduction by one half gave enough allowance to that. Now, there are a number of ... obviously, every case is different, the circumstances are different ... had there been a disclosure or confession by the appellant as soon as he was caught out, which the police then failed to act upon, had that been the position, we might have felt that to reduce the ... what would otherwise have been a top sentence by one half would not have been giving sufficient allowance, but the situation we have is firstly that the appellant, before he was legally advised, wrote a letter to Mr Thomas in which (indistinct), in which he said, "I tender my resign-

ation, I do not wish to make any further statement or comments and obviously details of my clients since 1971 are readily available to you." Well, that seems to us to suggest that even then, before he had received legal advice, he was taking the view that he wasn't going to make any further statement and that it was up to the bank to find out what had been going on. Then he was legally advised and throughout the interview with the police, both before and after the legal advice, he said nothing and the police, we believe, were entitled to take the view that he was not going to co-operate. Now, it's perfectly true that subsequently the police could have, under the Judges' Rules, have approached him for information in relation to other matters which had come to light and we do not know why they did not, whether it was because they were quite satisfied that he was not going to co-operate - that may be the answer, we don't know. But we do know is that he ... the appellant himself made no approach. Now, it is perfectly true that he was legally advised to say nothing and had he been a person - of course he's not - but had he been a person of limited intelligence, perhaps one might have understood that he would entirely be guided by that advice but, of course, he is a person of intelligence, he knew what he had done, he probably knew better what he'd done than his advocate did, and at any stage during these five years, he could have known that there was an investigation going on, he certainly knew there was an investigation going on in the early years, he could have known the fact that, in the words of the Deputy Bailiff, 'the offences involved cunning and deceit' he could have, despite the legal advice, he could have gone to the police and said, "I wish to help, these things are obviously going to take a long time, there's a lot to unravel, I want to make a clean breast of it," he could have done that and he did not. He has a perfect right to remain silent but that is not the point at issue; the point at issue now is did he mitigate the damage which has been caused to him by the unreasonable length of the delay? And we have come to the conclusion that because he did not offer to co-operate with the police and to assist the investigating officers in the unravelling of what must have been a complicated series of offences, that he has, in fact, deceived all the mitigating credit, if I can put it that way, for the delay that he is entitled to and, therefore, we think

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that to halve what would otherwise have been a total sentence was correct and there are no grounds for reducing the sentence further.