

IN THE COURT OF APPEAL
CRIMINAL DIVISION



On appeal from Liverpool Crown Court
(Mr Recorder Wells)
Case No: 2024/02253/A3
NCN:[2024] EWCA Crim 1194

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 31st July 2024

B e f o r e :

LADY JUSTICE WHIPPLE DBE

MR JUSTICE GOOSE

THE RECORDER OF WOLVERHAMPTON

(His Honour Judge Michael Chambers KC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

TATHAGATA MANDAL

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Mr O Jarvis appeared on behalf of the Appellant

J U D G M E N T

Wednesday 31st July 2024

LADY JUSTICE WHIPPLE: I shall ask Mr Justice Goose to give the judgment of the court.

MR JUSTICE GOOSE:

Introduction

1. This is an appeal against sentence brought with the leave of the single judge by Tathagata Mandal against his sentence of two years' imprisonment imposed on 6 June 2024 in the Crown Court at Liverpool by Mr Recorder Wells.

2. The appellant, who is aged 43, pleaded guilty before the Magistrates' Court on 18 March 2024 to seven offences of money laundering, contrary to section 328(1) and 334 of the Proceeds of Crime Act 2002. The sentence imposed in the Crown Court was two years' imprisonment for the first offences, with concurrent sentences of 12 months' imprisonment on each of offences 2 to 7. The timetable for the confiscation proceedings under the 2002 Act were also pronounced.

The Offences

3. The appellant's money laundering was against a background of a sophisticated fraud. The complainants received phone calls from fraudsters purporting to be from their banks. The complainants were typically elderly and vulnerable. They were informed that there had been fraudulent transactions on their accounts, as a result of which they were told to attend their bank to withdraw specified amounts of cash. When they returned home they were instructed to wrap the money in foil, to place it in an envelope or box, and to post by recorded delivery to specified addresses.

4. The appellant's address is 8 Fleetcroft Road, Wirral. It was used for seven cash transfers. False names were used.

5. The complainants were required to notify the fraudster of the unique reference number for their recorded delivery, which was passed on to the appellant. On receipt, the appellant retained an agreed percentage of 15 or 20 per cent, and sent the cash on to an address outside the United Kingdom.

6. We shall deal with each of the offences in a little more detail.

7. The first offence involved a complainant in Leeds. After receiving the call, he was instructed to attend his bank, to withdraw £800 in cash, to wrap it in foil and to send it by recorded delivery to Thomas George at 8 Fleetcroft Road on 12 April 2021. The complainant realised that he was the target of a fraud and did not send the money.

8. The second offence involved a 74 year old complainant in Gloucestershire. On 13 August 2021, after receiving a call three days before when she was informed that it was Lloyds Bank reporting that there had been dishonest activity upon her account, she was told to withdraw £3,500, to wrap it in foil and to place it into a box to be sent to an address in London. The complainant was told that this would allow the bank to provide her with a new account. The money was sent, but a few days later she received another call asking her to withdraw £5,000 and to send it by the same method to 8 Fleetcroft Road. She withdrew the money and sent it via recorded delivery to the appellant's address. Later, she received a third call, but by this time she realised that she had been the victim of a fraud.

9. The third offence concerned a complainant from Bath who was aged 81. On 20 September 2021 he was asked by the caller to send £2,150 in cash to 8 Fleetcroft Road after

being told that his account had been the subject of fraudulent activity. The caller pretended to be from his bank, NatWest. He was persuaded to assist his bank in detecting the fraudulent activity, which involved him withdrawing the cash. He wrapped it in foil and sent it to the address via recorded delivery.

10. The fourth offence involved a 76 year old complainant from Gloucestershire who, on 3 November 2021, received a call purporting to be from Barclays Bank and informing her of suspicious activity on her account. She was told that if she withdrew £2,000 in cash and sent it by special delivery to 8 Fleetcroft Road the bank would open a Premier account for her. She did as she was instructed.

11. In offence 5, an 81 year old complainant who lived in Scotland sent two separate cash payments of £3,100 and £2,000 on 21 April 2021 by special delivery to 8 Fleetcroft Road. He had been informed that the payments were necessary to assist in the discovery of fraudulent activity on his TSB account.

12. The complainant in offence 6, who lived in Northumbria, was informed by the fraudulent caller that someone was trying to purchase goods from Amazon using her Barclays Bank account. To assist in detecting the fraudulent activity upon her account she was asked to withdraw £3,870 in cash and to post it to 8 Fleetcroft Road. She did as she was instructed.

13. After the police were informed, a warrant was executed to search the appellant's property on 18 November 2021. During that search the parcel containing £3,870 from the complainant in offence 6 was delivered to the appellant's property. It was seized by the police.

14. In offence 7 the complainant was an 86 year old lady from Oxfordshire. The fraudulent caller claimed to be from the NatWest Bank Fraud Team and told her that there had been

suspicious activity on her account which required her to close it and that a new one would be opened for her. She was asked to withdraw £2,230, to be sent by recorded delivery to 8 Fleetcroft Road. However, before she managed to post the money she spoke with her family and realised that she had been the subject of fraudulent activity and so the money was not sent.

15. After the police had attended the appellant's property, there was evidence of cash deposits relating to a nearby post office, as well as MoneyGram forms relating to banking transfers. The appellant's phone was seized and interrogated. Numerous messages were found which proved his communication with a male called Avashek who had an Indian telephone number. There were regular contacts with the appellant being informed that he should expect parcel deliveries and what he should do with them. From the appellant's MoneyGram account evidence was recovered to prove the transfers made between April 2021 and December 2021 – a period of seven months.

Sentencing

16. The Recorder identified each of the seven offences as falling within category B5 of the Money Laundering Sentencing Guideline. That identified a starting point of 18 months' imprisonment, with a range of six months to three years. Whilst the Recorder initially appeared to believe that there were eight separate offences, the prosecution made it clear that there were seven, in which the first might be treated as “an overarching offence”. In essence, the Recorder was invited to sentence the appellant on the basis of the first offence and to aggregate the offending for all seven offences. The Recorder adopted that approach and imposed a sentence of three years' imprisonment on offence 1, which was reduced to two years' imprisonment to reflect the early guilty plea. For the remaining offences a sentence of 18 months' imprisonment was imposed, before reducing those sentences to 12 months for the guilty plea. All of the sentences were ordered to run concurrently with each other.

Accordingly, the Recorder imposed a sentence of two years' imprisonment on offence 1, 12 months' imprisonment on all of the remaining offences, and declined to suspend the sentence of imprisonment.

The Grounds of Appeal

17. It is argued on behalf of the appellant by Mr Jarvis, for whose brief submissions we are grateful, that the sentence of two years' imprisonment on offence 1 was excessive because it failed to allow for a reduction in the sentence within the sentencing range to reflect the fact that the harm caused in cash terms was £20,350, against a starting point figure for category 5 of £50,000; and further, that there was significant mitigation which should also have reduced the sentence of imprisonment. Additionally, it is contended that the Recorder appeared to be sentencing the appellant as if he was convicted of the offence of fraud, rather than of money laundering. It is also argued that the Recorder should have suspended the sentence of imprisonment, given the appellant's strong personal mitigation, a realistic prospect of rehabilitation, and the effect of immediate custody upon his family.

Discussion and Conclusion

18. In sentencing the appellant, the approach taken by the Recorder in adopting offence 1 as the lead offence was appropriate. In doing so, the remaining offences were ordered to be served concurrently. No complaint is made in relation to that approach, or in relation to the sentences on offences 2 to 7. Further, the categorisation of these offences within the Money Laundering Guideline is also accepted as correct in falling within B5.

19. In addressing harm, the guideline requires the court to consider harm A, reflecting the monetary value of the offending and harm B, which provides:

"Money laundering is an integral component of much serious criminality. To complete the assessment of harm, the court should take into account the level of harm associated with the

underlying offence to determine whether it warrants upward adjustment of the starting point within the range, or in appropriate cases, outside the range. Where it is possible to identify the underlying offence, regard should be given to the relevant sentencing levels for that offence."

20. The Recorder assessed the effect of harm B in this case and stated:

"The harm in this case outside the amount of money is twofold. It is harm to the public. Serious harm to the public because it involves using banks, pretending to be the banks, undermining confidence in banks and banking. These people need bank accounts increasingly so with cashless payments and the like and anything that undermines public confidence in banking is serious.

But then there is the private and the private is really devastating. They could not buy their Christmas presents. They are worried. They are losing confidence. These sums were not trivial sums to those people and therefore the harm is serious.

This warrants me considering upping the starting point within the category or even moving outside the category itself."

21. In determining the sentence at three years' imprisonment, the Recorder does not appear to have given sufficient effect to the need to reduce harm A, in which the monetary value of harm was towards the lower end of the range, or to the significant personal mitigation advanced on behalf of the appellant. Effectively, the Recorder imposed a sentence at the top of the range and then discounted a sentence of three years for the early guilty plea and imposed a sentence of two years' imprisonment.

22. In our judgment, and with respect to the Recorder, we consider that the sentence of two years' imprisonment after a guilty plea failed to take into account those significant mitigating features. Accordingly, we must consider what the appropriate sentence should have been.

23. Within category B5 the starting point of 18 months is determined. Step 2 of the guideline requires the court to assess where the cash value falls within harm A. Category 5, which is the correct category, has a range of £10,000 to £100,000, based on a starting point of £50,000. The cash total which the appellant laundered was towards the lower end of the range. Therefore, a sentence of three years' imprisonment, with a necessary increase for the harm B factors, needed some downward reduction for the lower cash value within category 5. In our judgment that reduction should reduce the sentence to 30 months' imprisonment.

24. Taking into account the aggravating factors of seriousness, which include the fact that there were seven victims and that the offending was over a seven month period, and those which mitigate, which include the significant personal mitigation identified on behalf of the appellant, we find balance with each other. We conclude, therefore, that a sentence of 30 months' imprisonment on the first offence is appropriate, before credit for the guilty plea, which reduces the sentence to 20 months' imprisonment.

25. Whilst this relatively small reduction to the sentence imposed by the Recorder may appear to be tinkering with the sentence, it was wrong in principle for the sentence imposed not to reflect the factors to which we have referred.

26. We turn to the question as to whether the sentence of imprisonment should have been suspended. The Recorder gave clear reasons for not suspending the sentence when he said the following:

"I take into account what Mr Jarvis said about time elapsing and about seeing whether you could rehabilitate yourself, and clearly in the time you have done things that are lawful and praiseworthy, but even had I been within the limit of suspending the sentence, which is two years or less, in my judgment the seriousness of this matter requires immediate custody. Even though I note the rehabilitation and prospects of

rehabilitation and also the impact that it will have on your family but the circumstances are such that the impact on your family and rehabilitation would not have persuaded me that it had to be anything other than immediate imprisonment."

27. It is plain that the Recorder reached a considered view, taking into the Guideline on the Imposition of Community and Custodial Sentences, that appropriate punishment could only be achieved by immediate custody. Even allowing for the decision of this Court in *R v Ali* [2023] EWCA Crim 232, the circumstances of these offences merit the decision made by the Recorder. We are not persuaded that the decision to refuse the suspend the sentence was either wrong in principle or created an excessive sentence. The appellant was engaged in repeated offences of money laundering over a seven month period in which the underlying offences involved serious offending against vulnerable victims.

28. Accordingly, we allow this appeal against sentence in part by reducing the sentence on offence 1 to 20 months' imprisonment. To that extent only this appeal is allowed.

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

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