

Neutral Citation Number: [2013] EWCA Crim 1795

No. 2013/02111/A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Friday 11 October 2013

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE BEAN

and

MR JUSTICE JEREMY BAKER

REGINA

- v -

GORDON WILLIAM COE

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(Official Shorthand Writers to the Court)

Mr R Martin appeared on behalf of the Appellant

Mr N Tucker appeared on behalf of the Crown

J U D G M E N T

Friday 11 October 2013

LADY JUSTICE RAFFERTY: I shall ask Mr Justice Bean to give the judgment of the court.

MR JUSTICE BEAN:

1. The appellant, Gordon Coe, with four co-conspirators, conspired to dupe members of the public into donating money for the Marie Curie Cancer Fund by taking collecting tins around public houses. They then kept the money themselves. They used the Marie Curie name and logo, without authorisation, to fool people into thinking that they were collecting for the fund. The scam began in early 2008 and continued until 2011. The appellant was the instigator and ringleader. He ordered and received collecting boxes and other paraphernalia from a company who provided supplies for fund-raisers. He registered as a Marie Curie volunteer in December 2008 and was provided with collecting equipment, an official identification badge and a receipt book.

2. After a street collection in March 2009 the Fund lost contact with the appellant for some months. It was not until March 2010 that he contacted Marie Curie, returned some paperwork and paid over sums of £76 and £203.

3. In the meantime, he had recruited his co-defendants to collect on his behalf. He provided them with forged badges, forged letters of authority and collecting tins with forged Marie Curie labels. He also forged letters of gratitude purporting to come from the Fund. At the end of a collecting trip, the collectors and their drivers would return to the appellant's home where the money would be counted and divided among them. It could not be said whether the appellant was involved in the actual collecting, but it was clear, and the judge found, that he was the organiser and took a substantial cut of the proceeds.

4. In May 2010 a genuine Marie Curie organiser was confronted by one of the co-defendants collecting in a public house near Croydon and was suspicious. After lengthy enquiries, the Fund and the police discovered what had been going on.

5. On a regular basis the appellant had paid sums of money into his own bank account. In total £31,348 was paid in over the indictment period, a substantial proportion of which reflected money received from the collections. Various cash deposits were also paid into the accounts of the co-conspirators.

6. The defendants were arrested in December 2011. When their homes were searched various items of paraphernalia were found.

7. In interview the appellant maintained that everything he had done on behalf of Marie Curie was legitimate. He accepted that he had made up collector permits and ID badges for others, but did not know whether they had ever gone out collecting. He had taken his justifiable expenses out of the collection tins for petrol costs. He made no comment in further interviews.

8. On 31 August 2012 he pleaded guilty to a charge of converting criminal property (count 2). Subsequently, on 15 January 2013 he pleaded guilty on re-arraignment to a further charge of conspiracy to commit fraud (count 1). However, he did so on the basis that he only gained £600

from the conspiracy. The Crown, quite rightly, rejected that basis of plea. In the ordinary way there would have been a Newton hearing, but as all of the co-accused proposed to contest the charges it was agreed that the trial judge would hear the evidence and would come to a conclusion when passing sentence on the appellant and on any of the co-conspirators who were convicted at the trial. That is what he did.

9. The four co-accused were all convicted by the jury. On 8 April 2013 the appellant appeared before His Honour Judge Hope for sentence. The judge found that the amount that the appellant had received at the expense of the Marie Curie Cancer Fund was “many, many thousands of pounds”. It was difficult to say exactly how much. He emphasised that in his view, having heard the evidence, the Fund were not at fault at all. He sentenced the appellant to four years' imprisonment on count 1, and to a concurrent term of three years eight months' imprisonment on count 2, making four years' imprisonment in all. The co-defendants received sentences varying from twelve months to 20 months' imprisonment. They have not appealed. The appellant appeals against his sentence by leave of the single judge.

10. The best point which the appellant has, in our judgment, is his state of health. We have a letter from his general practitioner, Dr Bolland, dated 12 February 2013, and a report dated 22 August 2013 from a general practitioner attached to Her Majesty's Prison Winchester which says the same thing. Dr Bolland wrote:

"In the last couple of years [the appellant] has suffered with lower lobe pneumonia, implantation of a permanent pacemaker, fracture to his hip in July 2011, pleural effusion in September 2011, congestive cardiac failure and pulmonary oedema in February 2012. He also has chronic obstructive airways disease, [and] obstructive sleep apnoea. He was recently admitted on 5th April 2012 to Southampton General Hospital with congestive cardiac failure. In addition to this he has hypertension, hypercholesterolaemia and type II diabetes. He also has chronic renal failure and requires regular monitoring of his renal function.

Unfortunately his most recent hospital admission resulted in him having a right above-knee amputation which was done on 1 October 2012 and he currently mobilises with the use of a wheelchair."

11. In his sentencing remarks Judge Hope said:

"There is no sentencing guideline that specifically covers what each of you have all done, but I have had my attention drawn to the one relating to confidence fraud involving such fraud

characterised by a degree of planning and/or multiple transactions. I note that additional aggravating features over and above the high level of breach of trust are said to include, firstly, the numbers involved in the offence and the role of each offender; the fact that the offending was carried out over a significant period of time; and also that the offence has had a lasting effect on the victim, in this case, Marie Curie, who have lost large sums of money as a result of this fraud perpetrated on them.

It is also, of course, behaviour that can lead to members of the public being hesitant about giving to any charity collector in the future and so the courts must do all they can and pass sentences not only to punish those of you who have carried out such levels of dishonesty, but also to deter any one else from ever thinking about such schemes."

12. Mr Martin submits that there was too great a degree of disparity between the sentence passed on the appellant and those passed on his fellow defendants. We think there is nothing in this point. The judge, having presided over the trial of the co-defendants, was well-placed to make the findings which he did, that the appellant was the ringleader, the organiser, and the person who thought up the scam and put it into operation. The others were his assistants.

13. Mr Martin points to the guideline for confidence fraud characterised by a degree of planning and/or multiple transactions in the range of £20,000 to £100,000, with a starting point of three years' custody and a range of two to five years' custody. As the judge said, there is a limit to the precision with which this guideline can be applied to an unusual case of this kind. Had the appellant been a younger and fitter man, and the facts otherwise exactly the same, we would have had no hesitation in upholding the sentence imposed by the judge. However, having regard to the fact that the appellant is 66 years of age, indisputably in a poor state of health and using a wheelchair, we are prepared to extend a degree of mercy in his favour.

14. We shall quash the sentences of four years' imprisonment on count 1 and three years eight months' imprisonment on count 2 and substitute for each of them, concurrently, sentences of three years' imprisonment. To that extent this appeal succeeds.