Regina v Peter King

Court of Appeal Criminal Division

[2019] EWCA Crim 1176

Before: Lord Justice Gross Mrs Justice McGowan DBE Mr Justice Butcher

Tuesday 2 July 2019

Representation

Mr R Levack appeared on behalf of the Appellant.

Judgment

Lord Justice Gross:

1. On 12 April 2019 in the Crown Court at Southwark, before His Honour Judge Gledhill QC, the appellant was convicted of the offence of conspiracy to commit fraud by false representation. On 15 April 2019, before the same court, he was sentenced in respect of that offence to four years and six months' imprisonment and he was also sentenced in respect of an admitted offence of failing to surrender to custody, contrary to section 6 of the Bail Act 1976 . With regard to the Bail Act offence, he was sentenced to six months' imprisonment consecutive. The total sentence of imprisonment was thus one of five years. Various other orders were made. It is unnecessary to recount them here.

2. There is no appeal in relation to the substantive sentence in respect of fraud. The appeal is in relation only to the sentence of six months' imprisonment consecutive imposed for the Bail Act offence.

3. There was a co-accused, Eastwood, who pleaded guilty to count 1 and was sentenced to a term of imprisonment.

4. As the appeal is confined to the Bail Act matter, it is an appeal as of right.

5. The substantive offences spanned a period between 2015 and 2017 and involved the appellant and Eastwood defrauding elderly and vulnerable people by providing substandard and overpriced, indeed often unnecessary, building work. Manifestly the offence involved serious dishonesty. It can also fairly be said for offending of that nature that it is despicable.

6. In relation to the Bail Act matter, the appellant had been on bail during the course of the trial. There came a point when he did not turn up on time and he was remanded in custody. Subsequently, the judge, faced with entreaties as to the difficulties the appellant was said to suffer in custody, restored his bail. While the judge was summing up the case to the jury, the appellant failed to turn up. He was subsequently arrested post sentence and brought back before the court on 17 April 2019 to be sentenced for the Bail Act offence.

7. The judge, passing sentence in this regard, remarked that he found it difficult to believe a single word the appellant had said, after what had happened during the course of the trial. The appellant had promised the court that he would be on time when required to attend court and he would honour his bail conditions. By not attending, the judge concluded that the appellant had intended to disrupt the trial but that had not worked. The judge had been told that the appellant had been taken seriously ill and had been rushed to hospital. That was a pack of lies. When the judge had been informed that the appellant was not in hospital and had breached his bail he did not inform the jury. He was told that if he turned up for his sentencing hearing that would amount to some mitigation, but he did not attend. The judge passed sentence on the appellant in his absence as it had been plain that the appellant had no intention of attending. A great deal of police time had been spent locating the appellant and bringing him to court.

8. The judge considered the sentencing guidelines for failure to surrender to bail. He remarked that a more serious failure to surrender to bail was very hard to imagine. Although the judge had the guidelines in mind, they did not assist him as to how to sentence the appellant for this offence. Bearing in mind all the aggravating features of the offending, the appropriate sentence was one of six months' imprisonment consecutive.

9. The appellant has 30 previous convictions for 56 offences spanning a period from 1984 to 2018. Those convictions include 30 for theft and kindred offences, and five offences relating to police, courts or prisons.

10. In his carefully constructed and able submissions, Mr Levack for the appellant contends as follows. First, having regard to the guideline the culpability was Category B. Culpability A involves "failure to surrender, representing a deliberate attempt to evade or delay justice". Mr Levack submitted that Category A was reserved for still more serious cases. All such cases were inherently serious, but this case fell within culpability Category B, rather than A.

11. Secondly, Mr Levack submitted that in terms of harm, the failure to attend the Crown Court hearing had not resulted in substantial delay or interference with the administration of justice. Accordingly, this was not a case of harm Category 1, but it was instead a case of harm Category 3.

12. Thirdly, on the footing that this was a B3 case, the judge's sentence was far too high. B3 in guideline terms involves a starting point of a fine with a category range band A fine to a medium level community order. Even if this offence was aggravated, it did not get near to the level of sentence the judge passed.

13. Finally, submission four for Mr Levack was that whatever view the judge took as to the starting point, he had failed to give reasons for or justify not affording the appellant a discount for his admission of the Bail Act offence at the first opportunity.

14. Throughout, Mr Levack accepted that guidelines were only guidelines but in so far as the judge went outside them he had not given adequate reasons for doing so. As already observed, those were careful submissions ably advanced.

Discussion

15. The matter can be briefly disposed of. In our judgment, in guideline terms this was Culpability A and harm Category 3. The reason is that we have no doubt the judge was entitled to conclude that the appellant's failure to surrender represented a deliberate attempt to evade or delay justice. In terms of the guideline, the starting point is 14 days' custody with a range of low level community order to six weeks' custody. However, this was a serious offence of its type, committed by a man with a poor record. Given the history of bail during the trial, the judge was entitled to sentence outside the category range. The appellant had quite simply abused the court's indulgence. This was not a one-off incidental failure to surrender to custody. He betrayed the trust the judge had placed in him. He knew full well what he was doing and aggravated matters by ensuring that, as the judge put it, "a pack of lies was told to the court". His intention was to disrupt the trial. Fortunately, the effort failed.

16. For our part, we accordingly see nothing wrong in the judge going outside the guideline range and taking a starting point of six months. Especially in the case of an offender such as this, it is important that the consequences are brought home to him. He had, as the judge put it, brought all this on himself.

17. In one respect only, however, the judge fell into error. The appellant admitted the offence at once when he was apprehended. There was no good reason for the judge not allowing him the one-third discount to which he was entitled and for which Mr Levack contended. For that reason, and to that extent only, we allow the appeal.

18. We quash the sentence of six months' imprisonment consecutive and substitute a sentence of four months' imprisonment consecutive. The substantive sentence of four years six months remains. The total sentence of imprisonment becomes one of four years and 10 months' imprisonment. To such extent the appeal is allowed.