

ROYAL COURT
(Samedi Division)

30

15th February, 1991

Before: F.C. Hamon, Esq., Commissioner, and
Jurats Vint and Le Ruez

Attorney General

- v -

Paul Christopher Godfrey

Application to defer Superior Number sentencing pending decision by the Court of Appeal in the appeal of Derek George Foster, on whether or not fraud is known to the Law of Jersey.

Accused remanded on bail on 7th December, 1990, for Superior Number sentencing, following guilty plea.

Recent decisions of the Royal Court in Clarkin and Pockett (5th February, 1991) to defer sentencing on drugs offences pending determination by Court of Appeal on the 8th April, 1991, of the appeal of Peter Thomas Fogg cited by the applicant's counsel.

The Crown opposed the application:

The accused had pleaded guilty to 13 Counts of fraud, and to 1 Count of attempted fraud. There had been a loss of £43,000.

Sentencing had been deferred on the 7th December, 1990, until 27th February, 1991, pending determination of Foster appeal, which was then expected in January, 1991. A firm date for the Foster appeal remains to be fixed. If the Court were again to grant application to defer sentencing, there might be a gap of half a year from date on which accused pleaded guilty to date sentence passed. It was not satisfactory that accused should have to wait so long and sentencing Court might be influenced by such a delay in reaching decision. Justice required that there be no further delay.

Cases of Pockett and Clarkin were distinguished; both were in custody pending sentencing and there was, therefore, no prejudice to them as the period spent awaiting sentence counted towards whatever sentence was eventually imposed. Article 6 of the European

Convention on Human Rights provided that criminal matters be dealt with within a reasonable time.

The Court refused the application.

The Attorney General.
Advocate D.E. Le Cornu for the accused.

JUDGMENT

COMMISSIONER HAMON: Mr. Attorney, it is perhaps fortunate that, as we told you, we had wiped the slate clean, because we thought originally that the matter was totally unopposed.

We have to look at the whole matter, in its totality, and we are concerned obviously about the victims of the crime as well as about the accused and we think, on reflection, that it would be quite wrong for us to order that this trial be stayed until the Foster appeal is heard. Although we value the forceful argument put by Mr. Le Cornu on this point, and we can see the difficulties, nevertheless the Law as it stands is that the crime of fraud exists in Jersey until the Appeal Court sets the matter aside. If the Attorney is pressing for a trial, this Court without hesitation is now unanimous that we must find for the prosecution and we therefore Order that the trial proceeds on the date specified.

Authorities

A.G. -v- Clarkin (5th February, 1991), Jersey Unreported.