No: 201900619 A4

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

*[2019] EWCA Crim 1534*

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 3 September 2019

**B e f o r e**:

**LORD JUSTICE GROSS**

**MR JUSTICE STUART-SMITH**

**R E G I N A**

v

**MAJAD HUSSAIN**

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**Mr A Hendron** appeared on behalf of the **Appellant**

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

(Draft for approval)

1. LORD JUSTICE GROSS: On 10 December 2018, in the Crown Court at Reading before His Honour Judge Nigel Daly, the appellant, now aged 33, changed his plea to guilty for the offences to which we shall come.

2. On 21 January 2019, the same Judge sentenced the appellant as follows: counts 3, 4, 5, 10, 11, fraud by false representation, 35 months' imprisonment concurrent between themselves; counts 14 to 18, possessing an article for use in fraud, 13 months' imprisonment consecutive to the fraud counts but concurrent between themselves; a total sentence of imprisonment of 4 years.

3. There were various others matters dealt with which need not be recounted here.

4. The facts make for unhappy reading. They can be very shortly summarised. The appellant defrauded members of the public by tricking them into buying cars which were not as advertised. He would sell cars irrespective of their defects without disclosing those to members of the public. Engineers who

examined the vehicles determined that they did not meet the representations made at the point of advertising or sale. He represented them as being sound and roadworthy. But some of the vehicles had serious structural and mechanical defects which exposed their drivers and others using the roads to the risk of serious harm or worse.

5. The fraud was sophisticated and systematic. The complainants were those who had purchased vehicles from the business and later found that there were a number of difficulties with them. There was documentary evidence of misrepresentation. For example, vehicles were sold with service books which had been invented and supported with what looked like genuine stamps from garages when they were not. All the vehicles were sold either by the appellant or others acting on his behalf.

6. A noteworthy feature is that when the buyers realised they had been "conned" and wanted their money back, the appellant refused to repay the monies and the buyers were threatened or bullied into going away.

7. So far as concerned the articles of which the appellant was in possession for use in fraud, a number of previous owners of vehicles were contacted by the investigators and confirmed that the stamps were false as they knew they never had their cars serviced by any garage bearing the names on the stamps during the period of their ownership.

8. The prosecution produced a table relating to vehicles and the use of false stamps sold to members of the public from the appellant's business premises. When the British Car Auctions invoices were compared with the House of Cars adverts it was sometimes the case that the BCA invoice made no reference to a service history whereas the House of Cars advert included service history in its wording.

9. In the event, on 16 November 2016, Trading Standards carried out a search of the business premises and recovered a number of false stamps and false service histories. Some of the stamps had featured in the vehicles which had been sold.

10. The appellant had a previous conviction. In 2012, he was sentenced to 14 months' imprisonment for fraudulently evading VAT and making articles for use in fraud.

11. Passing sentence the judge said this. The appellant had pleaded guilty to five counts of fraud by false representations in relation to vehicles which were sold by him or on his behalf and to the possession of articles for use in fraud. Those frauds were of a similar nature. In relation to the counts specifically relating to the vehicles, they were individual counts and had to be dealt with as specific offences. He could not be sentenced for something of which he had not been convicted, although the surrounding circumstances in which the offences were committed could be taken into account. In respect of the offences relating to possession of articles for use in fraud, it was clear that such articles had been used for fraud but also were intended to be used for further frauds in the future.

12. The court had read the various victim impact statements along with the statements of the individuals who were defrauded. It was a common factor that when people buy second-hand vehicles they were very much reliant on the representations made and the documents produced by the seller. Many of the victims were dependent upon those vehicles and no doubt were pleased and excited to buy a new car only to be extremely disappointed. Not only, said the judge, were some or all of those cars defective but some were positively dangerous.

13. The individuals who complained not only lost their money but were treated with contempt, sometimes abuse and even threats. What was also concerning was that the appellant had been recently released from prison after serving a sentence of 14 months' imprisonment for not dissimilar matters of fraudulent behaviour. He was clearly an extremely dishonest man.

14. His grandmother and one of his teachers had attested to his good character but his antecedent history and his behaviour in relation to the current matter showed that he was not what they believed him to be.

15. Looking at the guidelines for the fraud counts, the court concluded he played a leading role. It was fairly sophisticated in its nature and there were a number of victims, facts which needed reflecting in the overall sentencing. To some extent there was deliberate targeting of people but the total number of offences was not great. The case fitted into the high culpability category 4 of the guideline. However, the impact of the offending on those people was considerable. It was high impact and therefore it was proper to raise it from category 4 to category 3 with a starting point of 3 years' imprisonment.

16. There were, however, aggravating features, including of course his record of previous convictions only a few years before for offences of a similar nature and so the court placed his offending towards the top of the range with a starting point of 42 months' imprisonment. That was reduced to give credit for his plea by approximately 15 per cent to 35 months' imprisonment in respect of counts 3, 4, 5, 10 and 11 currently.

17. The remaining counts were again high culpability. There were a large number of items with a potential to facilitate fraudulent acts against a number of victims and the potential to involve considerable sums. The starting point would be 18 months but there were the aggravating factors and so the court considered the starting point should be in the region of 30 months' imprisonment. Giving him credit for his plea, that was reduced to 24 months' imprisonment. That would give a total sentence of 59 months' imprisonment, which was too high.

18. Accordingly, the judge reduced the sentence in relation to the possession counts to 13 months' imprisonment on each concurrent with each other but consecutive to the fraud counts, making a total of 48 months' imprisonment in all.

19. Developing his grounds of appeal, Mr Hendron, for the appellant, focused in particular on three matters. First, the judge was wrong to categorise this case as one of high impact. Thankfully, the impact was purely financial - none of the physical risks had materialised but the high impact categorisation had provided the foundation for the Judge moving up a category. If the Judge was wrong to treat this as a high impact case then that foundation fell away.

20. Secondly, there was an inherent danger of double counting in a case like this. There was some overlap between the fraud and the possession counts. Moreover, having once found that the appellant had played a leading role in the frauds, great care was needed not to double count when considering the sophisticated nature of the offending.

21. Thirdly, those dangers of double counting were aggravated by the judge's approach of passing consecutive sentences. The correct approach would have been to sentence concurrently given the relationship between all these offences. In this regard, Mr Hendron placed some reliance on the decision in *R v Abuissa [2018] EWCA Crim 2420* .

22. For all these reasons, Mr Hendron's submission was that the sentence passed was manifestly excessive and should be reduced.

23. We were most grateful to Mr Hendron for the clarity of his submissions and their succinctness both in writing and orally.

24. Despite, however, Mr Hendron's attractive presentation of the case, we are not persuaded.

25. We begin by observing that it ultimately should not matter whether the judge approached sentencing on a consecutive or concurrent basis. Either way, double counting must be avoided, and totality must be taken into account. If the matter is approached on a concurrent basis then plainly the charges relating to possession of articles for use in fraud comprise a significant aggravating factor when passing sentence on the fraud counts themselves. To the extent that it matters, we ourselves would have favoured approaching this case on a concurrent basis. But, ultimately, the question for us is not how the judge structured his sentence but whether the total sentence was or was not manifestly excessive.

26. We also keep well in mind that the fraud offences were specific offences and indeed the judge emphasised this very fact. There were, however, five such offences and we are entitled, as the judge was, to have regard to their number.

27. So far as the question of impact goes, it is true that on a very literal approach to the guideline, we can see some force in Mr Hendron's challenge. But looking at those five offences overall and bearing in mind that the risks to which the purchasers were exposed were physical as well as financial, we find it very difficult to quibble with the judge's categorisation. Further and in any event, the judge would have been amply entitled to move up to the higher category having regard to all the circumstances of the case.

28. Turning to Abuissa, we do not regard that authority as laying down any principle. On the facts of that case, the court considered that the judge should have sentenced on a concurrent basis. As already indicated, for our part we are content to test the sentence in the present case by assuming that the sentences should have been concurrent.

29. To repeat, the question for this court is not whether we agree with the structure of the sentence but whether the total sentence was manifestly excessive. Approached in this manner, the features of the present case are as follows:

1. There were five specific offences of fraud by false representation.
2. The offending took place over a sustained period.
3. As is common ground, the appellant played a leading role.
4. The offences had at the least a considerable detrimental effect on the victims.
5. The appellant has a very relevant, fairly recent previous conviction.
6. The offending was sophisticated as demonstrated and aggravated by the counts covering possession of articles for use in fraud. Moreover, the offending was persistent in that when victims approached the appellant for the return of their money, he treated them very badly indeed, going beyond simply conduct inherentin the fraud involved.
7. The possession of the articles for use in fraud had the potential to facilitate further fraudulent acts.
8. The appellant is only entitled to very limited credit for a late plea of guilty. There is no question of any remorse going beyond his late plea of guilty as such.

30. In the circumstances, whether structured consecutively or concurrently, we are wholly unable to conclude that the sentence passed was manifestly excessive. Looked as at a whole, there was ample justification for the bracket in which the judge placed this case. Any adjustment would and could involve

tinkering only.

31. Accordingly, the appeal is dismissed.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk