

Neutral Citation Number: [2016] EWCA Crim 1642

No: 201603754 A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 15 September 2016

B e f o r e:

LADY JUSTICE SHARP DBE

MR JUSTICE HADDON-CAVE

MRS JUSTICE ELISABETH LAING DBE

R E G I N A

v

EDWARD BLACKBURN

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(Official Shorthand Writers to the Court)

Ms L Harrison appeared on behalf of the **Appellant**

The Crown did not attend and was unrepresented

J U D G M E N T

(Approved)

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1. MR JUSTICE HADDON-CAVE: On 27 April 2006, in the Crown Court at Teesside, the appellant, Edward Blackburn, now aged 65, pleaded guilty to one count of fraud by failure to disclose under section 1(1)(b) and 3 of the Fraud Act 2006. On 1 August 2006, the appellant was sentenced by His Honour Judge Hickey to 12 months' imprisonment for that offence. The co-accused, Linda Cook, his partner, was acquitted of causing or permitting another to fail to notify a change of circumstances to obtain a benefit. The appellant appeals against sentence by leave of the single judge. The appellant was represented today by Ms Harrison, for whose very able and succinct submissionS we are grateful.
2. The facts. The appellant had lived with his partner, Linda Cook, for many years. He had claimed benefits, initially income support from about 2002 and then pension credit when he turned 60 in 2012, effectively for the both of them as a couple. In November 2010, Ms Cook obtained employment at a care home in Middlesbrough. The appellant, however, failed to notify the Department of Work and Pensions of that change in those circumstances and his benefits continued to be paid in full; that is until the matter came to light in September 2014. The appellant and Ms Cook were invited for interview under caution, in which they both stated that she was working without his knowledge.
3. When the case first came before the court in February 2006. Initially, it was just Ms Cook who was prosecuted. The appellant was added as a defendant in April 2016. He gave evidence in Ms Cook's trial to the effect that she had told him to notify the authorities but he did not do so. As a result of the failure to notify, a total of about £40,000 in benefits was wrongfully paid. Passing sentence, the learned judge observed that the appellant had misled the authorities by not telling them that his partner had obtained work and that he was not therefore entitled to the benefits that he was continuing to claim. The appellant gave his account at court during the co-defendant's trial and pleaded guilty at the first opportunity. In mitigation, the judge took into account the appellant's guilty plea, his good character and his age and also that the appellant had health problems. The judge said that the guidelines did not fit easily as the appellant had been charged under the Fraud Act, but whether the fraud or benefit guidelines were used or whether he was placed within high or medium culpability, the starting point and range should be about the same. The judge took a starting point of 18 months and gave a full third discount to arrive at the net sentence of 12 months.
4. Today Ms Harrison takes essentially two points by way of appeal. Her first point is that the starting point which the judge took was in all the circumstances too high. She submits that the judge placed the case in the wrong bracket and should have held that this was a case of medium culpability in category 4 of the sentencing guidelines, to which we will return. She submits that none of the factors indicating higher culpability were present. Second, she submits that the judge failed to give sufficient effect to the appellant's mitigation, in particular his age, 65; the fact that he was effectively of good character; the fact that he showed remorse; his medical condition; and the points raised in the pre-sentence report.
5. Ms Harrison has very helpfully and candidly pointed out that the relevant table applicable to this case is in fact table 3 on page 31 of the Fraud, Bribery and Money

Laundering Offences Sentencing Guidelines. That is the table which applies to offences in respect of section 1 of the Fraud Act 2006, which was the section under which the appellant was charged. Table 1 of the Benefit Fraud Sentencing Guidelines on the other hand relates inter alia to section 1(1)(a) of the Social Security Administration Act 1992 offences, dishonest representations to obtain benefit.

6. It should be noted that the starting points under table 3 are altogether higher than those in table 1. For category 4 cases (offences relating to sums between £10,000 and £50,000) the starting points for the three levels of culpability are (a) 21 months' custody; (b) 1 years' custody; and (c) a higher level community order.
7. Ms Harrison submits that the judge should have placed this case in category 4(b), namely, that this was a case of medium rather than higher culpability. She submits that none of the criteria referred to on page 28 of the sentencing guidelines indicate higher culpability in this case. In those circumstances, she submits that a starting point of 18 months was too high given the appellant's particular circumstances.
8. It is important and pertinent to have regard to the following points in this case. First, the benefit fraud to which the appellant pleaded guilty was a fraud which lasted 4 years from 2010 to 2014 and the amount involved was very considerable: £40,000. Second, the major point in this case, as the judge emphasised in his sentencing remarks, was the fact that this was not the first time that this appellant had committed benefit fraud. In 2006, whilst he was living with his partner, Ms Cook, he worked as a self-employed builder for 2 years without notifying the Department of Work and Pensions. As a result he received overpaid benefits of £14,900 over those 2 years. He managed to escape prosecution and the sum was subsequently clawed back. However, this was, as the judge said and Ms Harrison acknowledged, "a shot across [his] bows" and a clear warning by the authorities. Unfortunately this appellant chose to ignore it. The fact that the appellant then within a few years committed this fraud over, as we have observed, a period of 4 years having been given that warning is unfortunate.
9. The sentencing guidelines are clear. This case falls into category 4 whether on table 1 or table 3. The starting point under category 4, even taking all Ms Harrison's points as correct, is 1 year. However, she ignores, with respect, the fundamental point that this was the second occasion on which this appellant had committed benefit fraud. The courts have repeatedly emphasised the vulnerability of the benefits system to this sort of fraud. The appellant, having been given a warning and failing to heed it and then proceeded to milk the benefits system again unlawfully, cannot, in our view, complain at all about this sentence.
10. In our judgment, the sentencing remarks by the sentencing judge are faultless and the net sentence passed of 12 months cannot on any view be regarded as manifestly excessive. We add that there was no evidence to suggest that the appellant's medical condition was such as to justify a suspended sentence. For those reasons this appeal is dismissed.