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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 11 July 2019

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE EDIS

HIS HONOUR JUDGE POTTER

R E G I N A
v
GENNARO ORABONA

Mr M Tomassi appeared on behalf of the **Appellant**
Mr B Hone appeared on behalf of the **Crown**

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

1. LORD JUSTICE DAVIS: On 7 November 2018 the appellant, a man now aged 61, pleaded guilty to a number of counts on the indictment in the Crown Court at Blackfriars. On 22 November 2018 he was sentenced by Judge Darling as follows: on counts 1 and 2, which were counts of having custody or control of false imprisonments, contrary to section 5(1) of the Forgery and Counterfeiting Act 1981, he was sentenced to concurrent terms of 5 years' imprisonment; on counts 6 and 11 to 16, that is to say seven counts in total, being counts of converting criminal property contrary to section 327(1)(c) of the Proceeds of Crime Act 2002, he was sentenced to concurrent terms on each count of 20 months' imprisonment but to run consecutively to the sentence on counts 1 and 2. The overall sentence therefore was 6 years and 8 months' imprisonment and various other ancillary orders were also made. A further seven counts of converting criminal property were ordered to lie on the file.

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

3. The background facts can, for present purposes, be shortly stated. Counts 1 and 2 related to the appellant being found in control of 3.6 million forged stamps. They were estimated to have a value of nearly £2.2 million. So far as the money laundering counts were concerned, they were related to the unexplained movement of some £1.2 million in total which had passed between a number of different bank accounts. There was no evidence to link the money laundering and the stamps and the case was presented at the sentencing hearing by the prosecution as there being two separate operations, one being the selling of stamps with the high value and the second a long-term operation of money being moved to different bank accounts in a relatively sophisticated way with a view to the money ultimately ending up in Italy.

4. The appellant had operated or had purported to operate a legitimate business selling retail clothing from shop premises in London NW1. The business however was in effect a front in order to enable him to launder the proceeds of crime.

5. The appellant had been kept under surveillance for a period of time. He had been in control of a particular storage facility. He was in effect the keeper and custodian of the stamps that were subsequently found there and had been responsible for their onward supply and distribution to smaller retail businesses. Thus, between May and October 2018, on a number of occasions he, together with another man, had visited the storage unit in order to deal or transfer the counterfeit stamps held there, all this involving use of a number of cars. In addition, he was observed to meet a number of men at various locations and hand to them packets and envelopes.

6. Ultimately, on 1 October 2018 he was arrested at the storage facility. An envelope containing counterfeit first and second class UK postage stamps in booklets of 12 was recovered. Inside the storage facility there were found to be 300,000 books of mixed first and second class stamps. This equated to 3.6 million counterfeit stamps with a face value, as we have said, in the region of £2.2 million. Further, a quantity of stamps were recovered from his shop premises together also with a considerable amount of clothing. It was not in dispute that the stamps which had been seized were all counterfeits. It was

assessed that they were sophisticated forgeries with some attempt to mimic the security measures applicable to official stamps.

7. When he was interviewed the appellant answered some questions relating to the motorcars he had been seen in. However he refused to answer questions relating to the stamps.

8. A financial investigation had also been undertaken with regard to the appellant. In due course a production order was obtained in relation to bank accounts linked to him. There was an investigation into those bank accounts and to the various business concerns seemingly connected to the appellant. It proved difficult to ascertain just what those businesses actually traded as. At all events the various money laundering charges related to the unexplained movement of in excess £1.2 million through seven different bank accounts for the period from 11 February to 1 October 2018. It was assessed that the money laundering had been sophisticated. Whilst the money or some of it had purported to relate to clothing companies, there were very little signs of legitimate trading on a scale to justify movement of such large sums. It may also be noted that the appellant had paid minimal personal tax and very little corporation tax.

9. The appellant, as we have said, is 61 and also he has been in poor health. Unfortunately he has a relevant antecedent history dating back some period of time, in that he has a number of convictions in the Italian courts for offences of fraud and related offences.

10. It appears that at the Crown Court there had been detailed negotiations between counsel then appearing for the appellant and Mr Hone then, as now, appearing for the prosecution. At all events the upshot of those negotiations was that a number of the money laundering counts were not pursued: although some, as we have indicated, were. The appellant pleaded guilty with no basis of plea being tendered.

11. When the judge passed sentence he went through the matter in some detail. He set out the facts very fully with regard to the stamps. He then went on:

> "But your criminality does not rest there. Further investigations reveal the existence of no fewer than seven bank accounts... You have pleaded guilty to money laundering to the tune of just over £1.2 million. It is difficult to say and there is no evidence to show that the money going through those seven accounts relates to stamps. What is clear is that none of it is legitimate."

12. Those remarks reflect entirely the way in which the case had been opened to the judge. The judge went on to find that the appellant had lived for a significant period of time "a life based entirely on significant and lucrative dishonesty". He describe him as a "thoroughly dishonest and up until then successful criminal".

13. The judge referred to the plea, which was accepted at being at the first available opportunity and referred to the age and health issues of the appellant. It was common ground that counts 1 and 2 did not have any precise sentencing guidelines applicable to those offences. The judge had regard, by way of analogy, to what he considered the most

appropriate guideline, being the guideline relating to conspiracy to defraud. On that footing, he was in no doubt that this was category 1A, involving greater harm and high culpability. The judge then also dealt with the money laundering matters. His overall conclusion was that, had there been a trial, and factoring in the aggravating and mitigating factors, he would have reached a total sentence of 12 years but then reduced that by 2 years on grounds of totality. Having then reached a figure of 10 years he deducted a full third by way of credit for the early plea, thereby reaching a total figure of 6 years and 8 months' imprisonment structured, as we have already explained.

14. Before us today the appellant has been represented by Mr Tomassi of counsel. The written grounds and advice had been drafted by Mr Martin of counsel (Mr Martin not himself having appeared at the sentencing hearing) and Mr Tomassi adopted Mr Martin's written grounds.

15. The overall submission made by Mr Tomassi is that the sentence totalling 6 years and 8 months' imprisonment was excessive. In order to further that overarching submission, he further submits that the judge had been wrong to adopt the guideline relating to conspiracy to defraud as he had. It was suggested that other guidelines, for example, the guideline relating to making or supplying articles for use in fraud or relating to revenue fraud might have been more appropriate; and those guidelines would have indicated a rather lower sentencing range. It was further submitted that the judge had been wrong in principle to impose consecutive sentences with regard to the money laundering counts. It was suggested that there was nothing to show that the money passing through the accounts had been derived from criminal conduct other than that reflected in counts 1 and 2, relating to the counterfeit stamps. It is said that the court should have approached sentencing on the basis that here there was one overall criminal enterprise covering all counts on the indictment.

16. We have considered these arguments. But we are not able to accede to any of them. This was, on any view, a very large scale fraud indeed relating, so far as counts 1 and 2 were concerned, to counterfeit postage stamps. In the case of R v Chinnappah [2016] EWCA Crim 1369, a case which we note had been specifically charged as conspiracy to defraud but involving counterfeit stamps, the court stated among other things:

> "We do however consider that fraudulent dealing in counterfeit postage stamps imported for that purpose from abroad is a serious matter and it has the ability to impact on public confidence ..."

17. Mr Tomassi pointed out that here counts 1 and 2 had not been charged as a conspiracy to defraud. That is true. But in substance there was here a conspiracy to defraud involved; and the judge was fully entitled to have regard, albeit not being bound, by the guideline relating to conspiracy to defraud.

18. We also are not able to accept the complaint that the judge wrongly imposed a consecutive sentence on the money laundering counts. The fact is there had been no evidence to show that the money laundering had occurred as part and parcel of the counterfeit stamps conspiracy. That had always remained the position up to and including the time Mr Hone

addressed the judge in sentencing. That had always been the position of the prosecution.

19. Mr Tomassi said there must nevertheless still be "some unease" at it being concluded that the money laundering counts were distinct from the counterfeit stamp operation.

20. We see no reason for there to be any unease. There was no evidence to show that the money laundering was linked to the counterfeit stamps. If that was indeed to be the position to be argued on behalf of the defence, then either a basis of plea should have been put in, which may or may not have been accepted, or a Newton hearing should have taken place. None of that happened; and at no stage has the appellant ever advanced any positive case that the money laundering was wholly part and parcel of the counterfeit stamp operation.

21. Mr Tomassi has referred us to what he says were instructions of the appellant at the time, that he was not accepting that all the counts of money laundering were rightly brought against him. But that leads nowhere, if only because the negotiations had resulted in a number of the money laundering counts being dropped in any event.

22. Ultimately, the real point is whether, as a matter of totality, for all this offending a starting upon of 10 years but balancing aggravating and mitigating factors but before credit for plea was excessive. Mr Tomassi urges that it was and that something has "gone very wrong" in this particular case.

23. We do not think that anything has gone wrong and we do not think that this sentence was excessive. The judge's sentencing remarks were very well structured and were crystal clear. The money laundering merited increasing the overall sentence over and above that appropriate to counts 1 and 2 taken on its own; indeed the sentencing on the money laundering counts would have been very much greater than ultimately it was but for the considerations of totality. It may be that this was a severe sentence for a man of this age and with his health problems but this was very serious criminality. We are not persuaded in the result that a total sentence of 6 years and 8 months' imprisonment was excessive. Accordingly, this appeal is dismissed.

MR HONE: My Lord, there is an application, as this is a private prosecution, for costs of the respondent appearing today out of Central Funds. This application, my instructions are, for £1,750 plus VAT. The Royal Mail is a private prosecutor and under section 17 of the Prosecution of Offenders Act 1985, we are entitled to apply for costs out of Central Funds if the reason for us appearing has been appropriate. We say in this matter it has, given that there has been a change in counsel and that somebody who was at the sentencing hearing was appropriate to attend.

LORD JUSTICE DAVIS: I understand that but it looks as though you were always going to attend.

MR HONE: We were.

LORD JUSTICE DAVIS: We do not normally have counsel for the prosecution present at sentence appeal hearings unless it is a homicide case.

MR HONE: Indeed, and I am in your Lordships' hands.

LORD JUSTICE DAVIS: You are indeed. You are entitled to apply and we are entitled to consider. Thank you very much.

(The Bench Conferred)

LORD JUSTICE DAVIS: Whilst we have appreciated you coming along today Mr Hone, we think not.

MR HONE: Thank you your Lordships.

LORD JUSTICE DAVIS: Thank you both very much indeed for your very helpful submissions.

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