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NCN: [2024] EWCA Crim 752  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO: 202401382/A2

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 20 June 2024

Before:

LORD JUSTICE WILLIAM DAVIS

MRS JUSTICE COCKERILL

HIS HONOUR JUDGE JOHN LODGE  
(Sitting as a Judge of the CACD)

REX

V  
STEPHEN KELVIN RULE

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MR N ROBINSON appeared on behalf of the Appellant.  
MR R HULEIHEL appeared on behalf of the Crown.

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

## **MRS JUSTICE COCKERILL:**

1. On 8 February 2024, in the Crown Court at Bournemouth before His Honour Judge Richard Fuller KC, the appellant pleaded guilty to two counts of theft, contrary to section 1(1) of the Theft Act 1968, representing thefts from Phillip Rule (his brother) and David Rule (his son from his first marriage). On 15 March 2024, before Mr Recorder Hill, the appellant was sentenced to 2 years and 9 months' imprisonment in relation to Count 1, with 15 months' imprisonment in relation to Count 2 to run concurrently.

## **THE FACTS**

2. The facts had their origin in the will of Donald Rule, who died on 18 December 2020. He was the brother of the appellant and of the first complainant. He left a will in which he stipulated that his assets were to be divided between his brother Stephen (the appellant) and Phillip and his grandson, David Rule. The main asset was a property, 20 Buckingham Mansions in Bournemouth. That was to be sold and the proceeds split. The appellant was to receive 40 per cent, Phillip Rule 55 per cent and David Rule 5 per cent. The will specified that the sale of the property was to be entrusted to House & Son Estate Agents and a specific conveyancer, Genesis Legal Services. It was agreed verbally that the appellant would handle the sale of the property and therefore David and Phillip entrusted that task to him.
3. In July 2021, the appellant contacted both David and Phillip, asking them to urgently grant their consent by email to a different firm called MJP Law for the proceeds of the property sale to be transferred to the appellant's Nationwide account for onward distribution. They were told this was to be done urgently to prevent the collapse of the sale. For that reason, David and Phillip Rule complied and provided their consent. Then

silence fell. The appellant failed to provide any further update on the sale of the property. He was uncontactable for a period.

4. In September 2021, David Rule found out, by contacting the solicitors MJP Law, that the sale had been completed in July. He was told that the proceeds of sale had been transferred to the appellant on 30 July. David Rule was surprised by this development and by the fact that the appellant had not informed them or distributed the proceeds of sale. The house had been sold for £259,500. After fees, a total of just over £249,000 remained and therefore, according to the will, Phillip Rule should have received just over £137,000 and David Rule should have received £12,500.
  
5. Between July 2021 and January 2022, David and Phillip Rule made constant attempts to contact the appellant. They inquired about the funds and when they could expect to receive them. At several points, the appellant said that he had transferred them and there were delays with the bank, but that was not true. The funds never reached the victims. This continued until they made a complaint to the police. The appellant's bank statements then showed that after the transfer was made to his Nationwide account, he transferred some funds to his wife's bank account. On 2 August 2021, shortly after the sale of the property, the appellant had purchased a property (Flat 44 Altitude) in the name of his wife, using in addition some of her own funds.
  
6. In interview and over the process of the investigation, the appellant stated that he had invested the proceeds of sale to increase the inheritance, although Phillip Rule had specifically told him not to. There were two different police interviews. In the first one,

he gave a full account explaining the investments he had made and assured the interviewer he would pay the money back within 3 to 4 weeks. That did not happen. He was interviewed again 4 months later. The moneys had still not been paid back and it was put to him that he had lost the money from investments and he had used money that was not his to pay for that property. The appellant denied this.

7. He was charged with theft. There were a number of pre-trial hearings between November 2023 and February 2024. At one or more of those hearings there was discussion of the potential discontinuance of proceedings in consideration of full repayment. There has been a dispute as to whether a confirmation was given by the prosecution that the prosecution would not proceed if the defendant made full repayment of the sums stolen. Meanwhile, the appellant pleaded not guilty, denying that he had intended to permanently deprive his relations of the inheritance. There were issues as to his fitness to stand trial, since he had suffered a stroke in February 2023. Medical and psychiatric evidence was served.
8. By the date of the trial, the appellant's brother had sadly died. Full repayment had not been made. The case was listed for hearing and the appellant then pleaded guilty, thereby accepting that by treating the inheritance money as his own and disposing of it he intended to permanently deprive his brother and son of their money and was thereby guilty of theft.
9. The position at the sentencing hearing was that following that guilty plea, steps had been taken to sell the property. By the sentencing hearing, the appellant and his wife had

entered into a contract to sell the flat (44 Altitude) but that had not completed and the sale was at a loss. Sufficient funds were to be raised to compensate the victims in full but that did not happen until after the sentencing hearing.

10. The sentencing remarks are fairly brief. The judge outlined the facts and explained the parameters of the sentencing exercise. He said:

“So, what I am balancing on your case is this. Firstly, the sheer size of the theft. This is not just a few thousand pounds taken in the heat of the moment in a panic. It is a very substantial sum which was plotted and extracted over a little period of time, taking advantage of gullible family members who would have been prepared to [place] their trust in you. You seem, I am afraid, to have placed money above family love and actual affection and trust, and that is very much an aggravating feature in this case.

You are 71, you have never been to prison before. I am... alive to the difficulties that that presents, and it is one of the things that I have to factor into account when I take a [final] view on punishment. I take into account the fact that you are suffering [from] ill health. Your counsel urges me to reach a sufficiently low sum to suspend the sentence.

The figures I reach are these. The lowest figure appropriately within the bracket for the more serious sum is 2 years and 6 months. So, that is above the suspended sentence ceiling. In addition to that, there is the further theft of a not insubstantial sum from your son. Taking all of those factors into account...

The sentence I am going to impose is one of 2 years and 9 months on Count 1, and I am going to impose a sentence of 15 months on Count 2, but that will run concurrent to the Count 1...”

## **THE APPEAL**

11. The appellant appeals by leave of the single judge, contending that the sentence was manifestly excessive and wrong in principle. A variety of points were taken, grouped

under two headings. These equate to arguments as to (i) the sentence being manifestly excessive and (ii) the sentence being wrong in principle. In relation to the arguments on manifestly excessive, it is said that the judge did not identify the starting point, that the starting point in the sentence passed was too high given the mitigating circumstances relating to the offences of the offender, in particular the appellant's age, good character, extremely poor health and the severe impact on his wife and daughter if he were put into prison and, further, that no reduction was made for prison conditions.

12. In relation to the "wrong in principle" argument, it is said that the sentence of immediate imprisonment was wrong in principle because up to the date of the trial the prosecution would have offered no evidence on both counts on public interest grounds, given the appellant's extremely poor health, had he repaid the sums to the victims, which he had effectively achieved by date of sentencing. In the alternative, it said it was manifestly excessive not to reduce the sentence to account for the voluntary and fulsome compensation.

13. Before us today, Mr Robinson, who appeared below and for whose clear submissions we are very grateful, has particularly emphasised the mitigation, both in terms of the repayment and the appellant's health. He has reminded us in particular of his wife and daughter's concerns as to his ability to have his basic needs met in prison. Those points have been further emphasised by reference to an account given to us on instructions as to the difficulties which prison residence has for the appellant compared to the round-the-clock care he was being able to receive from his wife outside of prison. Mr Robinson submitted that, in the absence of any identifiable reduction in the

sentencing remarks, we should conclude that the judge did not make sufficient reduction to take account of these important factors. Essentially, he submits that the reduction for mitigation was not enough. In the alternative, he submits we should make a reduction on the basis that, however one looks at it, the sentence was manifestly excessive, even if it is not capable of being reduced to the point where the sentence can be suspended.

## DISCUSSION

14. While, as we have said, we are grateful for the clear submissions of Mr Robinson, in order to have a prospect of success that submission must be that the sentencing judge erred in some way during the sentencing exercise. We do not consider that the sentencing judge fell into error.
15. Taking the arguments relating to the supposedly manifestly excessive sentence first, while the judge did not expressly categorise the offence, that is because no one was in any doubt as to the category in question. The prosecution contended that it was a 1A offence in the Sentencing Note. No issue was taken with this. The judge plainly accepted that categorisation when he referred in the sentencing remarks to “*the sheer size of the theft, this is not just a few thousand pounds taken in the heat of the moment in a panic. It is a very substantial sum which was plotted and extracted over a little period of time, taking advantage of gullible family members who would have been prepared to place their trust in you*”, thereby referencing the relevant category for that category within the guideline.
16. That categorisation was plainly right. This was a breach in relation to an amount of money significantly above the level needed for category 1 harm and was both an offence

involving a breach of a high degree of trust and one which involved significant planning.

17. We do accept that it would have been more helpful had the judge made the genesis of his figures clear but it is also clear that, from that starting point and bearing in mind the factors in play in this case, he could perfectly well reach the figure which he did. While the judge did not indicate his starting point as a figure, he was entitled, and really required, to lift the sentence above the 3 year 6 month starting point, bearing in mind the two culpability A factors (very significant breach of trust and planning) and the additional harm factors of serious inconvenience and real emotional distress caused to his brother and son. In our judgment, an uplift of at least 6 months would have been appropriate to take into account the serious aggravating factors.

18. The judge then did not give a specific figure, as Mr Robinson points out, for the reduction for mitigation, but it is plain, looking at the sentencing remarks, that he did consider the appellant's health, the other mitigating factors of good character and the impact of prison. On this basis, even if a very substantial reduction of 30 per cent were made for mitigation, the sentence which would result could be no lower than 30 months. That indicates that a sentence of 33 months arrived at by the judge may be stern but is not manifestly excessive. To alter the sentence in relation to that 30 months on the basis of a calculated 3 months disparity would be no more than tinkering. There is no error by the judge and it would not be appropriate for us to conclude that the sentence was manifestly excessive.

19. For the second ground, this is, in our judgment, hopeless and it was not pursued with any



enthusiasm before us. While there was some element of dispute as to exactly what happened at the earlier hearings and as to whether the prosecution made any assurances, it is clear that there was no formal assurance; and in any event any prosecution assurance would not be a basis for an appeal in circumstances where the appellant pleaded guilty at trial and this point was not apparently raised at the time.

20. Accordingly, the appeal is dismissed.

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