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IN THE COURT OF APPEAL
CRIMINAL DIVISION

No: 2005/02419/A8

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday, 1 July 2005

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(The Lord Woolf of Barnes)

MR JUSTICE RICHARDS

MR JUSTICE HENRIQUES

REGINA

- v -

MOHAMMED HUSSAIN

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(Official Shorthand Writers to the Court)

MR P B ANDREWS appeared on behalf of **THE APPLICANT**

MR M AINSWORTH appeared on behalf of **THE CROWN**

JUDGMENT
(**As Approved by the Court**)

Friday, 1 July 2005

THE LORD CHIEF JUSTICE:

1. This is an application of some considerable importance in relation to sentencing. At the outset we would like to acknowledge the impeccable and helpful submissions which the court has received from Mr Andrews.
2. Among the most important features of the way of life in this country is, first, the fact that this country is a democracy. It has a form of government based upon the principle that, subject to limited exceptions, each individual member of the public is entitled to a single vote to elect the government of the day, whether national or local. In this process of election every vote should be of equal value. The second feature is that, although we have no reason for complacency, the government in this country (both national and local) is usually free from any form of corruption. The third feature to which we draw attention is that the principles to which we have already referred are every bit as much as important in the case of local government as they are in the case of central government.
3. If in a democratic society the electoral system is contaminated by corruption or fraud, it will be rendered worthless. It is the responsibility of the courts and our justice system as a whole, so far as it is within the courts' jurisdiction, to protect the country's electoral system. This is a responsibility to which the courts must attach the greatest of importance. While we should not do so, it is all too easy not to take our responsibilities as electors as seriously as we should. First among them is the responsibility to vote when there is an election at which we have a right to vote. Recent experience has been that a smaller and smaller proportion of members of the public take the trouble to vote. It is not the law of this country that a person must vote. Unlike some other countries it is not compulsory to vote; there is no penalty for a failure so to do.
4. The government and the legislature have recognised the dangers that the reduced proportion of the population who vote has for our democratic form of government. Particularly in the case of local elections the percentage of those who vote is worryingly small -- so small that it undermines our form of government. The government therefore caused to be passed by Parliament in June 2001 legislation designed to extend greatly the availability of postal voting. The advantage of this is that there has been an increase in the percentage of those who vote. The disadvantage of a postal voting system is that it is easier for the system of voting to be corrupted and more difficult to bring to justice those responsible for activities that undermine the voting system.
5. These preliminary comments are important background to this application. The applicant is now aged 62. Apart from the matters to which we are about to refer, he is of positively good character.
6. On 28 February 2005, in the Crown Court at Preston, before the Recorder of Preston, the applicant pleaded guilty on re-arraignment to a single count of conspiracy to defraud. On 8 April 2005, he was sentenced to three years and seven months' imprisonment. It is common ground that the Recorder would have sentenced him to

four years' imprisonment but for the fact that he pleaded guilty at the first opportunity. The Registrar has referred his application for leave to appeal against sentence to this court.

7. The conspiracy to defraud involved widespread abuse of the postal voting system for the local election in May 2002 in Blackburn in which the applicant stood as an official Labour Party candidate. He and others systematically collected from households postal votes before they were completed, and completed them to indicate a vote in the applicant's favour at the election. He had stood in the May 1999 election as a candidate for Blackburn. He had been defeated on that occasion by 92 votes. At that time the right to a postal vote was extremely limited. It would be anticipated that the applicant's election in May 2002 might be a closely called election.
8. Two weeks before the May 2002 elections, eligible voters in the Blackburn area who had indicated that they wished to vote by post were sent the postal voting forms. A declaration of identity form had to be signed by the voter and witnessed by someone who knew them personally. The form had then to be returned by post with the ballot paper. There were 22 wards in the Blackburn elections. The percentage of postal votes returned in the applicant's ward of Bastwell was significantly higher than the percentage of the votes returned in Blackburn as a whole. The applicant defeated the only other candidate in the ward by 685 votes.
9. After the election, the police investigated irregularities with some of the postal votes. They spoke to a number of householders about the circumstances in which their documents were completed and submitted. The postal ballot forms and the declaration of identity forms from the Bastwell ward area were also examined. They discovered that there were numerous instances of householders being visited by certain individuals who said that they had come to collect the postal votes for the householders and their families. Those householders were persuaded to hand over incomplete voting documents. The documents were then submitted, having been completed by the applicant. Declarations on the identity forms were signed with false signatures and purportedly witnessed by individuals unknown to the voter. Many of the declaration of identity forms were signed by the same individual. 233 postal votes in Bastwell had been submitted with wholly or partly falsified documents.
10. On 4 June 2003, the applicant was interviewed. Initially he denied the offence, but later made admissions in a prepared statement which was read by his solicitor. He admitted speaking to a number of postal voters who indicated that they were going to vote for him. He received incomplete forms for well over 100 voters, which he completed or asked other campaigners to complete. He realised that this was not in accordance with the voting rules, but he said that he did not realise it was a criminal offence (albeit that it must have been obvious to him that he and others were engaged in a criminal conspiracy).
11. In due course the applicant pleaded guilty. Co-accused who were charged with the same conspiracy pleaded not guilty. The count was ordered to lie on the file against them on the usual terms. It is not necessary to refer to those individuals by name, although on some of the documents their names appeared as being, for example,

witnesses.

12. In understanding what happened, it is important to bear in mind that a substantial percentage of the constituents in the ward for which the applicant stood were those who had come from the Indian sub-continent and who had limited, if any, English. The forms which had to be signed were all written in English and not in their native language. The following examples we take from the very helpful advice prepared by Mr Andrews which sets out the history in detail. Shortly before the May election a voter was visited at home by three unidentified men who said that they had come to collect the postal votes. She left the men on the doorstep while she collected the incomplete voting documents for herself, her husband and her son. She handed over the documents. She was told that they would be returned to her, but they were not. The documents were completed by others and submitted to support the applicant's candidacy.
13. Two men called at the home of another man. They were in possession of a list containing his name. They said that they had come to collect the four postal votes received at that address. He handed over two of the four documents. He said that the other two had been promised to another person. The two men said that they would fill in the documents and they were handed over. That gentleman could not read or write English or Urdu. He could only speak Bengali.
14. Another gentleman who had received a postal vote was under the impression that he had selected the Liberal candidate. He could not recall the name of the candidate, but he said that it would definitely have been from the Liberal Party. He remembered signing the bottom of the form. He did not know what he was signing for at that time. Although he was confident that he did not complete the form so as to vote for the Labour Party candidate, he did not know its contents. However, someone later collected the form from the house. His wife had handed it over when he was not present. The document was completed and subsequently submitted to indicate that the person concerned wanted to vote for the applicant.
15. Those examples are but a few of those which could be described. They indicated a concerted course of action with which to benefit the applicant, which was conducted by a number of individuals who took advantage of electors who did not have the knowledge or the understanding to prevent what happened.
16. Having regard to the nature of those offences, it was of importance that the punishment that was passed was one which would deter others from committing offences of that sort. Even a deterrent sentence has to be proportionate to the offence and not unjust in relation to the offender. However, a deterrent sentence is passed by the courts with the primary object of deterrence. So far as that is its purpose, the circumstances of the offender, such as the fact that in this case the applicant is now aged 62 and suffers from angina, become of significantly less importance. So does the fact that hitherto he had been a leader of the community to which he belonged and that he was regarded by those in the community who knew him as being entirely estimable. Indeed the very fact that he had this reputation within the community meant that it was easier for him to commit these offences. No doubt if his name had not been associated with the election in the

way that it was, it would have been more difficult for those who were acting on his behalf to persuade people to entrust their voting papers to their custody. The applicant took advantage of members of his own community who were less educated and less able to protect themselves than the majority of the electorate in this country. They did not understand what they were doing when they handed over the papers. He used others to carry out his fraudulent intentions. By doing so they became part of a conspiracy to undermine the electoral system. These were calculated offences.

17. Ironically, as pointed out by Mr Andrews, it may not have been necessary for the applicant to do what he did because he would have been elected anyway. However, he was not prepared to take the risk that he would not be elected. As a result this criminal conduct was committed.
18. When he came to sentence the applicant the Recorder pointed out the gravity of the offence. He made it clear that he was imposing a deterrent sentence. In the course of his sentencing remarks he indicated that the authorities provide little, if any, guidance as to the level of sentencing for offences of this sort. Fortunately, it is the position that normally offences of this nature do not occur in this country. That is the explanation for that difficulty.
19. Mr Andrews draws an analogy with offences that interfere with the due administration of justice. Clearly there is an analogy. However, a fraud on this scale is one in our view which has even more dangerous consequences than an offence undermining the administration of justice. In his submissions Mr Andrews referred to a well-known case involving interference with the proper administration of justice in which a sentence of four years' imprisonment was passed, the starting point which the Recorder in this case adopted. In the course of his submissions Mr Andrews referred to the fact that at about the same time as these offences were committed there had been electoral fraud in Birmingham. As a result of that a report had been made. It is true that from what we know of it the Birmingham case may indicate that a more serious fraud took place there than took place as a result of the applicant's activities. We consider the applicant's case only in relation to what he did and not what was involved in the Birmingham offences. There is no suggestion that aggression or "bully-boy" tactics were used in relation to the offences with which we are concerned. However, it was not necessary to use bullying tactics to carry out the offences which constituted this conspiracy.
20. We have looked carefully at what the Recorder said. We have looked carefully at the facts of this conspiracy. It is our conclusion that the Recorder was perfectly entitled to impose the sentence which he did. It was the appropriate sentence. We hope that the sentence which was imposed will send the message it was intended to give to anyone else who is minded to indulge in action of this sort. The message is that that sort of conduct which undermines our system of democracy will not be tolerated. If those who commit offences of this nature are detected and brought to justice they will receive from the courts punishment which makes that clear. That was the purpose of the sentence which was imposed here. In our judgment it was a proper sentence to impose. This application is refused.
21. Mr Andrews, we assume the position is that you are not publicly funded today?

22. **MR ANDREWS:** I have a representation order, my Lord.
 23. **THE LORD CHIEF JUSTICE:** You have a representation order?
 24. **MR ANDREWS:** Yes, I do.
 25. **THE LORD CHIEF JUSTICE:** What happens with regard to that? Are we not under a duty to consider whether your client makes a contribution to that representation order?
 26. **MR ANDREWS:** My Lord, the difficulty is that I do not have a client here. He waived his right to be here. It was only an application. I do not have any details of his financial circumstances.
 27. **MR JUSTICE HENRIQUES:** Is a Form B not completed?
 28. **MR ANDREWS:** I believe it is, yes. That should be with the appropriate file. I believe his means are reasonably limited.
 29. **THE LORD CHIEF JUSTICE:** There is nothing in the file. Mr Andrews, would you please make the necessary enquiries and then submit to the court your response to the suggestion that your client should make a contribution in respect to his legal aid, having regard to his means as indicated on the form? Would that be the sensible way to deal with the matter?
 30. **MR ANDREWS:** Does that need to be done today?
 31. **THE LORD CHIEF JUSTICE:** No, it does not have to be done today. Shall we say within seven days?
 32. **MR ANDREWS:** Yes. Might I simply say this, my Lord? In the ordinary way an application for leave would be dealt with by the single judge as a paper exercise. This case was directly referred to the full court. I make that point.
 33. **THE LORD CHIEF JUSTICE:** We have treated it as though it was an appeal so as to avoid dividing the matter into two halves.
 34. **MR ANDREWS:** Yes.
 35. **THE LORD CHIEF JUSTICE:** But does it have any other significance?
 36. **MR ANDREWS:** No, my Lord. My Lord, certainly I shall endeavour to have the appropriate financial details on the Form B sent through in the course of next week.
 37. **THE LORD CHIEF JUSTICE:** Thank you very much indeed. Perhaps you had better let Mr Ainsworth see what is being submitted. Thank you very much.
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