

Neutral Citation Number: [2015] EWCA Crim 1642

No: 2015/2212/A5

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 2 October 2015

**B e f o r e:**  
**LORD JUSTICE DAVIS**

**MR JUSTICE KING**

**MRS JUSTICE PÄTTERSON DBE**

**R E G I N A**

**V**

**MICHAEL RANGOS**

Computer-Aided Transcript of the Stenograph Notes of  
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(Official Shorthand Writers to the Court)

**Mr G Knight** appeared on behalf of the **Appellant**

The **Crown** did not appear and was not represented

**J U D G M E N T**  
(As Approved by the Court)

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1. LORD JUSTICE DAVIS: The appellant Michael Rangos is a man now aged 40. On 16th January 2015 in the Crown Court at Woolwich, he pleaded guilty to 12 counts of fraud and on 28th April 2015 he was sentenced in the following way. On counts 1 to 11 he was sentenced to two months' imprisonment on each count to run concurrently and on count 12, a further count of fraud, he was sentenced to a term of 22 months' imprisonment to run concurrently to the other sentences. Accordingly, the total sentence was one of 22 months' imprisonment.
2. Leave to appeal against sentence was initially refused by the single judge but was granted by the Full Court. It may be noted that the appellant in person had put in very detailed and extensive written submissions to the Full Court which it had carefully considered; but the ground on which leave to appeal was granted was limited. However, it leaves this appellant in a position to say that the sentence imposed was excessive.
3. The background facts, relatively shortly put, are these. The appellant had been carrying on a business as a ticket broker on the internet. In May 2012 he set up a mailbox address at The Foundry, 156 Blackfriars Bridge Road. He set that up in his own name but the eBay account he created for that address he set up in the name of another person called Papacostas. The victims in counts 1 to 11 believed that they were selling tickets to Papacostas.
4. The appellant then registered an American Express charge card to the eBay account, that charge card being his then partner's, Mr Karelis. During the indictment period the appellant used that card to purchase tickets from individuals. The sellers would be paid and the tickets sent to the address of The Foundry. The appellant would then leave positive feedback on the eBay website. By his doing so the sellers believed they were involved in a legitimate transaction where the tickets had been received, payment made

and all appeared to be well.

5. However, in October 2012 the appellant informed American Express that there had been fraudulent activity on the card in the sum of £68,678-odd. American Express assumed liability and reimbursed the account holder. American Express then turned to eBay and PayPal to recover the losses and ultimately to the sellers of the tickets. The ticket sellers were therefore exposed to the risk of not just having lost the tickets but also the proceeds of the sale and not least their reputation on the eBay website. As the appellant had used a false name on the eBay account, the sellers had no mechanism for seeking redress against him. However American Express carried out its own investigations and re-applied the charge to the account. In April 2013 the appellant procured that the charge was paid and so the loss to American Express was in the event made good. He was arrested on 1st April 2013 and at his home address police officers found hundreds of concert and theatre tickets and over £4,000 in cash. In interview he said that he was a ticket broker and suggested there must have been some kind of misunderstanding. He made no comment regarding the use of a false name at The Foundry.
6. The appellant has no previous convictions. However his previous business career is not unsullied. It has resulted in litigation and it appears that in the past he has been made the subject of a Directors Disqualification Order.
7. There was a pre-sentence report before the Recorder. That was an important document. That shows that amongst other things the appellant had two particular very severe incidents suffered by him earlier in his life. One had resulted in him having a fractured spine, which has given him long term physical disabilities, and the other was a serious road accident. Further, the pre-sentence report records a history of depression, anxiety and obsessive compulsive behaviour and indications of extreme anxiety. The

recommendation in the pre-sentence report was for a suspended sentence, it being observed that with these physical and psychological attributes the appellant would have a particularly hard time of it in prison.

8. The Recorder went through the background facts in some detail. She took the view, there being no basis of plea before her, that this was "a professional pre-planned operation". She went on to note that it involved multiple transactions; and she did not accept the appellant's explanation to the writer of the pre-sentence report that the appellant had considered the sellers and their position and thought that they would not be affected as they could easily prove that they had posted their tickets. The Recorder went on to find that all that happened was part of the appellant's operation. As she put it "Why would these sellers keep their email or proof of posting when you had already posted a confirmation on the eBay site and a positive review in relation to the receipt of the tickets?"
9. The judge then went on to deal with the question of how this matter was to be categorised for the purposes of the definitive guideline of the Sentencing Council on Fraud, Bribery and Money Laundering Offences. There was a debate before her as to whether this matter should be categorised as category 3A or category 3B. It was common ground at all events this was category 3 offending at least by relation to count 12. If it was to be categorised as category 3A, the starting point was three years with a range of 18 months to four years; if category 3B the starting point was 18 months' imprisonment, with a range of 26 weeks to three years.
10. In the result, the Recorder decided that this was category 3A offending and then said this:
  - i. "The starting point which I take accordingly is one of 40 months' imprisonment. The range is one of two to five years."

11. She then gave a deduction of 25 per cent for the plea of guilt entered at the plea and case management hearing and then deducted a further period of time to reflect the strong personal mitigation of the appellant, reaching a total of 22 months' imprisonment.
12. We confess that we find this a somewhat puzzling approach. First, the Recorder was not indicating why the starting point was taken to be one of 40 months' imprisonment, which seems to bear no clear relation to the guideline, and was wrong in stating the applicable range as being one of two to five years. Furthermore, by reference to the guideline the conventional methodology is to select a starting point, then move up and down the range having regard to the various aggravating and mitigating features, and then apply the discount for any plea to the resulting provisional sentence. At all events what this court now has to consider is whether the sentence of immediate custody of 22 months' imprisonment was excessive.
13. Mr Knight on behalf of the appellant, who has put the matter very well indeed, submits that it was excessive. He says first that a custodial term of 22 months' imprisonment was simply too long and second that this Recorder could and should have imposed a suspended sentence, having regard to the circumstances and in particular the position of the appellant himself.
14. Mr Knight sought to say that this was not to be described as significantly pre-planned offending in that the ultimate fraud was occasioned by the one phone call to American Express. Although one can see what Mr Knight is getting at, the fact remains that the Recorder did find that there had been pre-planning and in any event one cannot simply sweep under the carpet, as it were, the content of counts 1 to 11 on the indictment. As the Recorder quite properly found, the individuals dealing with the appellant under his alias on eBay also stood to be potentially gravely affected by his conduct and stood to

lose their reputation for the purposes of eBay account dealing. The fact that individually they may have suffered relatively small losses cannot be made to make it look as though those matters are not of importance.

15. Nevertheless, we do overall agree with Mr Knight that this is a case which is rather hard to fit neatly either into category 3A or into category 3B and on one view this offending falls somewhere between the two.
16. Having considered the points made by Mr Knight, we do take the view that a custodial term of 22 months' imprisonment was excessive. There was very strong personal mitigation available to this particular appellant. Further, there was, through no fault of his own, quite significant delay before this matter came on for sentencing. Furthermore, it is a very strong point in his favour that he has procured repayment of American Express, notwithstanding the gravity of the original offending.
17. Having regard to all the aggravating and mitigating features, we think that before giving credit for the plea a sentence in the order of 16 months' imprisonment would have been appropriate in the particular circumstances of this case. Giving the 25 per cent credit for the plea, which the Recorder gave to this appellant, that gives a resulting sentence of 12 months' imprisonment which this court concludes is appropriate in this particular case.
18. We also have to consider Mr Knight's argument that this sentence should have been suspended. However, we think the Recorder was entitled in her discretion to refuse to suspend the sentence and we can see no reason why a suspended sentence was mandated in the circumstances of this particular case. It has to be remembered that eBay fraud is quite readily committed and an element of deterrence is by no means inappropriate for offending of this kind. In the circumstances the sentence does not require to be suspended. Accordingly the appeal is allowed to the extent that we substitute a term of

12 months' imprisonment for the term of 22 months' imprisonment imposed in the Crown Court.

19. MR KNIGHT: My Lord, thank you. May I make one additional submission, unusually, in terms of the 12-month term whether or not I could persuade you to reduce that by a day. The reason I say that is in connection with the fact that Mr Rangos is a European citizen and I understand of course deportation issues may come into play if it is 12 months. If it is one day less then they would not.

20. LORD JUSTICE DAVIS: No, Mr Knight 12 months is the appropriate sentence. We are not prepared to have regard to such considerations in reducing it further.