

Neutral Citation Number: [2020] EWCA Crim 633

Case No: 201903836/A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Crown Court at Isleworth
HHJ Simon Davis
S20190472

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2020

Before :

LORD JUSTICE GREEN
MR JUSTICE JULIAN KNOWLES
and
HER HONOUR JUDGE WENDY JOSEPH QC

Between :

REGINA
- and -
Karan PANTA

(Transcript of the Handed Down Judgment.
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Mr Mutahir Ahmed (instructed by **Thomson & Co Solicitors**) for the **Appellant**
The Crown was not represented

Hearing date: Thursday 16th January 2020

Judgment
As Approved by the Court
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Lord Justice Green :

Introduction

1. The appellant pleaded guilty to a count of fraud by false representation contrary to Sections 1 and 2 of the Fraud Act 2006 on the 20th August 2019 before the Magistrates. On the 1st October 2019 he was sentenced to a term of 20 months imprisonment.

The facts

2. The facts of the case may be summarised briefly. During the period of the offending the appellant applied for a number of loans in the name of Mr Pravin Jadhav. He played cricket for the Brantham Cricket Club which is part of the Middlesex leagues. It serves as a feeder club for Middlesex County Cricket. A significant number of club players had links with the Indian subcontinent. From time to time, foreign players would come to play for the club. The appellant was one such player. He came over from India and played his first game for Brantham in June 2019. He was invited to stay with Mr Jadhav at his home. The appellant was not paid for playing for the club which was akin to work experience. Accommodation provided by Mr Jadhav was free of charge.
3. The appellant moved into Mr Jadhav's family home at the end of June 2019. Within a couple of days, Mr Jadhav's wife discovered that someone had applied for a loan using their address. Mr Jadhav asked the appellant if he had applied for the loan in question and was told that he had not. Subsequently he told Mr Jadhav that his parents were intending to take out a loan in order to send him money. However, they did not wish to pay bank charges and they preferred to send the money to Mr Jadhav's bank account, assuming that he was willing. Mr Jadhav accordingly provided the appellant with his bank details. On the 3rd July 2019, Mr Jadhav received a credit from the British based company, Satsuma Loans, for £1,000. He transferred the money into the appellant's account on the 4th July 2019. Three further loans were taken out in that month and on each occasion the money was paid into Mr Jadhav's account. Each such loan was short term and accrued high rates of interest. Mr Jadhav himself also lent the appellant the sum of £1,100.
4. Towards the end of July Mr Jadhav came to appreciate that the loans had been applied for using his name. Having spoken to his wife, they reported the matter to the police. The total sum borrowed was in excess of £7,300. The appellant was interviewed on the 27th July 2019 and made full admissions.
5. Mr Jadhav and his wife produced a victim impact statement. It is relatively brief but sets out the impact which the offending has had upon them. As we explain below this statement was relied upon by the judge to increase significantly the severity of the sentence.

Sentencing and the impact of the victim impact statement upon categorisation

6. In sentencing the appellant, the judge addressed himself to the Sentencing Council Definitive Guideline on Fraud, Bribery and Money Laundering offences ("the Guideline").

7. Under the Guideline harm is determined by reference to actual, intended or risked loss. A Category 4 harm refers to loss caused or intended between £5,000 and £20,000. It refers to a starting point based upon a sum of £12,500. In the present case the agreed figure for loss was £7,400. Accordingly, this case sat at the lower end of Category 4.
8. In terms of culpability, Category A, high culpability, occurs where the offender plays a leading role where the offending is part of a group activity, where the offender has involved others through pressure or influence, where there is an abuse of position of power, trust or responsibility, where the offending is sophisticated or involves significant planning, where the fraudulent activity is conducted over a sustained period of time, where there are a large number of victims, or where there is a deliberate targeting of a victim on the basis of vulnerability.
9. Cases involving lesser culpability, Category C, include where the defendant has become involved through coercion or intimidation or exploitation, where there is no motivation of personal gain, where the involvement is peripheral, where the fraud is opportunistic or involves very little or no planning, and where there is limited awareness or understanding of the fraudulent activity.
10. Category B, defined as medium culpability, involves cases which fall between Categories A and C because there are factors in A and C which balance each other out and/or where the offender's culpability falls between those identified factors in Categories A and C.
11. In the present case the judge concluded that this was a Category A case. He stated that there was "some" planning though he accepted that it was not significant. In relation to the period of time of the offending, the judge observed only that it was longer than in some other cases but not as long as in others. The judge refers, in passing, to an abuse of trust. But it is evident that the factor that most swayed the judge was the victim personal statement from the victims. The judge observed that it made "*harrowing reading*". The defendant's conduct had a "*fundamental and high impact*" upon Mr Jadhav and his wife. He relied upon this to accede to a submission from the Crown that there should be "*a jump, a leap in the sentencing guidelines to 3A*".

Appellant's submissions

12. It is argued on behalf of the appellant that whilst it is accepted that the impact upon the victims entitled the judge to adjust the starting point upwards he nonetheless erred in jumping to Category 3A. The proper way to proceed was to take Category 4 as the starting point for harm and to identify an appropriate starting point based upon the loss entailed. Under the Guidelines a starting point based upon a loss of £12,500 involves a category range of 26 weeks – 3 years custody. The loss in the present case was significantly less than £12,500. Aggravating factors included the abuse of hospitality and the abuse of the victims' good nature and trust, as well as the impact upon the victims. Mr Ahmed for the appellant, contends that an appropriate starting point would have been one of 12 months custody.
13. He then argues that the judge would have been entitled to move that period up to take account of the aggravating factors. So far as personal mitigation is concerned, counsel argues that there was very little planning and a degree of opportunism about the

offending. There was little awareness that the offending could cause such a severe impact upon his hosts including as to their credit rating which, on the particular facts of the present case, may well have exerted a disproportionately and adverse effect. Moreover, the appellant is of a relatively young age, he is of previous good character, and expressed regret and remorse. He had worked hard in his chosen sport that he wished to play at a professional level. Counsel also refers to the fact of his cooperation with the investigation and in particular his immediate confession to his offending.

Conclusion: the probative weight of victim impact statements

14. We turn to our conclusions. So far as aggravating factors are concerned this is, as the judge observed, some degree of planning. The judge refers in passing, to abuse of trust. There was an element of this in that the appellant took advantage of the good nature of his hosts. That being so this is, nonetheless, not an abuse of trust in the sense that the appellant breached some form of position of responsibility or a fiduciary relationship. The offending did not last for a long period of time, though it did span a number of weeks.
15. The most significant aggravating feature so far as the judge was concerned was the impact upon the victims. The relevance of victim impact statements is set out in the Criminal Practice Direction on “*Victim Personal Statements*” (see Archbold (2020) page 691 paragraph 5A-302). Guidance has been given upon their use by this Court in *R v Perkins* [2013] EWCA Crim which has been somewhat updated by the Court more recently in *R v Chall* [2019] EWCA Crim 865. The contents of a statement can be taken into account in the setting of the appropriate sentence. A court should, when sentencing a defendant, proceed upon the basis of facts about which the judge is sure. Such statements may contain facts and other evidence which is incontrovertible. But they often contain expressions of a deeply personal nature or assertions unsupported by any evidence. As the Court pointed out in *Chall* (ibid) there is always a risk that the raw emotion that is expressed might be exaggerated or the description of the harm suffered overstated albeit unintentionally and without a desire to mislead. If a judge is going to rely upon a statement of this sort to justify a leap in the categorisation of a sentence then that needs to be explained in the sentencing remarks.
16. In the present case we do not for one moment underestimate the effect that these frauds had upon the victims. They showed charity and hospitality towards the appellant and he took advantage of them. It is not surprising that they found the experience distressing. In their joint statement they refer to the effects of the frauds upon their credit rating and they explain how in a variety of unpredictable ways the offending had a personal and deleterious effect upon their lives. There is no need for us to set out in a judgment the details of these personal matters.
17. The question is whether this statement justified the significant increase in the severity of the sentence that would otherwise be imposed. We have reviewed the statement with care. It is well written and moving. There are several areas where, quite understandably, matters are simply stated and asserted but for which there is no evidence and there are factual circumstances described briefly about which more should ideally have been known before being used as highly aggravating factors. We say this without intending it to be a criticism of the victims.

18. We do not however understand from the judges reasoning why it was allowed to have such an effect upon his thinking that it was used to justify such a steep increase in sentence. The statement was clearly relevant, but its weight had to be proportionate.
19. Taking all these matters into account we see the force in the appellant's submissions. We can see no basis for placing this case into Category 3A. We conclude that this is Category 4 harm with culpability combining elements of A and B.
20. In our judgment the appropriate sentence, before discount for the plea, would be a sentence of 18 months imprisonment. The appellant is entitled to full credit for his guilty plea of one third. This has the effect of reducing the sentence to one of 12 months imprisonment. To this extent we allow the appeal.
21. Finally, we would record that Mr Jadhav and his wife have placed new material and documents before us. To determine the appeal we focus upon material before the judge. Nonetheless this new material included recent demands for payment made to them from various loan companies including Likely Loans, Themis Recoveries and Bamboo Loans. We would make clear, so that it is recorded formally in a judgment, that Mr Jadhav and his wife are not under any obligation to pay those debts. They were victims of fraud and did not themselves enter any loan contracts with these lenders which could make them liable. The same would apply to any other lender who in these circumstances believe that there is a debt outstanding from them. If any debts do remain unpaid the lenders must seek recovery from Mr Panta, and no one else. Mr Jadhav and his wife can of course also rely upon this judgment to rectify any errors made by credit rating companies based upon the false assumption that they are debtors.