

Neutral Citation Number: [2013] EWCA Crim 1986

No: 201302259 B3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL
Tuesday, 9th July 2013

B e f o r e:

LORD JUSTICE AIKENS

MR JUSTICE MACKAY

MR JUSTICE SWEENEY

R E G I N A

v

DEREK MARTIN

Computer Aided Transcript of the Stenograph Notes of

WordWave International Limited

A Merrill Communications Company

165 Fleet Street London EC4A 2DY

Tel No: 020 7404 1400 Fax No: 020 7422 6138

(Official Shorthand Writers to the Court)

Non-Counsel Application

J U D G M E N T

(As Approved by the Court)

Crown copyright©

1. MR JUSTICE MACKAY: This applicant pleaded guilty to three counts of an indictment for which he was sentenced on 8th March 2013 in the Crown Court at Snaresbrook as follows: count 1, failure to comply with the notification requirements under section 91 of the Sexual Offences Act 2003, four months' imprisonment; count 2, the like offence, four months' imprisonment; count 7, fraud, four months' imprisonment. All those terms were ordered to run consecutively and the total sentence was therefore one of 12 months' imprisonment. A victim surcharge order was made.
2. The facts were that this applicant had been the subject of a sex offenders' notification requirement for seven years made in 2005, including a requirement to notify police of any change of address, name and date of birth. Count 1 related to his application for a passport in the name of John Cartwright, which he obtained in July 2006 and retained, as the indictment specified, until 13th August 2012, when there came into force a further requirement requiring him to notify police of any passports or uses of an alias. He attended the police station on 14th August and signed the document saying he had notified police of any passport or other form of identification. He never informed them of any changes of name or additional address.
3. Count 2 related to his application to the DVLA to change the name of his driving licence to Landis on 14th June 2012. On the previous day he had been disqualified from driving under the name of Martin. He never informed the police of this change of name and he had been driving on a number of occasions.
4. Count 7, the charge of fraud, related to his application for motor insurance using the name Landis on the day after he was disqualified. He was arrested on 23rd October while driving a transit van. When questioned why he had applied in the name of Landis, he said he did not know, it was just someone he used to know.
5. The sentencing judge viewed it as a highly aggravating feature that he had acted dishonestly using the name of Landis to obtain motor insurance, and the only conclusion he could reach was that it had been deliberate and premeditated to circumvent the law. He noted also that there had been two previous occasions on which he had been convicted of failing to comply with a notification requirement under the Sexual Offences Act. Those two previous occasions were in July 2008 and January 2012, when he was fined. It was also relevant that in 2010 he had been sentenced to three months' imprisonment for six breaches of a Sexual Offences Prevention Order.
6. The pre-sentence report revealed that the applicant accepted that he had sought the driving licence in the way that he did in the name Derek Landis to avoid the driving disqualification consequences that he had just the day before received in the name of Derek Martin, because he thought he had not been at fault. He minimised his behaviour: he thought it was not important. It was apparent, said the report writer, that he committed the offences because he knew he could and believed he had a fair chance of success. The applicant admitted to the report writer that he likes to cheat the system and prove his own intelligence.
7. His grounds of appeal against conviction on count 7 are these, against a background which the single judge rightly said was one of an unequivocal plea of guilty. He now says that he was advised by his counsel that if he did plead guilty to count 7, the prosecution would agree to all other charges lying on the file. In the event, only counts 3 to 6, which we have not described, were ordered to do so, but the other summary offences he faced, driving whilst disqualified and driving without insurance, were in the event remitted to the magistrates by the judge. His privilege was waived. His counsel has made plain that he, as his counsel, positively argued, in the presence of the applicant, for these matters to be so remitted. He produced his skeleton argument used on that occasion. His argument had been accepted by the judge. This is a point without any value whatever.
8. Secondly, the applicant also says that because the wording of count 7 reads that he committed fraud in "dishonestly and intending thereby to make a gain for himself or another he made a false representation which was and which he knew untrue or misleading, namely ... using a name Derek Landis, in breach of section 2 of the Fraud Act"; this was in relation to his policy of insurance. The applicant argues "I am entitled to call myself by any name I want"; and indeed there is nothing intrinsically wrong in his using the name Landis. He still remained a disqualified driver, he says, albeit that he was disqualified under a different name. As a disqualified driver he was entitled, he argues, to continue to own and insure a vehicle.
9. But his omission to inform the insurer that he was a disqualified driver, which he says was not a representation, is, in our judgment, entirely to the point. It is elementary law that a person applying for insurance is obliged to disclose all facts material to be known by the insurer, and that plainly included this previous disqualification.
10. Secondly, the applicant argues he obtained no pecuniary advantage or gain for himself by this. This was a false argument, as the single judge pointed out. The insurance company's evidence, had there been a trial, was plain: it would not have issued any cover to this applicant had it known of his disqualification. The granting of a contract of insurance is, as the single judge said, the conferring of valuable rights, rights of monetary value, and therefore a gain for the recipient.
11. Thirdly, that this was all a dishonest act was plain from the very timing of the change in his name and the absence of any other plausible explanation for it; all, for good measure, fully confirmed by what the applicant said to the probation officer in the pre-sentence report.
12. There is no merit whatever in the appeal against conviction on count 7.

- 13.As to the appeal against sentence, this applicant had 13 convictions for 52 offences dating from 1991, which included deception, handling, theft and voyeurism. This extensive record of fraud and of dishonesty, together with the previous breaches of the registration requirements and the Sex Offenders Prevention Order, meant, in our judgment, that no guidelines were operative so as to constrain the judge in any way. We have received a letter from the applicant enclosing the sentencing guidelines on fraud, but they were not, in our judgment, of assistance to the judge in this case.
- 14.Consecutive sentences were plainly appropriate: these were distinct and discrete offences. There is nothing wrong in principle with the sentences passed, nor were they manifestly excessive.
- 15.Generally, we have considered all of the grounds of appeal contained in the applicant's letter of 21st April 2013 before coming to the conclusion to which we have come, that there is no merit in the appeal against conviction or the appeal against the prison sentences imposed on the three counts.
- 16.However, part of the sentence was a victim surcharge of £120. Though the point is not taken by the applicant, we are concerned that that was an unlawful order. This court has reviewed the circumstances in which such unlawful orders can be dealt with in the recent decision of David Stone [2013] EWCA Crim 723, and in particular paragraphs 17 and 18 of that judgment. All these offences were committed before the relevant date of 1st October 2012 -- relevant, that is, for the purposes of surcharge orders. Prior to that date a victim surcharge order could only be applied to a sentence if the defendant was sentenced to a fine. That was not the case with this applicant. That order was therefore unlawful. We grant leave to appeal in respect of it only and we quash the victim surcharge order.
- 17.To that extent, and to that extent alone, the appeal against sentence is allowed.

SMITH BERNAL WORDWAVE