



THE COURT OF APPEAL

**Birmingham J.
Sheehan J.
Mahon J.**

206/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Stefan Onofrei

Appellant

Judgment of the Court (ex tempore) delivered on the 19th day of January 2016 by

Mr. Justice Birmingham

1. On the 15th July, 2015, the appellant was sentenced in the Dublin Circuit Criminal Court to a term of three years imprisonment on foot of s. 4 Theft and Fraud offences charges. The indictment that was before the court at that stage was a six count one and the balance of the counts were taken into consideration. However, it is the case that the appellant was originally charged with 436 counts and an indictment had been prepared reflecting that. The maximum sentence that was available to the judge in the Circuit Court was one of ten years imprisonment.

2. The offending in question involved seeking and obtaining jobseekers allowance, jobseekers benefit, supplementary welfare allowance, rent allowance, family income supplement and doing so between the period of January 2009 and February 2015.

3. At the sentence hearing there was some limited disagreement between the parties as to the extent of the loss to the State and as to the precise amount that was dishonestly obtained by Mr. Onofrei. The calculations that the State had done indicated that the amount involved was €97,407.24.

4. However, Mr. Onofrei had engaged in an analysis of the counts and felt that he was in a position to identify some element of as it were double counting and to challenge some individual counts on the 436 count indictment. By his calculations the amount involved was closer to €85,000.

5. In those circumstances the judge in the Circuit Court realistically and in the view of this Court correctly took the view that it was appropriate to approach this on the basis that the amount in issue fell within the range of €85,000 to €97,000 and indicated that it was on that basis that he was going to approach his task of sentencing.

6. In terms of the appeal, two grounds were identified. The first is that the judge should have considered a partial suspension of the sentence and secondly, that the sentence was disproportionate. However, as regards the second ground, it was accepted in oral argument that the sentence of three years was not inherently objectionable and that indeed it fell with an acceptable range of available penalties. Really the issue nets down to the question of whether the judge was required to part suspend the sentence.

7. In terms of the background to the offending, the position is that the appellant, who is a Romanian national, came to the State in 2003/2004. That was at a time before the accession treaty between the European Union and Romania had taken full effect. The result of that is that while Mr. Onofrei was entitled to travel to the country, he was not at the time entitled to work legally.

8. On his arrival, he engaged in various forms of casual work. That involved gardening, power washing and cutting trees. Then at a slightly later stage he equipped himself with a false identity and a false PPS number and he did that by acquiring a Lithuanian passport and a Lithuanian driving licence in the name of Justinas Staliunas. With the false identity and with the false PPS number, he was in a position to obtain work in the construction industry and did so. It is to be noted that during the period that he was working in the construction industry, that he paid the taxes that were appropriate to somebody in this position.

9. In 2009 he lost his job and at that stage proceeded to claim, first jobseekers allowance and then the other forms of social welfare to which reference has been made. The bulk of the monies involved were obtained through the use of the false identity, but the family income supplement aspect was apparently claimed in his own name, but improperly claimed in his own name because of the fact that his wife was working at the time and therefore the family were not entitled to this form of support.

10. In terms of his background and personal circumstances, at the time of the sentence hearing, he was married with two children (twins) and his wife was pregnant at the time, he is now the father of three children. He had no previous convictions and he had a good work record. It was also indicated to the court that he had by that stage spent a number of months in custody and that he had been doing well in prison, having been assigned to a work party, confirming the fact that he is somebody with a good ethic.

11. In terms of the matters that went to mitigate this offending behaviour, the matters that were most in issue were the plea, the absence of previous convictions and the cooperation that was forthcoming when approached by the gardaí when investigating this matter.

12. The matters that pointed to the seriousness of the offending behaviour were the prolonged period over which it took place, the fact that a number of different forms of social welfare were involved and the fact that there was a very significant loss to the State.

13. The point has been made that that debt to the State remains in being and that the State can and will take steps to recover it.

However, the extent to which any such efforts would be successful remains to be seen and indeed must be in doubt.

14. This was a prolonged and persistent offending and as the judge identified, has to be regarded as serious offending and indeed that was not seriously disputed either in the sentencing court or in this Court. This Court has stated repeatedly that it is not in a position to intervene simply because individual members of the court or indeed the court collectively might have adopted a somewhat different position in relation to sentence. The court can intervene only if it identifies an error in principle and only if the sentence that was imposed was one that was not properly available to the sentencing judge.

15. In the view of this Court having regard to the matters that went to the seriousness of this offending, particularly the long period over which it occurred, the sentence that was selected by the judge in the Circuit Court was one that was open to him. The sentence that was selected fell within the range of available sentences and the approach that he took is not one that in the view of this Court discloses any error in principle. In the circumstances the court must dismiss the appeal.