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IN THE COURT OF APPEAL
CRIMINAL DIVISION

NCN: [2023] EWCA Crim 1060



No: 2023/01359/A2

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 7th June 2023

B e f o r e:

LADY JUSTICE THIRLWALL DBE

MR JUSTICE LAVENDER

MR JUSTICE FORDHAM

R E X

- v -

CREDDICK PRICE

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Mr E Moss appeared on behalf of the Appellant

J U D G M E N T

LADY JUSTICE THIRLWALL:

I shall ask Mr Justice Lavender to give the judgment of the court.

MR JUSTICE LAVENDER:

1. The appellant appeals with leave granted by the single judge against two concurrent sentences, of three months' and nine months' imprisonment respectively, imposed on him in the Crown Court at Great Grimsby on 21 April 2023 for two counts of concealing criminal property, contrary to section 327(1)(a) of the Proceeds of Crime Act 2002 ("the Act"), to which he had pleaded guilty in the same court on 24 November 2022.
2. The first offence, for which he received the sentence of three months' imprisonment, was committed on 5 December 2018. The second offence was committed on 30 March 2020. In each case the appellant concealed a quantity of cash in his caravan in Brigg: £8,060 on the first occasion; and £30,720 on the second. Given the admissions which the appellant made in interview, he was sentenced on the basis that he had earned the money by doing gardening work, but that he had not declared his income to His Majesty's Revenue and Customs, intending thereby to avoid the payment of tax and to cheat the Revenue. Indeed, the appellant, who is now aged 57, said in interview that he had never in his life paid income tax or National Insurance on any income which he had received.
3. Prosecution and defence counsel prepared an agreed skeleton argument in which they referred to two cases in which this court has considered the application of the definition of the term "criminal property" in section 340 of the Act to situations such as the present. Those cases are *R v Gabriel* [2007] 1 WLR 2272 and *R v KI* [2007] 1 WLR 2262.
4. Subsection 340(3) of the Act provides that:

"Property is criminal property if –

 - a) it constitutes a person's benefit from criminal conduct or it represents such a benefit (in whole or in part and whether directly or indirectly), and
 - b) the alleged offender knows or suspects that it constitutes or represents such a benefit."
5. In the present case, it was common ground that the appellant had engaged in criminal conduct, namely cheating the Revenue. Although his benefit from that criminal conduct was the amount of tax which he had avoided, rather than the whole of his earnings from his work as a gardener, the effect of the words "in whole or in part" in section 340(3)(a) was that all of the cash found in his caravan constituted criminal property: see paragraph 21 of Dyson LJ's judgment in *R v KI*.
6. No complaint is made about the length of the sentences imposed by the judge on the appellant. The sole issue on this appeal is whether the judge should have suspended

them.

7. The appellant had two previous convictions: one for theft in 1999; and one for indecent exposure in 2000, neither of which resulted in a custodial sentence. They were of no real significance when it came to sentencing the appellant for the present offences.
8. The author of the pre-sentence report noted, on the one hand, that the appellant believed that he had done nothing wrong, but, on the other hand, that he had now obtained a National Insurance number and an accountant. The appellant claimed never to have appreciated that he had to pay tax on his income as a result of his upbringing in the Romany community. The appellant was illiterate. He was assessed as presenting a low risk of re-offending. He said that he had had thoughts of suicide and that he would attempt suicide if he were sent to prison. The probation officer suggested a 12-month community order with an unpaid work requirement and a rehabilitation activity requirement.
9. In his sentencing remarks, the judge made clear that he had had regard to the guideline on the imposition of community and custodial sentences. He acknowledged that the appellant could be rehabilitated in the community and he recognised the very significant effect which a custodial sentence would have on the appellant. However, he decided not to suspend the appellant's sentences, because he considered that this was a case in which appropriate punishment could only be achieved by immediate custody.
10. We are very grateful to Mr Moss for his clear and focused submissions on the appellant's behalf. He contends that the following factors meant that an immediate custodial sentence was manifestly excessive:
 - (1) there was a significant delay between the offences and the imposition of sentence and the appellant had committed no further offences during the period of that delay;
 - (2) the appellant had taken steps to address the underlying offending by engaging an accountant, with whom he had monthly meetings;
 - (3) the appellant had never been in prison before;
 - (4) the appellant was illiterate, which may affect his experience of prison;
 - (5) conditions in prison are currently harsher than usual as a result of the very high prison population: see *R v Ali* [2023] EWCA Crim 232; and
 - (6) of the three factors identified in the guideline as indicating that it would not be appropriate to suspend a custodial sentence, two were inapplicable because the appellant had been assessed as presenting a low risk of re-offending and he did not have a track record of poor compliance with court orders.
11. Mr Moss invited us today also to take into account the effect on the appellant's family of his incarceration.
12. We acknowledge that the decision whether or not to suspend a custodial sentence is

often the most difficult decision which a sentencing judge has to make. In many cases, and certainly in most cases which come before this court, there are things to be said for and against suspending the sentence. The guideline is helpful insofar as it identifies relevant factors, but it is not simply a matter of counting the factors on one side or the other which apply in a particular case. Moreover, the competing factors are incommensurable. Weighing the competing factors can never be an arithmetical exercise. The question of which factor or factors should prevail in any particular case is necessarily a question of judgment and, moreover, a judgment of the kind which sentencing judges are experienced in addressing. This court will not lightly interfere with judgments of that nature. Appellants in such cases will not succeed unless they can show that the decision not to suspend their sentence was either manifestly excessive or wrong in principle.

13. In the present case, while we acknowledge that there were strong arguments for suspending the appellant's sentence, we also acknowledge that there were strong arguments for imposing an immediate custodial sentence, notably the fact that the appellant repeated his offending in 2020 after his offending had been detected in 2018. The judge was entitled to conclude that this was a case in which appropriate punishment could only be achieved by immediate custody.
14. Balancing all the relevant considerations, we do not consider that it was either manifestly excessive or wrong in principle for the judge to impose an immediate custodial sentence.
15. Accordingly, for those reasons we dismiss this appeal.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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