

**ROYAL COURT
FULL COURT**

26th January 2023

**Before: Catherine Maureen Fooks, Judge of the Royal Court and Jurats:
Claire Helen Le Pelley, Jonathan Grenfell Hooley, Steven John Morris, David John Robilliard,
Stuart Michael Crisp, Marilyn Jasmine King, Paul Martin Burnard, Felicity Jane Quevâtre,
James Robert Toynton.**

THE LAW OFFICERS OF THE CROWN

- v -

ANTONY CRAIG WILLIAM GALLIENNE

Advocate J D McVeigh appeared for the Crown

Advocate O C Fattorini appeared for the Defendant

JUDGE OF THE ROYAL COURT:

Background

Mr Gallienne you have pleaded guilty to a single count of fraud by abuse of position, contrary to Sections 1 and 4 of the Fraud (Bailiwick of Guernsey) Law, 2009, in that, between 1st July 2021 and 2nd September 2021 you dishonestly abused your position as an employee of the Channel Islands Co-operative Society Ltd (“the Company”), by processing 83 refunds totalling £12,150, causing a loss to the Company and a gain to yourself in that sum. The maximum sentence is 12 years’ imprisonment or an unlimited fine, or both.

The facts are that you were employed by the Company as a general assistant from December 2018 until September 2021, when your offending was discovered. In that role, you had supervisor and enhanced till permissions, which enabled you to process refunds. Anomalies were spotted in a spot check, which ultimately led to the revelation that your staff identity number was linked with a high volume of tobacco refunds, whereby cash has been taken from the till but no corresponding tobacco product actually returned. The individual sums taken varied from £15.96 to £706.50 and increased in frequency over the period of the offending. On the 18th August 2021 you took nine amounts totalling £1,985.64.

You were interviewed by the Company on the 10th September 2021, during which you admitted taking the cash which you said was to pay bills and other debts. You were shown CCTV footage, showing you taking the cash. You were suspended from employment on that day and dismissed on the 13th September following a second interview, at which the scale of the offending was put to you and you said that you were in a lot of debt, hadn’t known what else to do and made reference to your daughter.

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A search of your property revealed a large quantity of Pokémon cards and collectibles, the purchase of at least some of which officers were able to link to the times of your having taken sums of cash. At Police interview you exercised your right to silence.

You are a local man of 33 years of age. You are currently not working. You have one relevant previous conviction for shoplifting on the 16th December 2019. You have been on conditional bail throughout the proceedings.

Sentencing Considerations

The Court of Appeal issued guidelines for sentencing of those who commit fraud whilst in a position of trust, in the case of McCarthy v Law Officers of the Crown, Judgment 35, 2008. The Court said, “*when someone in a position of trust takes a deliberate decision to abuse that position, it is right that the person should know that he or she will almost certainly go immediately to prison..... and that the length of sentence will reflect, among other things, the amount misappropriated.*” It sets bands for sentencing based on amounts; there is a band of less than £20,000 which relates to your offending and the suggested starting point is between “*the very short and about 18 months*”.

We have taken a starting point, before aggravating and mitigating factors of 10 months. In terms of aggravating factors, we consider that there is an element of sophistication, and there is also the fact that others were interviewed as a consequence of the anomalies discovered. You also have a previous conviction for shoplifting. In those circumstances we increase the starting point to 12 months.

Plea

The Court must first consider the impact of your guilty plea on sentence. We afford you full credit for that guilty plea.

Personal Mitigation

The Court has considered carefully the very detailed and thoughtful Social Enquiry Report prepared in respect of you. We have also listened to the submissions of your Advocate and read all the materials provided.

You come before the Court as mature man, with only one relevant previous conviction. You do not have an issues with alcohol or drugs to address. You were living a quiet family life and had been working for the Company for 2½ years before you started to commit these offences. Once you had done it once, you shut your mind to the wrong you were doing. We note the offending was over a relatively short period, but it was escalating.

Whilst it is said that you took the money to pay for bills and pay debts, there can be no doubt that you spent a good proportion of it on your obsessive collection of Pokémon cards and other things. You simply did not focus on how to manage your finances without resorting to stealing. Even now you are not working to fend yourself, but relying on your family. As it says in the Social Enquiry Report, you need to learn how to manage your problems in a constructive way, seeking assistance from agencies, as required. You have expressed remorse; you were shocked at the scale of your offending.

You have a young daughter, for whom you are the primary carer. In accordance with the case of Bourgaize v Law Officers of the Crown, 2014, Judgment 49, the Court is required specifically to consider the Article 8 Rights of your child, as a result of you being imprisoned, as well as yourself. There are three questions to be considered:

- 1) Is there an interference with family life?
- 2) Is it in accordance with law and in pursuit of a legitimate aim within Article 8.2?
- 3) Is the interference proportionate, given the balance between the various factors?

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A sentence of imprisonment almost by definition interferes with family life. The imposition of a sentence of imprisonment for a serious criminal offence is in accordance with law and in pursuit of a legitimate aim within Article 8.2. Parents who commit serious offences face prison like everyone else. The issue for this Court is always whether the imposition of an immediate custodial sentence would be a proportionate interference with family life given the balance between the various factors.

The case of Bourgaize makes it clear that the Court should be informed about the domestic circumstances of a defendant facing an immediate custodial sentence. The arrangements are primarily described in the Social Enquiry Report, which highlights the particular issue your daughter has which information is supplemented by the other papers filed and your Advocate's responses to the Court's questions, all of which have been carefully considered. The input from the school was particularly valuable. Your fear is that your imprisonment would have a particularly negative impact on your daughter psychologically, more so than on a child without her issues.

The proposed arrangements for the care of your child, should receive an immediate custodial sentence, are that she would remain living with your mother and would be cared for primarily by her, but with some family support. Your mother is not in the best of health and expressed some concerns about her ability to manage, especially as she is reliant on you for transport. It is said that she has understated her health problems. The Probation officer expressed her professional view that there are practical arrangements in place but your daughter, with her additional needs, is at risk of significant psychological harm if you are imprisoned, given that you are her only stable parent. The Court has to balance that impact against the legitimate aims of sentencing in a serious case. This is not a case which stands on the cusp of custody, as it falls squarely within the McCarthy guidelines. In a case such as this, where the custody threshold is clearly passed, the balancing exercise entitles the Court to consider reducing the length of the sentence or suspending it or imposing a Community Service Order, as an alternative. The Court has undertaken the balancing exercise very carefully.

You also have another child with whom you have no contact so his rights are not engaged. You are assessed as having a low to moderate likelihood of re-offending and no risk of serious harm to the public, which we take into account.

Sentence

The guidelines in the McCarthy case are clear that a term of immediate custody is to be expected to reflect the need to punish what is a serious offence and to deter what the Court of Appeal described as, "*those who are tempted to steal in a cold and calculated manner, in breach of trust.*" There can be exceptions to an immediate custodial term, but these will be rare. In your case, the fact that the sentence of imprisonment would be relatively short and the likely disproportionate impact on your daughter of that sentence, when she already has enough to contend with, enables the Court, exceptionally, to consider suspending the sentence or imposing an alternative to immediate custody which it otherwise would not be considering.

In your case the Court proposes to make a Community Service Order of 150 hours of unpaid work, as a direct alternative to sentence of imprisonment. The alternative sentence is one of 8 months' imprisonment. We note that you have signed a form stating you understand the nature and effect of a Community Service Order, the power of the Court to review the Order and the consequences that may follow if you fail to comply with any of the requirements of the Order, or if you are convicted of a further offence while the Order is in force. The Court is satisfied that provision can be made for you to perform work and that you are a suitable person to perform work. Please note, that if you fail to complete even one hour without a medical certificate, or you commit any other offence you will be brought back before this Court and you will face going to prison.

The Court is satisfied that it is appropriate to add a Probation Order to the sentence and will do so, but for a greater period than that recommended in the Report. The period will be 3 years. As set out in the

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SER, over this period of time you will be offered support in relation to problem solving, childcare matters and financial matters, so that you can gain the skills to prevent you from re-offending. Such an order is imposed for the purpose of your rehabilitation and to prevent you from offending further. We are satisfied that you have had it explained to you the purpose and effect of the Order and the powers that follow if it is breached, including the consequences thereof but in brief summary it means that you must keep in contact with your Supervisor, in accordance with the instructions you will be given from time to time, notify your Supervisor of any change of address or working arrangement and not do anything to undermine the purposes of the Order. If you were to fail to comply with any requirement, you would be liable to return to Court and the Court has the power to continue the Order with or without variation, to fine you or even to revoke the Order and re-sentence, so it is vital that you comply with the Order.

Mr Gallienne you have committed a serious crime and would, in almost every other case, being going off to prison now. You are not because of impact on your daughter; she needs you to be there for her. You have let her down badly by stealing and so very nearly being taken from her today. As you leave here, you need to keep that thought firmly in your mind. You also need to ask for help when you need it and take that help and not bury your head in the sand. You can start doing that by working fully with Probation to explore what brought you here in the first place and to deal with that, so that we do not see you again. Finally, please note, that the fact that the impact on your daughter allowed the Court not to imprison you today does not mean that you will get another chance if you re-offend.

Compensation

The Company is seeking compensation in sum of £12,150 and the Court has considered this and determined that it is appropriate to make an Order for Compensation in that sum. We will give you a period of 3 years in which to pay that sum. It is not part of the Order but the Court expects the cash to be paid over immediately and the cards and collectables to be sold and the proceeds put towards the Compensation Order.

Finally, I summarise, the **total sentence** is as follows:

- **Community Service Order** – 150 hours as a direct alternative to 8 months' imprisonment
- **Probation Order** – 3 years
- **Compensation Order** - £12,150 to be paid within 3 years

Catherine Maureen Fooks
Judge of the Royal Court

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