No: 201901156 A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2019] EWCA Crim 1541

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
STEFFAN NEEDHAM

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Mr J Pickup QC appeared on behalf of the **Appellant**

J U D G M E N T
(As Approved)

1. LORD JUSTICE GROSS: On 31 January 2019, in the Crown Court at Reading before Her Honour Judge Campbell, the appellant, now aged 36, was convicted on two counts: count 1, unauthorised access to computer material; and count 2, unauthorised modification of computer material. On 1 March 2019, before the same judge, he was sentenced to 1 year's imprisonment on the first count and to 2 years' imprisonment concurrent on the second count. It follows that the total sentence was one of 2 years' imprisonment.

2. The appellant now appeals against sentence by leave of the single judge.

3. The facts in short summary are these. For a month prior to 12 May 2016, the appellant was employed on a 4-week contract for a company called Voova who provided cloud-based online services to coach hire companies. Voova had customers in the United Kingdom, Thailand and Australia. Voova used servers provided by Amazon Web Services for the storage of information for their customers. The appellant was contracted to provide monitoring services and online support as there had been some issues with the system overloading.

4. During the course of the contract Voova concluded that the appellant did not have the required skill set. For his part, the appellant did not think that the system Voova were using was adequate for the company's needs. Voova had also employed a man named Andy Gonzalez to begin to build a new server configuration. Gonzalez was given the username “Speedy”.

5. On 12 May, the decision was made not to renew the appellant's contract. It was mistakenly believed that the appellant's user credentials had been deleted from the system.

6. The appellant was also employed by a Manchester company, Valtek, who similarly concluded that the appellant did not have a broad enough skill set and during a meeting held on 18 May terminated his employment.

7. The appellant had been aware of the meeting a few days before and knew that his employment with Valtek was likely to end and that he would have to return his laptop to the company. On 17 May, he accessed the Voova system and checked the policies in place for himself and the username Speedy. He was on the system for an hour and 7 minutes: count 1.

8. On 18 May, following his termination meeting with Valtek, the appellant logged onto the Voova system and changed the password for the username Speedy. Over a period of 13 minutes he terminated 23 of Voova's servers.

9. An investigation of the IP address that deleted the servers was traced to Valtek and then the appellant. He was arrested and interviewed on 2 March 2017, thus nearly a year later, and denied the offences.

10. As already indicated, the case went to trial and the appellant was convicted.

11. Passing sentence, the judge observed that the appellant was then 35; he had been convicted of unauthorised access to computer material and unauthorised modification of computer material. It had been the questioning of the appellant's skills that triggered the offending. His use of Gonzalez's username Speedy meant that suspicion initially fell on him and consequently Gonzalez's employment with Voova was terminated almost immediately.

12. In the pre-sentence report, the appellant accepted that he committed the offences but claimed that it occurred while removing information from the computer belonging to Valtek. It had not been put forward at trial that it had been an accident and it did not explain why he viewed the policies for himself and Speedy on 17 May. The judge found that this explanation did not "hold water". The appellant had changed the password for Speedy before using that username to delete the servers.

13. The judge considered a number of authorities whilst observing that there were no sentencing guidelines in this area. The judge considered whether the offending was planned or persistent. In this case, the appellant harboured a grudge due to not having his contract renewed by Voova. It was what the judge termed a passive aggressive and petulant act from someone who, having read the various reports, suffered from low self-esteem and feelings of inadequacy. He was sensitive to humiliation and was more likely to be prone to this type of reaction than others. The appellant had a secondary diagnosis of paranoid personality disorder and an unspecified personality disorder. The offences were planned but not as planned or persistent as other cases. The judge did not accept that the appellant knew he would be caught. If that was the case, he would have used his own username.

14. The termination of 23 servers caused significant damage to Voova's business and their customers. The appellant knew that the company did not have offsite backups. The evidence heard at trial fell into three categories: the damage to the system; the financial losses; and the personal effect on the chief executive officer, the CEO, of Voova, Mr Bond. Voova lost a number of customers from the United Kingdom. One of their customers, CoachHire, estimated they lost £500,000. While CoachHire did remain with

Voova, they reduced their spending with them from £30,000 - £40,000 per month to £10,000.

15. Mr Smith of CoachHire gave evidence. He reported £500,000 losses to the board. Nine people were made redundant. The initial projected loss for CoachHire was put at £100,000 - £150,000. When questioned about this, however, Mr Smith stated that those were initial projections but the ramification were actually far greater.

16. The defence did not accept the figures. The judge took into account all the evidence and submissions and found that the combined loss to Voova and CoachHire was in the region of £500,000.

17. Mr Bond of Voova gave evidence that the offences had a significant detrimental impact on his mental and physical health.

18. This case did not raise wider issues of public interest of national security or individual privacy. Revenge was a serious aggravating factors here, although it was tempered by the appellant's diagnosed personality traits. The judge did not agree with the pre-sentence or psychological reports that the appellant's act of sabotage was committed against himself rather than the company. There had been an element of planning in the days prior to the offending. The appellant had 24 hours to reflect upon his planned course and was not deterred. The judge took into account the appellant's personal history but did not accept that the offences had been an act of self-harm to ruin his own career. The appellant did have previous convictions but the judge put them to one side.

19. The appropriate starting point after trial before consideration of the mitigating factors was 3 years' imprisonment. The judge took into account the pre-sentence report, two psychological reports and a cognitive behavioural therapy report. The appellant had been diagnosed with major depression, an anxiety disorder and a paranoid personality disorder. The report spoke of the appellant's sexual abuse as a child, his need for immediate treatment and the risk he presented to himself.

20. The judge was aware of the impact those types of offences could have on victims. Nonetheless, the judge did not accept that the appellant's history played as significant a motivation in his offending as had been urged on his behalf. His personality disorder explained to a degree why the offences were committed but did not absolve him of responsibility.

21. The second psychological report completed post-conviction considered the appellant to be a medium to high risk of suicide and a high risk of self-harm. Following his conviction the appellant was admitted to a local psychiatric ward for 4 days. He had an

appointment with therapeutic services.

22. The judge did not underestimate the impact that a custodial sentence would have on the appellant. The appellant was remorseful. Delay was submitted as a mitigating factor but given the length of time it took to investigate and in light of the matter being contested the judge did not regard it as a significant factor. The judge had regard to the many references provided on the appellant's behalf.

23. The judge went on to conclude that only a custodial sentence could be justified. Given the seriousness of the offences, the sentence could be not suspended - having regard as well to the level of culpability and the harm caused. The custodial term was reduced significantly to reflect the appellant's mitigation.

24. The judge then passed the sentences which we have already set out.

25. In writing, the grounds of appeal were these:

1. The 2-year sentence was manifestly excessive;
2. The judge failed to have any or proper regard to the absence of aggravating factors;
3. The judge failed to have any or proper regard to the psychological report, which detailed the appellant's diagnosis of a complex personality disorder caused by the sexual abuse committed against him by the grandfather;
4. The judge failed to have any or proper regard to the appellant's remorse.
5. The judge failed to give the appellant any or proper credit for his effective good character.
6. The judge was wrong to find (i) that the damage caused was in the region of £450,000 (ii) that it was in part a revenge attack (iii) that the appellant attempted to conceal his identity.
7. The sentence of imprisonment should have been suspended.

26. The prosecution, for its part, have submitted a respondent's notice and grounds of opposition taking issue root and branch with each of those propositions. The Crown contends that the sentence was not manifestly excessive and that the judge made a significant reduction for the appellant's mitigation. The Crown contends that there were aggravating factors. There were evidence of planning and the finding that it was a revenge attack not an act of self-sabotage. The Crown accepted there was no wider impact on the public and no financial gain.

27. The judge did have regard to the psychological report and all the matters put forward in mitigation. So too the judge had regard to the appellant's remorse. The judge had put out of her mind the appellant's antecedents and effectively treated him as a man of good character. The judge was entitled to make a finding as to the value of the damage caused and that it had been a revenge attack. The judge had in fact considered the strong

personal mitigation but having regard to the seriousness of the offences concluded that only an immediate custodial sentence was appropriate.

28. In sustained and strenuous submissions today Mr Pickup QC, on behalf of the appellant, effectively developed the following points:

1. Delay. These matters had taken a long time to come before the court and that was a matter to be taken account of in mitigation.
2. Mr Pickup realistically accepted that a custodial sentence was appropriate, especially given that the appellant had been convicted.
3. However, Mr Pickup submitted that in the light, in particular, of the appellant's mental health a suspended sentence would have been appropriate. Alternatively, if we were not persuaded of that, the sentence was too long and a shorter period of imprisonment would have sufficed.
4. The essence, as he put it, of his submission was that there was a need for urgent therapeutic psychological intervention directed to the appellant's sense of low esteem. All this dated back to his experience as a child and the matter was aggravated now by the high risk of self-harm. That was unfortunately not as yet a thing of the past.
5. Given the appellant's personality and health background, the ordeal of imprisonment which he had suffered was harsher than it would have been for others. Contrastingly, there was hope for the future because the issues had now been identified in the course of these proceedings and once the appellant was back in the community they could be appropriately addressed through psychological treatment.
6. Mr Pickup submitted there had been little, if any, planning; the offending was not persistent and in this case there was neither financial benefit nor were there present the aggravating factors that are sometimes to be found in such cases.

29. Discussion

Computer misuse plainly has the potential to cause enormous damage: R v Martin [2013] EWCA Crim 1420; [2014] 1 Cr App R (S) 63, at [42]. There are no guidelines and sentencing must thus, necessarily, be fact specific having regard here, as elsewhere, to culpability and harm: R v Mudd [2017] EWCA Crim 1395; [2018] 1 Cr App R (S) 7.

30. The present case undoubtedly has some deeply unattractive features, tempered by the mitigation flowing from the appellant's sad background and his medical condition.

31. As it seems to us, the judge, who had the distinct benefit of trying the case, was entitled to reach the following conclusions:

1. The appellant felt slighted as result of his treatment by Voova. His background and medical condition meant that he took this worse than others would or might have done.
2. His offending was by way of revenge flowing from that slight. The suggestion that this was no more than an act of self-harm did not survive scrutiny.
3. He attempted to divert suspicion on a fellow employee, who lost his job as a result.

32. 4. The appellant caused serious financial damage running into hundreds of thousands of pounds. We interpose to say that whether the damage was £450,000 or £500,000 or £400,000 matters not for these purposes. The losses were serious. His offending also had a serious effect on the wellbeing of Mr Bond, the CEO of Voova, and on nine others who lost their jobs as a result of his conduct.

33. Against this background, the judge reached a carefully calibrated sentencing decision, taking full account of the appellant's personal circumstances, background and mitigation.

34. We too take into account and are not unsympathetic to this background and the problems to which it has given rise. We accept, as far as it goes, that the sentence will have been a particular ordeal for him. We have also carefully considered the additional information in the most recent psychological report from Dr Waheed.

35. Nonetheless, even having regard to that very full background and Mr Pickup's submissions, we are not persuaded that the judge fell into error or that the sentence passed was manifestly excessive. We feel unable to conclude that this is a case where we could say that in the light of the appellant's circumstances he has already served long enough.

36. It follows, not without sympathy, that the appeal must be dismissed.

37. We express the hope that when this period has passed the appellant will take the appropriate treatment that has now been identified and that there can be hope for the future given the identification of those issues. If so, some good will have come from all this.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk