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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO: 2019 01359 C4  
[2022] EWCA CRIM 650

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 17 March 2022

Before:

LORD JUSTICE FULFORD  
THE VICE PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)

LADY JUSTICE SIMLER

HIS HONOUR JUDGE EDMUNDS QC  
THE RECORDER OF THE ROYAL BOROUGH OF KENSINGTON & CHELSEA

Application to treat Notice of Abandonment as a nullity

REGINA  
v  
SAMI RAJA

Computer Aided Transcript of Epiq Europe Ltd,  
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MS NARITA BAHRA QC & MR NICHOLAS JAMES appeared on behalf of the Applicant

## **JUDGMENT**

## **LADY JUSTICE SIMLER:**

### **Introduction**

1. This is an application made on behalf of the applicant by Ms Narita Bahra QC and Nicholas James to treat the abandonment of an earlier sentence appeal as a nullity and to permit him to appeal against a sentence imposed upon him on 18 January 2019. The application arises in the following circumstances. On 18 January 2019, in the Crown Court at Southwark before Her Honour Judge Eady QC and a jury, the applicant was unanimously convicted following a trial in his absence, of two counts of conspiracy to defraud contrary to common law; three counts of entering into or becoming concerned in a money laundering arrangement contrary to section 328(1) of the Proceeds of Crime Act 2002; and one count of transferring criminal property contrary to section 327(1)(d) of that Act. He was sentenced to eight years on count 1 (conspiracy), with concurrent sentences of seven years for count 2 (conspiracy), six years on count 4 (money laundering) and no separate penalty on the remaining counts.

2. The indictment against the applicant had been severed from those of his co-accused Dosanjh, Sandhu, Lanston and Nascimento on 26 January 2018 because he had left the jurisdiction and was believed to be in Dubai. The co-accused were sentenced by a different judge in June 2018. Nascimento had a trial, but the others entered guilty pleas at different stages. Dosanjh put forward a basis of plea that was ultimately accepted by the Crown and he received a *Goodyear* indication.

### **The Abandonment Application**

3. The chronology is as follow. On 9 April 2019 an application for an extension of time of 52 days in which to seek leave to appeal against conviction and sentence was lodged with the Criminal Appeal Office. It had been prepared by the applicant's trial solicitors, Rainer Hughes. There was a separate document dealing with an extension of time application lodged at the same time. On 21 June 2019 the applicant's current solicitors wrote to the Criminal Appeal Office withdrawing the grounds of appeal against conviction and requesting time to serve additional grounds. The letter made no reference to the grounds of appeal against sentence.

On 13 July 2019 additional grounds of appeal against conviction were drafted and submitted shortly afterwards.

4. On 25 November 2019 the Registrar referred both applications to the full court, along with a number of other unrelated conviction appeals, which also raised an issue about a prosecution expert witness, Andrew Ager, who had given evidence at the applicant's trial. As a result, the case was listed together with others before a special court presided over by the Vice President of the Court of Appeal, Criminal Division. By then the applicant was represented by his current legal team, Ms Bahra QC leading Mr James. There was an appeal hearing over three days from 1 to 3 December 2020.

5. By a judgment dated 3 February 2021, the full court granted the necessary extension of time and leave to appeal against conviction but dismissed the applicant's appeal. At paragraph 6 of the judgment the full court said this:

“On 8 January 2019 in the Crown Court at Southwark, Sami Raja was convicted in his absence of two counts of conspiracy to defraud, contrary to common law, and five counts contrary to the Proceeds of Crime Act 2002 relating to the proceeds of the frauds. His applications for leave to appeal against conviction and sentence, and an extension of time of 52 days, have been referred to the full Court by the Registrar. The application for leave to appeal against sentence was abandoned during the hearing. We grant the extension of time and leave to appeal against conviction.” (Emphasis added)

The judgment was circulated in draft and no issue was taken in relation to that paragraph.

6. Ms Bahra frankly accepted, to her embarrassment, that she did not pick up on what was said at paragraph 6 or seek to rectify the draft judgment before it was issued. She accepted that this means that the fresh grounds of appeal against sentence were properly deemed to be ineffective.

7. The grounds of appeal against sentence now relied upon were advanced in a document dated

9 March 2021, submitted to the Criminal Appeal Office on 15 April 2021. They make no reference to the earlier application to appeal against sentence or indeed to any abandonment. They recognise that a significant extension of time is required but justify this by reference to the delay that ensued as a consequence of the conviction appeal. There was correspondence between the applicant's new solicitors and the Criminal Appeal Office in the period following submission of the new grounds of appeal document. The correspondence culminated in an explanation provided to them by the HMCTS Delivery Manager, to the effect that the entire sentence application had been abandoned and that the applicant would need to make an application to treat that abandonment as a nullity in order to pursue any sentence appeal. It is against this background that the applicant seeks to rely on the 9 March 2021 grounds of appeal, submitting that his abandonment should be treated as a nullity for these new grounds to be considered.

8. Ms Bahra has frankly accepted the error she made. She simply did not appreciate that, when in the course of the hearing before the full court counsel withdrew the sentence appeal grounds, that would mean the sentence application would be treated as having been abandoned. She explained that at that time the applicant had just returned from abroad and the Covid pandemic was ensuing. The new defence team had not had an opportunity to speak to him or to obtain his instructions in relation to the sentence appeal and they were not in a position to pursue the sentence grounds that had been drafted by his original defence team. In those circumstances, and not being familiar with issues surrounding the question of abandonment, when she purported to withdraw the sentence grounds in the course of the appeal hearing, she believed that this would not prevent the applicant from putting forward fresh grounds once she and Mr James had taken instructions. The sentence grounds were therefore drafted as fresh grounds simply requiring an extension of time.

### **The applicable legal principles**

9. The legal principles in relation to abandonment are not in dispute. An appeal may be

abandoned orally as of right immediately after it is called on but once an appeal has been opened, the leave of the court must be sought to then abandon. Where an appeal or an application for leave to appeal is abandoned, it will be treated as having been dismissed or refused by the full court so that abandonment is a final determination. Nothing in the Criminal Appeal Act 1968 modifies that position, and if anything, the court has interpreted this rule more strictly: see for example, R v Sutton [1969] 1 All ER 928. Such an appeal or application remains finally determined unless and until the court regards what purported to be an abandonment as a nullity. There is no room for a conditional abandonment or a request to withdraw a notice of abandonment. Any such application will be treated as irrevocable and requires an application to treat the abandonment as a nullity before it can be considered by the full court.

10. As to the question of reinstating an appeal after it has been abandoned, the legal principles here are clear too. The court must be satisfied that the purported abandonment was not the result of a deliberate and informed decision. In other words, the court must be satisfied that the mind of the applicant did not go with the act of abandonment: see R v Medway (1976) 62 Cr App R 85. The relevant legal principles were restated in R v Smith (Paul) [2013] EWCA Crim 2388; [2014] 2 Cr App R 1, and also considered by this court in Michael Holland [2021] EWCA Crim 1056. Those cases make clear that a notice of abandonment will not be regarded as a nullity merely because there are arguable or even cogent grounds in support of the abandoned application or appeal, whether those grounds have become available before or after the abandonment itself. Such an application cannot be founded on a mistake of law either. An applicant's remedy in that sort of case is to go to the Criminal Cases Review Commission. Where, however, an offender abandons his or her appeal after and because of receiving incorrect legal advice, his or her mind may not go with the notice of abandonment. Whether or not that is so depends upon all the circumstances.

### **The nullity application**

11. We have considered the history of this matter as set out in the chronology we have outlined. We accept that the applicant's defence team simply did not understand the implications of withdrawing the grounds of appeal against sentence, and did not have instructions from the applicant when they did so. In light of those matters we are satisfied that the applicant's mind did not go with the abandonment made on his behalf in the course of the appeal hearing. We are therefore satisfied that the applicant has shown grounds on which the court can properly set aside his notice of abandonment as a nullity and reinstate his application for leave to appeal against sentence. We move, therefore, to consider that application on its merits.

### **The sentence appeal application**

12. Mr Raja was 32 at the date of sentence. Apart from an offence of battery in 2013 for which he received a community-based sentence in August 2013 and an offence of failing to comply with that order in July 2014, he had no relevant previous convictions. He was, as we have already indicated, absent at the date of sentence and there was accordingly no opportunity to obtain a pre-sentence report.

13. The judge read a number of victim impact statements in relation to this offending and acknowledged, as we do, the very real pain caused by it.

14. She made clear that she would apply the Sentencing Guidelines for Fraud and Money Laundering Offences. In relation to count 1, the conspiracy to defraud, she ascribed a leading role in what was undoubtedly a sophisticated operation to this applicant. There was significant planning over a sustained period of time, a large number of victims, with deliberate targeting of vulnerable elderly people. She found high culpability category A. As for the level of harm, given the sums involved, this was plainly a category 1 case. That meant a starting point based on a loss of £1 million (whereas this fraud led to losses of £1.5 million) of seven years; the range was five to eight years. The same was true, as the judge found, of the conspiracy to defraud in count 2, although the time period and losses were not quite as great. That too was

category 1A. The judge identified no real aggravating features. As for factors that might mitigate the seriousness of those two offences, she accepted that the applicant had no previous relevant convictions and she referred to his age at the time of the commission of the frauds.

15. In terms of the three money laundering offences, these were category A offences as well: high culpability, given his leading role and the sophisticated nature of the offences, with significant planning, and the fact that the criminal activity took place over a sustained period of time. As for harm, counts 3 and 5 fell within category 5, giving a starting point of three years and a range of up to four years. Counts 4 and 6 fell within category 4, giving a starting point of four years, with a range of up to six years. The judge considered these counts together. She treated the money laundering offences as an aggravating feature in respect of counts 1 and 2, passing the sentence of eight years on count 1, with concurrent sentences of seven years on count 2 and six years for the money laundering counts.

16. Finally, it is relevant given the proposed grounds of appeal to record what the judge said about Mr Dosanjh. She said this:

“I have had regard to the sentence imposed on your partner, Mr Sandeep Dosanjh, four-and-a-half years on each of counts 1 and 2 to run concurrently”.

She continued:

“I note, however, that the judge on that occasion expressly acknowledged that the starting point was seven years, based on a loss of £1 million and sentenced Mr Dosanjh on his basis of plea, which led him to start with a sentence of six years with a further reduction by four months to reflect matters of personal mitigation and then a reduction by 20 per cent given Mr Dosanjh's guilty plea.”

### **Grounds of appeal**

17. There are two grounds of appeal against sentence for which leave is sought. First, it is argued that there is an unjustified disparity between the applicant's sentence and the sentence passed on Sandeep Dosanjh, his “partner” in the fraud. Secondly, the judge made no or



insufficient reduction for the applicant's character or other mitigating features.

18. Developing those grounds with conspicuous focus and clarity, Ms Bahra submitted that no complaint could be or is made about the categorisation of the offences in this case. The fraud counts were plainly category 1A offences with high culpability. She submitted, however, that there was no proper basis for taking a higher starting point than was taken in the case of Mr Dosanjh. The case was put forward by the Crown on the basis that the applicant and Dosanjh were the controlling minds in this fraud and that remained the Crown's case throughout the applicant's trial. Moreover, the judge regarded the two as equal partners. The starting point in Dosanjh's case was seven years before being reduced to take account of his basis of plea. Ms Bajra submitted that in circumstances where they were described as having the same role in the offending and as equal partners, it was wrong in principle to sentence them on a different basis. The result is a starting point of six years for Dosanjh, as compared with eight years in the applicant's case. She submitted that is a significant disparity in all the circumstances. Moreover, the two were of similar ages. The offences occurred in 2012; they were arrested in 2014 and charged in 2016, so that there was undoubtedly a significant delay; and the applicant had no previous relevant convictions. Moreover, she referred us to the fact that he has been a model prisoner since his incarceration, which coincided with the pandemic. No account, she submitted, was taken of these features, including his lack of previous convictions and the delay between the offending and the commencement of proceedings in his case. She therefore submits that this was a manifestly excessive sentence and wrong in principle.

19. We do not regard these grounds as arguable. Disparity is rarely a successful ground of appeal, especially in a case where the disparity is with another offender sentenced on a different occasion by a different judge and in quite different circumstances. The real question, and the only question for this court, is whether the sentence passed on the applicant was wrong in principle or manifestly excessive. Here, there can be no argument that it was. The judge approached this sentence on an entirely orthodox basis in line with the Sentencing Council

Guidelines, explaining clearly her reasoning, how she approached the different counts, the aggravating and mitigating features and reflecting totality. In any event, as she explained, the starting point in Dosanjh's case was seven years, but the basis of plea led the judge in his case to reduce it further. There were further reductions made, reflecting what was described by the judge who sentenced Dosanjh as “powerful mitigation” in his case, and a generous 20 per cent credit was accorded to him because his guilty pleas to the two conspiracy counts saved considerable time and resource. None of those factors were available to the applicant whose circumstances were quite different. The judge was entitled to increase the seven year starting point, not only to reflect the count 2 conspiracy, but also the money laundering offences in the applicant's case, but which did not feature in the case of Dosanjh. In any event a sentencing error is not cured by making another, and even if there was a degree of leniency or even undue leniency shown to Dosanjh, that is not a reason for reducing a perfectly proper and otherwise entirely appropriate sentence passed on the applicant.

20. We regard the second ground as equally unarguable. The judge who presided over this trial was best placed to assess the seriousness of the overall offending in the applicant's case, the undoubted and significant harm it caused to many victims, many of them deliberately targeted as elderly and who lost their life savings. The judge made express reference to the applicant's lack of previous relevant convictions. Much of the delay in this case was attributable to his having left the jurisdiction and chosen to absent himself so that mitigation was not advanced on his behalf. Even having regard to the matters now raised by Ms Bahra, we have no doubt that the total of eight years imposed properly reflected the offending as a whole, together with his age and the mitigating features in his case. This was a just and proportionate sentence that is not manifestly excessive or even arguably so.

21. For all these reasons the application for leave to appeal against sentence is refused.

**THE VICE PRESIDENT:** Ms Bahra, given the handsome apology that you Mr James made at the

beginning, please put entirely out of mind our perhaps slight grumpiness at the beginning of this hearing.

**MS BAHRA:** I am very grateful for that. I was actually going to say Mr James and I look forward to a substantive application where we can restore our reputation before your Lord/Ladyships.

**LADY JUSTICE SIMLER:** It is restored.

**THE VICE PRESIDENT:** Thank you both very much.

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