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No: 201900905/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 4 July 2019

B e f o r e:

LORD JUSTICE BEAN

MR JUSTICE CHOUDHURY

HIS HONOUR JUDGE POTTER

R E G I N A

v

BALJINDER SINGH

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Mr G Doig appeared on behalf of the **Applicant**

J U D G M E N T

(As approved)

1. JUDGE POTTER: On 25 February the applicant was sentenced at Newcastle upon Tyne Crown Court in respect of one offence of transferring criminal property, contrary to section 327(1)(d) of the Proceeds of Crime Act 2002. He was sentenced to 28 months' imprisonment. He now renews his application for leave to appeal against sentence and for a representation order after refusal by the single judge.
2. The facts of this case are as follows. The applicant was that sole director of Devine Technical Services Ltd ("DTS"). That company was based in the United Kingdom but had close links to an Indian company which purported to provide online technical support for computer users. The applicant's role was to operate a series of bank accounts into which proceeds of the Indian company's fraud were paid. The nature of the fraud was that computer users were made to think that their machines had been infected with viruses or had been subject to hacking and were encouraged to pay for the services of the IT support company. The applicant then transferred that money out from the accounts, sending the majority of money to India but also retaining a sum for himself.
3. The fraud worked successfully in relation to a number of victims from August of 2016 onwards. The first victim was a computer user called Roger Lawton. He lost £2,770 in this way. Another user was called Gordon Qin. He lost £2,442.50. Mariam Khwaje lost £1,600. Audrey Farrimond lost £399.99 - which was subsequently repaid to her by a third party. Gillian Deakin lost £2,000.
4. In each of these cases money passed through bank accounts held by the applicant, some of which were closed by the banks concerned as they became suspicious of the activity that was taking place.
5. The fraud raised very significant sums as large numbers of members of the public were conned out of money. The total amount of money laundered through accounts within the control of the applicant amounted to £300,188.
6. The applicant, as we have said, did not retain all of this laundered money. The majority of it was transferred out of the country, most likely to India. Some of the money was however retained by the applicant by way of cash withdrawals or transfers to further accounts that he controlled. The total sum of this money amounted to £38,665.
7. The fraudulent activity came to the attention of the police following the intervention of a computer user called Daniel Morrison. He was contacted by DTS, as were others before him, with a view to fraud being perpetrated upon him. Mr Morrison however was suspicious of this contact and what was to take place, partly as a consequence of his own previous work experience in the telecommunications industry and investigation of online fraud. Mr Morrison made researches into DTS. He discovered the company's links to the applicant and the applicant's mobile telephone number. He telephoned the applicant to discuss what had taken place, informing the applicant of his suspicions. The applicant initially feigned a degree of ignorance. Understandably not satisfied with the applicant's purported explanation of the activities of DTS, Mr Morrison reported matters to the police,

providing them with the evidence that he had accumulated. The applicant was arrested and interviewed. In his interview he said that his activity had been encouraged by a man called Nishant Walia who had been introduced to him via a mutual friend. Mr Walia had asked him to transfer large sums of money in the manner described to India, utilising bank accounts within the applicant's control. For all this it had been agreed the applicant could deduct a 10 per cent fee from the money that was transferred.

8. The applicant was charged with a number of offences and eventually on the day of his trial in the Crown Court indicated for the first time that he would plead guilty to the money laundering count on a basis. The prosecution raised no objection to much of the basis of plea and the applicant was sentenced consistent with it. It is not necessary to repeat the contents of the lengthy basis of plea here.
9. The prosecution did not seek a trial in relation to any other count on the indictment and the applicant fell to be sentenced for the single offence described above.
10. At sentence, the judge was provided with a number of victim personal statements from each of those named as victims in the proceedings and we have considered these statements. In sentencing the applicant, the sentencing judge made the following observations. He said that the applicant had played a subordinate role with no managerial independence but was nevertheless an important cog in the scheme providing the United Kingdom face of the operation and vital banking services to the fraudulent operation. The appropriate harm category within the guidelines, based on the total sum laundered, was Category 4.
11. In respect of culpability, the offending by the offender was committed over a sustained period. The applicant was motivated by financial gain. This was not a one-off opportunistic offence and the applicant must have appreciated through the volume of monies transferred through his account the extent of the criminality that he, the applicant, was involved in. Notwithstanding that he was being given direction from overseas and he was not directly involved in the underlying offence, the applicant was not performing a limited role but an important one in the context of this offending. The offending fell within Category B harm.
12. The sentencing judge noted that the underlying offence in this case involved the repeated defrauding of members of the public, particularly those with limited computer knowledge, by deceiving them into transferring money from their bank accounts. This had had a significant effect on those it had affected. It was not corporate or white collar offending but instead involved defrauding over a significant period a large number of individuals of significant sums of money. Whilst ordinarily the starting point would be one of three years' imprisonment within the guidelines, with a range of 18 months to four years, the sentencing judge increased to three years and six months to reflect the nature of the underlying offence. The offence also involved cross border transactions which was an aggravating feature.
13. The sentencing judge took account of the applicant's previous good character and other

matters of personal mitigation, including his remorse and shame for having become involved in these offences, the low risk of re-offending the applicant posed and the significant effect his first custodial sentence would have on him and his wife and two children. Some limited deduction was made for the fact that the applicant suspected rather than knew the underlying offences were criminal. Personal testimonials were also considered by the sentencing judge. We have considered those and further testimonials provided to this court today.

14. The sentencing judge came to the view that the appropriate sentence after trial would have been 32 months' imprisonment. There was credit of 10 per cent for the guilty plea entered on the day of trial. The offence was so serious that only a custodial sentence could be justified. The sentence would be one of 28 months' imprisonment.
15. Leave to appeal the sentence was refused by the single judge. He refused leave in the following terms:

"I have considered the papers in your case and your grounds of appeal. The learned Recorder took great care to consider and apply the guidelines, to make proper adjustments for the mitigating features, and he was entirely loyal to your basis of plea. He reached a sentence which lay well within the broad parameters of his sentencing discretion and which was neither manifestly excessive nor wrong in principle."

16. The applicant now seeks leave to renew his appeal on the same grounds as those considered by the single judge. They are:
 1. The Recorder failed in applying the sentencing guidelines to the facts of this case to pay sufficient heed to the agreed basis of plea.
 2. The Recorder wrongly applied the definitive guidelines in concluding that the applicant's offence was one of medium culpability.
 3. The Recorder adopted too high a starting point.
17. We have heard attractive submissions on the applicant's behalf by Mr Doig this morning. We have considered them very carefully. They were eloquent and well made. However, we agree with the single judge and we refuse leave in this case. We also refuse the application for a representation order. We are of the view that the sentencing judge correctly applied the guidelines in the circumstances of this case and considered properly those matters raised by way of mitigation, including the applicant's previous good character and other matters to which we have referred. We believe the judge imposed a sentence consistent with the basis of plea in this case and that the sentence imposed could not properly be viewed as excessive in the circumstances. These applications are dismissed. We decline to make a loss of time order in the particular circumstances of this case.

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

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