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Case No: A2-201802762/A2-201802764

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 12 February 2019

B e f o r e:

LORD JUSTICE LEGGATT

MRS JUSTICE McGOWAN DBE

HIS HONOUR JUDGE WALL QC
(Sitting as a Judge of the CACD)

R E G I N A

v

JOHN SIMON BLIGHT
NIGEL INGRAM

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Mr D Rhodes appeared on behalf of the **Appellant Blight**
Mr A Trollope QC appeared on behalf of the **Appellant Ingram**

J U D G M E N T
(Approved)

LORD JUSTICE LEGGATT:

1. These appeals raise a question about the proper approach to sentencing in cases of fraud, where the fraud consists in the dishonest failure to disclose the information that the defendant has taken possession of wreck.
1. The two appellants, John Blight and Nigel Ingram, were both convicted of such offences after a trial at Canterbury Crown Court in June 2018. John Blight was convicted of two counts of fraud, contrary to sections 1 and 3 of the Fraud Act 2006. He was sentenced for those offences to a total of 3½ years' imprisonment. Nigel Ingram was convicted of four counts of fraud and an additional offence of possessing criminal property, contrary to section 329 of the Proceeds of Crime Act 2002. He was sentenced to a total of 4 years' imprisonment.
2. In giving leave to appeal, the single judge observed that the unusual facts of this case give rise to a novel question as to how to apply the relevant sentencing guidelines and it is appropriate for that question to be considered by the full court.
3. Section 236(1) of the Merchant Shipping Act 1995 provides that:

"(1) If any person finds or takes possession of any wreck in United Kingdom waters or finds or takes possession of any wreck outside United Kingdom waters and brings it within those waters he shall—

(a) if he is the owner of it, give notice to the receiver stating that he has found or taken possession of it and describing the marks by which it may be recognised;

(b) if he is not the owner of it, give notice to the receiver that he has found or taken possession of it and, as directed by the receiver, either hold it to the receiver's order or deliver it to the receiver."
4. The reference in that provision to the "receiver" is to the receiver of wreck who is responsible under the Act for dealing with matters relating to wreck in the United Kingdom. Failure to comply with the duty set out in section 236(1) without reasonable excuse is a summary offence.
5. Nigel Ingram first came to the attention of the receiver in 2012, after two incidents in which he had to be rescued by the RNLI Lifeboat whilst diving in the English Channel. On the first occasion he was reportedly in possession of a torpedo hatch cover and on the second occasion he was reported to have had at least four lifting bags in the water which had to be cut away as they were too heavy for the lifeboat to tow.
6. In April 2013 the receiver met Mr Ingram and asked him about his diving activities. He denied having taken any substantial items from wrecks but admitted that he had taken a few small items such as bottles and pieces of crockery which he showed to the receiver. He was reminded of his legal duty to declare items of wreck and subsequently submitted four declaration forms (known as droits) for the items shown to the receiver. These are the only such declarations which Mr Ingram ever made.
7. Mr Ingram came to the attention of the authorities again and Mr Blight did so for the first time following an incident on 30 September 2014 when French coastguard officials boarded Mr Blight's fishing trawler '*De Bounty*' in French territorial waters.

At the time Mr Blight was on board the *De Bounty* and Mr Ingram was in the water, having just completed a dive to the wreck of *HMS Hermes*, a ship which sank during the First World War in 1914 with the loss of 22 lives. The French authorities found no items of wreck on board the *De Bounty*. However, the evidence adduced at the trial showed that the appellants afterwards carried on diving and later that day removed from the wreck of the *Hermes* a large brass condenser.

8. In October 2015 Mr Ingram's home address was searched and numerous items of wreck (around 100) were found and seized. Also seized was a notebook entitled "De Bounty Diver Recovery Book" which contained a list of dates, between May 2010 and December 2012, together with the names of shipwrecks and items raised on those dates including the weights and estimated value of the items. The notebook also recorded payments received by Mr Ingram from Mr Blight totalling £11,700 and a calculation of the total sum owed to Mr Ingram by Mr Blight over the period covered by the notebook. This sum was recorded as £14,000. The notebook indicated, and Mr Ingram confirmed at the trial, that Mr Blight had initially agreed to pay him 10%, later increased to 15%, of the proceeds of sale of the items of wreck raised aboard the *De Bounty*.
9. Photographs of wreck were found on Mr Ingram's computer often showing him posing alongside items, some of them very large. Digitally recorded dates of photographs corresponded to entries in the notebook. Also seized was £16,000 in cash found in a safe at Mr Ingram's address.
10. It was established that between May 2012 and December 2015 Mr Ingram had deposited large quantities of metal with a dealer in Sittingbourne called APM Metals to be sold as scrap. There were 35 visits to APM Metals, some of which corresponded closely to entries in his notebook. Some of the items sold as scrap were very large. For example, the brass condenser taken from *HMS Hermes* on 30 September 2017 weighed more than two metric tonnes. It was sold for £5,029.
11. The items taken all came from shipwrecks of commercial vessels which had been lost at sea or from naval warships lost during the First World War. With one exception none of the shipwrecks had been designated as a "protected" site. The exception was the wreck of a vessel called *HMS Gurkha* which had been designated under the Protection of Military Remains Act 1986.
12. The prosecution case at trial was that Mr Blight and Mr Ingram had engaged in a joint enterprise to raise items of wreck from the seabed and sell them without declaring them to the receiver for commercial gain. Each man's role was critical to the venture, in that Mr Blight was the owner and skipper of the vessel *De Bounty*, while Mr Ingram was an expert diver. Amongst other evidence of their commercial partnership was a confidentiality agreement signed by the two men by which they agreed to keep their activities secret.
13. The two men were jointly charged on four counts of fraud. Count 1 alleged fraud between May 2010 and December 2012 in the period covered by Mr Ingram's notebook. Both men were convicted on this count. Count 2 alleged the same type of fraud between January 2013 and September 2014. It was Mr Ingram's evidence that he had raised smaller items of wreck during this period, using his own vessel, *ESP*, which was a much smaller vessel than the *De Bounty*. Mr Ingram alone was convicted on this count and Mr Blight was acquitted. Both men were convicted on count 3 which concerned the dishonest failure to declare the condenser taken from the *Hermes* on 30

September 2014. Count 4 covered the period between October 2014 and December 2015. Mr Ingram was convicted on this count but Mr Blight was acquitted on the direction of the judge, who ruled that the evidence did not disclose a case for him to answer. Mr Ingram alone was charged on count 5 with possession of criminal property, comprising the £16,000 in cash found in his safe. He was convicted of that offence.

14. At the time of sentence John Blight was aged 58 and Nigel Ingram was aged 57. Both had previous convictions for offences of dishonesty but these were discounted by the judge as they were many years old. Both men adduced numerous references attesting to their good qualities.
15. The sentences imposed by the trial judge, Her Honour Judge Norton, for the individual offences were as follows:

Count	Blight	Ingram
Count 1 (2010-2012)	3½ years	3½ years
Count 2 (2013-2014)		4 years
Count 3 (Hermes)	18 months	18 months
Count 4 (2014-2015)		4 years
Count 5 (money in Ingram's safe)		18 months

All the sentences were made concurrent.

16. The judge, in sentencing, focused principally on count 1, of which both men had been convicted. This was by far the most serious offence in terms of the proven quantity of wreck involved. The judge applied the Definitive Guideline issued by the Sentencing Council for Offences of Fraud. Consistently with section 143(1) of the Criminal Justice Act 2003, the guideline requires the court, in considering the seriousness of the offence, to assess the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause, or might foreseeably have caused.
18. The judge found that the culpability of both men was high. Although counsel for Mr Ingram has sought on this appeal to challenge that finding, it was clearly justified by the fact that the fraudulent activity was conducted over a sustained period of time and involved what was undoubtedly a sophisticated operation which required significant planning.
19. The judge was also plainly entitled to find and sentence the appellants on the basis that they had participated in a joint venture in which each played a leading role. The fact that Mr Ingram apparently received a smaller share of the proceeds of sale was at most a factor to be taken into account at the end of the sentencing exercise in deciding whether to differentiate between them in the sentence passed.

20. According to the guideline, "harm" should be assessed in two stages. The first stage is to estimate the amount in financial terms of the actual or intended loss or risked loss caused by the offence. On this basis the harm is provisionally placed in one of five categories. The second stage is to take into account in a broader way "the level of harm caused to the victims or others" in order to determine whether the offence should be moved upwards either within the initial category or to the next higher category.
21. The judge based her initial assessment of harm on an estimate made by the prosecution of the value of the property taken from shipwrecks during the relevant period and not disclosed to the receiver of wreck. Mr Ingram's own estimates of the values of the items which he recorded in his notebook totalled over £129,000. The prosecution cross-checked that figure against other information. An officer from the Maritime and Coastguard Agency had estimated the value of the items at £82,600, based purely on their weight and estimated scrap value. Perhaps more relevantly, however, Mr Ingram had, as we have mentioned, calculated the total amount owed to him by Mr Blight as £14,000. Had Mr Ingram's share remained 10% throughout, this would have corresponded to total sale proceeds of £140,000. Had Mr Ingram's share been 15% from the beginning, it would have corresponded to total sale proceeds of around £93,000. In fact Mr Ingram's notebook recorded that his percentage increased from 10% to 15% only for the last few items, indicating that the relevant figure was towards the higher end of the range. Overall, the prosecution proposed £100,000 as a safe estimate for the value of the property and this figure was not disputed by counsel for either defendant. That estimate is also not contested on this appeal by counsel for Mr Blight.
22. On behalf of Mr Ingram, however, Mr Andrew Trollope QC has submitted that the judge was wrong to rely on this estimate. That submission, in our view, is wholly unrealistic. It cannot reasonably be suggested that the judge was wrong to adopt a figure which was conservative in comparison with the figures derived from Mr Ingram's own records, and which his counsel at the trial did not dispute.
23. Taking £100,000 as the relevant figure for assessment of harm put the offence at the top of category 3 or the bottom of category 2 in the sentencing guideline. For a case involving high culpability, this pointed towards a sentence of the order of 4 years' custody. At the second stage of the assessment the judge regarded the offence as having "medium" impact and therefore justifying some upwards movement from that level.
24. On this appeal Mr Blight has not sought to challenge the assessment of medium impact. However, Mr Trollope, on behalf of Mr Ingram, has. Again, we see no reasonable basis for such a challenge. The judge was, in our view, entitled to find that the appellant's activities had a considerable detrimental effect. As she fairly remarked, whether something is of historical significance or value may be to some extent subjective. Nevertheless wrecks of vessels sunk during the First World War are reasonably, in our view, described as they were by the judge as a "unique" source of information about the maritime heritage surrounding this country. They are, she said, a finite and fragile resource and the removal of items from such vessels constitutes stealing part of our national story.

25. Although Mr Trollope, on behalf of Mr Blight, has sought to submit that this statement was hyperbole, we do not accept that it is. Moreover, the appellant's conduct involved the removal of many, many items without the consent of the owners from many different wrecks and, in our view, the judge was fully entitled to regard that conduct as of considerable detriment.
26. In arriving at the total sentences imposed, the judge clearly gave some credit to both men for their good character, which was the only significant mitigating factor. She explained that her main reason for imposing on Mr Ingram a total sentence that was six months longer than the sentence imposed on Mr Blight was that Mr Ingram's fraudulent activities carried on for much longer. She might have added that a further aggravating factor in his case was his failure to respond to the clear warning about his behaviour given when he was interviewed by the receiver of wreck.
27. Making every allowance for the fact that Mr Ingram received a smaller share than Mr Blight of the spoils of their joint enterprise, we see no proper basis for interfering with the judge's assessment of the appropriate differential between them.
28. We come then to the real issue on this appeal which persuaded the single judge to grant leave. It is the only ground of appeal advanced by Mr David Rhodes, in his well focused submissions on behalf of Mr Blight. It is also the only issue of real substance raised on behalf of Mr Ingram.
29. The issue is whether, in making the initial assessment of harm under the guideline, the judge was right to treat the estimated value of the property as a suitable measure of loss. The argument made is that, even if the figure of £100,000 adopted by the judge was an appropriate measure of the gain made by the appellants, as we are satisfied that it was, the appellant's gain and the loss caused by the offence are unusually in this case, so it is submitted, not opposite sides of the same coin. It is argued that, in assessing the loss caused to the owners of the wreck, it is necessary to consider what amount of money they would have received if the wreck had been salvaged legitimately. When any item of wreck comes into the possession of the receiver it must generally be held for a year. If within that time someone establishes ownership of the item, the owner is entitled to receive the wreck or its proceeds of sale on paying any salvage fees and expenses due. If no one establishes ownership, title passes to the Crown. In either case a legitimate salvor of the wreck may claim a salvage award.
30. The appellants concede that they were not legitimate salvors. Section 236(2) of the Merchant Shipping Act 1995 expressly provides that a person who fails without reasonable excuse to comply with the duty to declare wreck to the receiver shall forfeit any claim to salvage. The appellants accordingly accept, as they are clearly right to do, that no allowance for salvage should be made in assessing the gain made by the appellants from their fraudulent conduct. It is submitted, however, that such an allowance should be made in assessing the loss caused to the owners of the wreck.

31. That argument has been put in two different ways this morning on behalf of, respectively, Mr Blight and Mr Ingram. Mr Trollope, on behalf of Mr Ingram, has submitted that, if only the appellants had chosen to declare the items which they recovered instead of dishonestly failing to do so, then they would have been entitled to receive salvage awards. It was, so Mr Trollope sought to suggest, a perfectly legitimate activity for the two men to remove items from wrecks beneath the sea and bring them ashore, as they did. The only exception, as we understood it, which he was prepared to concede was that it was unlawful for them to remove one item that they were shown to have removed from a protected wreck, being the *HMS Gurkha*.
32. It seems to us that, in principle, if a person who has fraudulently chosen not to declare a wreck wishes to suggest that he would have been entitled to receive a salvage award if he had acted honestly and complied with his legal duty, then he must bear the onus of making good that claim. We think it clear that the appellants in this case could not show that they were legitimate salvors of any item. As prosecuting counsel, Mr Hope, submitted in his note prepared for the purposes of sentence, their whole operation was conducted outside the law.
33. It is likely that, in addition to the offences of which they were convicted, the appellants were guilty of a raft of further criminal offences, such as using a vessel to remove items from the seabed without a licence in circumstances where a licence is required to lift any item which cannot be lifted simply by hand, causing criminal damage, theft and wrongfully carrying away or removing wreck contrary to section 246 of the 1995 Act.
34. Pursuant to section 224 of the 1995 Act, the provisions of the 1989 International Convention on Salvage have the force of law in the UK. Article 1A of the Convention defines a "salvage operation" as "any act or activity undertaken to assist a vessel or any other property in danger in any waters." Article 12 states: "Salvage operations which have had a useful result give right to a reward."
35. It is questionable whether the items of wreck taken by the appellants can reasonably be characterised as having been in danger if left where they were on the seabed. But even assuming in favour of the appellants that their operations were salvage operations within the meaning of the Convention, we think it impossible to characterise those operations as having had a useful result. Removing and disposing of items taken from wrecks which were causing no obstruction without the consent of their owners cannot be regarded as a useful activity, all the less when it involved the plunder (as in some cases it did) of wrecks of historic interest. In these circumstances, we think it untenable to suggest that, if the appellants had declared to the receiver the items of wreck which they brought ashore, they would have been entitled to any salvage awards.
36. Mr Rhodes, on behalf of Mr Blight, sought to put the argument in a different way. He, realistically and in our view quite properly, conceded that the conduct in which the appellants were engaged was outside the law and that they would not have been entitled to any salvage award had they declared the items in accordance with their legal duty to do so. He nevertheless sought to argue that it is appropriate, in estimating the loss caused to the owners of the wreck, to deduct the costs that the owners would have had to incur, including salvage awards payable to salvors, if they had chosen

themselves to salvage their property or if it had been salvaged legitimately. There is no evidence of what the amount of any such salvage award would have been, save that it would have been a proportion and quite possibly a very large proportion of the value of the salvaged property. Mr Rhodes submits that this ought to have been taken into account and a downwards adjustment made in estimating the loss caused by the offences.

37. We accept that, if the wreck brought ashore by the appellants had been salvaged legitimately, a significant sum would have been payable to the salvor as a reward. But we do not accept that that consideration is relevant to how the loss caused by these offences should be assessed. The offences of which the appellants were convicted were offences of dishonestly failing to disclose to the receiver the items of wreck which they had raised. If they had complied with their duties under section 236 of the 1995 Act, the owners of the wreck would have been entitled to receive the items raised or their proceeds of sale. *Prima facie*, therefore, they lost the value of those items. In circumstances where the persons who had recovered those items (i.e. the appellants in this case) would not, as we are satisfied that they would not, have been entitled to receive any reimbursement of costs or other reward, the owners would have been entitled to receive the whole value of those items if they had been declared to the receiver. Accordingly, that was the proper measure of loss caused by the offences.
38. A number of other points were made on behalf of Mr Ingram. None of them, in our view, had any merit, with one exception. This is a complaint that the sentences of 4 years' imprisonment imposed on Mr Ingram on counts 2 and 4, were unjustified. There was no reliable evidence of the value of property covered by those offences but the prosecution have accepted that it is unlikely to have been on the same commercial scale as the offending which was the subject of count 1.
39. As we have indicated, the judge was in our view justified in imposing on Mr Ingram a total sentence of 4 years. However, it was not legitimate to achieve that result by passing sentences for counts 2 and 4 which were far longer than the facts of those offences merited and when the offending covered by count 1 had already been fully reflected in the sentence passed on that count.
40. In our view, a proper approach would have been to impose a sentence on count 1 which was not intended to reflect the totality of Mr Ingram's offending and then to pass sentences on each of the other counts which were appropriate for those individual offences, making all the sentences run concurrently. Adopting that approach, we will vary the sentences imposed on Mr Ingram on counts 1, 2 and 4 so as to increase the sentence on count 1 to one of 4 years and reduce the sentences on counts 2 and 4 to a sentence of 18 months in each case. The total sentence of 4 years will therefore remain the same. Save for that variation, the appeals are dismissed.

Addendum

41. After this judgment was delivered in court, Mr Trollope QC on behalf of Mr Ingram asked for and was granted permission to make an additional submission in writing on whether it was appropriate for the court to increase the sentence on count 1 from 3½ to

4 years while reducing the sentences on counts 2 and 4 from 4 years to 18 months.

42. Mr Trollope accepted that such a variation in the sentences is permitted by section 11(3) of the Criminal Appeal Act 1968, as overall it does not involve dealing with Mr Ingram more severely on appeal than he was dealt with by the Crown Court. He also accepted and indeed submitted that appropriate sentences for the offences charged under counts 2 and 4 would be in a range between 26 weeks and 3 years. However, Mr Trollope submitted that it was wrong to take account of the fact that Mr Ingram's offending continued after the period covered by count 1 ended by increasing the sentence on count 1 above the term of 3½ years that was appropriate for that offence considered by itself. Instead, he submitted, the court should reflect Mr Ingram's continued offending by reducing the sentences on counts 2 and 4 from 4 years to 6 months and ordering them to run consecutively to the sentence on count 1 (and concurrently with each other).
43. We agree that Mr Trollope's proposal would have been a possible means of arriving at the same total sentence of 4 years as the Crown Court judge. But it would have the demerit of replacing sentences on counts 2 and 4 which were, in our view, too long with sentences which would, in our view, be too short to reflect the criminality of those offences.
44. As stated in the main judgment, we consider that the appropriate course is to take account of the principle of totality by passing concurrent sentences for what was a series of offences of the same kind and to reflect the overall criminality involved in the sentence imposed for the lead offence. The submission that such a course would be wrong pays no regard for the definitive guideline on totality issued by the Sentencing Council, which states in terms:
- “Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggregated by the presence of the associated offences.” (emphasis added)
45. We were accordingly unmoved by Mr Trollope's further submissions.