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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 3 May 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE SPENCER

MR JUSTICE MORRIS

R E G I N A

v

CARLY DOUGLAS

SUSAN STEWART

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Mr G Gatland appeared on behalf of the **Appellant Douglas**

Mr P Reid appeared on behalf of the **Applicant Stewart**

J U D G M E N T

(Approved)

1. MR JUSTICE SPENCER: Carly Douglas, aged 28, appeals by leave of the single judge against a total sentence of two-and-a-half years' imprisonment, imposed by Mr Recorder Pritchard in the Crown Court at Newcastle-upon-Tyne on 18 January 2019, for offences of theft, transferring criminal property and fraud. Her mother, Susan Stewart, aged 49, appeals against her sentence of 2 years and 3 months' imprisonment, imposed on the same occasion, for offences of theft and transferring criminal property. The single judge referred her application for leave to the Full Court.
2. Susan Stewart was the general manager of the Sycamore Care Centre in Nookside, Sunderland. She took up those duties in August 2015. She had day-to-day control over the centre. Her daughter, Carly Douglas, was a "flexi bank carer" who was called upon to work at the centre when required.
3. The victim of these offences was Irene Shield, a resident at the care centre, aged 94 at the time of these offences, which were committed in July 2016. She had been a resident at the care home since May 2015, having been admitted from hospital after a number of falls. She was frail and vulnerable. In 2016 she sold her house and the proceeds of sale of around £150,000 were paid into her bank account on 1 June 2016. Mrs Shield paid £600 a week to the care centre for her accommodation and care.
4. Susan Stewart set up internet banking on behalf of Mrs Shield on 28 June 2016. Almost straightaway, and over the next month or so, mother and daughter, between them, stole some £21,000 from Mrs Shield's bank account. Between 23 June and 20 July Susan Stewart made 13 separate withdrawals of cash from ATM machines, usually of £200 or £250 at a time. The total sum withdrawn was £2,990. On 20 July, the date of the last ATM withdrawal by her mother, Carly Douglas withdrew £18,000 from Mrs Shield's account via internet banking and the money was transferred directly into her own bank account. From that sum she transferred a total of £6,000 into the bank account of her mother, Susan Stewart, on 20 and 21 July.
5. The transactions on Mrs Shield's account aroused the bank's suspicion and the account was suspended on 21 July. That day Carly Douglas telephoned the bank pretending to be Mrs Shield, in an attempt to gain further access to the monies in the account. The attempt failed. She made three such calls that day. It seems that she had made two attempts each to obtain a further £3,000 from the account.
6. When the police became involved Susan Stewart manipulated the care centre's computer system to create retrospective entries in respect of Mrs Shield, purporting to justify the cash withdrawals. One of the entries, dated 9 July read: "Irene requests staff to purchase Jimmy Choo gift sets for yourself. Today this was purchased at Debenham's store. Gift set and receipt handed to Irene. She was really pleased with gift set on special price and the gift bag too."

7. Irene Shield gave an ABE interview to the police in December 2016. By that time she was very frail indeed. She died in March 2017, aged 95.
8. Count 1 charged both defendants with theft of £20,995.61, the aggregate of the ATM cash withdrawals and the £18,000 online banking withdrawal. On count 1, Carly Douglas was sentenced to two-and-a-half years' imprisonment and Susan Stewart was sentenced to 2 years 3 months' imprisonment.
9. Count 2 charged both defendants with transferring criminal property, contrary to section 327(1)(d) of the Proceeds of Crime Act 2002, namely the sum of £6,000 transferred by Carly Douglas to Susan Stewart. On count 2, Carly Douglas was sentenced to a concurrent term of 9 months' imprisonment. Susan Stewart was sentenced to a concurrent term of 12 months.
10. Count 3 charged Carly Douglas with fraud, contrary to section 1 of the Fraud Act 2006, the allegation being that she abused her position as a care worker by making telephone calls and pretending to be Irene Shield, dishonestly and with a view to gain for herself or a loss to another, in breach of section 4 of the Act. On that count Carly Douglas was sentenced to a concurrent term of 7 months' imprisonment.
11. The judge made it clear in his sentencing remarks that although he was passing concurrent sentences, the overall criminality of each defendant's offending was reflected in the lead sentence he imposed on count 1.
12. Carly Douglas pleaded guilty some 2 months before trial. She was afforded credit of 17.5% for her pleas. Susan Stewart pleaded guilty on the day of trial. She was afforded 10% credit.
13. Carly Douglas had one previous conviction, many years earlier, for an offence of common assault. The judge made it clear that he disregarded that. Susan Stewart was of previous good character completely.
14. The judge had pre-sentence reports and psychiatric reports on both defendants. Carly Douglas was a single parent with a 4-year-old son. She had a troubled background. She had grown up in a household with a violent and abusive father. In 2012 she had been the victim of a serious offence herself; the perpetrator received a very lengthy prison sentence. She had become depressed and suffered symptoms of post-traumatic stress disorder. Subsequently there were issues with her partner. Those were complicated by housing issues. The flat where she was living was damp and unhealthy. She was desperate to extricate herself from that situation by finding new accommodation, which required a deposit and the payment of rent in advance. This was said to be the motivation for stealing from Mrs Shield.
15. The psychiatric report suggested that her depression and PTSD would have lowered the threshold for offending behaviour. She was not suffering from any mental disorder of a nature which would make a hospital order appropriate or make a mental health condition for community disposal appropriate.

16. The assessment in the pre-sentence report was that there was a low likelihood of re-offending. If the court was able to consider a community based disposal, appropriate requirements for such an order were suggested.
17. Carly Douglas told the probation officer that she decided to steal the money because she had to fund privately rented accommodation and needed 7 months' rent in advance. She transferred £6,000 to her mother as a "thank you" and to repay her for all the financial and other support she had received from her mother in recent years. The pre-sentence report disclosed that she also had debts of £15,000, mostly owed to mobile phone companies. Carly Douglas told the psychiatrist that she was also worried that the man who had committed the offence against her and received a very long sentence was shortly to be released from custody and this caused her anxiety and increased her need to move to other accommodation for fear that he might find her and her son.
18. Susan Stewart was a carer for her husband. He, it seems, has his own health problems. She had suffered a mini stroke herself in April 2018. A mental health report described significant trauma throughout her life: she was only 17 when her mother died, which had a long-standing impact on her emotional and psychological well-being. As an adult she had experienced prolonged exposure to extreme domestic violence. She described acute symptoms suggestive of post-traumatic stress. The pre-sentence report described a similar history.
19. Susan Stewart told the author of the pre-sentence report that her daughter had got into a mess financially and came to her asking for help. She felt that she could not say "no" and made the decision to take money from Mrs Shield's account. Initially, she said, she had intended to repay the money. The recommendation in the pre-sentence report, if prison could be avoided, was a community order with appropriate requirements.
20. We note that the judge took time to consider sentence. The sentencing hearing began on Friday 11 January. The case was opened and the judge heard mitigation. But the case ran into the afternoon and it was not feasible to pass sentence that day. In fact he passed sentence the following Friday, 18 January. It is plain that he had given great thought to the appropriate sentences and to their structure.
21. In his sentencing remarks he described it as an extremely sad and troubling case, involving a very serious and disturbing breach of trust in relation to a frail and vulnerable old lady. The judge considered and applied the relevant Sentencing Council guidelines for each of the offences.
22. He dealt first with Carly Douglas. On count 1, the theft of £18,000 put her offence into category 2, with a starting point of 2 years under the guideline and a range up to three-and-a-half years. There was, however, additional significant harm, in the judge's view, which he explained was not only the impact of this on a vulnerable old lady but also the reputational damage to the care home itself. He acknowledged the strong mitigating factors, in particular the very damaging events in her life to which she made reference, which had left her in a very vulnerable mental state. For reasons of sensitivity, he did not refer in detail publicly to the content of the reports which set out those matters fully. But it is quite clear that he had them very much in mind. He

noted that she was the primary carer for her 4-year-old son. He noted that she had shown remorse and that she was under a degree of financial pressure and difficulty at the time. His view was that, taken on its own, the offence of theft merited a sentence of 27 months' custody after trial, which he reduced to 22 months for her guilty plea. He then analysed and applied the relevant Sentencing Council guidelines for counts 2 and 3, concluding that if they stood alone, the money laundering count 2 would have justified a sentence after credit for plea of 9 months and the fraud (count 3) a sentence of 7 months. Rather than make those sentences consecutive, he concluded that the proper course was to reflect the additional criminality which they represented by an uplift in the lead sentence for the theft (count 1). The appropriate uplift, he thought, was 8 months which in fact represented one-half of the aggregate. Her total sentence was therefore two-and-a-half years.

23. The judge approached the sentence of Susan Stewart in a similar way. In her case the theft in count 1 related only to the £3,000 or so she had stolen in cash withdrawals (not the £18,000 as well). Under the theft guideline this lower figure initially put the offence in category 3 where the value stolen is £500 to £10,000. However, the judge explained that he was satisfied there was "significant additional harm" for the purpose of the guideline in her case as well, of the same kind, which meant that the offence spanned the border of category 3 and category 2: medium value with significant additional harm. He explained that not only was there significant harm to Mrs Shield but also to the care centre which had suffered reputational damage. He was careful not to double count the high degree of trust, which went to culpability rather than harm.
24. He also considered that there were aggravating factors in her case which justified a further increase: the prolonged period over which withdrawals took place (just over a month) and the fact that she went out of her way to manipulate the care records to cover up what she had done.
25. In mitigation the judge took into account her ill-health and the psychological issues from her previous relationship many years earlier; he took into account her good character and the fact that she was the primary carer for her partner and had shown remorse. He concluded that the appropriate sentence on count 1, had it stood alone, was in her case 2 years' custody after trial, reduced to 21 months allowing 10% credit for plea.
26. In addition, there was the separate criminality of the money laundering offence in count 2. Applying the relevant guideline the appropriate sentence, reduced for a plea, was 12 months. He made that sentence concurrent but explained that there needed to be an uplift of the lead sentence on count 1 to reflect the overall criminality. The uplift was 6 months, making her total sentence 27 months.
27. On behalf of Carly Douglas, Mr Gatland submits, in his written argument, that the sentence was wrong in principle. The appellant was a vulnerable young woman, of essentially good character, who pleaded guilty and was the sole carer for her child. She committed the offences against what is described in the submissions as "an appalling background" including post-traumatic stress and her being the victim herself

of crime. She was at low risk of re-offending and could properly be sentenced in the community.

28. In his written submissions Mr Gatland accepted that the judge had correctly placed each of the offences in the respective Sentencing Council guidelines. He said that in 2016 Carly Douglas was sent a letter informing her that the perpetrator of the offence against her was going to be released shortly from prison. He expanded on this in his oral submissions when we asked him about it. It was something which was news to her legal advisers when she eventually revealed it to them, and caused her great distress. She believed that the man who was going to be released would find out where she and her son were living. It seems the letter had been sent in error from the prison where he was serving his sentence. She needed to get herself out of the house. She did not have the money to pay for the deposit on a new flat and became increasingly desperate about her housing situation. She used the money to pay a deposit on the flat and 6 months' rent in advance and to furnish the flat.
29. Some more of the money, Mr Gatland explained in his oral submissions, was spent on purchasing a car, and we note that the judge ordered the forfeiture of that vehicle which in effect represented part of the proceeds of the thefts from Mrs Shield. Mr Gatland confirmed that the balance of £6,000 was transferred to her mother to repay what her mother had given to her in the past and to reflect the help and support she had given her over her son in particular.
30. In his oral submissions Mr Gatland went as far as to say that now that she has served the equivalent of a seven-and-a-half month sentence, this court should take the step of substituting a suspended sentence, so that she could take advantage of the rehabilitation activity requirement recommended in the report as part of a community order. He submits that the judge failed to give her sufficient credit for the undoubted mitigation personal to her, which was unusually strong in this case. He says that the judge failed to give her any credit for the fact that she was of good character, saying in his sentencing remarks that he regarded as "neutral" the fact that she had only one very stale conviction.
31. We have a report from the appellant's offender supervisor in prison. She has demonstrated a good attitude and has interacted well with the staff. The main focus of work with her in custody will revolve around counselling. She has been using her time constructively attending education. She has maintained contact with her son and has even declined the opportunity to transfer to open conditions, as this would make it more difficult for her to receive weekly visits from her son. She is described overall as a quiet, compliant prisoner.
32. We have considered all of Mr Gatland's submissions carefully, written and oral, and we have considered carefully all the material placed before us from all sources. In the end, the sole question is whether the overall sentence of two-and-a-half years' imprisonment was manifestly excessive, bearing in mind that the judge had to reflect the criminality of all the offences. The judge afforded credit of 17.5% for plea, across the board. It follows that her sentence of 30 months represents 3 years after a trial. We do not necessarily find it helpful to analyse the sentences for each offence

individually, particularly as they were all made concurrent in accordance with good sentencing practice. The question is whether the total sentence was just and proportionate to reflect culpability and harm and to reflect the undoubted personal mitigation including her vulnerable psychiatric state.

33. It is said that the motivation for the offence was to provide herself with suitable housing. We do not think that affords any real mitigation in the end. The fact remains that this was a gross breach of trust committed against a very vulnerable victim quite deliberately. It was a disturbing feature that the appellant, impersonating Mrs Shield on the telephone, made a determined further effort to obtain more money when the account had been frozen. Had she been able to do so, it is quite clear that she would undoubtedly have gone on to obtain more. There were the two failed applications each for £3,000. That was not money she needed for housing; it was wholesale theft in breach of trust.
34. We are not persuaded that this sentence was manifestly excessive. It was properly severe while at the same time reflecting the relevant mitigation. Her appeal is dismissed.
35. We turn to Susan Stewart. The single judge declined to grant leave but referred the case to the Full Court as she had granted leave to Carly Douglas and it was sensible for the court to consider both cases together.
36. On behalf of Susan Stewart, Mr Reid submits that the sentence was wrong in principle and manifestly excessive. He contends that the judge erred in putting her offence of theft into the same category as her daughter's. He submits that the judge failed to take account of the extraordinary mitigation, as he described it; the judge should have passed a custodial sentence of a length which enabled him to suspend its operation.
37. In his oral submissions, we pressed Mr Reid about the suggestion that the judge had erred in the application of the sentencing guideline as to the category. He accepted that the judge had been entitled to say, at least, that it spanned category 3 and category 2, but he submits before us that the judge was not justified in going higher up within category 2 to reach the point he eventually did.
38. Again, we have a prison report in her case from her offender supervisor. Mother and daughter are serving their sentences in the same prison, in the same unit. Susan Stewart is engaging well with the sentence plan; she is receiving counselling; she is finding separation from her husband hard, naturally enough, but she is receiving regular visits. She too has declined the opportunity of moving to open conditions so as to remain with her daughter and to be able to see her grandson. We note that there has been no deterioration in her heart condition, which was said to be one of the factors which justified taking the course of suspending the sentence.
39. We have considered carefully Mr Reid's submissions, written and oral and all the material placed before us. We think the criticism of the judge's categorisation of the theft in count 1 is misconceived. As the judge was at pains to explain in his sentencing remarks, although the amount stolen (some £3,000) would normally fall into category

3, there was the extra ingredient of significant additional harm which took it well into category 2, and there were the aggravating factors we have identified which the judge referred to, which amply justified going up to the level he did.

40. The breach of trust, as the single judge acknowledged, was even graver in the case of Susan Stewart. She was the general manager, with overall responsibility for the daily running of the home. She set up the online banking for Mrs Shield and we query whether that really had much value to a lady of her age who would not have been able to use the facility herself. It simply increased the duty of care on those looking after her to make sure that the account was dealt with properly and honestly. Instead, Susan Stewart cynically stole from Mrs Shield's account on 13 separate occasions, making cash withdrawals and it was a very serious aggravating factor, in our view, that when questions were asked she began to cover up her thefts by false entries on the computer. In reality, she facilitated her daughter's offences by setting up online banking for Mrs Shield, enabling her daughter to steal £18,000, £6,000 of which she herself received.
41. Again, in the end, the sole question is whether the total sentence of 2 years 3 months was manifestly excessive. The judge allowed 10% credit for the plea, which came very late, on the day of trial. It follows that her sentence represents a starting point, after trial, of 30 months. That had to reflect the criminality, not only of the ATM withdrawal thefts but also the cynical attempts to cover up those thefts and the receipt of £6,000 from the money stolen by her daughter. We are quite satisfied that it is not remotely arguable that a sentence of 27 months was wrong in principle or manifestly excessive.
42. Accordingly her application for leave is refused.
43. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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