

Superior Number Sentencing - Fraudulent Conversion

**[2018]JRC230**

**ROYAL COURT  
(Samedi)**

**12 December 2018**

**Before : Sir William Bailhache, Bailiff and Jurats Nicolle, Crill,  
Thomas, Ronge, Dulake.**

**The Attorney General**

**-v-**

**Kevin Robert Manning**

Sentencing by the Superior Number of the Royal Court, to which the accused was remanded by the Inferior Number on 26<sup>th</sup> October, 2018, following guilty pleas to the following charges:

**First Indictment**

20 counts of: Fraudulent conversion (Counts 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 31, 32).

1 count of: Fraudulent conversion by a trustee (Count 20),

**Second Indictment**

1 count of: Failing to comply with the requirements of Article 19 of the Money Laundering (Jersey) Order 2008, contrary to Article 37(4) of the Proceeds of Crime (Jersey) Law 1999. (Count 5).

Age: 62

**Plea**: Guilty.

**Details of Offence**:

Jersey scrivain who for many years operated a practice as K R Manning & Co, a regulated business from 2009. He was curator to various curatorships. A deficit occurred in his general client account. When there was not enough money in the general client account to make payments on four different transactions in 2008 and 2010 he took money from a total of eight curatorship accounts and a trust to make up the short fall. After an investigation by the Law Society he was suspended from practice and the Viscount took over his business. The defendant also failed to keep accurate client records over a six year period in breach of the Money Laundering (Jersey)

Order 2008. Complex investigation by forensic accountants to work out what had happened in his client accounts. Crown case was that over £96,000 was fraudulently converted. Defence case was that about £65,000 was converted but it was agreed that the difference did not matter for the purpose of sentence.

**Details of Mitigation:**

Crown – benefit of guilty pleas, good character.

Defence – extraordinary delay, alcoholism, long-standing mental health problems, guilty pleas, genuine remorse

**Previous Convictions:**

No previous convictions of relevance, treated as man of good character

**Conclusions:**

**First Indictment**

- Count 7: 12 months' imprisonment, concurrent.
- Count 8: 12 months' imprisonment, concurrent.
- Count 10: 18 months' imprisonment, concurrent.
- Count 11: 18 months' imprisonment, concurrent.
- Count 12: 18 months' imprisonment, concurrent.
- Count 14: 18 months' imprisonment consecutive to Count 10 and concurrent to Counts 7, 8, 11 and 12.
- Count 15: 18 months' imprisonment, concurrent.
- Count 16: 18 months' imprisonment, concurrent.
- Count 17: 18 months' imprisonment, concurrent.
- Count 18: 18 months' imprisonment, concurrent.
- Count 19: 18 months' imprisonment, concurrent.
- Count 20: 24 months' imprisonment, concurrent.
- Count 21: 24 months' imprisonment, consecutive to counts 10 and 14 but concurrent to counts 7, 8, 11, 12, 15-19, 22-26, 28 and 31.
- Count 22: 24 months' imprisonment, concurrent.
- Count 23: 24 months' imprisonment, concurrent.
- Count 24: 24 months' imprisonment, concurrent.
- Count 25: 24 months' imprisonment, concurrent.
- Count 26: 24 months' imprisonment, concurrent.
- Count 28: 24 months' imprisonment, concurrent.
- Count 31: 24 months' imprisonment, concurrent.
- Count 32: 12 months' imprisonment, concurrent.

**Second Indictment**

- Count 5: 8 months' imprisonment, concurrent.

Total: 5 years' imprisonment.

**Sentence and Observations of Court:**

**First Indictment**

Count 7: 3 years and 6 months' imprisonment, concurrent.  
Count 8: 3 years and 6 months' imprisonment, concurrent.  
Count 10: 3 years and 6 months' imprisonment, concurrent.  
Count 11: 3 years and 6 months' imprisonment, concurrent.  
Count 12: 3 years and 6 months' imprisonment, concurrent.  
Count 14: 3 years and 6 months' imprisonment, concurrent.  
Count 15: 3 years and 6 months; imprisonment, concurrent.  
Count 16: 3 years and 6 months' imprisonment, concurrent.  
Count 17: 3 years and 6 months' imprisonment, concurrent.  
Count 18: 3 years and 6 months' imprisonment, concurrent.  
Count 19: 3 years and 6 months' imprisonment, concurrent.  
Count 20: 3 years and 6 months' imprisonment, concurrent.  
Count 21: 3 years and 6 months' imprisonment, concurrent.  
Count 22: 3 years and 6 months' imprisonment, concurrent.  
Count 23: 3 years and 6 months' imprisonment, concurrent.  
Count 24: 3 years and 6 months' imprisonment, concurrent.  
Count 25: 3 years and 6 months' imprisonment, concurrent.  
Count 26: 3 years and 6 months' imprisonment, concurrent.  
Count 28: 3 years and 6 months' imprisonment, concurrent.  
Count 31: 3 years and 6 months' imprisonment, concurrent.  
Count 32: 3 years and 6 months' imprisonment, concurrent.

**Second Indictment**

Count 5: 8 months' imprisonment, concurrent to the fraudulent conversion offences.

Total: 3 years and 6 months' imprisonment, concurrent.

**M. Temple, Esq., Solicitor General appeared for the Crown.**

**Advocate E. L. Burns for the Defendant.**

**JUDGMENT**

**THE BAILIFF:**

1. The defendant is here to be sentenced on the First Indictment which contains a number of offences of fraudulent conversion and the Second Indictment which alleges a failure to comply with requirements under the Money Laundering (Jersey) Order 2008. The defendant has been a

solicitor of this Court for many years and the offences were committed by him in the course of his business as a solicitor.

2. As a solicitor of course he took an Oath of Office before this Court when he was sworn in and the offences included a number of occasions on which money was transferred from curatorships of where he had been appointed as curator to the interdicts in question and those monies were fraudulently converted for other purposes. In relation to all those curatorships he had taken an oath before the Court that he would look after the money of the interdict as well, if not better than he would his own. It is obvious from what I have said immediately that these were offences committed with a significant breach of trust.
3. It is a personal disaster for this defendant. The Court accepts entirely that he has come up with numbers of references and with an explanation for the offending which show that his life has fallen apart during the period in question and on a personal level the court can have much sympathy with him from that perspective. The Court is also impressed with the references which describe him as being a kind person, a good man in most respects, but we cannot get away from the fact that these are significant dishonest offences committed in breach of trust and as I say serious breaches of trust as well.
4. Having regard to all the personal circumstances, the alcohol dependant syndrome, the personality issues raised in the psychological and psychiatric reports, the obsessive compulsive disorder, the offending also becomes perhaps more comprehensible although ultimately no one can be absolutely sure about why the offending took place. But what one can be sure about is that they were dishonest offences and therefore the court is obliged to view the sentence in the light of the standard policy on sentencing such offences which is to impose a custodial sentence unless there are exceptional circumstances and we cannot find that there is anything exceptional in this particular case.
5. We have noted, of course the good character of the defendant which goes to his credit for the purposes of sentencing and we have noted the guilty plea which has been entered which unquestionably has saved a considerable expense in the context of a trial. It is true that the guilty plea came a little late, but nonetheless which I will say for my part because this is not something which the Court as a whole discussed, I am conscious that I pressed Advocate Burns to enter a plea in October this year when the not guilty plea was entered and so to some extent it might have been said that the not guilty plea would not have been entered then with extra time. The Court is sure that the defendant will also place some reliance on support which he has had from his family in particular his sisters.

6. In the circumstances of this case having regard to all the facts which I have touched upon which it is really not necessary to go to in any greater detail we think the sentence of 5 years imprisonment is too high and we are going to reduce it, but before we come to the actual sentence which we are going to impose I wish to say a couple of things about the English Sentencing Guidelines. It has never been the case that the English Sentencing Guidelines in terms of quantum are regarded as helpful by this Court. There must have been at least half a dozen occasions when the court has indicated that the English Sentencing Guidelines on quantum are unhelpful. On page 13 of the written submissions we have received from Advocate Burns it is said that:

*"It is wrong to take part of the determinates of seriousness set out in the Crown against Barrick the English Court of Appeal case, without recognising the central position given to quantum within that judgment and the judgment or guidelines that follow..."*

7. If that is limited to the question to the amount of the loss that was incurred as a result of the dishonest conduct that is a fair point to make. If it was intended to go any further and point to the actual sentences that might have been imposed had this set of offences been sentenced in England and Wales it is not an appropriate course to take; and just for the avoidance of doubt I say again the Sentencing Guidelines are designed in England and Wales pursuant to a statutory scheme which we do not have. They were designed for the purposes of ensuring consistency between courts across the country. They take into account a myriad of different statutory sentencing options not all of which are available in this jurisdiction and I am far from saying they need to be available in this jurisdiction. They require a tick box approach to sentencing which we have not in this Court or in the Court of Appeal found to be appropriate. No doubt the sentencing guidelines are mutually consistent with the different sentences which are imposed in that jurisdiction but they are not consistent with the sentences which are imposed in our jurisdiction. Ours are approached on a different basis and already have a wider basis for the sentencing court than is the case in England and Wales because here we have a Judge and Jurats who together form the Sentencing Court. It should not be necessary to feel obliged to keep saying to both Crown and Defence that the Court finds the guidelines unhelpful in terms of quantum and they should not be cited for this purpose.
8. We do have regard to the Barrick features (Barrick (1985) 7 Cr. App R (S) 142) and they have been applied by this Court on several occasions in the past and they are relevant. In our judgment the right overall sentence that should be imposed in this case is one of 3½ years' imprisonment, and we have therefore looked at the question of how to break that sentence in overall terms down appropriately. We think that the most suitable way of doing it because we have taken a step back to find what we consider to be the right overall sentence is to apply 3½

years' imprisonment on each count on the First Indictment concurrent, that is to say on each fraudulent conversion count and so that sentence is going to be imposed. There will be 8 months' imprisonment on the Second Indictment on the money laundering count, which will run concurrently. Because the sentences are of the length they are the question of suspension does not arise even though we note that both Mr Manning in his personal statement which we have read and the written submissions of Advocate Burns referred to it.

9. On the First Indictment you are sentenced to 3½ years imprisonment, concurrent on each count, and on the Second Indictment on Count 5 to 8 month's imprisonment, concurrent.

### **Authorities**

Money Laundering (Jersey) Order 2008.

English Sentencing Guidelines

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

Proceeds of Crime (Jersey) Law 1999

[AG v Marriott](#) [1987] JRC 023

[AG v Delaney](#) [1993] JRC 062

[AG v Hanley](#) [1993] JRC 134

[AG v Delaney](#) [1993] JCA 123

[AG v Sinclair](#) [1995] JRC 022

[AG v Hay](#) [1995] JRC 133

[AG v Thorne & Cavanagh](#) [1996] JRC 204

[AG v Bellows](#) [1999] JRC 28

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[AG v Renouf](#) [2001] JRC 125

[AG v Seal](#) [2002] JRC 32

[AG v Barnes](#) [2002] JRC 40

[AG v Michel](#) [2011] JRC 093

AG v Arthur [2018] JRC 129

Arthur v AG [2018] JCA 217

**Whelan on Aspects of Sentencing in the Superior Courts of Jersey**

