Regina v Afshan Meesha Kadiri

[2017] EWCA Crim 2667

Before: Lord Justice Flaux Mrs Justice Cheema-Grubb DBE Sir John Royce

Tuesday, 27 June 2017

Representation

Mr A Smith appeared on behalf of the Appellant.
Mr J Ojakovah appeared on behalf of the Crown.

Judgment

Sir John Royce:

1 The appellant is aged 41. On 12 April 2017 in the Crown Court at Harrow she pleaded guilty to two offences: count 1, misconduct in a public office; count 2, wrongful disclosure of Revenue and Customs information. On 19 May she was sentenced to 4 months' imprisonment on each count to run concurrently. She appeals with the leave of the single judge, who also granted bail.

2 The facts were these. The appellant had been an employee of HM Revenue and Customs since 2006 and had access to HMRC databases containing confidential and personal details of members of the public and taxpayers. For a four-week period in June to July 2015 she was seconded to assist the Tax Credit Queries Department, and as a result also had access to two further databases: the Taxpayer Business Service (TBS) and Pay As You Earn (PAYE). After finishing the tax credit work, she had no legitimate reason to access TBS and PAYE records. It later became known that she used her access to TBS and PAYE to make large numbers of unauthorised accesses between July and December 2015 in search of the name and address of her husband's new partner, "V". She eventually succeeded in obtaining the information she sought and passed it to a private investigator whom she had already engaged.

3 On the morning of 4 September 2015, that private investigator attended V's address posing as a window cleaner. He was still there when she returned from work. She noticed that he had a mobile telephone mounted above his clipboard and asked if she was being filmed. He said no and left. V felt unsafe and contacted the police. In fact, he had taken photographs which he sent to the appellant, who later emailed them to her HMRC account from her personal email address.

4 In December 2015, V received a series of abusive text messages from the

appellant which she also reported to the police. HMRC investigations showed large numbers of unauthorised accesses by the appellant on TBS and PAYE, culminating in her viewing records for V, V's son, V's ex-partner and brother. Each time the appellant logged on to her computer, she would have been required to acknowledge a notice regarding the rules about not accessing customer information unless there was a legitimate business reason for doing so. She was arrested on 15 April 2016. During interview she made full admissions.

5 She was aged 41 at sentence and she was of previous good character. There was a pre-sentence report that indicated that she did not seem fully to understand the seriousness of her offending. A risk of further offending was extremely low and she did not pose a risk of serious harm. A suspended sentence order with an unpaid work requirement was available.

6 The judge in sentencing pointed out that the improper access to the databases occurred between July and December but not constantly. The judge took account of the fact that the appellant had passed information on to a private investigator who had tracked V down, and that the appellant had sent V abusive texts, although there was no charge in relation to these. The judge accepted that there was remorse and shame and that there had been a plea at the earliest available opportunity. She accepted that what was done was out of character and took account of the fact that the appellant had lost her job. She accepted that the appellant posed an extremely low risk of re-offending.

7 The judge indicated that the offending here was less serious than in the majority of cases involving misconduct by serving police officers. She concluded that, after a trial, her sentence would have been one of 9 months. She reduced that to 6 months to take account of the early plea and reduced it by a further 2 months to take account of her personal mitigation. The judge concluded it was not possible to suspend this sentence. She accepted that in these cases the court has to bear in mind the need for deterrence, and in many cases that will result in an immediate term of imprisonment. In *Attorney-General's Reference No 30 of 2010 [2010] EWCA Crim 2261* the court made that clear. Mr Ojakovah, for the Crown, draws our attention to paragraph 64, where Leveson LJ giving the judgment of the court said this:

> "None of these decisions are, of course, binding in the sense that they drive the decision in this case. They are, however, illustrative of a number of important principles. First, punishment and deterrence are always important elements in these cases: not only must police officers be deterred from misconduct, but also the public must see that condign punishment will be visited on police officers who betray the trust reposed in them and do not live up to the high standards of the police service. Secondly, an incentive (usually money but it need not be) inevitably increases the seriousness of the offence. Third, misconduct, which encourages or permits criminals to behave in the belief that they will be

> kept informed of areas to avoid in connection with their criminal activities, or of those who might be informing on the police also increases its gravity. That is reflected in the observation of the learned judge who commented that Ahmed had boasted that it was 'like having his own police station at the end of a phone'. Fourth, any misconduct that impacts on police operations moves the offence into a different category of gravity."

8 We were also referred to the reference to *R v Kassim [2006] 1 Cr App R (S) 12* , the court presided over by Rose LJ, then Vice President, where it was observed:

> "It seems to us that, especially nowadays, the preservation of the integrity of information regarding members of the public held on data bases like those maintained by the police is of fundamental importance to the wellbeing of society. Any abuse of that integrity by officials, including the police, is a gross breach of trust which, unless the wrongdoing is really minimal, will necessarily be met by a severe punishment, even in the face of substantial mitigation."

9 Mr Smith, on behalf of the appellant, points to an authority at the other end of the scale, *R v Nichols [2012] EWCA Crim 2650* . That was a case involving a detective inspector of many years' standing who accessed the police database in order to ascertain whether drug dealing was taking place as reported by his mother. The court concluded that the case was very different from the earlier two to which we have made reference, and that it did not even justify a suspended sentence of imprisonment. They substituted a community order for a 16-week suspended sentence.

10 In our judgment, the instant case is more serious than *Nichols* but substantially less serious than *Attorney-General's Reference No 30* and *R v Kassim* . In the present case the appellant was 41 and of good character. She had held for 15 years a good job where she was highly regarded. She had been profoundly affected by her husband's affair and his proposal that his adopted new woman should become his second wife. The appellant had two children of ten and seven. She was the carer for her profoundly disabled brother. We are told today by Mr Smith that the grandparents who took over the care of the two children were struggling to cope.

11 This is not a case of obtaining police information to give to criminals; it is not a case where there was any financial motive. We reach the conclusion that there were powerful reasons in the mitigation here to lead to the conclusion that the sentence that was passed could and should have been suspended. Accordingly,

the appeal is allowed. We quash the immediate sentences and substitute sentences of 4 months concurrent on each count suspended for 12 months. To that extent, this appeal is allowed.

Lord Justice Flaux:

12 We discharge the bail