

**Neutral Citation Number: [2016] EWCA Crim 1400**  
**201601016 A1**  
**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 12<sup>th</sup> August 2016

B e f o r e:

LORD JUSTICE BEAN

MR JUSTICE FOSKETT

and

MR JUSTICE HICKINBOTTOM

**REGINA**

**v**

**JAMES DELANEY JUNIOR**

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(Official Shorthand Writers to the Court)

**Mr J Harris** appeared on behalf of the Appellant

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

(Approved)  
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**LORD JUSTICE BEAN:**

1. J Delaney Landscapes is an unincorporated property maintenance business based in the Northampton area. It was owned by the appellant. He was assisted by his father and his uncle, Sean Lowther. Between January 2014 and December 2015 the business accepted advance payment for the carrying out of domestic building and repair work in the Wellingborough and Northampton area. A number of home owners were approached and agreements were made to carry out roofing, fencing, block paving and other odd jobs. No paperwork or receipts were provided. On most occasions the work agreed was not completed. Any work that was carried out was grossly substandard and, when later inspected by an expert, was judged to be worthless.

2. The appellant, Lowther and another man called Brian Maughan were all charged in respect of the carrying out of this fraudulent work for five customers of the business. The indictment was expressed as five counts relating to individual victims and a sixth catch-all count of participating in a fraudulent business. It was to count 6 that the appellant and Lowther pleaded guilty. We need say nothing more about Maughan, whose involvement was very much less than the other two defendants.

3. The appellant and Lowther both pleaded guilty to count 6 and both received the same sentence from Her Honour Judge Lucking QC in the Crown Court at Northampton on 5<sup>th</sup> February 2016, namely, a sentence of 32 months' imprisonment, which represented a starting point of four years, less a discount of one-third for the early guilty pleas. The appellant pleaded guilty on a written basis as follows:

"I knew that payment would be taken in advance for the building work but I took no such payment. My part in the fraud was simply to provide what I knew was going to be sub-standard work."

4. On behalf of the appellant Mr Harris realistically concedes that this basis of plea does not mitigate the appellant's role to any real extent. The customers were defrauded. They handed over money. Who actually received the cash does not seem to us to be a matter of any significance.

5. In her sentencing remarks the judge outlined the individual facts relating to the five complainants. She described them as five individuals who could ill afford to lose that money. The total was just under £12,500. We need not set out the facts of all five cases, but it is important to refer particularly to one of them, a Mr Garibaldi. The judge said this:

"Perhaps the meanest of all of these, although not the highest in monetary value, is Mr Garibaldi. [He is] 49 years old [and] disabled by two strokes. Money was taken from him, and the end result of this offending on your part [addressing both Delaney and Lowther] is that he has had to move back in with his parents. It is clear that he was so vulnerable [that] his parents have now had to ... take over his financial affairs. He has had another stroke subsequently. He has lost his independence because he has had to leave a home that he valued and liked, and gave him a little independence because he could walk to the local shops. It has caused stress; it has caused worry. And other members of the family had to get involved to end this offending committed against him.

... This was, in my view, a [case of] category A high culpability. The reason for that is, Mr Lowther, you had a leading role within the group. There was significant planning. It was over a sustained period. And it has to be said at least the fifth complainant, Mr Garibaldi, appears on the face of it to have been deliberately targeted as vulnerable. It has to be said that each of these people, to a certain degree, [was] vulnerable, otherwise there would have been no point in going to their houses. But particularly as far as Mr Garibaldi is concerned, the involvement of others through influence.

When it comes to [the appellant], of course again you are part of an enterprise that involved significant planning. It was over a sustained period. And some of the [victims] – in particular Mr Garibaldi – [were] vulnerable and targeted as vulnerable.

And so looking at the combined [facts] ... albeit for different reasons, and slightly more in Mr Lowther's case, this is culpability A, in my view.

Turning to harm ..., the loss caused or intended, I am of the view that we start with the value being £12,480, category 4. But because of the fact that this is a high impact case, the victim[s] particularly vulnerable – particularly in the case of Mr Garibaldi – it is right to say that overall the impact of this conspiracy is one where it should be assessed as a high impact category 3. There are series detrimental effects on some of the victims in this case, for the reasons given.

So the starting point is one of three years' imprisonment, and indeed the range is 18 months to four years' imprisonment."

The judge then addressed the appellant. She referred to his bad criminal record, which includes a sentence of eight years' imprisonment imposed in February 2008. She continued:

"Mr James Delaney Junior, in your case I have considered what the appropriate sentence would be. Reflecting on it carefully, I have reached the view that in your case the starting point of three years is not sufficient, having regard to the aggravating factor of your previous convictions. Looking at that, that you have a particularly bad record in that regard, I am minded to give you a full one-third credit in view of the submissions that were made ... [and] to reduce your sentence accordingly.

The right sentence, in my view, after trial would have been one of four years' imprisonment. In relation to this, the sentence, giving you one-third credit for a guilty plea, is 32 months' imprisonment."

The judge then went on to address Lowther, who also had a very bad previous record, comparable, as it seems to us, to that of the appellant, and, as we have said, she imposed the same sentence on him in respect of the indictment where he was jointly charged with the appellant. There were also in his case other matters on a different indictment which we not mention.

6. At several points in her sentencing remarks the judge appears to have found that the appellant was involved in the targeting of Mr Garibaldi. We have looked at the way that the prosecution opened the facts to the judge. It is clear to us from pages 8 to 10 of the prosecution opening that it was not alleged that the appellant took part in the targeting of Mr Garibaldi. The Criminal Appeal Office invited the prosecution to confirm – and they have confirmed – that there was no evidence that the appellant was involved in the Garibaldi incident. Of course, it could be said that to some extent Mr Garibaldi was one of a number of victims of the fraudulent business in which the appellant took part. But, nevertheless, he must be given the benefit of the doubt on this point. The particular emphasis which the judge placed on the targeting of Mr Garibaldi is not something that can properly be applied to increase what would otherwise have been the appropriate sentence on the appellant.

7. Mr Harris has submitted that the judge should have taken the ordinary starting point for a category 4 fraud with culpability in category A, namely, one of 18 months' custody, and increased it, if at all, only to modest extent for the appellant's bad criminal record.

8. We are unable to accept that submission; but we do accept that, notwithstanding the involvement of the appellant in the targeting of four victims, and his very bad record, the starting point should not have been beyond the top of the range for category 4, culpability level A, namely, three years. We will apply that starting point and give the same discount for the plea of guilty, as did the judge.

9. The result is that the sentence on the appellant of 32 months' imprisonment will be quashed, and we will substitute a sentence of 24 months' imprisonment. To that extent the appeal is allowed.