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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1206
CASE NO 202301223/A2



Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 5 October 2023

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE GOSS

MRS JUSTICE HEATHER WILLIAMS DBE

REX

V

RICHARD COLLINS

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MR M RADSTONE appeared on behalf of the Applicant.

J U D G M E N T

1. LADY JUSTICE MACUR: Richard Collins was sentenced to a total of 33 months' imprisonment for three offences of fraud, contrary to section 1 of the Fraud Act 2006. The timeframe of offending was between 1 April 2016 and 23 January 2017. He was charged in 2019, he pleaded guilty on 14 June 2021, and he was sentenced on 16 March 2023.
2. He renews his application for leave to appeal against sentence after refusal by the single judge. He is represented today before us by Mr Radstone, who appeared below and who appears on his behalf *pro bono*. We are very grateful to him for the courtesy he has extended to the Court, both in the submission of written documentation and also the amplification of those submissions today.

The Facts

3. The applicant worked for Mashki Ltd, a property management company; he had done so since October 2013. Part of the applicant's responsibilities involved handling London rental properties managed by his employer. The fraud related to the rent that should have been paid in respect of two of those properties which from April 2016 was diverted into accounts controlled by two of the applicant's associates. A total of £191, 918-odd was diverted in this fashion.
4. The applicant had two previous convictions for three non-relevant offences between 2012 and 2018. He had not previously received a custodial sentence.
5. The sentencing remarks are carefully crafted and refer to a previous prosecution concession made as to 'medium culpability' during counsel's discussions regarding plea. This had been honoured by subsequent prosecution counsel, and the judge referred to it as a "generous concession indeed". The judge went on to identify what were

undoubtedly factors in the high bracket, not least the breach of trust involved but the sophisticated nature of it. Clearly, as the judge indicated, he was not bound by the agreement between counsel but:

“... bearing in mind the time that has passed since you pleaded and the fact that during that time it was your understanding that this was the basis you were to be sentenced upon and the fact that the upper end of the bracket is, in any event, four years within the range of the next bracket up, it seems to me that there is good reason to accept this classification today and that it is fair to do so.”

6. The harm, the judge determined, was to be placed in category B.
7. The Sentencing Council Guidelines indicate a starting point of 3 years' custody, with a range of between 18 months and 4 years, based upon an indicative figure of £300,000. The offending comprised a course of conduct which resulted in a loss in the region of £200,000. The judge made specific reference to all matters of mitigation urged on the applicant's behalf, including delay, in reaching the figure of 42 months then discounted to 33 months.
8. The draft grounds of appeal may be discerned to be, and amplified today as, the fact that insufficient weight was afforded to the disproportionate delay between plea and sentence. Mr Radstone relies on R v Ali [2023] EWCA Crim 232 and submits that a suspended sentence should be imposed. Particularly, he draws our attention to the fact that in November 2022, this applicant was prepared to be sentenced to custody; he had made arrangements with his family for the care of his disabled mother during the Christmas period. His sentence hearing was adjourned at the last moment. This, it is submitted, should be placed in the balance when considering the applicant's reasonable expectations to receive a shorter sentence or a suspended sentence.

Discussion

9. Delays in any criminal hearing are regrettable. But in recent years, for various reasons, they have become unavoidable. We stress that the case of Ali is not authority for the principle that the mere fact of delay and prison overcrowding will, in every case, result in a substantially reduced or suspended sentence. For the reasons articulated by the judge, and endorsed by the single judge, this offending did not warrant a custodial term of 24 months or less, even with the most general allowance for mitigation.
10. The applicant was described in the pre-sentence report to accept little responsibility for his actions. There is no mitigation of the offences to say that those defrauded were extremely wealthy and that the offence had not impacted the working relationship between them and the applicant's previous employers. Nevertheless, the judge honoured the generous agreement reached between counsel to reflect delay and the unmanaged expectations of the applicant. The sentence reached fell well within the reasonable range predicated upon the Sentencing Council Guidelines. We regret that, despite Mr Radstone's eloquence, it is simply unarguable that this sentence is either manifestly excessive or wrong in principle, and the application is refused.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the

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