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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT MANCHESTER

(MINSHULL STREET)

HHJ MAURICE GREENE T20167277

[2024] EWCA Crim 1501

CASE NO 202401463/B2

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 8 October 2024

Before:

LADY JUSTICE WHIPPLE

MRS JUSTICE MCGOWAN

RECORDER OF WINCHESTER

(HHJ ANGELA MORRIS)

(Sitting as a Judge of the CACD)

REX

V

BETTY LAMPTEY

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MR V QUAITE appeared on behalf of the Applicant.

MR C SYKES appeared on behalf of the Crown.

J U D G M E N T

LADY JUSTICE WHIPPLE:

1. This application for leave to appeal against sentence is made long out of time but, for reasons we shall come to, we are satisfied that there is good reason to extend time and that it is in the interests of justice to do so. We therefore grant the request for the extension of time; we grant leave to appeal and we confirm a representation order for counsel.
2. On 28 June 2016, the appellant was sentenced by HHJ Maurice Greene, sitting at Manchester Crown Court in Minshull Street, to a total of 8 months' imprisonment on the basis of guilty pleas entered one week earlier, to two counts of fraud, under section 1 of the Fraud Act 2006 (those were counts 1 and 3 on the indictment) and one count of possession of an identity document with improper intention, pursuant to section 4(2) of the Identity Documents Act 2010 (count 4 on the indictment). No issue now arises in relation to that aspect of the sentence. The judge also imposed confiscation orders pursuant to the Proceeds of Crime Act 2002 on the appellant and on her co-accused, Stephen Ellis. The confiscation order against each was for £5,000, £3,000 of which was to be paid as compensation to Barclays Bank. The amounts were to be paid within 3 months or in default the appellant would be required to serve 3 months' imprisonment. It is that aspect of sentence which is now challenged by the appellant. This appeal is not opposed by the Crown.
3. There is no appeal by Stephen Ellis, the co-defendant. We are informed that Mr Ellis is currently outside the jurisdiction and has lost contact with his solicitors. He also pleaded guilty to two counts of fraud and two counts of possession of an identity document with

improper intention. He too was sentenced to a total of 8 months' imprisonment together with a confiscation order in the terms we have summarised.

The Facts

4. In February 2016, the appellant sought employment and falsely represented that she was named "Akosua Gyasi-Boateng" and provided a Dutch passport in that name in support. The recruitment agency undertook compliance checks which revealed some anomalies. An investigation into those anomalies resulted in the appellant being arrested. This was the basis of counts 3 and 4.

5. In police interview, the appellant disclosed that she had used those false details to obtain a business loan of £6,000 from Barclays Bank. The business loan had been taken out in the name of "Akonam Ltd", which was a company jointly owned by the appellant and Mr Ellis. The appellant said that the business bank account contained £10,000 (representing the £6,000 of the loan, together with money which the appellant and co-accused had received as wages). That was the basis of count 1.

Confiscation Order

6. The prosecution initially sought an order for forfeiture of the £10,000 believed to be standing to the credit of the Akonam Ltd bank account. There was no objection to this and that was what the judge initially indicated he was minded to do. During the course of the hearing, however, the appellant's counsel raised the issue of compensation to be paid to Barclays Bank. In order to achieve that compensatory element, the judge suggested making a confiscation order under the Proceeds of Crime Act 2002. That

suggestion was not resisted by either party and the judge took that course. The judge declared the benefit figure to be £10,000. Initially he made a confiscation order against the two defendants jointly in the sum of £10,000 -- that being the available amount -- with £6,000 payable by way of compensation to Barclays Bank. Following discussion he decided to make two separate confiscation orders, one against each defendant, each one in similar terms stating the benefit figure at £10,000 and directing that the available amount was £5,000 of which £3,000 was to be paid to Barclays Bank as compensation.

7. The confiscation order in these terms against the appellant remains unpaid. There is no information before us about the status of the compensation order which was made against Mr Ellis, although there is reason to believe that it too remains unpaid and at today's date.
8. In July 2021 enforcement proceedings began. During the course of those proceedings, it came to light that the confiscation order against the appellant had been based on incorrect information. First, Barclays Bank had already refunded to itself the outstanding loan of £6,000 from money that was held in the Akonam Ltd account, so Barclays was not out of pocket. Secondly, the balance after repayment of the loan amount had only been £947.26 not the judge's figure of £4,000. Barclays had transferred the balance of £947.26 to another sundry account. Barclays had closed the Akonam Ltd account. That meant that none of the money which had been in the Akonam Ltd account had at any stage been transferred to the appellant or had been at her disposal.

Subsequent applications to the Crown Court

9. The defence applied, under section 23 of the Proceeds of Crime Act 2002, to vary the

confiscation order against the appellant but that application to the Crown Court was opposed by the Crown on the basis that section 23 did not apply. The Crown's view was that section 23 could only apply where an asset had not realised as much as was anticipated in the confiscation stage, but that was not what had occurred here. Further, the Crown's view was that a downwards adjustment under section 23 could be met with a later application for upwards adjustment under section 22 of the Proceeds of Crime Act 2002, given that the benefit figure remained at £10,000. In summary, it was the Crown's case that variation was not the right route to remedy the problem; the Crown suggested the confiscation order needed to be quashed and that this should be done by way of appeal out of time. Thus it was that appeal proceedings were eventually issued in this Court on 17 April 2024.

Grounds of Appeal

10. Ms Quaite now appears for the appellant, although she did not appear below. She submits, first, that the Crown Court was wrongly advised that the balance on the Akonam Ltd account was £10,000 when it was in fact something closer to £7,000 on the day the confiscation order was made; secondly, that the loan amount was repaid to Barclays Bank via an internal transfer from the Akonam Ltd account so there was no need to compensate Barclays Bank by means of the confiscation order.

11. These grounds have been referred to the Full Court by the Registrar. The Crown indicated in correspondence and in the Respondent's Notice that the appeal should succeed and that the original amount of the confiscation order, with accrued interest, should be quashed. Mr Sykes has appeared today and has confirmed that position.

Discussion

12. We accept the underlying proposition that this confiscation order should not have been made. First of all, there was no inquiry as to the amount in the account at the date that the order was made. If there had been, it would have been clear that the amount in the account was significantly less than £10,000. The confiscation order therefore proceeded on a false basis as to the available amount. Secondly, and more fundamentally, the purpose of the confiscation order, with its compensation element, was to ensure that Barclays was not out of pocket as a result of the appellant's criminal activity. It is now clear that Barclays, through internal processes, has recovered the amount of the loan plus interest accrued and has no uncompensated losses.

13. The true balance remaining on the account, after Barclays had repaid itself the loan amount plus interest, was something less than £1,000. That amount has been transferred to a sundry account also held by Barclays. Whatever the formal status of that £1,000, it is not in the appellant's hands and there is no application before us to make it subject to any sort of order or to direct the Crown to proceed afresh against that amount.

14. In the circumstances therefore, we simply allow this appeal. We quash the compensation order made against the appellant, including the accrual of any interest on the outstanding loan and we quash the order dated 28 June 2016.

15. LADY JUSTICE WHIPPLE: Does anything arise from that, Mr Sykes?

16. MR SYKES: No, my Lady.

17. LADY JUSTICE WHIPPLE: Ms Quaite, does anything arise from that?

18. MS QUAITE: No, thank you.

19. LADY JUSTICE WHIPPLE: May we simply thank you very much for your attendance.

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