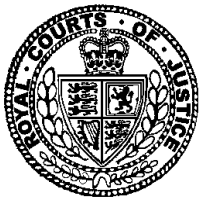

Neutral Citation Number: [2023] EWCA Crim 945

Case Nos: 202203389 A3, 202203280 A4, 202301885 A3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CROWN COURT AT WOOLWICH
His Honour Judge J Mann KC

AND ON APPEAL FROM THE CROWN COURT AT READING
Her Honour Judge Campbell

AND ON APPEAL FROM THE CROWN COURT AT SOUTHWARK
Her Honour Judge Cahill KC

Date: 4th August 2023

Before :

LORD JUSTICE EDIS
MR JUSTICE JOHNSON
and
HIS HONOUR JUDGE LICKLEY KC

- -

Between :

Rex	**Respondent**
- and -	
(1) STEVEN COOPER **(2) DAVID PARK** **(3) TEJAY FLETCHER**	**Appellants**

- -
- -

Rhys Rosser for the Appellant Steven Cooper
Simon Farrell KC for the Appellant David Park
Simon Baker KC for the Applicant Tejay Fletcher
Lyndon Harris for the Respondent

Hearing date: 25 July 2023

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 4 August 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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LORD JUSTICE EDIS

Lord Justice Edis:

1. The primary issue in each of these otherwise unrelated appeals concerns the approach to totality when sentencing a defendant for an offence contrary to the Proceeds of Crime Act 2002 in respect of the criminal benefit from offences for which the defendant also falls to be sentenced.

2. David Park was sentenced to 4½ years' imprisonment for cheating the public Revenue, and a consecutive sentence of 18 months for transferring the proceeds of that cheat. Stephen Cooper was sentenced to 4½ years' imprisonment for possession of drugs with intent to supply, and a consecutive sentence of 6 months for possessing the proceeds of the supply of drugs. Tejay Fletcher was sentenced to 7 years and 4 months' imprisonment for offences connected with fraud, and a consecutive sentence of 6 years for transferring criminal property which represented the proceeds of fraud. David Park and Stephen Cooper were each granted leave to appeal on grounds which included that the sentence for the 2002 Act offence should have been imposed concurrently because it concerned the same criminality. The Registrar for Criminal Appeals referred the application for leave to appeal in Tejay Fletcher's case to the Full Court because it raises the same issue. We grant leave.

3. The grouping of cases involving a common issue in sentencing is, perhaps, an implied invitation to the court to give guidance. In these cases, it appears that the sentencing judges were well aware of the proper approach. There is a relevant guideline which sets out the general principles to be applied, and there are some decisions of this court which deal with the particular situation where the court must decide whether to impose a consecutive sentence for an offence contrary to the 2002 Act in addition to a sentence for the substantive offence which produced the criminal property. We do not think it necessary to say anything which changes or develops the law, but it may be useful to set out in this single location the correct principles to be applied where the issue identified at [1] above arises. This is what we will try to do. We shall also have some observations to make about the use of consecutive sentences in a somewhat broader context in dealing with Tejay Fletcher's appeal.

The 2002 Act offences

4. Section 340(3) of the 2002 Act provides that property is "criminal property" if it constitutes a person's benefit from criminal conduct, or represents such benefit, and the alleged offender knows or suspects that it constitutes or represents such a benefit. For these purposes, a person benefits from conduct if they obtain property as a result of or in connection with the conduct: section 340(5). Conduct amounts to "criminal conduct" if it constitutes an offence in any part of the United Kingdom, or would constitute such an offence if it occurred there: section 340(2).

5. Section 327 of the 2002 Act creates of an offence of concealing, disguising, converting, transferring or removing from the United Kingdom criminal property.

6. Section 329 of the 2002 Act creates of offence of acquiring, using or possessing criminal property.

7. The maximum sentence for an offence contrary to section 327 or 329 of the 2002 Act is 14 years' custody. The Sentencing Council has published a guideline for such

offences. The harm is to be assessed by the value of the money laundered, but also taking account of the level of harm associated with the underlying offence. The factors that are relevant when assessing culpability include the role played by the offender where the offending is part of a group activity, whether others have been involved through pressure or influence, whether there has been an abuse of a position of power or trust or responsibility, the level of sophistication of the offending, the amount of planning, and the time period over which the offending takes place.

Principles to be applied

8. The length of a custodial sentence must be the shortest term that is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it: section 231(2) Sentencing Act 2020. The court must follow any relevant sentencing guideline unless that would be contrary to the interests of justice: section 59(1).

9. The Sentencing Council published an amended overarching guideline on totality on 1 July 2023. The principles set out in that guideline are largely unchanged from the previous version that was in force at the time of the sentences that were imposed in these cases. The guideline requires that:

   (1) When sentencing an offender for multiple offences, the court must apply the principle of totality.

   (2) The principle of totality is that the overall sentence should be just and proportionate and should reflect all the offending behaviour.

   (3) There is no inflexible rule as to how the sentence should be structured: sentences can be either concurrent, or consecutive, or a mixture of both.

   (4) If consecutive sentences are imposed, it will ordinarily be necessary to apply some downward adjustment to reflect the principle of totality.

   (5) Conversely, if concurrent sentences are imposed it will ordinarily be necessary to apply some upward adjustment to ensure that the total sentence properly reflects the criminality of the offender.

10. The approach to sentencing in this type of case was considered by this court in *R v Greaves* [2010] EWCA Crim 709; [2011] 1 Cr App R (S) 8, *R v Alexander and Others* [2011] EWCA Crim 89; [2011] 2 Cr Ap R (S) 52 and *R v Randhawa* [2022] EWCA Crim 873. Those decisions show that there is a broad spectrum of cases involving the combination of 2002 Act offences and other underlying, primary, offending. At one end of the spectrum, the 2002 Act offence does not involve any additional culpability or harm and does not aggravate the seriousness of the primary offence. At the other end, the offending contrary to the 2002 Act is markedly distinct from the primary offending and involves significant additional culpability and harm, aggravating the primary offence to an extent that would not otherwise be reflected in the sentence for that offence if considered in isolation. The decisions in those cases illustrate the operation of the principle of totality in this context:

(1) Where the 2002 Act offence adds nothing to the culpability and harm involved in the primary offence then there should be no additional penalty: *Greaves* at [24], *Alexander* at [11]. In such a case it is appropriate to impose concurrent sentences, with no upward adjustment.

(2) Where the 2002 Act offence involves additional criminality (whether increasing the culpability or harm, or both) beyond that involved in the other offences for which sentences are imposed, an additional penalty should be imposed: *Greaves* at [24], *Alexander* at [13], *Randhawa* at [21]. The seriousness of the additional criminality is to be assessed by reference to the culpability of the offender and the harm caused by the 2002 Act offending. In such a case the sentencing judge may either impose concurrent sentences with an appropriate upward adjustment, or consecutive sentences, often with a downward adjustment.

11. It is thus important, in each case, to identify whether the 2002 Act offence involves additional culpability and/or harm, and, if so, the extent. Examples of cases where there is such an additional factor include those where the 2002 Act offence:

(1) takes place over a different period from the primary offending.

(2) involves additional or different criminal property, beyond the proceeds of the primary offending.

(3) makes it more difficult to detect the primary offending.

(4) involves dealing with the proceeds of the primary offending in a way which increases the risk that victims will not recover their losses, or that confiscation proceedings will be frustrated.

(5) creates additional victims. This may arise where the proceeds of the primary offending are used to make further transactions which are then thrown into question, resulting in loss to the innocent parties to those transactions: *Randhawa* at [20].

(6) involves additional planning or sophistication, extending the culpability that might otherwise attach to the primary offending.

(7) assists in the continuation of offending. In this regard, in *Alexander* at [13] Moses LJ drew attention to "[t]he pernicious nature of money laundering and its capacity for enabling the proceeds of drug dealing to be not only concealed but to assist in the continuation of such crimes" (referring also to ***R v Linegar*** [2009] EWCA Crim 648 *per* Aikens LJ at [18]).

12. Conversely, where the 2002 Act constitutes nothing more than the continued possession of the proceeds of the primary offence, then there is unlikely to be any additional culpability or harm beyond that reflected in the primary offence. In that event, it would be wrong in principle to impose any additional penalty. If an immediate custodial sentence is imposed for the primary offence this principle requires a sentence for the 2002 offence that runs concurrently with it.

R v Cooper

The facts

13. On 4 November 2022 in the Crown Court at Woolwich the appellant, who was then 27 years old, pleaded guilty (following the plea and trial preparation hearing, but before the first day of trial) to 10 counts of possession of a controlled drug with intent to supply (comprising 4 offences concerning class A drugs, 3 offences concerning class B drugs, and 3 offences concerning class A drugs). He also pleaded guilty to an offence of possession of criminal property contrary to section 329(1)(c) of the 2002 Act. On the same day, HHJ Mann KC sentenced the appellant to a total of 4 years and 6 months' imprisonment in respect of the drugs offences. HHJ Mann KC imposed a consecutive 6-month term in respect of the 2002 Act offence. The total sentence was therefore 5 years' imprisonment.

14. On 6 October 2021 police executed a search warrant at a lockup. They found 50 litres of Gamma Butyrolactone ("GBL") and 4,038 Zopiclone tablets (both class C drugs), together with associated paraphernalia. CCTV footage showed the appellant attending the facility several times between September and October 2021, often in the middle of the night.

15. On 21 December 2021 the appellant was arrested. His home was searched. Police found 15 grams of methylamphetamine hydrochloride (crystal meth), 28 grams of ketamine and 354 grams of GBL, together with further associated paraphernalia and over £2,500 in cash. He was bailed on 4 January 2022 with a condition to reside at an address in Devon

16. On 14 June 2022 police officers found the appellant slumped forward in the driver's seat of a car in London W1, unconscious. The officers searched the car and found 54 milligrams of GBL, almost £2,000 in cash, and further drugs paraphernalia.

17. On 18 July 2022 in London N1 an officer was on patrol when she saw the appellant driving a vehicle towards her at speed and on the wrong side of the road. She stopped the appellant. Further drugs and paraphernalia were found. A hotel room where the appellant was staying was also searched. Further drugs and paraphernalia were found.

18. The appellant was charged with the drugs offences and with the 2002 Act offence. The latter related to the total quantity of cash, £4,791, that had been seized from him. This was a multiple incident count to reflect repeated seizures of criminal property from him, namely the cash found on the occasions when he was arrested and searches were carried out.

The sentence

19. In respect of each drugs offence, the sentencing judge found that the appellant performed a significant role. That was because he held an operational or management function within the chain, he had an expectation of significant financial or other advantage, and he had some awareness and understanding of the scale of the operation. He was a street dealer, and so each offence fell within harm category 3. The starting point for the class A offences was therefore a custodial sentence of 4½ years, with a range of 3½ to 7 years. The principal aggravating feature was the repetition of the offending whilst on bail. The judge took account of the appellant's previous good character. The judge reached a 6-year sentence for two of the class A offences which he then reduced by a quarter to take account of the appellant's guilty pleas. He imposed concurrent sentences in respect of each of the other drug offences. In respect of the

2002 Act offence, the judge would have imposed an 8-month sentence following trial, which he reduced to 6 months' imprisonment in the light of the appellant's guilty plea.

The appeal

20. Mr Rosser, on behalf of the appellant, submits that the judge erred in his approach to totality in imposing a consecutive sentence for the offence of possession of criminal property. Further, he submits the judge erred in the approach to totality by taking a starting point, before credit, of 6 years' imprisonment for the drugs supply offences. He suggests that this appellant fell between a significant and a lesser role for culpability and that the case fell in category 3 for harm. He says this is particularly so given that the appellant was dealing in drugs to which he was addicted. If that is right, the appellant appears to have become addicted to a large number of different drugs. Finally, he says that the judge failed to give enough credit for matters of personal mitigation, including the fact that this appellant was of good character when he came to be sentenced. Mr. Rosser points out that the judge's starting point before plea discount was 6 years and 8 months, which is nearly as long as the 7 years which would be the required minimum term for a person on their third such conviction under section 313 of the Sentencing Act 2020. Accordingly, he contends that the overall sentence was manifestly excessive.

Discussion

21. The sentencing judge did not obtain a pre-sentence report, and we agree that a report is unnecessary.

22. The 2002 Act offence related to the cash that was found. That cash was not the proceeds of the drugs offences which resulted in the sentence of 4 years and 6 months' imprisonment. Those drugs had not been sold. The cash related to the proceeds of the supply of other drugs. It therefore amounted to additional offending beyond that which was marked by the sentence of the drugs offences. The judge was therefore right separately to penalise that offending, and to do so by way of a consecutive sentence.

23. The comparison with the minimum sentence required by section 313 of the Sentencing Act 2020 does not assist. Parliament did not say that a sentence of 7 years was the right sentence for a person being convicted of a drug trafficking offence involving class A drugs, only that it should not be less than that. It will usually be the case that significantly longer sentences are required in such cases.

24. The question that remains is whether the overall sentence was manifestly excessive. We do not consider that it was. The guideline starting point for a single category A offence was 4½ years imprisonment, with a range of 3½ to 7 years. We do not accept that the appellant had anything other than a significant role. There were 4 separate category A offences, and a further 6 category B/C offences. This required a significant upward adjustment. A number of the offences were committed while the appellant was on bail. That too required a further upward adjustment. After taking account of the mitigation, a sentence following trial of 6 years' imprisonment would not have been manifestly excessive. The judge was generous in making a one quarter reduction for the pleas which were entered after the plea and trial preparation hearing.

25. The 2002 Act offence fell within culpability bracket A and harm bracket C, giving a starting point of 12 months' custody and a range of 26 weeks to 2 years. The same aggravating and mitigating factors applied. Allowing for totality, an 8-month sentence following trial would not have been manifestly excessive. Again, the reduction for plea was generous.

26. It follows that the resulting sentence of 5 years' imprisonment was not manifestly excessive.

27. We therefore dismiss the appeal.

R v Park

The facts

28. On 17 October 2022 the appellant, who was then aged 73, was sentenced to a total of 6 years' imprisonment for two offences of cheating the Revenue, and an offence contrary to section 327 of the 2002 Act. He appeals against sentence with the leave of the single judge.

The facts

29. The appellant was a director of a company that provided school runs for children with special education needs. It provided these services to two local authorities. The company was registered for VAT. The appellant was informed by his accountant about the obligation to file VAT returns. The company invoiced the local authorities for payment for work done, charging VAT on the amounts charged. Payments were made by the two local authorities, the payments including the amounts charged for VAT. However, the company did not submit any VAT returns.

30. In 2012, in email correspondence, the appellant indicated that he knew he had not submitted his VAT returns. Multiple letters were sent to the company about the non-provision of VAT returns. The appellant's accountant offered him advice and information about VAT but he was not instructed to submit VAT returns. The total figure of unpaid VAT between 2010 and 2016 amounted to approximately £777,320.

31. From 2011, the appellant used staged payments received by the company to purchase a property called Holdfast Hall, for the total price of £3,770,000. Around three quarters of the funds for the purchase price came from the company.

32. In interview, the appellant admitted that he was responsible for doing the VAT returns and knew that he had to pay VAT. He said that he had been trying to get his books in order and complete records. He knew he had to pay the VAT sooner or later. He said that money found in his house had been put aside to pay the VAT. He was charged with two offences of cheating the Revenue (one in respect of each of the local authorities) and a further offence of transferring criminal property contrary to section 327 of the 2002 Act.

33. At trial, the appellant said that he had not acted dishonestly because he had understood that his accountant was dealing with the VAT returns, and that he always intended to pay the VAT that was owing. He was convicted by the jury.

The sentence

34. In sentencing the appellant, HHJ Campbell found that the Revenue offences involved high culpability because they comprised fraudulent activity over a sustained period, and the appellant had abused his position as a company director. She applied the fraud guideline for the offence of which the appellant was convicted, namely cheat. This is dealt with in Table 3 of the guideline, titled "Cheating the Revenue". For cases below £2m in loss caused, the sentencer is directed to Table 1. That is the Table the judge applied. She said that there was significant planning by the transfer of the funds for the purchase of the property, but, as she said, "one must be careful not to double count with [the 2002 Act offence]." The case fell within harm category 4, with an indicative amount of £1 million. That provided a starting point of 7 years custody and a range of 5 to 8 years. It was an aggravating feature that the appellant had not responded to warnings. Although the appellant had previous convictions, these were old and the judge did not treat them as an aggravating feature. The judge took account of the appellant's age, his poor health (he had a triple heart bypass in 2017 and was at high risk of a cardiovascular event) and the delay of 4 years and 9 months in charges being preferred, as well as further delay (due to Covid) in the matter reaching trial. She also took account of the fact that the appellant had now paid some £1.8 million towards tax liabilities of £2.25 million.

35. The judge imposed a sentence of 4 years and 6 months' imprisonment to reflect the totality of the fraud offences (comprising 18 months' imprisonment on count 1 and 4 years and 6 months' imprisonment concurrently on count 2). In respect of the 2002 Act offence the judge said that she would have imposed a consecutive sentence of 4 years' imprisonment but, bearing in mind the principle of totality, she reduced that to 18 months' imprisonment. It followed that the total sentence was 6 years' imprisonment.

The appeal

36. Mr Farrell KC, on behalf of the appellant, submits that the sentence imposed was wrong in principle and manifestly excessive. He contends that the starting point for the tax offences should have been no more than 3½ years, and that the sentence for the 2002 Act offence should not have been made consecutive to the sentences for the tax offences. He emphasises that the business was a legitimate one, and that this is not a case, such as a missing trader VAT fraud, where a fraudulent scheme is devised and operated from the start. He submits that the judge should not have applied Table 1,but should instead have applied Table 2 which applies to offences other than cheat, including offences contrary to section 72 of the Value Added Tax 1994.

Discussion

37. The judge correctly identified the applicable bracket in the Sentencing Council guideline. Table 1 is the Table to which the sentencer is directed in the guideline for offences of cheat where the sums involved are below the ranges given in Table 3. That provided a starting point of 7 years and a range of 5-8 years. That is based on an indicative amount of £1 million. Here, the indicted amount was around three quarters of that, meaning a reduction from the 7-year starting point was appropriate.

38. The judge correctly identified all relevant aggravating and mitigating factors. Her ultimate sentence was 4½ years, less than the category floor of 5 years. We consider

that subject to any reduction for totality, a sentence of 5 years and 6 months would have been justified in respect of counts 1 and 2.

39. The 2002 Act offence, considered in isolation, would likewise have justified a similar sentence.

40. We consider that the 2002 Act offence did involve additional culpability. It was the calculated purchase of a substantial property using the proceeds of the long running cheat on the Revenue. The property was then used to continue to run the business, continuing the cheat. It made it more difficult for the Revenue to recover the funds that were owing. The property was purchased in an unusual way, in that title is not to pass to the company controlled by the appellant until the last of a series of payments is made. Title has not yet passed. We are told that there is no doubt that the value of the property will be realised for the benefit of the Revenue, but this has not yet happened. We do not agree that entering into an arrangement of this kind is, for sentencing purposes, to be equated with placing the money in a cupboard.

41. The judge would have been entitled to consider that the overall offending merited a sentence of 6 years' imprisonment, and to have imposed that sentence on count 2, with a concurrent sentence in respect of count 3. She was, however, equally entitled to impose consecutive sentences so long as an appropriate reduction was made for totality. That is exactly what she did, reducing the sentence on count 3 to 18 months, a fraction of the sentence that would have been justified if count 3 had stood alone. The result is the same, an overall sentence of 6 years' imprisonment. We do not consider that is manifestly excessive. Accordingly, we dismiss the appeal.

R v Fletcher

The facts

42. On 19 May 2023 the appellant, who was 32, was sentenced to a total of 13 years and 4 months' imprisonment for four offences to which the appellant had pleaded guilty. The sentence comprised:

    (1) A sentence of 7 years and 4 months for count 1, an offence of making or supplying articles for use in fraud, contrary to section 7(1) Fraud Act 2006,

    (2) A concurrent sentence of 7 years and 4 months for count 2, an offence of encouraging or assisting the commission of an offence of fraud, believing that it would be committed, contrary to section 45 of the Serious Crime Act 2007,

    (3) A concurrent sentence of 4 years and 11 months for count 3, an offence of possessing criminal property, contrary to section 329(1)(c) of the 2002 Act,

    (4) A consecutive sentence of 6 years for count 4, an offence of transferring criminal property, contrary to section 327(1)(d) of the 2002 Act.

43. The appellant was the owner and lead administrator of a website, iSpoof, which facilitated fraud on an industrial scale. Subscribers paid for access to software, through which they were able to take advantage of a number of 'tools' which enabled them to commit fraud. Amongst the services provided was software through which the

fraudsters could make calls which appeared to the recipient to derive from trusted sources, for example HMRC or their bank. The software also provided the means to record calls, to intercept passwords and other sensitive data entered via the keypad of the victim's phone, and to divert call recipients to fraudulent websites or telephone numbers operated by the fraudsters. The iSpoof website contained tutorials designed to encourage subscribers to make best use of the available tools and offered a telegram channel, the purpose of which was to resolve technical issues and market the services offered by the website.

44. The prosecution identified frauds in the United Kingdom that had been conducted using the iSpoof website. The value of these frauds exceeded £43 million. The global loss was estimated to be about £100 million.

45. The appellant was arrested in November 2022. The police found in his possession a Lamborghini car, two Range Rovers and a Rolex watch with a combined value of over £360,000. He had no known legitimate income. He was charged with 4 offences, the indictment period covering the period from November 2020 to November 2022.

46. Count 3 reflected the payments made by subscribers to the iSpoof website. These payments were made by cryptocurrency into cryptocurrency wallets owned by the website. These payments had a total value in excess of £3 million.

47. Count 4 related to the transfer of those subscriptions into cryptocurrency wallets controlled by the appellant, to reflect his share of the proceeds of the offending. This amounted to between £1.7 and £1.9 million. Some of these wallets were more easily attributed to him than others. Some of them were attributable to his partner.

48. The appellant pleaded not guilty at the plea and trial preparation hearing. Two weeks before trial the appellant asked for an indication as to sentence. This was refused, but at a hearing a month before the day listed for trial the judge indicated that credit of 18% was still available for a plea on that day. The appellant then entered guilty pleas.

The sentence

49. The sentencing judge was satisfied that the appellant was the leading administrator of the iSpoof website. After his co-founder was removed, users increased from 6,433 to 44,459. The appellant received most of the proceeds of the subscriptions. The judge said that the appellant had created the website, which was a sophisticated article for fraud and which generated substantial profits. She accepted that when the appellant first started, he probably did not realise how successful and profitable the enterprise would be, but he then embraced it and was the active force behind it once his co-founder was removed. The impact was demonstrated by victim personal statements from those who had been persuaded to transfer large sums of money, in some instances hundreds of thousands of pounds, and in one instance £2 million, believing they were talking to genuine bank employees. The losses resulted in their businesses suffering, substantial personal financial problems, sleeplessness, depression and emotional stress and fall outs with family members. It had been a harrowing experience for all.

50. There was agreement that the case fell within the highest culpability and harm brackets of the applicable sentencing guideline. For count 1, that produced a starting point of 4 years and 6 months' custody, with a range of 3-7 years. The judge observed that three

high culpability factors were present (leading role, sophisticated nature of the offence and the significant planning, and the sustained period of time over which the offending took place) and that all five greater harm factors were present. The offence was aggravated by the appellant's previous convictions, his attempts to conceal or dispose of evidence by the deleting of the records of calls, and the fact that the offending was committed across borders. This justified moving beyond the category maximum. It was agreed on behalf of the defendant that the appropriate sentence, before reduction for plea, would be at or close to the statutory maximum of 10 years for both counts 1 and 2. This agreement appears to have proceeded on the assumption that the sentences would be concurrent, meaning that the maximum sentence for this exceptionally serious fraud was said to be 10 years.

51. The judge said that there was little in terms of personal mitigation, but she took account of the appellant's health issues and his work in the community. She would impose a sentence of 9 years' imprisonment before applying a reduction to 7 years and 4 months to reflect the guilty pleas.

52. The judge said count 3 was a category 2A offence with a starting point of 8 years, and a range of 6-9 years. Count 4 was a category 3 offence with a starting point of 7 years and a range 5-8 years. The same aggravating and mitigating factors applied. The judge considered that the appropriate sentences following trial in respect of counts 3 and 4 were 6 years' imprisonment and 7½ years' imprisonment respectively. After allowing credit for the pleas, these were reduced to 4 years and 11 months, and 6 years respectively.

53. The judge then addressed the question of whether she should pass concurrent or consecutive sentences. She did not accept that the sentences on counts 1 and 2 should be concurrent, except for the influence of the consecutive sentence she was imposing on count 4. She said:

> "I must consider whether the sentences I pass should be concurrent or consecutive. Consecutive sentences are ordinarily appropriate in certain circumstances set out in the Definitive Guideline on Offences taken into Consideration and Totality. One of those is where the offences are of the same or similar kind but where the overall criminality will not be sufficiently reflected by concurrent sentences. The Crown urge that in respect of each of Counts 1 and 2 the vast scale of the offending and the multiplicity and gravity of the culpability and harm factors will not be reflected by concurrent sentences. The guidelines also state that consecutive sentences for multiple offences may be appropriate where large sums are involved.
>
> I am satisfied that the vast scale of the offending in Counts 1 and 2 is such that this is a case in which concurrent sentences on counts 1 and 2 would not reflect that and that consecutive sentences would therefore be appropriate.
>
> The Crown also refer me to the cases of Graves and Alexander which are authority for the principle that consecutive sentences are appropriate where money laundering offences add to the

> culpability of the underlying offence, particularly where this involves complexity beyond the underlying criminal activity.
>
> Whilst Count 3 is an integral part of counts 1 and 2 and the sentence should therefore be concurrent. Count 4, in my view adds to the culpability of the underlying offending as it involves complex behaviour going beyond that underlying offending. The underlying offences were complete without the additional complex methods by which Bitcoin was transferred and the transfers obscured. The sentence on Count 4 should therefore be consecutive to Counts 1 and 2.
>
> I now turn to totality. The total sentence must be just and proportionate to the overall offending behaviour. Whilst I am satisfied in law that consecutive sentences for counts 1, 2 and 4 are appropriate the combination of them would not be proportionate. For that reason I shall step back from passing them all consecutively."

The appeal

54. Mr Baker KC, on behalf of the appellant, submits that the sentence is manifestly excessive. In particular, the imposition of a sentence of 6 years for Count 4, based on a notional starting point of 7½ years, to be served consecutively to the sentence on Counts 1 and 2, represents an excessive total sentence. It does not, he says, reflect the extent to which the criminality within Counts 2 and 4 was already encompassed within the sentence for Count 1, and it makes inadequate allowance for totality.

55. He accepts that the judge was entitled to impose a consecutive sentences for counts 2 and 4 insofar as she properly found that the criminality encompassed within that count went beyond the criminality encompassed within Count 1, but only to the extent that the total sentence was proportionate to the total offending. He submits that the count 4 simply represented the transfer of funds which were part and parcel of the offending encompassed within counts 1 and 2. Any additional criminality involved in those counts was therefore minimal. It followed that the notional additional sentence of 6 years following trial was disproportionate.

56. Mr Baker submits that the use of cryptocurrency wallets did not involve any greater seriousness than the use of ordinary currencies would have done, because (with the exception of the wallets controlled by the appellant's partner) they were no different from bank accounts. A consecutive sentence was justified in principle, but the sentence of 6 years was far too long.

57. Alternatively, Mr Baker submits that the judge reached a nominal sentence of 16½ years' imprisonment following trial which is manifestly excessive in that it significantly exceeds the maximum sentence for each of the underlying substantive offences.

Discussion

58. We do not consider that the sentencing judge can be faulted in respect of the individual sentences that she considered appropriate in respect of each count, before taking account of the guilty pleas and totality.

59. We agree with the judge that it was open to the court to impose consecutive sentences for counts 1 and 2 if they had stood alone. In *Attorney General's References (Nos 7 and 8 of 2013) (R. v Kallakis And Williams),R. v Levene*, [2013] EWCA Crim. 709; [2014] 1 Cr. App. R. (S.) 26, Pitchford LJ, giving the judgment of the court, said:-

> 77. We turn, secondly, to the question whether a consecutive sentence should have been imposed for the count 21 fraud. We do not accept that a consecutive sentence would have indicated a view that the maximum sentence for conspiracy to defraud was inadequate. On the contrary, the effect of the concurrent sentence is, in our view, to give the impression that the offenders have entirely escaped the consequences of a serious fraud in which substantial loss has resulted. It is true that the nature of the fraud was similar and that it overlapped in time with the count 1 conspiracy, but Bank of Scotland was a separate victim, separately targeted, and, unlike the count 1 offence, a substantial loss was realised. We have no doubt that a consecutive sentence for the offence was required, subject to the principle of totality. Had the offenders been sentenced for the count 2 offence standing alone it is our view that the appropriate starting point after a trial would have been six years' imprisonment.

60. In *R. v Timothy Schools* [2023] EWCA Crim 422 at [27]-[28], William Davis LJ, giving the judgment of the court, said this:-

> 27. In contrast, we found *Attorney General's References Nos 7 and 8 of 2013* [2013] 1 Cr.App.R (S) 26 of considerable assistance. One of the cases with which the Reference was concerned involved defendants named Kallakis and Williams. They were involved in two conspiracies to defraud banks which used dishonest means to cause the banks to advance monies. In the first conspiracy the advances were to purchase properties, whilst the second conspiracy related to a scheme to convert a ferry into a luxury yacht. Both conspiracies involved the use of the same kind of dishonest means to obtain the monies. They overlapped in time.
>
> 28. The sentencing judge concluded in those circumstances that consecutive sentences were not appropriate because the second conspiracy was an extension of the same conduct as practised in the first. The court rejected that approach and on the Attorney's Reference increased the overall sentence by imposing consecutive sentences. The court noted that the second conspiracy was directed at a separate victim and the victim sustained substantial losses. Consecutive sentences therefore were required. In the event the eventual total sentence exceeded

> the maximum sentence for a single offence of conspiracy to defraud.

61. In our judgment, the seriousness of the primary offences, comprising counts 1 and 2, justified the imposition of a total sentence in excess of the statutory maximum sentence of 10 years' imprisonment for a single offence, before reduction for plea. The conduct in count 1 involved setting up the website, and the conduct in count 2 involved promoting and facilitating its use by others. The conduct is closely connected, but separate. One way of illustrating this concept on the facts of this case is to note that it would be possible for an offender to be involved in committing one of these offences but not the other. This offender, who was involved in both, is plainly in a much more serious position than that notional offender, who was not. Either count 1 or count 2, standing alone, would justify a sentence at or close to the statutory maximum. The power of the internet to enable fraud on a truly massive scale is a factor which must be taken into account in sentencing. The scale is not simply measured in financial loss, but also in the number of people who are caused loss or put at risk of loss. This number is very much higher than can ever be the case using more traditional methods of fraud. The loss of trust in businesses and the requirement for ever more complex verification processes causes harm to the national and global economy beyond the actual losses caused. The difficulty in detecting such crime increases the vulnerability of the population to it. The fast-developing technology which can create new ways of faking communications to mislead people has created a new method of fraud which will become more and more potent as that technology continues to evolve. Sentences in such cases must reflect all of these factors.

62. There is some personal mitigation, but the appellant has significant previous convictions. In 2013, 2014, 2015 and 2017 he received prison sentences (some suspended) for offences contrary to the Identity Documents Act 2010 and the Proceeds of Crime Act 2002. Overall, the balance of these factors operates as an aggravating feature.

63. Count 3 and (more so) count 4 involved additional culpability beyond the offending reflected in counts 1 and 2. The offences involved in counts 1 and 2 do not necessarily involve the acquisition of criminal property. Counts 3 and 4 reflect the additional criminality that is involved in not only making an article to be used in fraud, and encouraging or assisting the commission of an offence of fraud, but also then acquiring part of the benefit of a very large number of individual substantive offences of fraud. Moreover, that offending involved a sophisticated mechanism to enable the appellant to receive large sums of money under a cloak of anonymity. It potentially made the proceeds of the fraud more difficult to trace and recover. It also enabled the distribution of those proceeds in a way that was difficult to detect.

64. The judge addressed totality by declining to order the sentence for count 2 to run consecutively with that on count 1. She did not make any further reduction to the consecutive sentence on count 4. This was an approach she was entitled to take. The length of the sentence on count 4 was the product of an application of the relevant guideline.

65. The issue for us, therefore, is whether the total sentence of 13 years and 4 months, after the discount of 18% for the pleas of guilty, is manifestly excessive. This was a total sentence before plea discount of 16½ years' imprisonment. There is no doubt that this

was a substantial sentence but, for the reasons we have explained at [61] above, there is equally no doubt that it was well merited. Other judges might have arrived at the same result by adopting a different structure for the sentence, but the end result must inevitably have reflected the truly exceptional seriousness of this offending. This appeal is therefore dismissed.