



THE COURT OF APPEAL

Record No. 148CJA/16

Birmingham J.
Sheehan J.
Mahon J.

The Director of Public Prosecutions

- and -

Naila Zaffer (No.2)

Appellant

Respondent

JUDGMENT of the Court (ex tempore) delivered on the 17th day of January 2017 by
Mr. Justice Mahon

1. The respondent pleaded guilty on the 23rd February, 2016, to ten counts, three of which were of making a false instrument contrary to s. 25 of the Criminal Justice (Theft and Fraud Offences) Act 2001, three were of using a false instrument contrary to s. 26 of the Criminal Justice (Theft and Fraud Offences) Act 2001, three were of theft contrary to s. 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001, and one was of attempted theft contrary to common law.

2. On the 11th May, 2016, the respondent was sentenced to two concurrent terms of imprisonment of two and a half years on each of the counts. The sentences were suspended on the appellant entering into a bond in the sum of €1,000 on conditions, including that she would keep the peace and be of good behaviour for a period of two and a half years from the 11th May, 2016, that she would place herself under the supervision of the Probation Service for the duration of the bond and attend all appointments with the service, and that she would keep the service fully informed of her contact details and follow all its lawful instructions, and that she would fully engage with the service in dealing with her addiction issues and attend all therapeutic treatments recommended, and that she would undergo treatment at a residential treatment centre.

3. The appellant sought a review of the said sentences pursuant to s. 2 of the Criminal Justice Act 1993, on the grounds that they were unduly lenient. That application was determined by this Court on the 28th October, 2016, when it deemed the said sentences unduly lenient. In its ex tempore judgment delivered on that date, this Court stated as follows:-

"In this case, the level of offending is very serious, given that it involved a sum of well over €200,000, and that it was a pre-meditated, well planned and carefully orchestrated fraud undertaken over a fairly prolonged period. There are obvious similarities between this case and the facts in Walsh (DPP v. Walsh CA 26th February, 2016). Even allowing, to the greatest possible extent, for the appellant's strong mitigating factors, including her guilty plea and previous good record and her own difficult personal circumstances, the imposition of a wholly suspended prison sentence is not justified. Serious pre meditated fraud will almost always merit a custodial sentence. The fact that the victim of the fraud is a large corporation rather than an individual may justify a more lenient sentence than would otherwise be the case, but, normally, only the existence of exceptional circumstances should result in an entirely non custodial sentence where there are hundreds of thousands of euro involved. The Court is satisfied that the sentence imposed by the learned sentencing judge was not only lenient but unduly lenient. The Court will consider a replacement sentence in due course."

4. This judgment is concerned solely with the imposition of the replacement sentence.

5. The offences were committed during the period 2007 to 2012, while the respondent was employed as a senior insurance claims official with the Irish Public Bodies Insurance Company. The offences involved the forging of insurance claims by adding an additional claimant to each of seventeen insurance policy claims paid by the Irish Public Bodies. The additional claimant in each case was always one of five persons, all known to the respondent. Cheques then issued in the names of the five persons, and these cheques were then lodged into a number of bank accounts. The total amount of the fraud was €221,600. No personal financial loss resulted from the fraud. It was entirely absorbed by Irish Public Bodies.

6. This court has reviewed sentences in a number of cases involving fraud. For example, in *DPP v. Walsh* [2016] IECA 74, a custodial sentence of two and a half years imprisonment was varied to the extent that the final ten months were suspended. In that case the fraud involved an employee of a life insurance company defrauding his employer of approximately €200,000 over fifteen months. In *DPP v. Reilly* [2016] IECA 43 a fraud of in excess of €800,000 resulted in a four and a half year sentence, which sentence was upheld by this court. The fraud was committed against Canada Life by one of its agents.

7. A feature of these types of fraud cases is often the fact that the perpetrator was previously a person of exemplary character, such as the respondent, in this case. Another is the fact that the 'victim' is often a large company reasonably capable of recovering from the event. Invariably also the offender is in a senior position of trust within the organisation, as is also the case with this respondent.

8. The court is satisfied that the headline sentences of two years and six months are the appropriate sentences in this case and are, in general terms, consistent with sentences imposed in broadly similar cases in recent years. The court will therefore impose the same sentences, but subject to an element of them being suspended having regard to the following considerations:-

(i) the strong mitigating factors including the plea of guilty, co-operation with the gardaí, genuine remorse, the lack of previous convictions and the respondent's commitment to avoid any further offending, as is evidenced by her remaining out of trouble since the commission of the offence almost two years ago.

(ii) the respondent's difficult background. Her counsel aptly described her as being psychologically vulnerable. In this regard the report of Dr. O'Leary, counselling psychologist, is particularly revealing.

(iii) the very positive reports from the Probation Service and the Community Addition Response Programme, both of which strongly indicate an ambition to deal with her addiction difficulties and avoid re-offending.

9. These factors when considered together justify treating the respondent as an offender who, notwithstanding the fact that she has committed a very serious crime, deserves particular leniency and the court proposes to proceed on that basis, in the first place, by suspending half of the two years and six month sentences.

10. There is however an additional factor that requires consideration. The respondent has, since February 2016, enjoyed her liberty and now faces a reversal of that status. This is probably significantly more difficult for her than if she had received an immediate custodial sentence and on its own account requires a further adjustment of what might be described as the appropriate sentence. That further adjustment will be an additional suspended element of seven months.

11. The court's sentences will therefore be as follows: sentences of two years and six months with all but the final eight months of each suspended for a period of three years post release on condition that the appellant enters into a bond in the sum of €100 to keep the peace and be of good behaviour. The custodial element of the sentences will therefore be eight months. The sentences will date from today, and are concurrent.