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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 29 June 2011

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Judge)

MR JUSTICE OWEN

and

MR JUSTICE WALKER

R E G I N A

- v -

NEIL ROLLINS

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(Official Shorthand Writers to the Court)

Mr G Rees QC appeared on behalf of the Appellant

Miss C McMullen appeared on behalf of the Crown

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

Wednesday 29 June 2011

THE LORD CHIEF JUSTICE: I shall ask Mr Justice Owen to give the judgment of the court.

MR JUSTICE OWEN:
1. On 26 November 2010 the appellant, Neil Rollins, was convicted on five counts of insider dealing contrary to section 52(1) of the Criminal Justice Act 1993, and four counts of transferring criminal property contrary to section 327(1) of the Proceeds of Crime Act 2002 in the Crown Court at Southwark. On 21 January 2011 he was sentenced to a total of 27 months imprisonment made up as follows: on counts 1, 2, 3 and 4 (insider dealing), 15 months imprisonment on each, to be served concurrently; on count 5 (insider dealing), 21 months imprisonment concurrent; and on counts 6 to 9 (transferring criminal property), six months imprisonment, concurrent between themselves but consecutive to the rest. The learned judge further made a confiscation order in the sum of £197,000, representing the total value of the shares sold in the transactions the subject of counts 1 to 5.

2. The appellant appeals against sentence with the leave of the single judge.

3. The appellant is now 47 years of age. At the material time he was employed by the PM Group Plc, a company for whom he had worked in one role or another since 1999. At the time of the offences the shares in the PM Group were traded on the Alternative Investment Market of the London Stock Exchange.

4. The division of the PM Group for which the appellant worked was called PM Onboard. They manufactured, marketed and serviced on-vehicle weighing equipment. Having started working for the company as an electronic engineer, the appellant was promoted to the position of senior manager at PM Onboard Limited. His title was that of Manufacturing Director although he was not, in fact, a company director. In that role he had responsibility for a team of the order of about fifteen people and earned a salary of £44,000 per annum.

5. Over the years for which he had worked for the group (and its previous incarnations) the appellant had built up shares in the company. By April 2005 he owned more than 90,000 shares. In December 2005 he began to sell the shares in small quantities.

6. In March 2006 the group announced its interim or half yearly results for the six months ending December 2005. The results were positive and were not suggestive of any particular problem or future difficulty.

7. The company was to publish its annual results on 19 September 2006. Prior to the publication of the results, various internal documents were disseminated regarding the company's accounts and prospects to a number of senior employees at the group, of whom the appellant was one.

8. During the period directly before the publication of those results, the group had a standard policy of prohibiting all employees who had access to such information from buying or selling shares during this time: the "close period". The policy was contained in a memorandum circulated to senior management, including the appellant, in July of each year. It explained that if an individual was in possession of price sensitive information, it would be an offence to deal or

to engage with another in dealing in shares in the company or to disclose such information to another. The memorandum defined the "close period" as the two months leading up to the announcement of results.

9. The close period for the purposes of this case began on 14 July 2006. On 21 July 2006 the group announced publicly that they anticipated results for the year ending 30 June 2006 broadly in line with expectations.

10. In the meantime, the internal management accounts and reports, which were distributed to various members of staff, including the appellant, made plain that there were various difficulties. The sales outlook was not good and redundancies had been discussed in meetings attended by the appellant.

11. Notwithstanding the prohibition on selling during the close period, the appellant sold 20,000 shares on 22 August 2006, at a share price of 252p, raising £50,400 in total (count 1). On the following day he sold a further 10,000 shares, at a price of 245p, raising a total of £24,500 (count 2). He also encouraged his wife to sell her shares in the group, which she did on 4 September, selling her entire shareholding of 36,930 shares which realised £16,839 (count 3). On 6 September 2006 the appellant sold 30,000 shares, now at a price of 225p, raising a total of £67,500 (count 4).

12. The appellant's trading in shares in the group during the close period came to the attention of the Board. In consequence, on 12 September 2006 he was summarily dismissed. On the following day he sold all his remaining 13,989 shares in the company, now at a price of 225p, raising a total of £31,475.

13. Some days later the group's results were published. Although results for the previous year were broadly in line with expectations, the share price dropped dramatically from 240p per share when the close period began, to around 140p per share on the day the results were announced. The price continued to drop in the following weeks.

14. In due course the FSA were informed of the sales that the appellant had made and began an investigation. He was contacted by the FSA on 22 November 2006 and an interview was arranged for 30 November. Between 24 and 28 November (between the initial telephone call from the FSA and the date fixed for interview) the appellant made four transfers of the proceeds of the sales of the shares to bank accounts in his father's name. These transactions formed the basis of the four money laundering counts (counts 6 to 9).

15. When interviewed on 30 November the appellant put forward a false account as to the reason for the transfer of funds to his father. He was interviewed again on 7 April 2007, in which he made no comment. He was interviewed for a third time on 5 June 2007 in which he put forward the defence upon which he relied at trial.

16. The appellant's defence was that he had formed the intention to sell his shareholding before the close period, in about March 2006, and that that brought him within the statutory defence under section 53(1)(c) of the Criminal Justice Act 1993, namely that he would have done what he did even if he had not had the information in question.

17. It is submitted on the appellant's behalf that a total of 27 months imprisonment was manifestly excessive. There are essentially three strands to the submission. The first and principal submission is that the offences did not merit such a term given their nature and the sums involved; secondly, that insufficient account was taken of the personal mitigation available to the appellant; and thirdly, that insufficient account was taken of the delay in bringing the matter to trial.

18. In addressing the first and principal submission Mr Gareth Rees QC, to whom we are indebted for his submissions, both written and oral, posed three questions for our consideration:

> (1) Were the sentences of 15 months imprisonment imposed in relation to counts 1 to 4 manifestly excessive?
>
> (2) Was a sentence of 21 months imprisonment warranted on count 5?
>
> (3) Should the sentences of six months imprisonment imposed in relation to the money laundering offences have been ordered to be served consecutively to those imposed for insider dealing?

19. As to the first question, Mr Rees took as his starting point the decision of this court in R v McQuoid [2010] 1 Cr App R(S) 43, in which the court gave general guidance as to the considerations that may be relevant to sentencing in cases of insider dealing. They were identified by the Lord Judge CJ in the following terms:

> "14. ....
>
> (1) the nature of the defendant's employment or retainer, or involvement in the arrangements which enable him to participate in the insider dealing of which he is guilty;
>
> (2) the circumstances in which he came into possession of confidential information and the use he made of it;
>
> (3) whether he behaved recklessly or acted deliberately, and almost inevitably therefore, dishonestly;
>
> (4) the level of planning and sophistication involved in his activity, as well as the period of trading and the number of individual trades;
>
> (5) whether he acted alone or with others and, if so, his relatively culpability;
>
> (6) the amount of anticipated or intended financial benefit or (as sometimes happens) loss avoided, as well as the actual benefit (or loss avoided);

> (7) although the absence of any identified victim is not normally a matter giving rise to mitigation, the impact (if any), where proved, on any individual victim; and
>
> (8) the impact of the offence on overall public confidence in the integrity of the market; because of its impact on public confidence it is likely that an offence committed jointly by more than one person trusted with confidential information will be more damaging to public confidence than an offence committed in isolation by one person acting on his own."

20. In his written Advice on Appeal, Mr Rees directed his submissions at a number of the considerations identified in McQuoid. He acknowledged that the appellant had acted deliberately, and that the case involved a number of transactions, but invited us to bear in mind that he had acted alone, and that the impact of the offences on public confidence in the integrity of the market was therefore likely to have been less than if he had acted in concert with others (the eighth consideration identified in McQuoid). He also pointed to the appellant's level within the organisation. Whilst it is correct that the appellant was not a director of the group or of the subsidiary PM Onboard Limited, he was in a senior management position. In our judgment this argument carries little weight in assessing the degree of culpability.

21. Secondly, Mr Rees invited us to take account of the loss avoided by the sales, a figure of the order of £50,000-60,000. But he developed the point by inviting us to distinguish between cases where the perpetrator of the offence of insider dealing sets out to take advantage of price sensitive information in order to derive a financial profit, and those where the offence is committed to avoid a loss. He argued that the motivation is different in each type of case, and that that may bear on the degree of culpability.

22. In this case it is submitted that the appellant acted in panic to put a stop to his losses as he watched the share price fall week by week, wiping thousands of pounds off his pension fund. In his sentencing observations the learned judge acknowledged that the appellant had acted in fear and naivety, but found that his reaction to his fear for his pension fund was a determination to protect his money regardless of the effect on anyone else who might suffer from his actions.

23. We recognise that the motivation for committing such offences will vary from case to case, and that a shareholder's motivation in buying or selling in insider dealing is likely to be a factor for the court to consider. But we are not persuaded that, as a point of general application, there is any distinction to be drawn between cases in which there is an intention to make a profit, and those in which the intention is to avoid loss. Whilst the degree of culpability may be greater in cases in which the motivating factor is the desire to make a profit from inside knowledge, that will not necessarily be the case. All will depend on the facts of the individual case.

24. Mr Rees also acknowledged in his Advice on Appeal that comparisons between sentences passed in different cases are unlikely to be of great assistance to this court given the degree to

which the facts of individual cases may vary and of the range of mitigating circumstances that may or may not be available to a defendant. But he submits that some guidance is afforded by the decision on the facts of McQuoid, given that this is a relatively new offence upon which there is little authority of assistance in setting the appropriate bracket. He points out that the figure in McQuoid was of the same order as in this case. McQuoid was a solicitor and former General Counsel for a public limited company who had become party to inside information regarding a takeover by another public limited company. He had passed that information to his father-in-law whom he instructed to purchase more than 150,000 shares. The profit generated was almost £50,000, divided equally between father and son. As in this case, McQuoid was a man of good character and of a similar age to the appellant. He, too, had small dependent children. Similarly, in the end he saw no financial benefit as all his profit was confiscated. In his case an appeal against a sentence of eight months imprisonment after trial was dismissed. The Lord Chief Justice remarked that the sentence was "not excessive as the case proceeded as a trial rather than a guilty plea, there could have been no ground for complaint if the sentence had been fixed at twelve months imprisonment".

25. Whilst we acknowledge that there are clear similarities between the instant case and McQuoid, we are not persuaded that the decision demonstrates that the sentences of 15 months imprisonment imposed in relation to counts 1 to 4 were manifestly excessive. Whilst the sums involved in each case are comparable, the appellant undertook five separate transactions over a period of weeks, as opposed to the single transaction in McQuoid. Furthermore, and importantly, the learned judge had presided over the appellant's trial and was in the best position to assess the degree of culpability involved in the offending. In our judgment it cannot be said that sentences of 15 months imprisonment on counts 1 to 4 were manifestly excessive.

26. We turn to the second question posed by Mr Rees, namely whether a sentence of 21 months was warranted on count 5. Count 5 involved the sale of the appellant's remaining shares on the day after he had been summarily dismissed. As he himself said, he made the sale "because what the hell". As the learned judge put it:

> "You had decided you might as well be hanged for a sheep as a lamb."

But the question is whether on proper analysis that offence warranted a sentence six months greater than that imposed in relation to each of the sentences on counts 1 to 4. Mr Rees submitted that all that had changed was that the appellant had been dismissed. He argued that that of itself did not aggravate the offence to such an extent as to warrant what amounted to a 40% uplift in the sentence.

27. In our judgment there is force in this submission. On the prosecution case the appellant knew from the start that to take advantage of his inside knowledge would amount to a criminal offence. We do not consider that his culpability was significantly increased by the fact of his dismissal following the discovery of his actions by his employer. We are therefore persuaded that there was no secure basis for distinguishing between the sentences imposed on counts 1 and 4, and that on count 5, and therefore consider that the appeal should be allowed in relation to

count 5 by reducing the sentence to one of 15 months imprisonment, to be served concurrently.

28. The third point raised by Mr Rees was the question of whether the sentences imposed in relation to the money laundering offences should have been imposed to be served consecutively to those imposed for insider dealing. He acknowledged that the principle applied by the courts in cases in which a defendant stands to be sentenced for both the primary crime and for consequential money laundering offences is that consecutive sentences will be appropriate if the offences add to the culpability of the conduct involved in the primary offence: see R v Scott Anthony Linegar [2009] EWCA Crim 648, and R v Greaves, Jenkins and Botcher [2010] EWCA Crim 709. But Mr Rees submits that the attempt by the appellant to dispose of the proceeds of sale of the shares adds little, if anything, to the appellant's culpability. He argues that the transfers of funds to his father were very unsophisticated acts with little, if any, likelihood of achieving concealment. The secondary argument is that if a consecutive sentence was warranted, then the sentences of six months imprisonment were manifestly excessive.

29. In our judgment the learned judge was fully justified in imposing such sentences to be served consecutively. The appellant deliberately set about attempting to dispose of the proceeds of sale within days of being contacted by the FSA. As the learned judge observed in passing sentence:

> "Here, when the investigations started, you attempted to get the proceeds into your father's name under a false claim you were repaying debts. It was rightly indicted as a separate offence and it warrants a separate sentence ...."

We agree with that observation. Nor was a total sentence of six months manifestly excessive for such offences viewed in isolation. We will return to the question of the totality of the sentence.

30. The second strand of the appeal is that the learned judge took insufficient account of the personal mitigation available to the appellant. He is a married man with two children, now aged 9 and 14. He was of good character, but, as the Lord Chief Justice observed in McQuoid, that will often be the case as it will usually be an individual of good character who has been entrusted with price sensitive information. That said, the appellant's professional reputation has been destroyed.

31. The financial consequences of his offending have been devastating. He is subject to the confiscation order in the sum of £197,000, the total value of the shares sold as opposed to the loss avoided which was of the order of £50,000-60,000. He has lost what amounted to his pension fund. Discharge of the confiscation order will require sale of all available assets -- assets that were built up by honest endeavour prior to the offending. He has lost his employment at a salary of £44,000 per annum. He has retrained as a domestic electrician, but has found work difficult to come by. Prior to his imprisonment he was earning at a level of approximately £8,000 per annum. His wife has had to return to work.

32. We have received a letter from his wife describing the impact of the imprisonment upon the

family in the most moving terms.

33. In passing sentence the learned judge observed that the appellant did not appear to show any remorse for his actions. But we have the benefit of a letter to this court dated 20 June 2011, in which he articulates his present feelings in terms that demonstrate considerable insight. He says:

> "I'm sorry to my boss and friend who I let down and to show me his disgust he failed to recall telling me not to sell them in March 2006. I'm sorry to the FSA for trying to lie my way out of this situation, but most of all I am sorry to my family, my wife, two children, dad with cancer, father-in-law with cancer, disabled mother, sister and family, sister-in-law and family .... I am now the only criminal in the whole family."

34. In our judgment the insight demonstrated by the letter, part of which we have quoted, goes well beyond self-pity. It demonstrates a genuine and deep remorse for his actions. We are satisfied that, whatever the position at trial, the appellant now recognises all too clearly the effect that his criminal conduct has had upon his family.

35. The third limb of the appeal is that the learned judge failed to pay sufficient regard to the delay in bringing the case to trial. A period of over four years elapsed between the commission of the offences and the appellant's trial during which he and his family were undoubtedly subjected to acute stress and anxiety. Although he was interviewed on three occasions, the last being in June 2008, the appellant was not charged until early 2009. There was then a preparatory hearing on 7 May 2009 when the learned judge ruled that the FSA had jurisdiction to prosecute the appellant under the Proceeds of Crime Act. That decision, as both prosecution and defence foresaw, was appealed. The appeal was dismissed by this court on 9 October 2009, but the court certified a point of law of general public importance. The Supreme Court granted leave to appeal on 2 February 2010, and dismissed the appeal in a judgment handed down on 28 July 2010.

36. In passing sentence the learned judge indicated that he was taking that delay into account but, understandably, did not attach any figure or percentage to it.

37. We turn to consider the totality of the sentences. Given the adjustment that we have already indicated in relation to the sentence on count 5, the question is whether a total sentence of 21 months imprisonment would be manifestly excessive, bearing in mind the mitigation to which we have referred and the degree to which the punishment was amplified by the stress occasioned by the delay in bringing this matter to trial.

38. We have come to the conclusion that it would be and that the appropriate sentence is one of a total of 18 months imprisonment. We therefore quash the sentence of 21 months imprisonment imposed on count 5 and substitute for it a sentence of 15 months imprisonment. We also quash the sentences of six months imprisonment on counts 6 to 9 inclusive, and substitute for them sentences of three months imprisonment on each, all concurrent, but consecutive to the sentences on counts 1 to 5, making a total sentence of 18 months' imprisonment.