

Neutral Citation Number: [2012] EWCA Crim 1432

No: 201200447 A6

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 19 June 2012

**B e f o r e:**

**LORD JUSTICE HOOPER**

**MR JUSTICE SILBER**

**MR JUSTICE HAMBLEN**

**R E G I N A**

v

**NIGEL ANTHONY SHREEVE**

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**Mr F Phillips** appeared on behalf of the **Appellant**

**J U D G M E N T**

(As Approved by the Court)

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1. LORD JUSTICE HOOPER: Hamblen J will give the judgment of the court.
2. MR JUSTICE HAMBLEN: On 17 October 2011 in the Crown Court at Swansea the appellant pleaded guilty to three counts of fraud contrary to section 1 of the Fraud Act 2006, and 33 counts of transferring criminal property contrary to section 327(1)(d) of the Proceeds of Crime Act 2002 ("POCA"). On 18 November 2011 he was sentenced by Mr Recorder Walters in relation to the fraud counts to 2 years, and in relation to the POCA counts to 3 years consecutive, making a total sentence of 5 years' imprisonment.
3. The appellant appeals against his sentence on the grounds that it was manifestly excessive, having been granted permission to appeal by the single judge.
4. The essential facts are that the appellant sold an office building to the complainant, Tarsem Singh, for £1.225 million. After the sale was completed, Singh discovered the terms of three of the leases to which the property was subject had been altered to make the freehold of the property more valuable than it actually was, meaning that Singh had paid over £300,000 more than it was actually worth. This was the subject matter of counts 1 to 3.
5. After the sale the proceeds were paid to the appellant rather than being utilised to discharge the £800,000 mortgage over the property. The appellant then dissipated the proceeds of sale by transferring money abroad, buying property, a car and by other transfers of criminal property. This was the subject of counts 4 to 33.
6. As a result, Mr Singh was additionally left liable for the outstanding mortgage on the property he had purchased. In effect, Mr Singh paid £1.225 million for a property of little or no value once the real terms of the leases and the mortgage was taken into account.
7. In his sentencing remarks, the judge stated the offences demonstrated a persistent course of conduct spanning a period between August 2009 and February 2010. He described the appellant's conduct as being astonishingly brazen and thoroughly dishonest. When he realised that the writing was on the wall so far as his business was concerned, his instinct was self-preservation.
8. The judge gave the appellant full credit for his guilty pleas entered at the first opportunity. Although the appellant did not have the benefit of good character, given that the convictions he had went back a considerable period of time, the judge did not treat them as aggravating his present position.
9. In mitigation the judge took into account the appellant's age, the fact that he was not in good health and the testimonials provided. The judge concluded that had the appellant contested the charges, even allowing for the principle of totality, the sentence would have been 7 and a half years' imprisonment. The total sentence imposed was therefore 5 years' imprisonment.
10. The central issue on the appeal is whether a sentence of 7 and a half years after a trial is manifestly excessive for this offending. We agree with the judge that this offending needs to be considered in its totality. Although there were two separate series of

counts, both arise out of the same transaction. The fraud counts related to the deception carried out in relation to the terms of the leases. The POCA counts relate to the appellant's misuse of the purchase funds which should have been used to discharge the mortgage. The net effect of the appellant's conduct was to deprive Singh of the benefit of the £1.225 million purchase price paid by him.

11. There are no guidelines directly applicable to a case such as the present. However, some guidance is provided by the guidelines for banking and insurance fraud. For frauds which are carried out over a significant period of time or involve multiple frauds, the guidelines for offences involving £500,000 or more sets out a starting point of 4 years based on £750,000 and a sentencing range of 3 to 7 years.
12. This is a case where the victim has, in effect, been defrauded of over £1 million, albeit in two different ways. As such we consider the guidelines of some assistance in assessing the appropriate total sentence. If so, then the sentence imposed exceeds the upper limit of the sentencing range. However, the amount involved in the present case is more than that which leads to a starting point of 4 years.
13. The appellant also prays in aid the pre-sentence report and considerations set out there in relation to financial pressure under which he was acting at the material time, and also what is said there about his mental state. It is said that these are mitigating factors that should be taken into account in arriving at the appropriate sentence.
14. Having regard to the guidance to which I have referred, the circumstances of the case generally, and the particular points of mitigation put forward on the appellant's behalf, we have concluded that a total sentence of 7 and a half years after trial for this offending is manifestly excessive. In our judgment, the appropriate sentence after a trial would be about 5 years, which means that, giving full credit for the plea, the total sentence should be one of 3 and a half years. That can be arrived at by changing the sentence imposed in relation to the POCA counts to one of 1 and a half years, consecutive to the 2 years imposed in relation to the fraud counts, resulting in a total sentence of 3 and a half years.
15. To that extent the appeal is allowed.