

Neutral Citation Number: [2019] EWCA Crim 1056

No: 2018 04647 A1

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday 9th May 2019

**B e f o r e:**

**LORD JUSTICE GREEN**

**MR JUSTICE SPENCER**

**MR JUSTICE MORRIS**

**R E G I N A**

v

**OLANREWAJU BOLAJI OTUKOYA**

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22 Furnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

*This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*

**Non-counsel application**

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

(Approved)

1. **MR JUSTICE MORRIS:** This is a renewed application for leave to appeal against sentence, the Single Judge having refused leave on the papers.
2. On 14th August 2018, in the Crown Court at Southwark, the applicant pleaded guilty to an offence of conspiracy to defraud contrary to the Common Law. On 12th October 2018, at the same court, he was sentenced to a term of five years' imprisonment.
3. His two co-conspirators, Mohsin Abbas and Anjam Shah, had pleaded guilty and been sentenced earlier, in 2016. Mohsin Abbas had pleaded guilty to conspiracy to defraud and acquiring criminal property, and was sentenced to a total of five years and three months' imprisonment. Anjam Shah pleaded guilty to conspiracy to defraud, acquiring criminal property and assault with intent to resist apprehension. He was sentenced to a total of four years and one month imprisonment. Their respective appeals against sentence were subsequently dismissed by this Court on 19th January 2017.
4. The facts of the case are as follows. The applicant was involved in a conspiracy to intercept and steal cheques from the Royal Mail sorting office in Luton. The two co-conspirators were employees of Royal Mail. The applicant was involved in laundering the stolen cheques through the banking system for the benefit of the three conspirators. The principal loser was a property management company, The Peverel Group, although there were other companies whose cheques were intercepted and paid into accounts benefiting the conspirators. The overall value of cheques stolen from The Peverel Group between April 2010 and March 2013 was in excess of £1,800,000. Other companies lost at least a further £119,000.
5. Cheques and other correspondence were found at the address of the applicant. The applicant was the key link in the conspiracy and had acted as the banker for it by creating, monitoring and funding fraudulent accounts through which the cheques were paid. Surveillance had observed him conducting ATM service till enquiries and balance enquiries in relation to beneficiary accounts. He was arrested at his home on 30th March and made no reply to caution. Stolen cheques were recovered from his home and from vehicles. The evidence showed that the applicant was a 40% beneficiary in relation to the sums obtained through the conspiracy, which was the greatest share received by any one individual.
6. The applicant was initially on bail but then absconded. He went to Nigeria. Eventually he was extradited from Nigeria to this country and first appeared at Westminster Magistrates' Court on 17th July 2018. Whilst contesting that application for extradition, he spent a total of 75 days in custody in Nigeria.
7. In his sentencing remarks the Recorder remarked that the applicant had been guilty of a conspiracy to defraud the Royal Mail. He had stolen and subsequently cashed a large number of cheques transmitted through the postal system. The applicant's co-conspirators had been in breach of trust, and that had been a significant factor against them. The applicant, however, would not be sentenced on the basis of a breach of trust, but that was an element of the conspiracy that the Recorder would not ignore, albeit he would not increase the applicant's sentence because of that. The Recorder referred to the sentencing guidelines. This was a conspiracy relating to stolen cheques

totalling around £2 million. He said he had to consider the offending as a whole. Applying the relevant sentencing guideline, it had been conceded that the offending fell within category 1A, with a starting point of seven years' imprisonment and a range of five to eight years' imprisonment. The Recorder concluded that the starting point was appropriate in this case. As the applicant had been assessed as a low risk of reoffending, he only aggravated the starting point by three months. That gave a figure of 87 months. Then, despite absconding and resisting extradition proceedings, the applicant would be entitled to a discount of 25% to reflect his conduct since return. To save it being a complicated calculation, the Recorder allowed a bit more than 25%, reducing the sentence to 65 months. Then, using his discretion, he deducted a further five months from the sentence to reflect the time that had been spent in custody during the contest of the extradition proceedings.

8. As far as antecedents are concerned, the applicant was 53. He had six convictions for 17 offences, spanning the period May 1997 to February 2011. Most pertinently, his relevant convictions including fifteen fraud and kindred offences.
9. Mohsin Abbas had one previous conviction for one offence of handling stolen goods, for which he had been given a community order. Anjam Shah had five convictions for twelve offences in the period between 1992 and 2002, albeit none were for fraud or other offences of dishonesty.
10. The written grounds of appeal are as follows:
  1. The learned judge erred in his approach to aggravating the starting point based on previous convictions and failed to give sufficient credit for the plea of guilty.
  2. The sentence passed was manifestly excessive as compared to the co-defendants and did not distinguish sufficiently between them.
11. These initial grounds were amplified by further written grounds submitted by the applicant in person. In particular, as regards the discount for plea, it was submitted that the PTPH on 14th August 2018 was the first and earliest opportunity to plead guilty and so a full one-third discount for a guilty plea should have been given.
12. In refusing permission the Single Judge made the following observations:

"The sentence of five years' imprisonment was neither manifestly excessive nor wrong in principle. You were the banker for the conspiracy to defraud by which high value cheques payable to companies were stolen by two corrupt co-conspirators employed by the Royal Mail, were paid into mule/beneficiary accounts and thereby diverted from legitimate payees. You were responsible for the creation, monitoring and funding of those accounts. ... You were the recipient of 40% of the proceeds of the fraud, your co-conspirators benefiting to the extent of 30% each. You must have known of their gross breach of trust in the conspiracy but the Recorder specifically indicated that he did not aggravate your culpability on the basis of your being in breach of trust.

On any view, you played a leading role in what was a category 1A offence within the Definitive Guideline. The judge was fully justified in taking seven years as the indicative starting point. Your previous offending, comprising a history of fraudulent offences, was a significant aggravating factor. You were fortunate the judge only added a notional three months."

The Single Judge then concluded by saying:

"In any event, a sentence of five years given your role and the aggravating factors in your case, balanced against mitigating factors, was not arguably excessive. I am fortified but not unduly influenced in reaching this conclusion by the judgment of this Court in the appeals against sentence of Abbas and Shah. Their culpability was not as great as yours."

13. We agree with the Single Judge's conclusion. First, as regards discount for plea, regardless of the fact that no plea was taken on that occasion, the applicant could have indicated his intention to plead guilty when he first appeared at Westminster Magistrates' Court on 17 July 2018 - a month before the PTPH.
14. Secondly, even if strictly, under the Guidelines for Reduction in Sentence for Guilty Pleas, the PTPH in August 2018 could be said to have been the first stage in the proceedings and thus a discount of one-third might have been warranted, we do not consider that the overall sentence was arguably manifestly excessive. The sentencing judge was generous in raising the sentence above the starting point by only three months to take account of the applicant's very serious record of previous offending involving multiple offences of fraud.
15. Thirdly, as regards the claim of disparity between his sentence and that for his co-conspirators, the applicant played the central and more serious role in this conspiracy as the banker for the proceeds of the fraudulently acquired cheques and was the person who received the largest share of the proceeds.
16. The sentencing judge fairly allowed a discount to reflect the time in custody. We add in passing that in fact the applicant was entitled to such a reduction by way of deduction of remand days, under the provisions of section 243(2) Criminal Justice Act 2003.
17. Nevertheless, for these reasons, it is not arguable that the sentence of five years was manifestly excessive, nor wrong in principle, and accordingly permission to appeal is refused.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: [Rcj@epiqglobal.co.uk](mailto:Rcj@epiqglobal.co.uk)