

## AG v Smith

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	The Deputy Bailiff
<b>Judgment Date:</b>	02 September 2011
<b>Neutral Citation:</b>	[2011] JRC 175
<b>Reported In:</b>	[2011] JRC 175
<b>Court:</b>	Royal Court
<b>Date:</b>	02 September 2011

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### Text

[2011] JRC 175

ROYAL COURT

(Samedi)

Before:

W. J. Bailhache, **Q.C.**, Deputy Bailiff, **and** Jurats Le Breton **and** Milner.

The Attorney General  
and  
Luisa Victoria Cabral Smith

Miss E. L. Hollywood, **Crown Advocate.**

**Advocate J. W. R. Bell for the Defendant.**

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**Authorities**

*Barrick* [1985] 7 Cr. App. R. (S) 142.

*AG -v- Morgan* [\[2006\] JRC 176](#).

*AG -v- Seal* 2002/32.

*AG -v- Lloyd* 1986/22.

*Congdon -v- AG* 2002/38

*AG -v- Howard* [\[2006\] JRC 008](#).

Sentencing by the Inferior Number of the Royal Court, following guilty pleas to the following charges:

9 counts of: Fraudulent conversion (Counts 1 – 9).

**Age** : 33.

**Plea**: Guilty.

**Details of Offence:**

The defendant was infatuated with a man who is resident in the United Kingdom (Mr Jason Thomas) to an extent that is difficult to fully comprehend. From 15<sup>th</sup> February, 2008, until 31<sup>st</sup> March, 2011, the defendant provided Thomas with at least £286,000 of her own monies. The defendant provided Thomas with at least £109,000 obtained from banks (the defendant re-mortgaged her flat), credit cards and her parents. £33,000 of the £109,000 was provided to Thomas after the defendant was arrested. When legitimate sources of income dried up, the defendant stole.

From 18<sup>th</sup> May until 13<sup>th</sup> August, 2009, the defendant stole a total of £176,500 from a trust structure that she administered as an employee of a financial services provider in Jersey. These funds were in nine separate transfers from the trust over a four month period. The larger payments were justified by false documentation generated by the defendant in order to cover her tracks. The documents were based on original documentation which was then copied and altered in part so as to make it appear that the relevant signatures from the beneficiary of the trust.

The defendant did not retain one penny of the money she stole, she gave it all to Thomas who took advantage of her infatuation. He pretended to love her but in fact treated her as a source of cash. He lied to her and made up stories in order to pressurise her into providing him with funds. In particular, he told her that he had been threatened by criminals in the UK who were demanding cash from him. Smith took annual leave two days after the final payment on 13<sup>th</sup> August. At the same time, Capita performed an audit of the trust because it was being transferred to a new corporate trustee. Those conducting the audit became

suspicious about the payments. This resulted in an investigation and ultimately the matter being reported to the police. Smith was arrested on 3<sup>rd</sup> September, 2009.

**Details of Mitigation:**

The defendant is of good character and entered guilty pleas early on. The defendant co-operated with the police in terms of admitting her own wrongdoing even if she has decided to protect Thomas at all costs and her story had its difficulties. Good references and employment record. Delay in bringing the prosecution. The defendant was remorseful and suffered stress due to the delay and was suffering depression at the time of the offences and continues to do so. The defendant had attempted to commit suicide when her long-term relationship ended some years earlier. The defendant was naïve and vulnerable and manipulated by Thomas who had previous convictions for blackmail, wounding, assault, and affray (the defendant only became aware of his convictions during 2011). The defendant did not benefit herself from stealing the monies and had accrued debts which she would have to repay.

**Previous Convictions:**

**None** .

**Conclusions:**

Count 1: 2 years' imprisonment.

Count 2: 2 years' imprisonment, concurrent.

Count 3: 2 years' imprisonment, concurrent.

Count 4: 2 years' imprisonment, concurrent.

Count 5: 2 years' imprisonment, concurrent.

Count 6: 2 years' imprisonment, concurrent.

Count 7: 2 years' imprisonment, concurrent.

Count 8: 2 years' imprisonment, concurrent.

Count 9: 2 years' imprisonment, concurrent.

Total: 2 years' imprisonment.

**Sentence and Observations of Court:**

This is a sad case but there were no exceptional circumstances. Theft in breach of trust cases is always serious. Infatuation was not mitigation. The Court considered defence counsel's request for suspended sentence and alternatives to imprisonment but taking into account the facts of the case agreed with the Crown's conclusions.

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Conclusions granted.

## The Deputy Bailiff

- 1 You are here to be sentenced on an Indictment containing nine counts of fraudulent conversion. You stole £176,500 from a trust structure which you were administering over a 3–4 month period. To cover your tracks you faked and altered documents to make it seem that the beneficiaries had approved these transfers. Presumably to assist in avoiding money laundering enquiries you signed false letters and you must have known at the time of doing so that all these things were wrong.
- 2 You did not personally benefit, at least directly, from this money. In all you paid a man who was, or you wanted to be, your boyfriend £286,000 at least, and some of that money was paid after your arrest. This makes the case unusual because offences such as this normally result from money being needed for family expenses or for payments of debts or simply used on a lavish lifestyle. Certainly where money is taken for family expenses or because there is an addiction of some kind, and in this case, the cases are very sad cases, and the Court has to balance the competing factors which go into what is the right sentence. You have been very foolish indeed and the difficulty is that notwithstanding that foolishness your conduct is nonetheless criminal and we have to sentence you for what you have done.
- 3 Thefts in breach of trust are always serious. The Court's established policy is to hand down a custodial sentence for such an offence unless there are exceptional circumstances. These particular offences reflect also on the probity of the financial services industry where the Island's reputation for good management and proper administration of trusts, as a result of your action, have been damaged. You have let yourself down and your family and friends and indeed in that respect you have let the Island down.
- 4 We have taken into account your guilty plea and give you full credit for that and your cooperation with the police and your previous good character. We have taken into account that there was no direct financial gain and your good employment record. We have certainly taken into account that within the trust company where you worked you did not have a very senior position but nonetheless it was a position which was sufficient to enable you to carry out these offences. We have taken into account the fact that these proceedings have been hanging over you for the last two years, and also of course that you are left with some acute financial problems as a result.
- 5 We have looked at the factors in the case of *Barrick* [1985] 7 Cr. App. R. (S) 142 which are mentioned in the Crown's summary and taken those into account as well. The fact is these offences were committed over a period of three months and you went back nine times. The infatuation which we are told about is like an addiction and we think is not a mitigating factor in a strict sense. It makes the case very sad, but it is not a mitigating factor. Undoubtedly the offences which you have committed have had a bad effect on your fellow

employees and on your employer and, as I say, on the industry. In all those circumstances we have had to consider whether there was anything which is exceptional and regrettably we find that there is nothing exceptional in this case. We have considered the options of a suspended sentence and community service as your Counsel asked, but we do not think either is appropriate.

- 6 In the circumstances we sentence you to two years' imprisonment concurrent on each count and that is the sentence you will have to serve.