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IN THE COURT OF APPEAL

CRIMINAL DIVISION

**[2020] EWCA Crim 1071**



No. 202001009 A4

Royal Courts of Justice

Thursday, 23 July 2020

Before:

LORD JUSTICE HCKINBOTTOM

MR JUSTICE SPENCER

and

HER HONOUR JUDGE MOLYNEUX

(sitting as a Judge of the CACD)

REGINA

V

KALJIT KAUR RANDHAWA

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MR A. D. SMITH QC appeared on behalf of the Appellant.

The Crown were not represented.

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

LORD JUSTICE HICKINBOTTOM:

- 1 On 23 and 24 January 2020 in the Crown Court at Wolverhampton before His Honour Judge Berlin and a jury, the Appellant was convicted of 16 counts of fraud by false representation, contrary to section 1(1) and (2)(a) of the Fraud Act 2006. On 20 February 2020, she was sentenced by the same judge to 28 months' imprisonment on each count concurrent with 14 days to count towards that sentence under section 240A of the Criminal Justice Act 2003. Now, with the leave of the single judge and represented by Andrew Smith QC, she appeals against that sentence.
- 2 The facts for the purposes of the appeal can be shortly stated. The Appellant was a director of a company which operated a nursery in Great Bridge Street, West Bromwich, called "Baby Einstein's Nursery" and, later, "Little Genius Academy". She was the operating mind of the company, and ran the nursery business.
- 3 The local authority, Sandwell Borough Council ("the Council"), operated two schemes for funding pre-nursery places. First, it administered a central government scheme for the funding of 15 hour per week places for children aged two years from particularly deprived families, a scheme known in Sandwell as "Early Learning for Twos". Second, the Council offered 15 hour per week funding for all three and four-year-olds ("Universal Nursery Education Funding"), extended by central government in 2017 to 30 hours per week where the parents were working ("Extended Nursery Education Funding"). Early years and childcare providers were able to apply for funding under these schemes on-line through a portal, on a form which required the applicant to confirm the correctness of the details supplied upon which the application was assessed. For the Appellant's nursery, she alone was set up to make on-line applications. Information had to be provided on hours of attendance etc, monthly for two year olds and otherwise termly.
- 4 Between 2017 and December 2018, the Appellant submitted claims which the Council considered were fraudulent. On investigation it appeared that some claims were submitted in respect of children who never attended the nursery, others for children who had once attended but had long since left and, in respect of two children, claims were made although the parents were also paying privately. Because it was unclear how much money had been involved with the privately paying children, the total amount of the fraud on the Council could not be calculated precisely, but it was in excess of £20,000 and certainly no more than about £25,000.
- 5 The Appellant was initially interviewed about the funding claims in May 2018, and she denied all allegations of fraud. She said that, at the time, she had suffered a number of personal difficulties and family bereavements, and so she had hardly been at the nursery and left two staff members in charge. When invited for a second interview in December 2018, she declined but instead submitted a detailed prepared statement. She maintained that others were at fault and she was not. It was the Council's case that the fraudulent claims were submitted as a deliberate and systematic abuse of schemes set up to support hard-up families to obtain early years' nursery care for their children, in an abuse of trust and an abuse of public funds, which only ceased when former employees raised concerns about the nursery's trading practices.
- 6 In a prosecution brought by the Council, the Appellant was found guilty on all counts, as we have described.
- 7 In a probation service report prepared for sentencing in respect of these frauds, the Appellant maintained that she was innocent and was, as the author put it, "intent on

displacing accountability onto other staff she employed at the nursery." Indeed, she perceived herself as a victim.

- 8 The Appellant had been convicted on a guilty plea of selling fireworks to a person under 18 years of age in 2006, but had no relevant previous convictions. She had been married for 17 years, and had two children aged twelve and seven years, for whom she was the primary carer. Her husband worked long hours in a shop. Both children were chronically overweight and had medical problems related to that. In addition, the Appellant had caring responsibilities for her parents, both of whom suffered from poor health. Her mother was diagnosed with cancer in 2017, and had had tumours removed from her bowel, pancreas and intestine. At the time of the trial and sentence, she was awaiting further invasive surgery. She relied upon the Appellant to assist with everyday tasks because she lacked mobility, and to take her to her home in Tipton to regular hospital appointments. Her maternal grandmother lived in Maidenhead and had recently had a stroke. The Appellant's mother relied on the Appellant to visit her. The Appellant's father was diabetic and required daily insulin injections. His eyesight was failing and he had had a lung removed. The Appellants' siblings lived far away and could not help their parents on a daily basis. That fell to the Appellant who, prior to her trial, had visited her parents daily.
- 9 In sentencing the Appellant it was (in our view, rightly) common ground that the Appellant's offending fell into Category 3A of the Sentencing Council's Guideline for Fraud. Given the planning and extensive period involved, culpability was inevitably high, and the amount of the fraud fell within the financial bracket of £20,000 to £100,000. Based on the value of the fraud being £50,000, the starting point for that category is 3 years with a range of 18 months to 4 years. By comparison, for the lower financial bracket of £5,000 to £20,000, the starting point is 18 months, with a bracket of 26 weeks to three years. As we have indicated in this case, the financial value of the fraud was just over £20,000.
- 10 The judge took the starting point of 3 years, which he reduced to 28 months to reflect that only £20,000, and not £50,000, had been involved.
- 11 Mr Smith submits that 28 months is simply too high a sentence. He accepts that there were, in the Appellant's case, some aggravating features. There was repeated fraudulent activity over a sustained period. The Appellant attempted to shift blame on to other members of staff, whom she still apparently blames. She abused a public scheme designed to assist those who are not well off. She took public money. However, he submitted, some aggravating factors usual with frauds were not present in this case. The nursery business was not set up to further a fraud: it was originally a legitimate business. Although there were parents who paid for children also being funded by the Council, contrary to the suggestion of the judge in his sentencing remarks, there was only one victim of the fraud, namely the Council itself. The value of the fraud was only just over £20,000. Given the gradations in the Guidelines, a reduction from the starting point based on £50,000 of 3 years to 28 months, he submitted, did not properly reflect that value.
- 12 Furthermore, he submits, the judge failed to take into account the mitigation open to the Appellant. She was effectively of good character and considered by the author of the pre-sentence report to be a low risk of re-offending. She is the primary carer for two children, each of whom has some health issues, and she has quite substantial caring responsibilities for her parents. The judge, it is submitted, failed properly to take into account the impact that the Appellant's imprisonment would have upon her children and her parents, a matter which he ought to have taken into account (see *R v Petherick* [2012] EWCA Crim 2214; [2013] 1 Cr App R (S) 116). It is to be noted that the Appellant is currently in HMP Sutton Park, Maidstone, a long way from the West Midlands where her family live.

- 13 Finally, relying on the recent judgment of this court in *R v Manning* [2020] EWCA Crim 592, Mr Smith submits that although the sentence was passed prior to the COVID-19 lockdown, the restrictions resulting from that pandemic have had serious adverse effects on the Appellant, with (e.g.) the postponement of home leave and family visits, difficult in any event because of the distance involved.
- 14 Mr Smith submits that, taking the value of the claim and the Appellant's mitigation properly into account, a sentence of no more than two years was appropriate, and given her caring responsibilities, in line with the Sentencing Council Guideline on Imposition of Community and Custodial Sentences, that sentence should be suspended.
- 15 We consider that there is substantial force in those submissions. In our view, the Appellant having been sentenced prior to the COVID-19 lockdown, *Manning* (which requires consideration to be given to the adverse impact of the restrictions when considering a sentence of imprisonment) has no application here. However, whilst this was undoubtedly serious offending involving the persistent taking of money from the public purse over a two-year period for which the Appellant has shown no remorse or even apparently acceptance, we agree that the reduction from three years to 28 months made by the judge did not properly reflect the value of the fraud (which was at the very bottom of the category range) and the substantial mitigation open to the Appellant. She was of good character, and it comes as no surprise to us that the manager at HMP Surrey Park confirms that the Appellant has used her time in prison productively, applying for Chartered Management Institute Level Five in leadership management; and, the manager says, "supporting others less able than her has been one of the Appellant's hallmarks". We have already referred to other aspects of her mitigation. Taking that in the round, we consider that a sentence of 28 months was excessive and manifestly so. A sentence of 24 months was the appropriate length.
- 16 As Mr Smith submits, for such a sentence, the Sentencing Guideline requires us to consider whether the sentence should be suspended. None of the guideline factors indicating that it would not be appropriate to suspend the sentence are present: we do not consider this offending, serious as it was, to be so serious that appropriate punishment can only be in the form of an immediate custodial term. On the other hand, the Appellant is at low risk of re-offending and, vitally in our view, custody will result in significant harmful impact on others, notably her children and her parents, for the reasons we have described. Indeed, we have been told by Mr Smith this morning that that harmful impact has had its effect, with the children exhibiting understandable behavioural changes and both the children and the Appellant's parents, in her absence, suffering from psychological problems. We are persuaded that this is a case in which the sentence of imprisonment should properly be suspended.
- 17 We therefore quash the sentence imposed on the Appellant on 20 February 2020, and we replace it with a sentence of 24 months' imprisonment suspended for the operational period of two years to run from 20 February 2020. That means that, if during that period the Appellant commits another offence, the court has the power to send her to prison under this suspended sentence order, as well as imposing the appropriate penalty for the new offence. Given that the Appellant has in fact spent five months in prison, and the attitude she has shown there which we have briefly described, we do not consider it is necessary or appropriate to impose any additional requirement to the order, including any supervision period.

**CERTIFICATE**

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This transcript has been approved by the Judge.