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IN THE COURT OF APPEAL

CRIMINAL DIVISION

**[2020] EWCA Crim 160**



No. 201903898 A3

Royal Courts of Justice

Thursday, 30 January 2020

Before:

LORD JUSTICE COULSON  
MR JUSTICE JULIAN KNOWLES  
HER HONOUR JUDGE WENDY JOSEPH QC

REGINA

V

RICHARD TURNER

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MISS G MAXWELL appeared on behalf of the Appellant.

**J U D G M E N T**

LORD JUSTICE COULSON:

- 1 The appellant is now 36. On 3 October 2019 he was sentenced to 27 months' imprisonment for various offences of fraud, together with a 14-day consecutive term of imprisonment as a result of an earlier failure to surrender to bail. He appeals against that sentence with leave of the single judge. The point that arises is a narrow one concerned with whether or not the appellant pleaded guilty to the fraud offences at the first opportunity and the overlap, if any, between the credit for his guilty plea and the term for the Bail Act offence.
- 2 The appellant has a bad record for fraud. The offences with which this case is concerned were committed when he was the finance manager of a company known as Perfect Associates. Following his dismissal, it transpired that he had created a number of false invoices and paid the figures on those invoices into his own account. The total sum of the fraud was £21,514. The judge took as a starting point the three-year term recommended by the relevant Sentencing Guidelines. As we have said, the appeal turns on the amount of credit that the judge gave him for his guilty plea with that starting point in mind.
- 3 The history in relation to the pleas is as follows. The appellant appeared before Stockport Magistrates' Court on 8 April 2019. At that time due to the absence of a charge sheet the appellant was advised not to enter a plea. No formal indication of a plea was recorded and the matter was sent to Minshall Street Crown Court. The plea and trial preparation hearing ("PTPH") was listed on 13 May. In advance of that an indictment had been uploaded on 9 May. The appellant, although bailed to appear on that occasion, did not attend. That gave rise to the Bail Act offence. Four months went past. On 9 September 2019 the appellant was produced before Minshall Street Crown Court under a bench warrant not backed for bail. The appellant entered a guilty plea in relation to the Bail Act offence. Although discussions took place in relation to the indictment, the appellant did not plead guilty. It appears that at least at one point during this process there was a question as to the available funding. The matter was listed on Friday 13 September and it was then that the appellant pleaded guilty to the fraud charges on the indictment.
- 4 Given that background, the judge said it was not appropriate to give the appellant full credit of 33 per cent for his guilty plea. That was because he had not pleaded guilty at the first available opportunity. He gave the appellant 25 per cent credit.
- 5 In a written advice on appeal, Miss Maxwell argues that there had been double counting. She says that because of the 14-day consecutive term in relation to the Bail Act offence, the judge could not also then reduce the amount of credit available for the guilty plea in the way that he did. Accordingly, her submission was that the three-year term for the fraud offences should have been the subject of a discount of one-third to reflect the guilty plea.
- 6 We reject that submission. It seems to us to be illogical. The correct sequence must be to consider first the fraud offences and the appropriate discount for plea. We have set out the history. It is plain that, on any view, the appellant did not plead guilty at the first reasonable opportunity. He did not do so because he absented himself from the PTPH on 13 May.
- 7 In support of her submissions this morning, Ms Maxwell relied on the Sentencing Guidelines and said that, in the circumstances the plea in September, that was the first reasonable opportunity to plead, taking into account the failure to attend on 13 May. In our view that submission is misconceived. The Sentencing Guidelines do not account for a defendant not attending when they are bailed to appear.

- 8 Accordingly, it seems to us plain that, on the facts available to the judge, the reduction in the discount for plea from 33 per cent to 25 per cent was merited on the facts. Indeed, on one view it might be said that the appellant was fortunate that the credit was as much as 25 per cent.
- 9 Having dealt with the plea and the discount for it, that just leaves the Bail Act offence. In her oral submissions this morning, Ms Maxwell, as a secondary argument, submitted that in order to avoid double counting it would be appropriate for that sentence, namely the 14 days, to be made concurrent rather than consecutive. We have set out the history, and it seems to us that Miss Maxwell's secondary submission is correct. The principal reason why the discount for plea was less than 33 per cent was because the appellant chose to absent himself from the PTPH. In those circumstances there is double counting (or at least the risk of double counting) if there was a separate consecutive sentence for the Bail Act offence. Accordingly, we make the 14-day term in relation to the Bail Act offence concurrent and not consecutive.
- 10 Subject to that minor modification, the appeal against sentence is otherwise dismissed.
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This transcript has been approved by the Judge.