

Neutral Citation Number: [2011] EWCA Crim 928

No. 2011/01043/A7

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Wednesday 23 March 2011

B e f o r e:

MR JUSTICE HENRIQUES

and

MR JUSTICE FOSKETT

REGINA

- v -

OLIVER BAKER

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Wordwave International Ltd (a Merrill Communications Company)
165 Fleet Street, London EC4
Telephone No: 020 7404 1400; Fax No 020 7404 1424
(Official Shorthand Writers to the Court)

Mr C L Rees appeared on behalf of the Appellant

J U D G M E N T
(As Approved by the Court)

Wednesday 23 March 2011

MR JUSTICE HENRIQUES: Mr Justice Foskett will give the judgment of the court.

MR JUSTICE FOSKETT:

1. On any view this is an unusual case. On 17 January 2011, at Cardiff Crown Court, the appellant pleaded guilty to six counts (counts 1 to 6) of supplying an article for use in fraud, contrary to section 7(1) of the Fraud Act 2006; one count (count 7) of possession of an article for use in fraud, contrary to section 6(1) of the Fraud Act 2006; and six counts (counts 9 to 14) of securing unauthorised access to computer material, contrary to section 1(1) of the Computer Misuse Act 1990.

2. The appellant is a 28 year old university graduate with a degree in mathematics. Until these matters he was of good character and held down a good job as an IT desk-top engineer with Siemens Plc. At the time of the offences he was working for that company which was doing work as a contractor in the IT department of the Welsh Assembly in Cardiff. The Welsh Assembly was the victim of the offences we will describe shortly.

3. The case was adjourned for the preparation of a pre-sentence report. The appellant appeared before Mr Recorder Walters for sentence on 11 February 2011. On that day he was sentenced to four months' imprisonment on counts 1 to 7, concurrent with each other, and to four months' imprisonment on counts 9 to 14, concurrent with each other but consecutive to the other sentences, making eight months' imprisonment in all. He appeals against those sentences with the leave of the single judge.

4. Whilst working in the Welsh Assembly building between 1 September 2009 and 20 April 2010 the appellant created and distributed counterfeit pay and display parking vouchers with a face value of £3.50 to six colleagues. Those were the allegations reflected in counts 1 to 6. It was not possible to say how many were used or how frequently. The total financial loss to the City Council was modest.

5. The offences came to light as a result of an anonymous letter sent to the police in March 2010. Over the next few months local traffic wardens and police officers identified a number of counterfeit parking vouchers displayed on cars parked in Cardiff City Centre. The appellant and his colleagues were traced through the vehicle registration numbers.

6. They were arrested on 19 April 2010. The appellant's colleagues fully admitted their involvement. They said that the appellant supplied them with the counterfeit parking vouchers. They were cautioned for their part in the offences.

7. The appellant's work computer was examined and found to contain a master counterfeit parking ticket (count 7), which had been created and saved for each date between 2 September 2009 and 30 April 2010. It was impossible to say whether they had all been used. Genuine tickets had been scanned onto his computer as a template for the counterfeit tickets.

8. On 4 June 2010 the appellant was dismissed from his employment. We understand that at that stage (or thereabouts) the appellant was offered a caution by the police in relation to the

matters relating to the production of the parking tickets.

9. The appellant's dismissal, however, led to the next sequence of offences reflected in counts 9 to 14. On 79 occasions between 6 June 2010 and 15 June 2010 the appellant used a remote dial-up connection from his home computer in order to gain unauthorised access to the Welsh Assembly computer system. Twenty of those attempts were successful. He gained access to the e-mail account of a senior member of the security staff involved in the decision to dismiss him. He changed the password to facilitate easier access for himself, but thereby locked that member of staff out of his account. The appellant read a number of sensitive e-mails. The breaches reached "restricted" level; there were no "high" level breaches.

10. The Welsh Assembly and Siemens Plc commissioned a full examination of the server access. The investigation revealed that access was gained using a dial-up system traced to the appellant's home address.

11. The appellant made full and frank admissions in interview. He was unhappy at his dismissal. He had retained a Siemens' laptop computer which enabled him to gain access to the Welsh Assembly computer system via his home telephone line. He gained access on a number of occasions following his dismissal. He said that he had been searching for e-mails relating to his dismissal about which, in his view, he should have been given more information.

12. Siemens had to conduct an audit to ensure that no further unauthorised access, malware or virus was present, and had to bring in additional staff. The investigation and assurance work lasted for sixteen weeks. The cost to Siemens was suggested to have been in excess of £300,000. The appellant disputed that figure, and the Recorder was not prepared to approach sentencing on that basis.

13. When addressing the nature of the criminality reflected in counts 9 to 14 the Recorder said this:

"There is no question at all about it other than that these offences, taken singularly or together, are such as to be regarded as sufficiently serious to justify an immediate prison sentence, there can be no doubt about that at all. People need to understand that the confidentiality of computing systems needs to be preserved. You knew that when you took this job. It undermines the public's confidence in those engaged in public life when there are breaches of this sort and a man as intelligent as you would have known that."

14. We agree with those sentiments. Subject only to the question of the length of the sentence, we can see nothing wrong with an immediate sentence of imprisonment on counts 9 to 14, even for someone of good character.

15. However, we part company with the Recorder in his assessment that the offences reflected in

counts 1 to 7 required an immediate custodial sentence for someone of good character, where the loss occasioned was so modest. If those matters had stood on their own then, as the Recorder observed, a caution might have been the most sensible outcome. Even if the matter had proceeded to court, for a first time offender this could well have been dealt with by way of a financial penalty or some other community disposal.

16. We propose, therefore, to quash those sentences on counts 1 to 7 and for convenience to impose a sentence of one day's imprisonment on each count, concurrent with each other, and concurrent with the sentences on counts 9 to 14.

17. It has not been submitted to us today that a sentence of four months' imprisonment on each of counts 9 to 14 was excessive. We agree with the implicit assessment that underlies that position. We do not think that that sentence can be criticised.

18. For those reasons the appeal will be allowed to the extent we have indicated, the net effect being that the appellant will serve a sentence of four months' imprisonment.
