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IN THE COURT OF APPEAL

CRIMINAL DIVISION

NEUTRAL CITATION NUMBER: [2021] EWCA Crim 654

CASE NO 202100171/A1

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 17 February 2021

Before:

LORD JUSTICE HOLROYDE  
MR JUSTICE LAVENDER  
MRS JUSTICE ELLENBOGEN DBE

REGINA  
V  
DENIS OKANG

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MR A KING appeared on behalf of the Appellant

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

MR JUSTICE LAVENDER: This is an appeal brought with leave granted by the single judge against concurrent sentences of nine months' imprisonment imposed on the appellant on 8 January 2021 in the Crown Court at Aylesbury on two counts of possessing criminal property, contrary to section 329(1)(c) of the Proceeds of Crime Act 2002, to which the appellant pleaded guilty on 9 November 2020.

Two individuals were persuaded by fraudulent misrepresentations to transfer sums of money to the appellant's bank account. On 14 December 2018 Sharon Apps transferred £9,000 to the appellant's account. The appellant disposed of this money as directed by those responsible for the fraud. It has not been recovered. Miss Apps was physically sick when she learnt that she had been the victim of a scam and spent six months unable to sleep, suffering from anxiety attacks, high blood pressure and losing weight.

On 17 December 2018 Robert Durston transferred £25,295 to the appellant's account. The appellant spent, or, as his counsel put it, squandered, £14,879.02 of this money on electrical goods and other expensive items, despite the fact that he was only supposed to receive £1,000 from this amount as payment for allowing his bank account to be used to receive this payment. The loss of this money caused considerable problems for Mr Durston's business.

The sole issue on this appeal is whether the sentences should have been suspended. The judge took the view that the offending was so serious that appropriate punishment could only be achieved by immediate custody. That is, of course, one of the factors indicating that it would not be appropriate to suspend a custodial sentence, as set out in the guideline on Imposition of Community and Custodial Sentences. However, it is submitted on behalf of the appellant that all three of the factors indicating that it may be appropriate to suspend a custodial sentence were present in this case.

The appellant, who was 29 when he was sentenced, had no previous convictions. It was not suggested that he had committed any criminal offences in the two years which had elapsed since December 2018. The appellant suffers from thalassaemia, a condition which required the removal of his spleen in childhood and which made him vulnerable to various infections and at risk of developing other conditions. It also required him to shield from the covid-19 virus. As the judge recognised, it was relevant to consider the effect of the pandemic on anyone sentenced to prison. He also had avascular necrosis of the right hip. The appellant lived with his mother and 18 year old sister and also spent time with his partner and their two children, who were aged nine and one. In a letter to the court the appellant's partner stated that the appellant took the children to school, looked after them while she was at work or university and supported her during her bouts of depression.

The pre-sentence report stated that the appellant had been physically abused by his father as a child in Italy until he and his mother and sister came to this country when he was 17. The report also stated that the appellant was assessed as a low risk of re-offending. He had experienced anxiety and uncertainty in the two years since December 2018 and he had expressed remorse, although he lacked any real insight into the effect of the fraud on the victims.

In those circumstances, we accept that all three of the factors indicating that it may be appropriate to suspend the sentence were present in this case. There was a realistic prospect of rehabilitation, there was strong personal mitigation and it was the case that immediate custody would result in significant harmful impact upon others.

What the guideline requires, of course, is not merely counting factors, but a qualitative assessment of the factors for and against suspending a sentence of imprisonment. On an appeal such as this, the appellant has to show that the factors indicating that it may be

appropriate to suspend the sentence were so preponderant that it was manifestly excessive to impose an immediate sentence of imprisonment.

Although he was not charged with fraud, the appellant played a necessary role in facilitating the frauds practised on Miss Apps and Mr Durston. Offenders who commit offences of this nature can expect their sentences to include a deterrent element and in many cases that will mean that an immediate custodial sentence is unavoidable. Moreover, an unusual and striking feature of the present case, and one which had to be reflected in the sentence, is that the appellant did not simply pass on the money received from Mr Durston, but spent over £14,000 of it on goods for himself.

Standing back and looking at all the circumstances of the case, we consider that the judge was entitled to conclude that appropriate punishment could only be achieved by immediate custody. Accordingly, we dismiss this appeal.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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