



Neutral Citation Number: [2024] EWCA Crim 465

Case Nos: 202202880 B4 and 202202892 B4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WOOD GREEN
HIS HONOUR JUDGE DODD KC
T20190897

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 May 2024

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE HOLGATE

and

THE RECORDER OF SOUTHWARK
(Her Honour Judge Karu)

Sitting as a Judge of the Court of Appeal Criminal Division)

Between:

REX

Respondent

- and -

RICHARD DAVID LOVE

and

VICTORIA SAINTCLAIR

Applicants

Abiud Kaihiva for the Applicants
Janet Weeks (instructed by CPS Proceeds of Crime Unit) for the Respondent

Hearing date: 25 April 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 3 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Stuart-Smith:

Introduction

1. On 30 November 2020 in the Crown Court at Wood Green before HHJ Dodd KC and a jury, the Applicant Ms Saintclair was convicted of 8 counts of Possession of a False Identity Document with Improper Intention, contrary to Section 4(1) of the Identity Documents Act 2010, 9 counts of Fraud, contrary to s.1 of the Fraud Act 2006 and 1 count of Making a Dishonest Representation with a View to Obtaining Benefit, contrary to Section 111A (1)(a) of the Social Security Administration Act 1992. On the same occasion the Applicant Mr Love was convicted of 1 count of Fraud, contrary to s.1 of the Fraud Act 2006, and 1 count of Converting Criminal Property, contrary to Section 327 of the Proceeds of Crime Act 2002. Mr Love's offences of fraud and converting criminal property had been charged under Counts 19 and 20 of the indictment respectively.
2. On 18 December 2020 Ms Saintclair was sentenced, in her absence, to a total term of 6 years' imprisonment for these offences. On 26 February 2021 she was sentenced to a consecutive term of 8 months imprisonment for failing to surrender, having absented herself partway during the trial. Mr Love was sentenced on 18 December 2020 to a total term of 4 years' imprisonment.
3. The Applicants lodged applications for leave to appeal against their convictions and sentences of imprisonment. Those applications were refused by the Single Judge, renewed before the Full Court and refused on 9 December 2022.
4. Following a contested hearing, confiscation orders were made against both Applicants. On 9 September 2022 Ms Saintclair was ordered to pay £398,274.97 within one month, or in default to serve 4 years. On the same date, Mr Love was ordered to pay £237,003.73 within one month, or in default to serve 2 ½ years.
5. The Applicants applied for leave to appeal the confiscation orders imposed by HHJ Dodd KC. After refusal by the Single Judge, they renewed their applications. At a hearing on 24 November 2023 the Full Court gave further directions for the service of skeleton arguments, to be fully cross-referenced to all documents relied upon. In particular the court required clarity as to the basis of the finding that £90,000 benefit derived from Mr. Love's conviction on count 20 of the indictment.
6. The Applicants' renewed applications came before us on 25 April 2024. At the conclusion of the hearing we announced that the applications would be dismissed and that we would provide our reasons in writing. This judgment sets out those reasons.

Brief facts and trial

7. The facts of the case are set out in detail in the Criminal Appeal Office Summary. We need not repeat them in this judgment. In short, this was a case of the systematic defrauding of the benefit system over a period of years, coupled with the use of false identities and documents, which enabled the Applicants to live a lavish lifestyle. The prosecution case was proved by witness statements, which the Applicants agreed should be read. The prosecution also called a live witness, Amanda McQueen (a criminal

investigator from the Department of Work and Pensions). The Applicants were not represented during the trial. Ms Saintclair absconded shortly after the trial began.

8. The benefits claimed between the two of them was put in the region of £500,000. That figure was described as the ‘tip of the iceberg’ by prosecution counsel in her opening note. In the Proceeds of Crime application the prosecution chose not to pursue the Applicants on the basis of criminal lifestyle, focussing instead upon particular criminal benefit.
9. It is necessary to explain the basis of Counts 19 and 20 to understand the basis for the finding against Mr Love. Count 19 alleged that Mr Love had himself made fraudulent Housing Benefit claims by which he obtained just over £100,000.
10. Count 20 alleged that Mr Love between 16 May 2017 and 30 April 2018 converted the proceeds of Ms Saintclair’s benefit fraud by allowing his bank account to be used to deposit monies from and to make payments to her. From the outset the prosecution concentrated on a 7-day period between 17 and 24 May 2017 during which he received £90,000 from Ms Saintclair into his account. That money was held until February 2018 when it was paid out again. The prosecution case was that Ms Saintclair had no legitimate source of income and that therefore the jury could be sure that the £90,000 she transferred in to Mr Love’s account in May 2017 was the proceeds of crime. Mr Love’s case was that the source of the money had been legitimate because it had originally been obtained from well-meaning benefactors who wanted to support a charitable music event. In the event, he said, the event did not go ahead and he thought he was therefore entitled to keep the money and spend it as he wished.
11. The prosecution did not dispute that a different sum of £87,000 went into Mr Love’s bank account in September 2016, which derived (or may have derived) from a non-criminal source (the “Live Aid/Peace for You” project). There was unchallenged evidence that the £87,000 may well have been to do with a music project that had a charitable intention. The jury could therefore only convict on Count 20 if they were satisfied that the £90,000 transferred to Mr Love in April 2017 was the illegitimate proceeds of Ms Saintclair’s benefit fraud. It was the prosecution case that any monies that Mr Love had legitimately received from the “Live Aid/Peace for You” project had been depleted in expenditure on the project by the time in April 2017 when Ms Saintclair transferred the £90,000 that was the subject of Count 20 to Mr Love. The Judge summed up Count 20 to the Jury in clear terms that, if they were not sure that that Mr Love knew or suspected that the money that passed through his account derived from Ms Saintclair’s criminal activity, they were to acquit him.
12. Mr Love, as we have said, was convicted on both Counts 19 and 20. The Jury were therefore sure that his story in relation to the £90,000 was untrue and that the source of the money was Ms Saintclair’s criminal conduct. The conviction on Count 20 subsequently formed the basis for the inclusion of that sum in the prosecution’s section 16 statements provided by Mrs McCabe, the financial investigator.

The confiscation proceedings

13. Mr Love was served with the section 18 questionnaire in November 2020. Ms Saintclair was served with the section 18 questionnaire after her arrest in February 2021. Neither provided the information requested.

14. In his detailed ruling the Trial Judge set out the chronology and progress of the trial and the subsequent hearings before him. The prosecution witness Mrs McCabe, financial investigator and an officer of the Department for Work and Pensions, produced the two section 16 statements of information that set out the prosecution position in respect of each Applicant.
15. Ms Saintclair cross-examined Mrs McCabe. She did not challenge the accuracy of the work done by Mrs McCabe or suggest any alternative explanation or interpretation. Ms Saintclair did suggest that Mrs McCabe, along with others involved in the investigation, had all behaved dishonestly in discharging their duties as public servants. The judge dismissed those suggestions as “palpably nonsensical allegations”. Mr Love cross-examined Mrs McCabe and ultimately accepted the arithmetic and figures presented by Mrs McCabe as his benefit and available amount.
16. Both Applicants gave evidence. Ms Saintclair did not address the evidence against her and in cross-examination she agreed with much that was put to her, including her interests in two properties and their valuations. Her evidence in respect of gold bullion that she had acquired was vague. The Judge found that its location remained a mystery but he was sure she had not given it away. Mr Love was brief in his evidence, and in cross-examination he essentially agreed the benefit figure, and the available amount as well.
17. The Judge found that Ms Saintclair obtained benefit of £346,441.86 during the indictment period. That figure, with the appropriate uplift when the Consumer Price Index was taken into account, became the benefit figure of £398,274.97 found by the Judge. Ms Saintclair’s available amount comfortably exceeded that benefit figure, which became the recoverable amount. From that sum, £249,692.32 was to be paid as compensation to the London Borough of Haringey. Payment was to be made within 1 month. The term of imprisonment in default was 4 years.
18. The Judge found that Mr Love obtained benefit of £118,570.75 (Count 19) and £90,000 (Count 20). With the appropriate uplift when the Consumer Price Index was taken into account, that became the benefit figure of £237,003.73 found by the Judge. Mr Love’s available amount exceeded that benefit figure, which became the recoverable amount. From that sum, £118,570.75 was to be paid as compensation to the London Borough of Haringey. Payment was to be made within one month. The term of imprisonment in default was 2 ½ years.

The Grounds of Appeal: Ms Saintclair

19. The applicants initially lodged Grounds of Appeal of their own composition. Gans & Co Solicitors LLP then came on the record as acting for the applicants by Notices of Acting dated 21 October 2022 (Ms Saintclair) and 14 November 2022 (Mr Love) respectively. Submissions in support of the applications for leave to appeal the Confiscation Order were lodged by Gans & Co.
20. In summary, on behalf of Ms Saintclair the Grounds are that:
 - i) The Judge was wrong to refuse the application for an adjournment of the Proceeds of Crime hearing;

- ii) There was a breach of Protocol 1, Article 1 European Convention of Human Rights which encodes an entitlement to peaceful enjoyment of ones possessions and that no one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law. She complains that property was illegally seized from her in November 2019 and not returned to her;
- iii) There was a violation of Article 6, right to a fair trial: the applicant was denied her right to legal assistance;
- iv) The Applicant has not been provided with the transcripts of the proceedings;
- v) The Applicant appeared by video link for the POCA proceedings which was to her detriment: she could only see the Judge; her view of the prosecutor was partly obstructed; she could not see who else, if anyone, was in the court room; she was constantly muted and her right to question the opponent was denied;
- vi) Criticisms of the Judge and counsel for the prosecution who improperly denied the applicant her right to a fair hearing;
- vii) There was no interpreter in Court to assist the applicant. The applicant submits an interpreter was required because she does not speak 'legalease'. This was in violation of Article 6, right to a fair trial;
- viii) Proportionality was not taken into account;
- ix) The applicant's co-accused, Mr Love, was also denied his right to challenge despite him having real evidence that the entire amount was flawed;
- x) The Confiscation proceedings should not have commenced until the applications for leave to appeal against conviction and sentence had concluded.

21. Refusing leave to appeal, the Single Judge said:

“1. You seek to challenge the confiscation order in the sum of £398,274 on the grounds of procedural irregularity.

2. Some of your grounds relate to the decision to proceed in your absence when you failed to appear in court following a traffic incident. That issue has been considered on previous occasions; has been conclusively determined against you by the decision of the full Court of Appeal in December 2022 and in any event throws no light on the fairness of the confiscation proceedings.

3. Other of your grounds focus on whether property seized was returned to you. Whatever your point is, it has no relevance to whether the confiscation order was properly made.

4. It is apparent from the judgment in the confiscation decision that there had been frequent attempts to persuade you to instruct professional legal advisers to no avail. I note you do not seek representation in this appeal. If you chose not to seek representation at the time when it might have made a difference

(in preparing a case to respond to the prosecution claim) this does not make the hearing unfair.

5. You have not addressed any submission to whether the decision was wrong in fact or law and it appears from the judgment that you conceded that the sums claimed were due. An attempt deliberate or otherwise to obfuscate the issue and address points that at best would be peripheral to the issue has not and will not succeed in preventing the law from taking its course.

6. The application is wholly without merit.”

22. Having independently reviewed the materials on which Ms Saintclair relies, we agree entirely with the Single Judge. None of the matters raised by Ms Saintclair casts doubt on the size of the benefit she obtained through her particular criminal conduct or on the Judge’s finding that her available amount is in excess of the sum of the assessed benefit. The renewal of this application is merely a device to put off compliance and is totally without merit.

The Grounds of appeal: Mr Love

23. In summary on behalf of Mr Love the Grounds are that:
- i) The time period of one month in order to meet the requirements of the Confiscation Order was insufficient;
 - ii) The Judge was wrong to make the Confiscation Order and the separate appeals (presumably against conviction and sentence) bring into question the validity of the calculations and presumptions made;
 - iii) Compliance with the Order would cause harm to third parties, namely the Applicant’s mother;
 - iv) The funds considered as the proceeds of crime were in fact from a legitimate source. £90,000 was an advance payment towards costs and disbursements from a music show the Applicants had invested in;
 - v) The Confiscation proceedings should not have commenced until the applications for leave to appeal against conviction and sentence had concluded.
24. Counsel, Mr. Kaihiva, has lodged a skeleton argument in support of the Applicant’s fourth ground of Appeal, in which the following submissions are made:
- i) The Applicant was not granted a fair opportunity to assemble and/or present evidence in support of his case. Reference is made to Mr Moore of Moore Justice Solicitors in regard to forensic evidence. We note at once that there has been no application to lodge forensic evidence and no evidence has been received. Mr Moore requested funding for Ms Saintclair which was refused by the Registrar. No application was made for funding for Mr Love.

- ii) The Judge wrongfully failed to give any, or any adequate, account of the evidence the Applicant presented.
- iii) The Judge appeared to have accepted in his sentencing remarks that the sum of £90,000 was, “that piece of evidence relating to a substantial amount of money that was for once not derived from fraud on the state benefit system here”, yet proceeded to include the same as part of benefit obtained from criminal contact.
- iv) The Applicant categorically denies that the sum of £90,000 was derived from money laundering and/or any other criminal conduct.
- v) The Applicant’s contention is that due to his incarceration he was unable to produce all requisite evidence at the confiscation hearing to show that the £90,000 was money legitimately received.
- vi) The Applicant should be enabled to produce forensic evidence that supports his contention that the £90,000 was derived from legitimate music projects. If the judge had been wrong in sentencing the Applicant on the basis that £90,000 was derived from criminal conduct when it was not, then the Applicant is entitled to argue that his 2.5 year sentence in lieu of the confiscation order be set aside.
- vii) The courts have made it clear that persons who are custodians of property or couriers will not necessarily obtain property at all, even though they play a role and it may be a very important role in the conspiracy.

25. Refusing leave, the Single Judge said:

“1. The issue is whether the judge was entitled to make the confiscation order in the sums that he did. There is nothing in your grounds as supplemented to suggest he should not have done so and it appears that the sums were not in fact disputed at the hearing.

2. Any issue relating to your conviction is now irrelevant as the Full Court refused the appeal to appeal conviction on 9th December.

3. This application to appeal is wholly misconceived and without merit.”

26. Having conducted an independent review, we agree. Mr Love could, had he wished, have commissioned relevant expert evidence to show the source of funds that went into and out of his account at any time since he was charged. There can be no sensible suggestion that a forensic examination was not possible either before conviction or in the course of the confiscation proceedings. It is far too late to introduce such evidence now. In any event, given Mr Love’s conviction on Count 20 and the failure of his attempt to appeal his conviction, a finding in the confiscation proceedings that the £90,000 was the proceeds of his particular criminal conduct was both right and inevitable. It could not be subverted by additional evidence about the music project, since the jury were not invited to convict on the basis of the sums paid in 2016: it was always accepted that those sums were not or may not have been the proceeds of the

Applicants' criminal behaviour. There can be no criticism of the decision to commence POCA proceedings before the disposal of the Applicants' applications to appeal their convictions and prison sentences. The Applicants were and remained properly convicted at all material times. Had either of their appeals against sentence been successful, the POCA proceedings would have stopped. No unfairness or disadvantage flowed from the manner in which the POCA proceedings were conducted. To the contrary, it is plain from the materials that we have seen that the POCA proceedings were properly conducted with considerable care by HHJ Dodd KC.

27. Mr Love sought to place great weight on an observation made by the Judge when sentencing him to prison, before the confiscation proceedings had begun. In his sentencing remarks the Judge said to Mr Love:

“You also of course helped to launder just shy of £90,000 of your partner's fraudulently obtained money, reflected in count 20. This is once again a high culpability offence by virtue of the sophistication of the offending. The harm is in category 3.”

28. Later he said, this being the passage relied on by Mr Love:

“It is clear to me that you both lack an ounce of moral fibre or scruple. This was demonstrated ironically in your case Mr Love, when you told the jury that you and your partner Ms Saint-Claire, had received some £90,000 from well-meaning benefactors in Bulgaria and that was visible on the bank accounts produced in the course of the trial. That money you said, was intended to promote a Live Aid style music event. You said that artists had let you down and so, as a result, you decided to keep the money – all of it. That piece of evidence relating to a substantial amount of money, that was for once not derived from fraud on the state benefit system here, showed you both up as the selfish, self-centred and self-absorbed people that you are.”

29. When this latter observation is read in context, it is clear beyond argument to the contrary that the Judge was not casting doubt on the correctness of the conviction in respect of the £90,000. What he was saying was that, where Mr Love had put forward an explanation (albeit one that was rejected by the jury), that explanation involved morally reprehensible behaviour because, even on his own account, he had received the money from well-meaning benefactors who intended it to be used for charitable purposes but, when the music project failed, he simply pocketed the money for his own purposes rather than giving it back to the benefactors. The passage does not cast doubt on the correctness of the conviction on Count 20 or the correctness of the confiscation figures.
30. There can be no criticism of the one-month period that Mr Love was allowed for payment. On the basis that he was being required to repay the proceeds of his crimes, a month was entirely reasonable, as was the period of imprisonment in default.
31. As with Ms Saintclair's, Mr Love's renewed application is totally without merit. Both applications are dismissed.