

Neutral Citation Number: [2010] EWCA Crim 2548

No: 201004360A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 20 October 2010

B e f o r e:

LORD JUSTICE HOOPER

MR JUSTICE BUTTERFIELD

MR JUSTICE KENNETH PARKER

R E G I N A

v

DAVID STEVEN SAMMONS

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Mr G Walters appeared on behalf of the **Applicant**

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

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1. LORD JUSTICE HOOPER: Kenneth Parker J will give the judgment of the court.
2. MR JUSTICE KENNETH PARKER: On 10 June 2010 in the Crown Court at Sheffield, the appellant pleaded guilty to four counts of fraud by false representation. On 1 July 2010 he was sentenced to 12 months' imprisonment concurrent on each count. He appeals against sentence by leave of the single judge.
3. The appellant was employed by the National Health Service through a recruitment agency called Adecco between 10 August 2007 and October 2007. During that period and after he completed the employment up until 22 February 2008, the appellant submitted work sheets claiming for work shifts which he had not done. He was paid for that up until 15 February 2008.
4. Matters came to light when irregularities were observed in the appellant's time sheets. This led to a confrontation with the manager of Adecco at the appellant's home on 29 February 2008. The appellant offered to repay the money. He wrote out a cheque, but made it clear that he had no money in his account at the time and that the cheque would most likely bounce.
5. A police investigation commenced and the false claims were discovered. The appellant had submitted a total of 151 time sheets over the period 10 August to 22 February 2008. He would complete the work sheet and falsify it by forging his manager's signature. He would then submit it to Adecco, who in turn invoiced the National Health Service and took their own cut.
6. The gross amount of claims made as a result of the fraudulent activity was £88,000-odd. The actual loss to the National Health Service was just over £14,000, which they had paid to Adecco. Adecco had paid the appellant £14,339.
7. The appellant was arrested on 2 April 2008. He co-operated with the police and made full admissions. He said that, after the birth of his child on 29 October, he could not return to work. He needed the money to support his wife and child. He was bailed to return on 26 April 2008, but failed to attend. He went to South Africa and gained employment. He was arrested at Heathrow on 24 March 2010. No proceedings were brought in that respect.
8. In passing sentence, the judge observed that this was a calculated, systematic and deliberate fraud committed in breach of trust by means of forgery. It continued over a period of six months. The loss to the National Health Service and the appellant's gain was around £14,000. The immediate victim was the National Health Service. Indirect victims were service users and honest taxpayers who funded the National Health Service.
9. Regard was given to the Sentencing Guideline for confidence fraud. This was a case which involved a sentence range between six months and three years, with a starting point of 18 months. Applying the appellant's plea of guilty and the discount that that must properly attract, the sentence was 12 months' imprisonment concurrent on each

count. Today Mr Storey argues on behalf of the appellant that that sentence was manifestly excessive.

10. As noted earlier, the judge referred to the Sentencing Guidelines Council's definitive guideline for fraud to reach a starting point of 18 months' custody. In doing so, he treated these offences as confidence fraud so as to trigger the higher level of sentences set out at page 20 of that guideline. However, in our judgment, the result was the imposition of a manifestly excessive sentence in this case. It is very doubtful whether the Sentencing Guidelines Council had in mind the kind of offence here in question when referring to confidence fraud. At page 19 the Sentencing Guidelines Council refers to advance fee fraud or other confidence fraud, and states furthermore that a factor common to many confidence frauds is that the offender targets a vulnerable victim. It is therefore a determinant of seriousness for this type of fraud. An offender is more culpable if he or she deliberately targets a victim who is vulnerable as a result of old age, youth or disability, and there is more than a usually serious degree of harm, where the victim is particularly vulnerable. That language is not apposite to the circumstances of a case of this kind and supports the proposition that this would not be a confidence fraud as referred to in the guidelines.
11. It is well arguable, as Mr Storey submits, that the levels of sentence indicated at page 24 of the guidelines (that is banking and insurance fraud and obtaining credit through fraud) and at page 26 (benefit fraud) were more appropriate in this case. Those offences carry a six-week custody starting point and range from community order to 26 weeks' custody.
12. Furthermore, if the appellant had simply stolen from the National Health Service the amount of which he had defrauded it, the relevant SGC Definitive Guideline would indicate a starting point of 18 weeks' custody, with a range of community order to 12 months' custody after a contested trial.
13. Of course, the appellant was charged and pleaded guilty to fraud, and his offence, as the judge pointed out, did involve both a breach of trust and also a significant element of deception and forgery.
14. Nonetheless, even taking account of the seriousness of the offence in terms of the substantial amount defrauded from the National Health Service and the period over which that fraud was committed, and the element of deception, we believe that the sentence was nonetheless manifestly excessive, and that a custodial sentence of no more than six months was justified, allowing for the guilty plea, the appellant's full co-operation with the authorities and the other matters of personal mitigation.
15. To that extent, therefore, the appeal is allowed and the sentence of 12 months is quashed and a sentence of six months' custody is substituted.