Neutral Citation Number: [2014] EWCA Crim 1281

No: 201306514 A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 4 June 2014

B e f o r e:

SIR BRIAN LEVESON
PRESIDENT OF THE QUEENS BENCH DIVISION

MRS JUSTICE PATTERSON DBE

SIR RICHARD HENRIQUES

R E G I N A

v

BAUMBER

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(Official Shorthand Writers to the Court)

Mr S Khanna appeared on behalf of the **Appellant**

J U D G M E N T
(As approved)

1. SIR RICHARD HENRIQUES: This appellant aged 39 appeals with leave of the single judge. On 4 November 2013 at Lincoln Magistrates' Court he pleaded guilty to seven offences involving fraudulent misconduct and he was committed in custody to the Crown Court sitting at Lincoln for sentence. On 5 December 2013 he was sentenced by Mr Recorder Medland QC as follows: For five offences of obtaining services by deception he was sentenced to 12 months' imprisonment on each count to run concurrently; for a single count of fraud he was sentenced to 15 months' imprisonment to run consecutively; and for a further offence of obtaining services by deception he was sentenced to 3 months' imprisonment to run consecutively. The four offences of fraud and one of attempted fraud were taken into consideration. Thus, the total sentence passed was one of 30 months' imprisonment. Compensation orders totalling £4,349.30 remain, with £520 to be paid within three months and the balance to be paid within 12 months.

2. This appeal raises a single point of principle, namely whether a defendant who denies guilt in interview but pleads guilty at the first reasonable opportunity in court is entitled to a full discount of one third of his sentence to reflect his plea of guilty. This point was examined in depth by this court in the case of R v Caley and others [2013] 2 Cr App R (S) 47 in a constitution presided over by the then Vice President Hughes LJ, as he then was. That judgment provides the answer to the point raised but is by no means conclusive in this appeal.

3. This appellant is 39 years of age. He is a habitual fraudster with numerous convictions for dishonesty over the last 15 years and some 24 convictions for fraud and theft. His most recent conviction was in December 2013 when he was sentenced to 18 months' imprisonment for seven offences of obtaining property by deception. Those offences were also committed whilst on licence, the appellant having been sentenced to a total of 38 months' imprisonment on 27 October 2011 for a number of similar offences. The appellant remains on licence until 18 January of next year and was made subject to a 28 day recall to mark the most recent offences. He had been released from custody on 19 April 2013. These seven offences and the five consideration offences were all committed between June and November of 2013. Whilst on licence he was supervised and presented himself as leading an offence-free lifestyle. When seen by the probation service prior to sentence he refused to be interviewed for the purpose of a pre-sentence report.

4. The facts can be taken shortly. The first five offences involved stays in hotels and guest houses when he failed to pay. He booked in his own name but then, when having incurred considerable expenditure on accommodation, food and drink and sometimes entertaining female company, he used a variety of excuses for non-payment: he had been admitted to hospital; his credit card was being replaced and was in the post; he could not find his credit card; he had left his wallet in his broken down car; he gave the wrong number for a credit card; he had been involved in a car accident; et cetera. The total amount involved in those five charges was £3,080. It represented approximately 18 nights' accommodation, food and drink between 14 June and 22 July 2013. Two of the agreed parties were small businesses.

5. The sixth charge involved taking £520 from a local barmaid on the pretence that he would supply her with a Louis Vuitton handbag. She trusted him, she said, because she had seen him before in the pub, he was quite cocky and had a lot of money. He gave a number of excuses as to why the bag had not arrived from his friend in Dubai who was said to be the supplier.

6. The final charge involved booking a taxi driver that he used with some frequency. Initially he paid the fare and was allowed credit. He then started to make excuses for non-payment, saying that he had left his bank card in his truck which was being serviced. The outstanding debt was £35.

7. As to the consideration offences, on four occasions between 1 October 2013 and 2 November 2013 the appellant represented that he was going to supply an i-Phone or an i-Pad. In one case he was given £300, in another £178, in two others £118 and there was an attempt to obtain £118. The appellant was interviewed on 2 November. He accepted that he stayed at each hotel but asserted that he had honestly intended to pay for each stay. In relation to the handbag he said that he had ordered it but that it had never been delivered.

8. The Learned Recorder was referred to the Confidence Fraud Sentencing Guidelines. They provide a starting point of 18 months' custody with a range of 26 weeks' to three years' custody. The starting point is based on a figure of £10,000. The total loss to all parties including the consideration offences was £4,349.30. Accordingly, it is contended that the starting point was too high. In particular it is said that the sentence of 15 months after discount represented too high a starting point in relation to the handbag offence. It is also asserted that a three-month consecutive sentence for booking the taxi driver was excessive.

9. Those arguments did not impress the Single Judge. As the Recorder observed during the prosecution opening, they are guidelines for court and not specific tariffs. He had to take into account the defendant's antecedent history, the consideration offences and the fact that all the offences were committed whilst the appellant was on administrative recall licence. We are fully satisfied that the Recorder had proper regard to the guidelines and that the multiplicity of offences in this case, and the character of the offender, necessitated the exercise of judicial discretion which is fully preserved by the statute. The notional starting point cannot be described as manifestly excessive.

10. The only point which concerned the Single Judge was the discount for plea. The Recorder concluded that because the appellant chose to deny his guilt in interview but admitted his guilt before the justices, credit for the plea should be of the order of 25 per cent or a little more. In Caley at paragraph 12 the Vice President said this:

> "Mr Little, who appeared for the Crown in all these cases, did not ask us to say that the first reasonable opportunity normally arises in police interview. We agree that that would require a significant adjustment to general practice. It might have implications for the terms of the caution and for other rules of practice about how interviews are conducted."

Paragraphs 13 and 14 of that judgment make it plain that failure to confess in interview is no bar to receiving the full one-third discount. At paragraph 28, the Vice President said this:

> "The general approach which we have endeavoured to set out is, we think, essential to an understanding by defendants and their advisers. But it does not altogether remove the scope of the judge to treat an individual case individually."

11. With that in mind we note that this was a case in which the appellant himself knew full well when interviewed that he had committed numerous offences. He needed no legal advice. He chose to tell lies in interview and, in particular, no order for a handbag had been placed by him. The reality of this case as it seems to us, is that there was here an overwhelming case against the appellant without the remotest prospect of an acquittal on any one of the charges, not least when bad character was introduced as it surely would have been. Paragraph 5 of the Sentencing Guidelines Council Guideline expressly advises that it might be appropriate to limit the reduction in sentence for plea of guilty where the case is, irrespective of any admission, overwhelming. Had the Recorder considered the overwhelming case against the appellant we doubt that he would have made such a significant reduction from the starting point as he did. A one-fifth reduction or 20 per cent may have been appropriate.

12. Mr Khanna has said all that could possibly be said on behalf of the appellant but we conclude however that, if the Recorder was in error, it was in the appellant's favour. We see no basis for reducing a sentence which was fully merited. Accordingly, this appeal is dismissed.