IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WOOD GREEN
HIS HONOUR JUDGE GODFREY
[T20230244]

Case No 2024/03594/A5
NCN: [2024] EWCA Crim 1762

Friday 6 December 2024

B e f o r e:

LORD JUSTICE JEREMY BAKER

MR JUSTICE LAVENDER

SIR NIGEL DAVIS

R EX

- v -

OSMAM AHMET

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Mr A Smith appeared on behalf of the Appellant

A P P R O V E D J U D G M E N T

Friday 6 December 2024

LORD JUSTICE JEREMY BAKER: I shall ask Mr Justice Lavender to give the judgment of the court.

MR JUSTICE LAVENDER:

1. The appellant appeals, with leave granted by the single judge, against the concurrent sentences of 28 months' imprisonment imposed on him on 13 September 2024 in the Crown Court at Wood Green for each of nine counts of adapting an article for use in fraud, contrary to section 7(1) of the Fraud Act 2006, to which he had pleaded guilty in the same court on 29 July 2024.

2. The appellant owned A-Z Rider Training Ltd, an approved motorcycle testing centre in Wood Green. He was authorised to issue certificates which confirmed that an individual had passed the compulsory basic training ("CBT"), which had to be undertaken before a new driver first rode a 50cc moped or a 125cc motorcycle, and every two years thereafter until the individual passed his driving test.

3. Between June and August 2021 the appellant issued 120 certificates which purported to be signed by different named instructors who had conducted the CBT. The individuals to whom the certificates were issued either had not completed the CBT at all, or had completed a shortened version of it.

4. Each certificate, therefore, contained two false statements, namely, that the individual to whom it was issued had properly completed the CBT and that the CBT had been conducted by the instructor named in the certificate.

5. The result was that 120 individuals who ought not to have been driving did so and were uninsured when they did so. This frustrated the purpose of the regulations concerning the CBT, which was to promote public safety on the roads.

6. The appellant's understanding was that most of these individuals had completed the CBT two years earlier, but he did not check this, and there was evidence that this was not the case in at least some instances. On the other hand, the Crown could not point to any specific instances of bad driving on the part of those to whom the certificates were issued, let alone any instances of injury being caused.

7. The judge held that the offence charged could only be committed if and insofar as certificates were issued to individuals who intended to use their certificate for the purpose of driving commercially. The appellant accepted that this was the case in respect of at least some of the 120 individuals, but he could not say how many. He then pleaded guilty on a basis which was not challenged.

8. The appellant accepted that his business charged between £100 and £150 per certificate, and that therefore he had received between £12,000 and £18,000 for the false certificates.

9. The offending took place over three months, between June and August 2021. The offending followed periods when the appellant's business and other testing centres had been unable to operate during the pandemic. This created pressure for the appellant's business and also a much increased demand for CBTs from drivers who had been unable to take CBTs because of the pandemic and who, as a result, in some cases faced the prospect of being unable to work.

10. The appellant was 63 years old when he was sentenced. He had no previous convictions and was a man of positive good character. He had spent 20 years in the army and had operated his business for five years without complaint until the present offences. He expressed remorse and provided a large number of positive character references. He provided care for his 88 year old mother and he supported his partner in the care of their children, who are now aged 9 and 15. His business closed in January 2022. Since then, he had worked as an ambulance technician. He was assessed as a low level risk of re-offending.

11. As for the offence-specific sentencing guideline, the Crown submitted that the appellant's culpability was high on four grounds, namely:

    - A leading role where offending is part of a group activity
    - Abuse of position of power or trust or responsibility
    - Sophisticated nature of offence/significant planning
    - Fraudulent activity conducted over sustained period of time

12. The appellant accepted that he had abused a position of power or responsibility, but contested the other grounds and submitted that his culpability fell between high and medium.

13. The Crown submitted that the harm fell within the greater category on four grounds, namely:

    - Large number of articles created
    - Articles have potential to facilitate fraudulent acts affecting a large number of victims
    - Use of third party identities
    - Offender making considerable gain as a result of the offence

14. The appellant disputed each of these grounds. He contended that the harm fell within the lesser category, or at least between the greater and lesser categories.

15. The starting points were: four years and six months' custody for high culpability and greater harm; two years and six months' custody for medium culpability and greater harm; two years' custody for high culpability and lesser harm; and 36 weeks' custody for medium culpability and lesser harm.

16. In his sentencing remarks, the judge said in relation to culpability: that there was an abuse of position of power or responsibility; that the fraudulent activity was conducted over a sustained period of time; and that this was not the most sophisticated of offending, but that there were elements of sophistication.

17. As for harm, the judge accepted that all four of the greater harm factors contended for by the Crown were present.

18. Accordingly, the judge took the starting point as four years and six months' imprisonment.

19. The only aggravating factor which he identified was the risk to road users.

20. The judge identified the many mitigating factors, as a result of which he said that he would have imposed a sentence of three years' imprisonment on the appellant following a trial. Three years was the bottom of the range for offending involving high culpability and greater harm. He reduced that by one-fifth by reason of the appellant's guilty pleas, which resulted in a sentence of 28 months' imprisonment.

21. No complaint is made about the one-fifth reduction for the appellant's guilty pleas.

22. The grounds of appeal are that the judge erred in his identification and application of factors relating to culpability and harm when applying the sentencing guideline and that the sentence was manifestly excessive, taking into account the agreed factual basis.

23. We do not accept that the judge was wrong to place this offending in the high culpability category. The appellant was in a position of responsibility, which he abused. That in itself was sufficient to make this high culpability offending.

24. In relation to harm, we begin by noting that this offending is not typical of the type of offending at which the sentencing guideline is directed. The principal mischief in this case was not the financial gain to those individuals who received false certificates and were able to use them to continue their employment as, for instance, delivery drivers, but rather the risk to public safety caused by allowing 120 people who had not taken the appropriate test to drive, or to continue to drive, on the roads. On any view, however, the number of false certificates issued was large: 120 in three months, or about 40 per month, or roughly two per working day. We accept that not all of them would have been used to deceive employers, but they certainly had the potential to facilitate fraudulent acts which affected a large number of victims.

25. It is submitted that cases of, for instance, credit card fraud may involve many more fraudulent articles, but that does not mean that the number of articles in this case was not large. Similarly, other cases may involve larger gains than the present case, but it does not follow that the gains made by the appellant were not considerable. The factor of the use of third party identities, had it stood alone, might well not have led to the appellant's offending being characterised as falling in the greater harm category, since this is not a typical case of identity theft. But there are, in our judgment, sufficient other factors to place the offending in the greater harm category.

26. It follows that we conclude that the judge was entitled to place the offending in the high culpability, greater harm category. Having done so, the judge recognised the many powerful mitigating factors by adopting a sentence, before the reduction for the appellant's guilty pleas, at the bottom of the range, which was one year and six months (or one third) less than the starting point. The judge took the view that that was the shortest sentence which he could properly impose. We consider that the judge was entitled to take that view. It was appropriate for him to follow the sentencing guideline and, having correctly categorised this offending, he then gave the appellant the maximum benefit for the mitigating factors provided for in the guideline.

27. Like the judge, we recognise that there were powerful mitigating factors in the appellant's case. However, the offending itself was deliberately dishonest conduct from which the appellant profited and which was consistently repeated over a period of three months. Seen in that context, we do not consider that the mitigating factors obliged the judge to impose a sentence below the bottom of the range set out in the sentencing guideline.

28. Accordingly, we consider that the sentence imposed was neither manifestly excessive nor wrong in principle, and we dismiss the appeal.
