

# HMA v Gordon Couch

Jul 21, 2022

At Edinburgh Sheriff Court today, Sheriff Kenneth Campbell QC sentenced Gordon Couch to three years imprisonment after the offender was convicted of embezzling a sum of £170,000.

On sentencing Sheriff Campbell made the following statement in court:

"You have been convicted by a jury of a charge of embezzlement, covering a period from 1 April 2009 - 11 May 2015.

Since I adjourned the diet for sentence, I have had an opportunity of reading the criminal justice social work report, and the testimonials from your employer and former clients. I have also heard the careful plea in mitigation made by Mr Munro on your behalf.

You have no previous convictions, and I am told that up until now you have been of good character. Unlike many people who come before these courts, you have experienced a largely stable adolescence and adult life. I also note what is said in the social work report about health conditions, which are long-standing but well managed.

From the evidence in this case, it is clear that you were hard working and motivated to develop your business. It is also clear that Marjorie Stewart was very fond of you, and that she relied on you beyond the normal professional relationship between client and financial advisor.

I take that into account; but more importantly, the court must give full weight to the serious nature of your offending whilst in a series of positions of trust in the financial affairs of Marjorie Stewart.

In the course of the trial in addition to the evidence about the history of your dealings with Marjorie Stewart, there was discussion of fiduciary duties; legal duties of trust which arise in each of the positions which you held: financial advisor, holder of a power of attorney, and executor. It is clear that you understood the nature of those duties. By their verdict, the jury were satisfied you breached each of those duties of trust, and they rejected your account of events. The jury have convicted you of embezzling a sum of £170,000 or thereby. The jury heard evidence about the significant debts which you had from an earlier period, and about a legitimate arrangement which you had to try to meet those debts; but that evidence did not account for the totality of the sums you embezzled.

In terms of Section 204 of the Criminal Procedure (Scotland) Act 1995, a court shall not pass a sentence of imprisonment on a person who has not previously served a sentence of imprisonment or detention unless the court considers that no other method of dealing with them is appropriate.

This court must therefore look at the verdict in context. This is serious charge which took place over a period of years. Nor was this a one-off incident. A substantial number of transactions were carried out by you in committing this crime, and the jury heard a listing of the agreed evidence of transfers which fill a number of pages in the Joint Minute.

You have been convicted of a crime of dishonesty, and a crime which is not victimless. The jury have accepted that you deceived Marjorie Stewart, an elderly lady who trusted you implicitly with her financial affairs, and also that you prevaricated with members of her family who were entitled to benefit from her estate after her death, most of whom have received nothing.

Because of the serious nature of the offence of which you have been convicted, I consider a custodial sentence is inevitable. No other sentence is appropriate. This has to reflect the serious nature of the offence of which you have been convicted, the prolonged period over which these acts took place and your clear breach of trust placed in you by others. In all of the circumstances I will impose a sentence of three years imprisonment.

Having regard to the nature of the charge, and to the fact that you have been working in the financial services industry for many years, I will also recommend that the Crown bring this matter to the attention of the Financial Conduct Authority to consider what, if any, regulatory action may be appropriate."

21 July 2022