

3rd July, 1986

A.G. -v- David Jarman Lloyd

Bailiff: Cases of this nature always pose some problems to a Court sentencing somebody in the position of Lloyd, who really is a first offender, for the purposes of deciding what proper sentence should be imposed on him. The Court obviously has to have regard to such principles as can be obtained from previous cases, but one should be very careful to make sure that one is always comparing like with like, and mitigating circumstances in one case may well not be present in another case. One of the principal matters which this Court, on many occasions, sitting as a Superior Number - and sitting as a Court of Appeal, side by side, so to speak, with the Court of Appeal which consists of learned silks and to whom appeals are made from the Superior Number - has to consider is the question of breach of trust. We have always said, sitting as the Superior Number, that a breach of trust is a serious matter, and that policy of regarding it as serious was upheld as recently as yesterday, when the Court sat, presided over by the learned Deputy Bailiff, and sentenced Ian Drew in his particular case. That being so, the Court has looked carefully at what the President of the Court of Appeal said, Mr. Calcutt, in the case of Preston, to which we are being referred, and in which judgment was given on the 7th April, 1986.

There the learned President said this:-

"The second matter which was dealt with by Mr. Renouf, which I take in my own order is this: that although he was in a position to take his employer's money, and so, it was said, and rightly said, he was to that extent in a position of trust, it would, in our view, be wrong to over-emphasise that factor, because to a certain extent, anyone who commits this offence must be in that position in order to be able to commit the offence itself".

I do not think that the learned President was suggesting that a breach of trust was not serious. What he was saying was that one should not over-emphasise it, and this Court, as far as it is been aware in the past, and as far as it is aware now, has never over-emphasised it, but it has placed on it, we think, a proper degree of seriousness, which cannot be over-emphasising the breach of trust cases but merely reflecting that they are serious. Having said that, we have also looked at the very helpful judgment, referred to by you, Mr. Whelan, of John Barrick reported on the 3rd May, 1985, where the Court

of Appeal in England, laid down a number of matters to which it would be right to have regard in considering sentences in cases of this nature. They are to be found on page 82, and I deal with them one at a time.

First the quality and degree of trust imposed on the offender, including his rank. Well, in this case, Lloyd, you were the Managing Director, over a period of time, and you had a great deal of trust imposed on you, and indeed you had the control of the company virtually in your own hands, so there is no doubt that you had a high degree of trust and a high degree of quality of your work, and indeed from the reference we have had and of what your Counsel has said, so far as your work was concerned it was excellent, but by the same token you had a very high degree of trust imposed on you.

Secondly, the period over which the fraud or the thefts have been perpetrated. Again these frauds were perpetrated over quite a considerable period and it is fair to say, that when you first confessed to your employers about unlawful borrowings, they treated you very leniently, and indeed you went on, however, to continue with your defrauding of them in respect of your gambling debts. I come to that in a moment.

Three, the use to which the money or property dishonestly taken was put. Well, we accept that you did not spend the money on riotous living, but you did spend it to make good the debts which you incurred through this gambling disease, and I think it is fair for you to know that we do accept your Counsel's submission that gambling can take the form of a disease, I think we can take Judicial knowledge of that, and affect people the same way as alcohol does.

Fourthly, the effect upon the victim, that is to say your company. Well, it is quite true, as your Counsel has said, that you had what he described as a proprietorial interest in that company, but to our minds that is not a true mitigating factor. In fact it might even be an aggravating factor, because you were then robbing your fellow members in the sense that having a proprietorial interest, you were that much less suspected of wishing to deprive the company of its money.

The effect upon the offender, well we accept that you have lost your wife, you have lost your job, you have suffered since these offences, and you have been engaged in work which you have been unhappy with in South Africa, we accept all those things and we have taken them into account.

Fifthly, the impact of the offences on the public and public conscience, this is not that type of offence, that really applies to public employees.

Sixthly, the effect on fellow employees or partners, we have already referred to the very generous way in which the company has treated you.

The effect on the offender himself, well I have already dealt with that, your own history, and any special matters and mitigation. Mr. Whelan we have taken all those matters into account, they are a most helpful resume if that case of Watford be properly applied and we have looked at the Jersey cases, but we cannot find that the conclusions asked for are wrong, and therefore we sentence you to four years' imprisonment, as asked for, a total of four years.

Right, I must do them formally now, they are in fact Count 1 - four years and Count 2 to 36 - four years concurrent.