

No: 201902109/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2019] EWCA Crim 1792

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday 23 August 2019

B e f o r e:

MR JUSTICE JEREMY BAKER

MRS JUSTICE McGOWAN DBE

R E G I N A

v

KATIE ANN WOODFINDEN

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd, Lower Ground, 18-22 Furnival Street, London EC4A 1JS, Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Miss S Watson appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. MRS JUSTICE McGOWAN: On 1 May 2019 in the Crown Court sitting in Preston, Katie Ann Woodfinden, who is now aged 38, pleaded guilty to an offence of theft, contrary to section 1 of the Theft Act 1968. On 31 May she was sentenced to a total term of two years and four months' imprisonment. She appeals against that sentence by leave of the single judge and is represented before us today by Miss Watson, to whom we are grateful for her carefully crafted and well argued submissions.

2. The history of this matter is that in November 2016 the appellant was employed as the financial controller for a small company called The Furniture Re-cycling Group. By August 2017 irregularities were reported to the Managing Director and in particular he was told that one supplier had contacted the company chasing payment. The records appeared to show that that company had been paid, but on a little further investigation it transpired that the money that should have gone to the supplier had gone directly into this appellant's bank account.

3. Further investigation made it clear that this was not an isolated incident. It was one of many similar dishonest transactions. There had been nine separate instances in which money had apparently been paid to legitimate suppliers, but in fact had been diverted by this appellant directly into her own bank account. She was contacted - at that time she was on holiday in Spain - and over the telephone admitted to her employer that she had taken sums of money over the period of her employment.

4. It transpired that in February, April, May, June, July and August sums ranging between £2,800 and £4,700 had been taken by her and in total the agreed figure reached between the Crown and the defence by the time of the guilty plea was a little under £38,000.

5. The appellant had not only taken that money but had disguised the theft by altering the accounts and so on occasions when she had been asked to show accounts to the Managing Director she was able to show him a document which in fact masked her theft.

6. As a result of her admission to the Managing Director, the police were contacted and she was spoken to by officers and interviewed. By that stage they had a better picture of what had been taken and in fact were investigating a larger sum of money. The allegations were put to her, but she chose at that point in time not to answer any questions put to her.

7. In passing sentence, the learned Recorder was required to assess into which category he should properly put this case. By that stage he had an impact statement from the Managing Director who spoke of the personal hurt and distress that he had suffered as a result of this breach of trust and further spoke in terms of how his attention had been distracted from the day-to-day running of the business in the ordinary way and he had become slightly obsessed or fixated about whether or not he could trust people and how he could continue. As a consequence by the time the matter came before the court in the earlier part of this year, he thought that the loss, consequential upon the original theft, was something well into the order of six figures, probably in excess of £200,000. It is not suggested that this appellant had taken that amount of money, but that the consequential loss to the business, as a result of his personal distress and his inability to control the business in the way that had been previously done, was in the order of that sum.

8. In dealing with the sentence, the learned Recorder took the view that the consequential damage to the business and the consequential impact upon the Managing Director, in addition to the lengthy period over which the thefts had occurred and the sums of money taken, were such as to put this into Category A. He described what had happened as a serious breach of trust which continued over a sustained period. He

described the appellant as having been in a trusted position within the company. She was one of only a very few people who had access to and responsibility for the business account and was responsible for paying suppliers the money that was legitimately owed to them. Within about a month of starting her employment she had begun to steal money from the company. To disguise that theft she had forged documents to make it appear that the money had properly been paid to the suppliers. He described her dishonesty as having a huge impact on the business, causing a huge financial consequential loss and had brought the business almost to the point of failure because, as he described it, not simply the financial loss but the obvious strain upon the Company Director was a direct consequence of her conduct. He accepted that once the discrepancies were uncovered she had quickly admitted to the Managing Director what she had done and agreed with him that he should contact the police. However, when she was interviewed she said nothing but it was accepted that she pleaded guilty at the first available opportunity before the court. She was in her mid to late thirties and of previous good character. By the time she came before the court she had obtained new employment and had stayed out of trouble for the period between the original investigation into these offences and her being sentenced.

9. We have had the benefit of a number of testimonials about her, in particular from her current employer who tells us that although well aware of her conduct in her previous company, he nonetheless has complete trust and confidence in her and goes on to say that whenever she is released there is a job available for her.

10. As has already been said, the conclusion of the court below was that this was a Category A higher culpability case because of the breach of trust and responsibility. With respect to the submissions made before us with skill this morning by Miss Watson, we accept that categorisation. The features as identified by the court below were: that what she stole was of substantial value to the company: that it caused severe consequences to the director and the company: that it created a high level of inconvenience and consequential financial harm as well as emotional distress.

11. Having categorised the matter as such, the starting point for a Category 1A offence, given the value of the theft, was three-and-a-half years' imprisonment with a range of two-and-a-half to six years. There were in addition aggravating features which included the sustained period of time over which the thefts had occurred and the steps taken to conceal what had been done. Against that the learned Recorder gave her full credit for the factors in mitigation: her personal background, her positive good character and what he accepted as an expression of genuine remorse. He therefore took a starting point at three-and-a-half years, as within the guidelines, and reduced it to give effect to all those mitigating factors.

12. Miss Watson urges upon us today in oral submissions based on her written advice that the sentence should have been suspended, that the Recorder did not properly take into account her prospects of rehabilitation and the fact that it was her first custodial sentence. She argues that the court was wrong in placing reliance upon the significant sums of money as set out in the victim impact statement: that the consequential loss did not follow directly from the offending in this case and she reminds us of the compelling mitigation by way of the appellant's character, her remorse, her personal circumstances: the delay between the original investigation and the matter coming to court and the fact that she had gone ahead and made the best of things during that period, namely by finding another job and establishing herself as a well-trusted employee.

13. It is of course a matter of great regret that a woman who displays intelligence and determination and no doubt a high degree of skill should find herself in this position. Nonetheless, this was a sustained series of deliberate acts of dishonesty, carried out irrespective of the risk to the business and in the view of this court carried out in such a way that it did cause severe consequential loss to the business and a severe impact upon the Managing Director of that business.

14. The learned Recorder was correct to take all those features into account and balancing them as he did, in a carefully conducted sentencing exercise, to reach the total period of 28 months. There is nothing, in the view of this court, either wrong in principle or manifestly excessive in the imposition of that sentence. Accordingly, this appeal is dismissed.

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

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

Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk

Crown copyright