

Fraud by abuse of position.

[2022]GRC034

**ROYAL COURT
FULL COURT**

14th January 2022

**Before: John Russell Finch, Esq., O.B.E., Lieutenant Bailiff and Jurats:
Stephen Murray Jones OBE, David Percy Langley Hodgetts LVO (OStJ),
David John Robilliard, Tina Jane Le Poidevin, Paul Martin Burnard,
Felicity Jane Quevâtre-Malcic, Heather Reed, James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

THOMAS EDWARD BOATWRIGHT-SMITH

**Advocate M Davies appeared for the Crown
Advocate A Ayres appeared for the Defendant**

LIEUTENANT BAILIFF:

Background

You appear here today for sentence on an Indictment containing one Count: fraud by abuse of position. Between 15th February 2016 and 6th November 2019, you stole £41,731.97 in money belonging to your employer. The maximum penalty is 12 years' imprisonment.

You are 35 years of age, now living back in the UK. This was, we understand, a lengthy investigation and we have noted the delaying effects of Covid. You returned here on 3rd September 2021 and were charged. You indicated an early guilty plea and have returned here for your various court appearances. You are of previous good character.

We have heard how you committed this offence by making fraudulent refunds to yourself in the period shown. After initial denials, you admitted your fraudulent activities. You produced documentation later to assist the enquiry. It goes without saying that you were in a position of trust.

Sentencing Considerations

We are bound by a decision of the Guernsey Court of Appeal in the case of McCarthy (2008). This laid down sentencing bands, which in your case, for the amounts of £20,000 - £125,000 is a starting-point of 2 to 3 years' imprisonment, before we consider the applicable mitigation in the case. This decision applies in the English guideline case of Barrick (1985). We carefully note the factors which have to be considered.

There was, as we have said, a breach of trust. You let down your employer and dishonestly obtained more than £40,000, over a lengthy period in order to, as we are given to understand, improve your marital relationship, and appear as a successful husband.

Considering primarily the amount, our starting-point is at 27 months. We have mentioned the lengthy period over which these dishonest actions were performed.

Mitigation

Your previous good character and early admissions, assistance to the authorities and guilty pleas are substantial matters in your favour. We note the helpful Probation report, the impressive letter from your brother and the Psychological report from Dr Datta, (the latter being obtained by you). This gives a diagnosis of “autism spectrum disorder” which can affect your decision-making. Importantly, the report does state fairly on page 5:

“There is no doubt in my mind, based upon my meeting and conversation with Thomas, that he was fully aware that the refunding of credits to his account from his employer was completely wrong”.

The very experienced Probation officer makes exactly the same point at paragraph 7 of her report.

We note that you have saved over £10,000 towards repaying your ex-employer. We agree that none of the delay is your fault. We are able, in view of the mitigation, essentially on the points set out, to afford you a generous discount. We also carefully note that cases say in general that a period of immediate imprisonment is inevitable, save in very exceptional circumstances, or where the amount of money obtained is a small amount.

Sentence

When this case is boiled down to its essentials, this was a serious and protracted breach of trust. Your employers trusted you and you shamefully abused it for your own ends for a substantial time. Even allowing for the mitigation we have factored-in, we have to emphasize the message that such matters are to be treated seriously. Noting the mitigation, very well set out by your extremely experienced Advocate, the Court, in all the circumstances, imposes a sentence of 180 hours Community Service as a direct alternative to 12 months’ imprisonment. This is, in our judgment, a rare and very exceptional case and family support is essential here in our view. That means that you must do all those hours down to the last minute with the only excuse being a doctor’s certificate saying you are unfit to do them. If you do not do all the hours, a warrant for your arrest will be issued and you will be brought back here and you will, almost certainly, be put away in jail.

In relation to compensation, you accept the amount. We do not in the circumstances deem it necessary for any further court proceedings. You will pay the amount of £43,731.97. There is no dispute on this and this will assist in its enforcement. The Order takes effect as a judgment of the Court and the £10,000 should be paid over to the authorities within 7 days.

J R Finch, O.B.E.
Lieutenant Bailiff

14th January 2022