

Neutral Citation Number: [2017] EWCA Crim 27

No: 201604749 A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 13 January 2017

B e f o r e:

MR JUSTICE BLAKE

MR JUSTICE JEREMY BAKER

R E G I N A

v

ERMAL SULA

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(Official Shorthand Writers to the Court)

Mr S Blom-Cooper appeared on behalf of the **Appellant**

The Crown did not attend and was not represented

J U D G M E N T

(Approved)

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1. MR JUSTICE BLAKE: On 6 October 2016 at the Crown Court at Southwark, this appellant was sentenced by His Honour Judge McCreath to a term of 22 months' imprisonment for a single offence of converting criminal property contrary to section 327 of the Proceeds of Crime Act 2002. He now appeals against that sentence with leave of the single judge.
2. The brief facts of the offence are as follows. At around noon on 5 September 2016, police kept a minicab under observation in Ladbroke Square, Notting Hill. They observed the appellant approach on foot with a heavy, wheeled suitcase. He had a conversation with the passenger in the minicab. There was an exchange between them and the passenger put the suitcase in the back of the minicab. The police then intervened. The suitcase was seized and found to contain just under £495,000 in cash, in piles of cash wrapped in plastic bags. The appellant was searched and was found with a £5 note in a pocket and two mobile phones and £615 in cash elsewhere on his person. He told the police at the scene that he had come irregularly from Albania four weeks previously and had been asked to deliver the suitcase, for which he had been paid the sum of £500. On arrest, he declined to answer further questions in interview.
3. The passenger in the minicab was the co-defendant, Zheng. On arrest he was found to be in possession of three mobile phones. His premises in Southwark were searched and between £3,000 to £4,000 in cash was found there. A list was also found recording transfers of cash to the value of over £13 million in the previous month. Analysis of Zheng's mobile phone supported the proposition that this was an activity that that defendant had performed before. Both accused pleaded the guilty at the first opportunity and the judge indicated that he would give the maximum one-third credit for the plea of guilty. Zheng was of good character; this appellant had been previously convicted at Lewes Crown Court on 27 November 2014 in the name of Bogdanov of two offences of possessing or controlling false identity documents with intent to use them. He received concurrent sentences of 11 months' imprisonment on each count.
4. The judge was taken to the sentencing guidelines on money laundering offences. He assessed this appellant had lesser culpability by contrast with Zheng on account of his written basis of plea, stating that this was indeed a one-off offence committed to support himself for which he was given £500 as he had indicated to the police at the scene of his arrest. The co-accused was assigned to medium culpability, B in the guidelines, on account of his greater role.
5. Under the money laundering sentencing guidelines, culpability is primarily assessed in the categories by the amount of money concerned. Category 4 is applicable to sums of between £100,000 and £500,000. For cases of lesser culpability, with which this appellant was concerned, a starting point of a sentence of 18 months' imprisonment is indicated where the notional sum involved is £300,000, with a range of 6 months to 36 months. The next category up is dealing with sums from £500,000 to £2 million, and the starting point of 3 years or 36 months' imprisonment is based on the sum of £1 million with the range being 18 months to 48 months. The judge recognised there was some difficulty in that this sum of money seemed to border on both categories. He decided, however, to take a starting point in this case of 30 months and added 3 months'

imprisonment for the previous offences, reaching 33 months. Giving full credit for the plea, he arrived at the sentence of 22 months. By contrast, in the case of the co-accused he took a starting point of 3 1/2 years and, for credit for a plea, reached a sentence of 28 months' imprisonment.

6. In this appeal, it has been submitted on his behalf by Mr Blom-Cooper (1) that the starting point was too high, having regard to his limited basis of culpability as expressed in the basis of plea and (2) there should have been no aggravation of sentence for the previous convictions of this offender.
7. As to the second submission, we cannot agree. The guidelines indicate that a previous conviction is an aggravating factor, but the degree of aggravation depends upon the nature of the offence and the time that has elapsed since the conviction took place. The identity offences were not money laundering offences, but they were offences of using false identity documents, involved dishonesty and, more significantly, had been committed two years before the index offence, and comparatively little time had elapsed since he would have been released from his prison sentence. In our view, the judge was entitled to take that into account as an aggravating factor.
8. We find, however, that there is some substance in the first submission that is made to us. We conclude that the judge was entitled to identify a starting point that was higher than 18 months but needed to find one that was lower than 36 months. We conclude that he erred in fixing upon 30 months. A straight-line graph between the starting points for sums of £300,000 and £1 million indicates that for a sum of £500,000 a starting point of around 24 months is appropriate. A starting point of 30 months for the amount of £500,000 would leave insufficient room for a proportionate increase for sums of £600,000 to £900,000.
9. Mr Blom-Cooper submitted that there needed to be then a shading down to the lower end of category 3 because of the basis of plea and the absence of any further aggravating factors. We do not accept that submission because it seems to us that the guidelines take culpability into account based upon the level of money recovered, and the range includes matters which could aggravate or mitigate in other circumstances other than simply the sum of money. This was a very large sum of money and there is a public interest in appropriate punishment being given for it.
10. But taking a starting point of 24 rather than 30 months, to which can be added 3 months for the aggravating factor of the previous conviction, giving an overall sentence of 27 months, which, reduced by one-third, leads to a sentence of 18 months, we conclude that that is the appropriate sentence in this case. Accordingly, we set aside the sentence of 22 months and substitute for it one of 18 months. To this extent, this appeal is allowed.