



JUDICIARY OF
ENGLAND AND WALES

Leeds Crown Court

R

-v-

David Friesner

Sentencing remarks by the Honourable Mr Justice Singh

10 February 2012

1. On 12 January 2012 you pleaded guilty to one count of theft, that is Count 2 on the indictment, which relates to the theft of £72,500 belonging to barristers' chambers at number 9 St John's Street, Manchester, between October 2008 and November 2009.
2. The theft consisted of taking 12 unauthorised loans or advances from your chambers which were never repaid. By pleading guilty you have admitted that you committed a serious offence of dishonesty.
3. You are now aged 46. You became a barrister in 1988, specialising in criminal law. In 1997 you moved to the chambers at 9 St John's Street and in 2000 became the deputy head of those chambers. By all accounts you were a highly successful criminal barrister and were regularly instructed by the Crown Prosecution Service.
4. But you also had other business interests. These included a property business and a specialist car hire business. The property business had expanded to the extent that, by June 2008, your property portfolio amounted to some 15 to 20 properties, which were valued at around £6.5-7.5 million. The properties were subject to mortgages, amounting to about £4 million.
5. The chambers at 9 St John's Street had about 79 members. Joanne Kelly worked at the chambers from 2000 until October 2009. She was the chambers administrator until April 2008 and then Director of Finance and Administrator.
6. During 2008 your financial position began to worsen as there was a general downturn in the property market. You sought to restructure some of your debts and to sell one of your properties.

7. On 1 October 2008 you requested and received the first of the unauthorised advances from Joanne Kelly which you never repaid to your chambers. Each of the payments went into one of two accounts held by you with NatWest bank. One had an overdraft limit of £1,000 and the other a limit of £60,000. The first payment was for £4,000 and brought the account back into credit from being above its overdraft limit.
8. There then followed a number of occasions on which you obtained unauthorised advances from chambers funds, in order to assist you in avoiding going over your overdraft limits.
9. Joanne Kelly asked you about repayment and there is evidence before the Court that you told her that you had spoken to Mr Charles Garside, the head of chambers, and that she should not worry. It is accepted on your behalf that you were “economical with the actualité” in speaking to Mr Garside. Mr Garside denies that he was ever told about the repayment advances. Joanne Kelly did not mention your failure to repay chambers to Mr Garside because you had told her that you had spoken to him about your financial position and that things were in hand.
10. In November 2009 evidence about your advances emerged and Mr Garside decided to report the matter to the police. On 10 December 2009 the police went to your home address and conducted a search of the premises and also searched your room in chambers. On 14 May 2010 you attended Whitefield police station in Manchester and were interviewed under caution. You accepted in interview that you had made requests for advances from chambers and that Joanne Kelly had recorded them correctly. You stated that you needed the money to pay off short-term commitments and your ability to repay was dependent on selling one or more of your properties. You agreed that your approach to Joanne Kelly was outside the normal procedure for members of chambers who owed money.
11. I have seen an agreed basis of plea in this case. It states that:
 1. At all material times the defendant was struggling to service his debts owing within his property business due to the increasing difficulty both in selling properties and obtaining credit to service the debts. These difficulties were caused by what has become known as “the credit crunch”. In other words they were difficulties of liquidity rather than assets.
 2. The defendant on 12 occasions identified in the [Prosecution’s] opening note obtained advances from Chambers’ funds to facilitate the juggling of his debts.
 3. On each occasion that he did so, via Jo Kelly, Chambers DFA, the defendant expected to “trade out” of his financial difficulties such that he could and would repay the advances; that expectation became increasingly unrealistic.

12. You, perhaps more than anyone else, ought to have known that what you were doing was both dishonest and unlawful. You have brought dishonour upon an honourable profession and shame upon yourself and your family.
13. I have had regard to the relevant sentencing guidelines on theft which are applicable to cases such as yours. In cases which fall within the bracket where there is theft of over £20,000 and breach of a high degree of trust, the appropriate starting point is 3 years imprisonment with a range of 2 to 6 years. That guideline applies to a person of previous good character like you but applies to a conviction after trial.
14. You pleaded guilty in this case but only on the first day of the scheduled trial. In the circumstances of your case, the credit which I will give you for this will be limited to 10-15%.
15. I have taken account of the pre-sentence report prepared by the Probation Service in your case. However, I am not able to accept the suggestion in that report that this case could be dealt with by way of a community order. As the report acknowledges, the custody threshold has been passed in this case. I am required to follow the relevant guidelines unless I am satisfied that it would be contrary to the interests of justice to do so. I am not satisfied that it would.
16. I have considered very carefully everything that has been ably said by Mr Beggs QC in mitigation on your behalf. In addition, I have taken account of the numerous testimonials which have been placed before me from barristers, solicitors and others. It is clear that you have made a substantial contribution to your profession in your career at the Bar, which is now very likely to come to an end. It is also clear that you have helped others around you through *pro bono* work and in other acts of generosity.
17. Having regard to both the aggravating and mitigating features of your case, I am of the clear view that the only sentence which is available to this Court in a case as serious as this is one of immediate imprisonment. If you had been convicted after a trial the sentence would have been 3½ years. Taking into account your guilty plea, the sentence which I pass upon you is 3 years imprisonment.
18. You will serve one half of that sentence and will then be released on licence for the rest of your sentence. You will then be liable to recall by the Secretary of State during that period of licence.