

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

JOHN JAMES DUFF

KELLY LJ

The appellant John James Duff was sentenced by His Honour Judge Hart QC to 3 months' imprisonment on 6 specimen charges of obtaining property by deception. The property he obtained was supplementary benefit paid to him over a period of 5 years amounting in all to £7,624.00. The deception that he used to obtain this property was his failure to disclose to the Department of Health and Social Services the fact that his wife was in part-time paid employment.

Social security frauds are prevalent and are not to be treated by the Courts lightly. In this case a serious aspect of the fraud was that it was persisted in over a period of 5 years. Although the weekly amount obtained was small, by reason of the length of the deception, over £7,000.00 was falsely obtained.

Sentencing is not easy in cases of this kind. Guidelines for sentencing have been laid down in England by Lord Lane LCJ in R v Stewart and Others [1987] 9 Cr.App.R(S) 135 in the Court of Appeal. He said ..

"We do not think that the element of deterrence should play a large part in the sentencing of this sort of case in the Crown Court."

If this is the proper approach, and the Court of Appeal in this jurisdiction have not considered it, it is implicit that the personal extenuating circumstances of the offender should be given considerable weight.

In this particular appeal, the personal circumstances and background of the offender are exceptional. They are of considerable weight. He has no previous convictions of any kind. He was in steady employment for 18 years. He lost his job through no fault of his own, simply because the firm closed down. This money was obtained not for luxuries for himself or his family, but to help maintain his wife and 5 children. Of those 5 children, 3 are of tender years. He is also repaying this debt - no doubt very

slowly in his circumstances but we trust consistently. When interviewed by the police, he confessed fully to them. At his trial he pleaded guilty.

We think that the personal circumstances of this applicant are of such weight that they should be preponderant over any deterrent aspect of sentencing. We think that the learned trial judge, although he gave some weight to them, did not give quite enough weight and accordingly we propose to suspend the sentence of 3 months for a period of 3 years.

This means John James Duff that we are suspending your sentence for a period of 3 years and if, during that time, you commit another crime which is punishable by imprisonment, then you will have to serve this 3 months. However if you keep clear of all crime during that period you will not be called upon to serve it.