



THE COURT OF APPEAL

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

211/15

The People at the Suit of the Director of Public Prosecutions

Respondent

V

Aoife Maguire

Appellant

Judgment of the Court (ex tempore) delivered on the 21st day of December 2015, by

Mr. Justice Birmingham

1. This is an appeal against severity of sentence.
2. The sentence under appeal is one of eighteen months imprisonment that was imposed on the 31st July, 2015, in the Dublin Circuit Court. The sentence hearing took place on that day followed on from a long trial at the conclusion of which the jury returned unanimous guilty verdicts against the appellant and two co-accused.
3. There were six counts on the indictment (seven count indictments in all) which alleged conspiracies either to defraud the Revenue or to commit an offence contrary to s. 243(1) of the Companies Act 1990, by destroying, mutilating or falsifying books and records relating to the property of the bank.
4. While there were good reasons for the prosecution to structure the indictment in the way that they did, it perhaps gives the impression of a more extensive conspiracy campaign than was in fact in issue. There was, really one act of wrongdoing which involved a conspiracy to conceal a number of bank accounts connected in one way or another to a senior figure within the bank from the Revenue Commissioners.
5. So far as the maximum sentence available to the court is concerned, the sentencing judge approached his task on the basis that the maximum sentence applicable should be regarded as one of five years imprisonment. He did so in a situation where the sole substantive offence on the indictment carried a maximum penalty of five year and/or a fine. Counts 2, 3, 5 and 6 involved a conspiracy to commit common law offences and they were punishable at the discretion of the court, no maximum sentence is provided, but there is a long standing convention that the penalty should not exceed the penalty that would apply for the substantive offence. Here, as we have seen, the substantive offence is provided for in s. 243 of the Companies Act and carries a maximum sentence of five years.
6. The position in relation to counts 4 and 7 on the indictment is more complicated again. These counts deal with common law offences for which there is no maximum sentence. But here there is no directly relevant substantive offence to provide guidance. However, these offences are inextricably linked with the other counts on the indictment which carry a five year penalty either by statute or by convention. In the circumstances the decision of the trial judge to operate on the basis that the maximum sentence available to him was one of five year imprisonment was a sensible and realistic one.
7. In a situation where there are other appeals pending in this Court's list, and where there are other trials scheduled to come on in the Circuit Court, this Court will refer to the facts of the case only in outline and then briefly.
8. The appellant, Ms. Maguire was an assistant manager with Anglo Irish Bank. In the late 1990s the Revenue Commissioners were examining financial institutions in the State, to establish if Deposit Interest Retention Tax or DIRT was payable arising from accounts held by these institutions. Anglo Irish Bank was assessed at the time as having a nil liability. There followed a tax amnesty and in response to the availability of the amnesty a number of customers of the bank came forward to disclose to the authorities what have become known as bogus non resident accounts. This triggered renewed interest on the part of Revenue into the affairs of Anglo Irish Bank. In March 2003, the Revenue Commissioners obtained a High Court order requiring the release by the bank of a list of non resident deposit account holders. In October/November 2003, the Revenue authorities embarked on an audit in Anglo Irish Bank which was focused on non resident deposit accounts and specifically those which were stated to be DIRT exempt.
9. As part of the audit process, Anglo was required to provide a list all relevant accounts. However, the list that was supplied to Revenue was not comprehensive and some half dozen or so accounts which ought to have been included were deleted from the list. All these accounts were linked in one way or another to a senior figure within the bank. The non inclusion of these accounts would not have had significant revenue implications in themselves, but obviously the exercise to exclude was not undertaken for no reason.
10. The exclusion from the documentation that was being prepared of the accounts in question required action on the part of the bank's IT department. The evidence is that it was Ms. Maguire who told the IT professionals what they were to do. It was accepted that she was not doing this on her own initiative, indeed her status in the bank was such that she would not have had authority acting on her own to issue instructions to the IT department, but rather that she was passing on the messages and instructions of persons senior to her, as it was put at trial, delivering "messages from upstairs".

11. In terms of the background and personal circumstances of Ms. Maguire she is 62 year so age and was an assistant manager in the Treasury Department of the bank. It appears that in her case, that as assistant manager she did not have anyone reporting to her as such. She was by some considerable distance the most junior of the three co-defendants, the others being the company secretary and the chief operating manager. Ms. Maguire is the mother of an adult child who she reared on her own, she separated from her husband when the child was very young and thereafter was the breadwinner in her small family. She left the bank in 2005 to look after her elderly mother and at the time of the sentence hearing was described as being unemployed.

12. There was evidence before the sentencing court that Ms. Maguire was very heavily involved in Good Counsel GAA Club in Drimmagh to the extent that she was a volunteer of the year in Dublin Camogie in 2013.

The judge's sentencing remarks.

13. In the course of his sentencing remarks dealing with the position of the task force that was established by the bank to deal with the Revenue audit he commented:-

"... designed on the one hand, on the face of it, to assist the audit that was to be presented, but also on the other hand silently and secretly to protect the interests of (an individual that he referred to). At this time the team was established directly at the request of Mr. O'Mahony who was then second in command and it was designed in such a way that Ms. Maguire played the key role in the team directly to sift out from the inquiries of the team for the purpose of the audit, any embarrassment to a particular individual and she was to liaise directly with Mr. O'Mahony in this respect."

14. It was not entirely clear what basis the judge concluded that Ms. Maguire had a key role sifting out from the inquiries of the team, embarrassing material. The sentencing court though, did take the view that her role was that of a conduit. The judge commented that she was a person with a less responsible role which must be reflected in the order of the court. In terms of the role of Ms. Maguire, it appears that in the context of banking prosecutions of recent times that Ms. Maguire may have been the only non officer/non executive to have faced charges.

15. The judge commented that everything was done, it would seem out of misplaced loyalty, but that this was still dishonest and against all good banking principles and practices. The judge felt that the offences represented a serious form of the offence and that this was deliberate offences of deceit.

16. This is a serious offence, the singular rather than the plural is used intentionally and for the reasons indicated earlier. An additional dimension of seriousness is provided by the fact that it was committed in a publicly quoted company and in a major bank. The banking sector is one where society is entitled to expect probity and entitled to demand high standards.

17. In a situation where the case had been fully contested it is understandable that the judge felt that he had to consider a custodial sentence. It is not the case that Ms. Maguire was to be punished for pleading not guilty, it was her right to do so. It does mean though that mitigation that would otherwise have been available to her was forfeited.

18. In case such as this one where individuals who occupy a position of some prominence in the commercial life of the State or in public life are charged with offences and are prepared to admit wrongdoing, that would be a matter of very considerable significance and will be treated accordingly, by sentencing court. In this case had there been a plea of guilty, it may be that custody for Ms. Maguire could have been avoided however, there was not.

19. If the judge felt that custody was inevitable and could not in fact have been avoided, it was appropriate then that the judge would remind himself that he was being called on to sentence someone without previous convictions and not just someone without previous convictions, but someone of positively good character, who had made a real contribution to society by her role as a volunteer and as a carer, stepping away from her career to take on the role of caring for her mother. In those circumstances the focus should have been on identifying the minimum period that could be specified which would meet the situation.

20. In the case of *DPP v. Doherty*, the Court of Criminal Appeal, the predecessor of this Court was dealing with a garda who had been convicted of an offence of corruption. In passing a sentence following a successful undue leniency application, the Court, (per Hardiman J.) the judgment commented as follows:-

"We also bear in mind the factors which were recited on several occasions yesterday and acknowledge in the case of *DPP v. Egan* that is to say that in dealing with a person without previous convictions and indeed of positive previous good character, if the court considers as we do, that a custodial sentence is required in the public interest, such a sentence need not be unduly prolonged because it is the fact of the sentence rather than its duration which is the principle effect."

21. In the earlier Egan case there referred to the, the Court of Criminal Appeal had quoted with approval remarks by Lawton L.J. in the English case of *R. V. Sergeant* [1975] 60 Crim.App. where he had commented:-

"For men of good character the very fact that prison gates have closed is the main punishment. It does not necessarily follow that they should remain closed for a long time."

22. In the court's view the judge in the Circuit Court erred in two respects. Firstly in selecting a sentence of eighteen months, a sentence which was more severe than necessary and then, having selected that sentence, failing to consider suspending any part of it. Having so concluded it does not seem to this Court either necessary or desirable to address all of the specific issues that were raised, such as the apparent misunderstanding about the extent of interaction between Mr. Gillespie and the appellant, the arguments as to the extent to which the fact that a number of other bank personnel declined to become involved in the conspiracy and the extent to which they were or were not valid comparators. Neither in a situation where the court will be saying something about the fact of Ms. Maguire's incarceration to date, do we regard it as necessary to address the argument in relation to the fact that there is no open prison where Ms. Maguire could serve any part of her sentence, whereas there is for males and that is what is happening in the case of her co-accused.

23. In the ordinary course of events we are required having taken the view that the sentence in the Circuit Court was not the appropriate one to re-sentence and to sentence as of today's date. In doing so, we take into account the fact that there is now an implicit admission of wrongdoing in that the appeal has been confined to an appeal against sentence and that is something to which we will have regard, and will be reflected in our order.

24. Another matter to which we have regard and which we are entitled having reached the stage that we have, are the testimonials that were put before us today. In particular the document that was submitted by the Governor of Docas bears quotation, it reads:-

"Ms Maguire was committed to the Docas Centre on the 30th July, 2015. She was sentenced to eighteen months. Despite the fact that she was very shocked at being committed to prison, from the start she participated in all activities. Please find a report from the head teacher."

The head teacher is then quoted as saying:-

"Aoife Maguire attended the education unit since the beginning of her sentence. Aoife attends classes in woodwork, knitting, design skills, photography, music appreciation and is also studying Italian in our open learning centre. Teachers find Aoife to be an excellent student, pleasant, reliable, punctual, co-operative and very diligent. She works hard and is always willing to help others where possible. She gets on really well with both staff and students here in the education unit. She is an extremely undemanding woman and a pleasure to deal with at all times."

The Governor continues:-

"I echo the head teacher's comments. Ms Maguire has done all that could be expected of her since her committal. She mixes very well with all and in particular regularly assists woman who are nervous at being in prison for the first time. She is also very generous with her time, becoming involved in the listener programme, a service that is set up by the Samaritans. She assists in the maintenance of the grounds and general upkeep of Docas Centre along with cleaning in the administrative area. . . . Ms. Maguire is respected by her peers, the staff and the wider multi disciplinary team in the Docas Centre."

25. Some of the language of that report indeed echoes a testimonial that was submitted by Fr. McDermott of St. Michael's Parish in Inchicore in the Bluebell area. He speaks of the fact that he has known Ms. Maguire for ten years through her generous and energetic commitment to community life. At one stage he comments following a visit to her in prison "that her gentle and modest demeanour is inspirational in a society where might and power are held in high regard".

26. The court, as I say is required to sentence as of today's date and the court will do so. The court will quash the sentence imposed in the Circuit Court and will substitute for the sentence there imposed a sentence of nine months imprisonment, but will suspend any unserved sentence as of today's date.