



THE COURT OF APPEAL

Birmingham J
Sheehan J
Mahon J

Appeal Number: 138CJA/14

IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 2 OF THE CRIMINAL JUSTICE ACT 1993
THE PEOPLE (at the suit of the DIRECTOR OF PUBLIC PROSECUTIONS)

APPELLANT

v.

Ignatius Forde

RESPONDENT

JUDGMENT of the Court (ex tempore) delivered on the 28th day of November 2014 by Mr. Justice Mahon

1. This is an application for a review of the sentence imposed at Carlow Circuit Court on 15th May 2014 on the basis that it was unduly lenient. The penalty imposed by the learned trial judge was a fine of €1,000 with six months to pay. This was imposed in relation to a number of counts and there were an additional number of counts taken into consideration.
2. The offences involved the production of false audit reports contrary to s. 2421 of the Companies Act 1990, which carries a penalty of a fine of up to €12,697 and/or up to five years in prison and acting as an auditor when disqualified contrary to s. 187B and 9 of the Companies Act 1990, which carries a penalty of a fine of up to €6,248. There were, in total, thirteen counts. A further thirty seven counts in the indictment were taken into consideration. The respondent pleaded guilty at an early stage in the proceedings.
3. The respondent carried on a business of providing accountancy services over a thirty year period in his local area. His clients, including those who were victims of these offences, were generally open businesses. The respondent had engaged in the activity that led to these offences while not a qualified auditor. He dishonestly used the names and false signatures of two qualified auditors and an accountant without their knowledge. He also used an invented name and purported it to be that of a qualified auditor and falsely purported himself to be a qualified auditor. The fall out from these offences was considerable. The businesses affected were obliged to have their accounts re-audited and re-submitted to the Companies Office, while the professionals whose names he used, and whose signatures he forged, were concerned that their good names and reputations had been harmed by the respondent's actions.
4. When interviewed by the gardaí the respondent made admissions of his involvement and generally co-operated with them. The respondent had a number of previous convictions, many of them particularly relevant to the offence in this matter. In general terms these were offences relating to acting unlawfully as an auditor, the misappropriation of his client's funds and the non payment of excise duty and importation of alcohol.
5. Of particular relevance is a conviction for a similar s. 187 offence on 6th December 2007 which pre-dated the offences for which he was convicted in May 2014. In that 2007 matter the respondent was fined €2,500. A further issue that fell to be considered by the learned trial judge in May of 2014, was whether or not there should be an activation of all or part of a sentence of six years imposed in the Circuit Criminal Court, but suspended for a period. Three of the offences which were the subject of the sentencing hearing in May 2014 were committed within the suspended period of the six year sentence.
6. Another revenue offence had also been the subject of a conviction at Athy District Court on 28th January 2014. The learned trial judge decided not to activate any part of the six year suspended sentence in respect of count 12 - producing a false audit report contrary to s. 242 of The Companies Act 1990. The respondent was fined €1,000 and given six months to pay. The remaining 49 counts, for which the respondent had pleaded guilty to twelve, were taken into consideration.
7. The appellant, on whom the onus of establishing that the €1,000 was unduly lenient rests, seeks to have that sentence reviewed on the basis that the learned trial judge erred in principle in imposing a sentence which constitutes a substantial departure from that which was appropriate in the circumstances. In particular the Appellant submitted that there was insufficient regard to a number of aggravating factors including:-
 - the fact that three of the offences pleaded to, that is counts 1, 12 and 23, were committed while the respondent was the subject of a previously imposed six year suspended sentence imposed for dishonesty type of offences
 - the fact that there were a number of previous convictions of a relevant nature
 - the fact that the reputation of *bona fide* auditors had been gravely threatened
8. The Appellant also submits that a number of mitigating factors were given too much weight by the learned trial judge, including the respondent's age - 62, his "poor health", reputational damage to him, his family's circumstances and his pleas of guilty.
9. It is submitted by the Appellant that at 62 a prison sentence would not be, as suggested by the learned trial judge, unduly harsh, in contrast to, for example, the remarks made by the court in *DPP v. JM* [2002] I.R. 363 where the accused was eighty four years old.
10. It was submitted that there was no evidence relating to health or family circumstances which could reasonably indicate that a custodial sentence would have been unduly harsh.
11. It was submitted that the respondent's many previous convictions for dishonesty type offences, and the imposition of a prison sentence for one of them, excluded undue emphasis being placed on the issue of the extent of any reputational damage being caused to the respondent and cannot be a sufficient reason for the avoidance of a custodial sentence in the circumstances.
12. The Respondent submits that in all the circumstances the penalty imposed by the learned Trial Judge is appropriate, and points to the fact that the conviction leads to an automatic disqualification from acting as a Director, Auditor or Officer of a Company for five years from the date of conviction pursuant to s. 160 of the Act. The respondent maintains that the learned trial judge correctly assessed all the aggravating mitigating factors and explained fully his reasons for imposing the financial penalty.
13. The fact that the earlier suspended sentence was not wholly or partly activated is, of course, not a matter for consideration by

this court. It is this court's view that the financial penalty imposed in this case was, on its own, unduly lenient. It did not properly or adequately represent the gravity of offences pleaded to, particularly having regard to the history of previous convictions, and the significant element of repeat offending and the apparent failure on the learned trial judge's part to consider a range of sentences appropriate to the case and then place this case in that range. This court notes that the great majority of penalties imposed for s. 187 cases over the past five or six years were fines, albeit most of these significantly exceeded €1,000. It is not clear, however, if any of these cases included an element of the repeat offending which very much is a feature in this case.

14. This court is satisfied that the two elements indicated, namely the repeated offending and the failure to identify the range of sentences in the point on that scale, appropriate to this case amount to errors in principle. That range should certainly have included possible sentences of up to three years and the appropriate place in that range which this case might have been placed would have possibly be at the higher end. Undoubtedly, a prison sentence was arguably warranted because of his repeat offending.

15. It is the decision of this court that Mr. Forde be ordered to undertake 200 hours of community service, in lieu of a twelve months prison sentence. In addition the court will increase the fine of €1,000 to one of €3,000 and will give him six months to pay, and in default, 12 months imprisonment.