



THE COURT OF APPEAL

Birmingham P
Peart J
Edwards J.

Record No: 128/2019

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

V

PRINCE AJIBOLA

APPELLANT

JUDGMENT of the Court delivered (*ex tempore*) on the 15th day of October 2019 by Mr. Justice Edwards

Introduction

1. The appellant pleaded guilty on arraignment before the Dublin Circuit Court on the 26th of March, 2019, to a charge of money laundering contrary to section 7(1)(a)(ii), and 7(1)(b), and as provided for with respect to penalty in s.7(3), of the Criminal Justice (Money Laundering & Terrorist Financing) Act, 2010 ('the Act of 2010')
2. The circumstances in which the offence was committed as particularised in the indictment were that '*Prince Ajibola, on or about the 9th August 2016, at a place unknown within the State, did engage in handling property, the proceeds of crime, to wit €32,000, while knowing or believing or being reckless as to whether or not the said property was the proceeds of criminal conduct*'.
3. The maximum potential penalty for such an offence is a fine and/or imprisonment for a term not exceeding 14 years. On the 29th of May, 2019, the appellant received a sentence of four years imprisonment with the final two years suspended, subject to the conditions that he would keep the peace and be of good behaviour for a period of two years post-release; that he would enter into a bond in the sum of €100; and that he would forthwith pay €1900 to the prosecuting member of An Garda Síochána so that it could be transferred to the injured party.

The facts as established in evidence

4. On 29 May, 2019, Garda Raymond Lyons testified to the sentencing court concerning the following matters. He told the court that on the 21st of September, 2016, it was reported to gardai that €32,000 had been stolen from a company called Finance Ireland and transferred into a suspicious account purporting to belong to a company named Gaynor Plant Sales.
5. Gaynor Plant Sales Ltd is a legitimate company engaged in the business of selling construction equipment. The evidence was that a building contractor, a Mr Gary Coone, was desirous of purchasing a Hitachi machine costing €32,000 from Gaynor Plant Sales for use in his construction business. The precise nature of the machine is unspecified but it is presumed, although nothing turns on it, that it was probably something like a tracked excavator. At any rate Mr Coone needed to secure finance to enable him to make the said

purchase and he contacted a financial brokerage called Practical Finance, which in turn arranged the necessary finance for Mr Coone through Finance Ireland.

6. During the putting in place of the financial arrangements, emails were exchanged between the three parties involved, namely Gaynor Plant Sales, Practical Finance representing Mr Coone, and Finance Ireland. During these exchanges Finance Ireland sought, via Practical Finance, details of Gaynor Plant Sales bank account so that they could in due course transfer the consideration of €32,000 to that company once the required finance was in place. Gardai believed that the email requesting these details was intercepted by a party unknown. The intercepted e-mail was addressed to info@gaynorplantsales.com. The intercepting party then replied to the original sender, i.e., Practical Finance from a somewhat similar sounding and looking, but nonetheless different, email address namely info.gaynorplantsales@mail.com. In doing so the intercepting party, representing himself to be Gaynor Plant Sales, stated that there was an alleged difficulty with using the company's normal bank account and that in the circumstances they were providing alternative bank details. A BIC and IBAN for an account at the Ulster Bank branch at Monastery Road in Clondalkin were provided. The broker in Practical Finance took those details in good faith and passed them on to Finance Ireland. The account name given was Aji Limited, and the email requested that an electronic funds transfer (EFT) document be completed by the intending transferor, i.e., Finance Ireland, which request was duly complied with.
7. On the 9th of August 2016 Finance Ireland transferred the sum of €32,000 to the account, details of which had been provided to them and which they believed belonged to Gaynor Plant Sales. They subsequently learned that Gaynor Plant Sales were contending that they never received the money, and the matter was reported to An Garda Síochána.
8. In the course of their investigations gardai successfully linked the appellant to the bank account at the Ulster Bank branch at Monastery Road in Clondalkin to which the funds had been transferred. Bank records were obtained by means of a statutory mechanism and an examination of those details revealed a series of debit transactions effected by the appellant, by way of purchases and cash withdrawals using a debit card, as well as a debit in favour of a credit union account at Clondalkin Credit Union in the name of the appellant. In particular there was multiple foreign currency purchases at Dublin airport, and the investigation revealed that the appellant had provided his passport as photo ID when effecting these transactions. The funds in the account were in that way dissipated by the appellant over a period of approximately a month.
9. On the 1st of September, 2016, the appellant was arrested at Dublin airport with €8,000 in cash on his person, which he claimed was for the purpose of purchasing a vehicle in the United Kingdom. He was taken to a Garda station where he was detained for questioning.
10. During interview, the appellant accepted that €32,000 was received into his Ulster Bank account. He indicated that he had been asked by a person, whom he identified simply as "Kumar", to facilitate that, in return for which he claimed to have received €300; and he purported to name a second person, called "Bang", whom he claimed had received

monies out of that €32,000 from him. He stated that he had provided his debit card to other persons so that they could take money from the account. He claimed to have believed at the time that the money was to be used for a legitimate purpose, namely the sale and purchase of motor vehicles. Notwithstanding claiming to have had this understanding, and inconsistent with it, there was clear evidence that he had used a proportion of the money for personal expenditure, and that he had personally withdrawn most of it. Moreover, he ultimately pleaded guilty to handling the money knowing or believing or being reckless as to whether it was the proceeds of crime. It was accepted by the prosecution that they were unable to link the appellant to the deception by means of which the funds had been stolen and transferred to his account. For that reason, he was charged with handling.

11. The appellant denied any knowledge of the injured parties, or any knowledge of the transactions by means of which the money was stolen. He did provide the name of the person he claimed provided the money, however there has been no other evidence of the involvement of anyone except the appellant.
12. The court heard that the appellant had applied for a loan to enable him to make some restitution to the injured party. He had hoped to borrow €5,000 from a credit union, but could only raise €1900, which he brought with him to court.
13. The appellant pleaded guilty at the arraignment date on 26th of March, 2019.

Impact on Victim

14. Much was made at the hearing of the appeal of some lack of clarity concerning the status of the €8,000 seized from the appellant at the time of his arrest. It was unclear if the source of that €8,000 was the account in question. Be that as it may, it appears that that €8,000 was applied towards restitution, as was the €1,900 made available at the sentencing hearing.

Appellant's Personal Circumstances

15. The appellant came before the court with 6 previous convictions, none of which were for relevant offences. His previous convictions would not therefore have aggravated his culpability, but neither was he in a position to contend that he was a person of previous good character. In February 2018 the appellant was convicted of possessing child pornography in September 2016, for which he received a 12 month suspended sentence. In 2011, the appellant was convicted of various road traffic offences; non-display of a valid NCT, using the vehicle without an NCT and failing to produce an NCT. Prior to that, in 2003 the appellant was convicted of offences dating from 2001, namely failure to produce registration certificate and uttering a forged document, contrary to section 6 of the Forgery Act 1913, for which he received a community service order of 200 hours.
16. The appellant is a 51 year old man, originally from Nigeria. He worked for several years in the security industry. He has several health problems including diabetes and heart issues, for which he is prescribed medications. He has no record of alcohol or drug problems. He has four children, all of whom, bar one, have reached adulthood and live with their mother in the U.K, from whom the appellant has been separated for a number of years.

Sentencing Judge's Remarks

17. In sentencing the appellant, the sentencing judge made the following remarks:

"In this case, I take into account the accused's guilty plea, his level of co-operation in that he did co-operate somewhat with the gardaí, and that's clear from the evidence of Detective Lyons. I also take into account that he has sought to make some reparation in respect of the loss and has brought to court the sum of €1900 which has been offered. It's been indicated that if he was given a further period of time he'd endeavour to procure more, but it's now -- he was arrested in November 2017, so it's over a year and a half now since the offence was committed, or he was on notice of being in the frame for the offence, as it were. So, I'm not mindful to give more time, particularly in circumstances where he is of limited means and I don't in any way punish him for that, but I don't see much reality in him gathering together a further sum, but I do acknowledge that he has brought a sum to court, which he's offered to the injured party and which I direct will be paid over to the injured party via Detective Garda Lyons. In the premises, by way of mitigation, his personal circumstances are taken into account. He's a person who isn't in the full of his health, he suffers from diabetes and indeed from other medical conditions which are painful, which have been outlined in a letter from his doctor, and I take those into account. He's not a person who comes before the Court with no previous convictions, although the convictions are of a different nature, but he is a person who has been criminally involved in other aspects of the criminal code. In the circumstances, I'm going to impose a sentence of four years imprisonment, and suspend the final two years on condition that the accused keeps the peace and be of good behaviour for a period of two years post-release."

Grounds of Appeal

18. The appellant put forward the following grounds of appeal in his Notice of Appeal:

- I. The sentencing judge erred in principle and in law by failing to sentence the appellant in respect of the specific allegation contained in the indictment, in sentencing the appellant for having committed acts, otherwise than and/or in addition to that of 'handling' property the proceeds of crime to wit €32,000 while knowing or believing or being reckless as to whether or not the said property was the proceeds of crime, thereby and/or in addition thereto, imposed a sentence which was excessive, unduly severe and disproportionate given the weight and nature of the evidence, the offence as actually charged on the indictment and in consideration of all of the circumstances of the case.
- II. The appellant was legally aided before the Circuit Court in respect of Bill Number 69/2019 and his financial circumstances have demonstrably dis-improved since then as he is now incarcerated. The appellant therefore seeks from this Honourable Court a Legal Aid (Appeal) Certificate for his Solicitor, Mr Philip Hannon of Philip Hannon Solicitors, Suite 306, The Capel Building, Mary's Abbey, Dublin 7, plus one counsel.

19. However, at the commencement of the oral hearing of this appeal counsel for the appellant indicated that he was confining his appeal to the matters embraced by the final clause of Ground No I, namely, that the sentencing judge "*imposed a sentence which was excessive, unduly severe and disproportionate given the weight and nature of the evidence, the offence as actually charged on the indictment and in consideration of all of the circumstances of the case*".
20. On being further probed by the Court as to where he was contending the judge had erred in principle, he identified two core issues as being central to his appeal namely (i) a contention that the sentencing judge had over-assessed the gravity of the case; and (ii) that his client had received insufficient discount for mitigation.

The complaint that gravity was over assessed.

21. Counsel for the appellant has contended that by fixing a headline sentence of four years, the sentencing judge located the offence in the mid-range for money laundering offences and he contends that that was an error. He points to the relatively small sum involved relative to many other cases that have come before the courts; and he emphasises that his client's involvement was confined, on the evidence, to handling the monies in question while knowing or believing or being reckless as to whether they were the proceeds of crime but in circumstances where there was no evidence that he knew anything about the actual manner in which they had been stolen, or that he had had any part in it.
22. We were referred to a number of cases as being potentially relevant comparators, and these included *The People (Director of Public Prosecutions) v Trimble* [2016] IECA 309; *The People (Director of Public Prosecutions) v McHugh* [2002] 1 IR 352; *The People (Director of Public Prosecutions) v Cunningham* [2013] IECA 62; and *The People (Director of Public Prosecutions) v Paul Carew* [2019] IECA 77. In our view the facts of each of these cases were so different from the present that their usefulness as guidance is extremely limited. They are not indicative of any clearly discernible trend in respect of how money laundering offences should be ordinarily ranked, nor do they flag a particular approach being consistently applied.
23. We therefore approach the matter from first principles. Gravity is to be assessed by reference to the available spectrum of penalties and having regard to the culpability of the offender and the harm done. The spectrum or range here was from non-custodial options up to an unlimited fine and/or up to 14 years imprisonment. The culpability of the offender was moderate in our assessment and while the harm done in financial terms was comparatively low, the offence significantly breached the social contract to which all citizens are expected to adhere and so the harm in the wider sense was certainly not minor. The case could justifiably have been located at the upper end of the low range or in the lower part of the mid-range if the available spectrum is divided three ways. The sentencing judge had a margin of appreciation in that regard.
24. The approach of the sentencing judge was to regard offences of this type as requiring deterrent action. She was entitled to prioritise deterrence amongst the accepted objectives of sentencing in the circumstances of this case, and to impose an exemplary

sentence for deterrent purposes within her legitimate margin of appreciation. Thus, she opted to impose a sentence in the lower half of the mid-range and nominated a headline sentence of four years. While that might well be regarded as having been towards the severe end of her legitimate scope for action, it did not exceed it in the court's view. We find no error of principle in terms of the assessment of gravity.

25. As regards the complaint that the appellant received an insufficient discount for mitigation, we would immediately point to the fact that he received an effective discount of 50% on the headline sentence. While there was a plea, and some co-operation, this was in circumstances where the evidence against the appellant was quite strong. The appellant was also not a first time offender, and by virtue of his record would have lost any ability to claim credit for being of previous good character. His health issues, personal circumstances and family situation were fully taken into account. Moreover, his efforts at making restitution were also taken into account. We are satisfied that the discount afforded was more than adequate, and find no error of principle on the mitigation side either.
26. The appeal is dismissed.