

42/87

COURT OF APPEAL (ENGLAND)

R v STEWART and ORS

Lord Lane CJ, Farquharson and Gatehouse JJ

24 March 1987 — [1987] 2 All ER 383; (1987) 1 WLR 559; (1987) 9 Cr App R (S) 135

CRIMINAL LAW – SENTENCING – WELFARE BENEFIT FRAUD – RELEVANT CONSIDERATIONS WHICH MAY AFFECT THE DECISION.

Whilst the appropriate sentence in welfare fraud cases will depend on an almost infinite variety of factors and deterrence should not play a large part in the sentencing, considerations which may affect the decision of the Court are:

- (i) the guilty plea;
- (ii) the amount involved;
- (iii) the circumstances in which the offence began;
- (iv) the use to which the money was put;
- (v) the offender's antecedents;
- (vi) whether any repayment has been made; and
- (vii) whether the department proposes to recover the loss from the offender.

LORD LANE CJ gave the judgment of the court. *[After setting out preliminary matters, provisions of the Social Security Act 1986 (Eng.) and some statistical detail concerning prosecutions in welfare fraud cases, His Lordship continued.] ... [WLR 561]* We have ventured to go into these matters at some length to show that it is only a small proportion of offences of this nature which are dealt with in the Crown Court and to demonstrate that the deterrent effect of any Crown Court sentence is unlikely to be great. This is because any one minded to embark upon this sort of fraud, unless he has a large scale operation in mind, or the fraud is blatant, is unlikely to find himself in the Crown Court. If prosecuted at all, the run of the mill offence is almost certain to be before justices.

It is perhaps interesting to see the sentencing figures for *Social Security Act* offences in magistrates' courts in England and Wales in 1985. The total of those found guilty was 6,368, of whom 17 were committed for sentence. Of the remaining 6,351, 2 per cent were absolutely discharged, 13 per cent were conditionally discharged, 7 per cent were made the subject of a probation order, 59 per cent were fined, 10 per cent were made the subject of community service orders, 6.5 per cent were given fully suspended sentences of imprisonment, 2.5 per cent were sentenced to unsuspended terms of imprisonment and the remainder were the subject of a variety of disposals.

Coming now to the Crown Court, unfortunately the statistics do not distinguish between welfare benefit frauds and other types of offences charged under section 15 of the *Theft Act* 1968. So it is not possible to give any figures as to the sort of numbers with which we are dealing. However, it is clear from what we have already said that in order to qualify for prosecution at all, the offence must be something other than minor, and it seems to follow that it will only be the apparently more serious cases which will come before the Crown Court. These offences involve the dishonest abstraction of honest taxpayers' money and are not to be treated lightly. They are easy to commit and difficult and expensive to track down. However it must be remembered that they are non-violent, non-sexual and non-frightening crimes. In some cases immediate unsuspended imprisonment, or youth custody, is unavoidable. At the top of this range, requiring substantial sentences, perhaps of 2 years' imprisonment and upwards, are the carefully organised frauds on a large scale in which considerable sums of money are obtained, often by means of frequent changes of name or address or of forged or stolen documents. Examples are *R v Adams* (1985) 7 Cr App R (S) 411, to which we have been referred in the course of the appeals and applications today, and *R v Dennehy* which is a case in our list today. These offenders are in effect professional fraudsmen, as is often apparent from their previous records. They have selected the welfare departments as an easy target for their depredations and have made a profitable business out

of defrauding the public in this way. The length of the custodial sentence will depend in the first instance on the scope of the fraud. Of course, as in all fraud cases, there may be a variety of mitigating circumstances and in particular a proper discount for a plea of guilty should always be given. These cases bear little relation to the average offender in this area.

As to the remainder, who form the great majority of those appearing in the Crown Court, the sentence will depend on an almost infinite variety of factors, only some of which it is possible to forecast. It may well be advisable as a first precaution for the court to inquire what steps the department proposes to take to recover their loss from the offender. Counsel for the Crown should be equipped to assist the court on this aspect of the matter. There are other aspects on which his help will often be required, as will emerge later. Other considerations which may affect the decision of the court are:

- (i) a guilty plea; (ii) the amount involved and the length of time over which the defalcations were persisted in (bearing in mind that a large total may in fact represent a very small amount weekly); (iii) the circumstances in which the offence began (e.g. there is a plain difference between a legitimate claim which becomes false owing to a change of situation and on the other hand a claim which is false from the very beginning); (iv) the use to which the money is put (the provision of household necessities is more venial than spending the money on unnecessary luxury); (v) previous character; (vi) matters special to the offender, such as illness, disability, family difficulties, etc; (vii) any voluntary repayment of the amounts overpaid.

[563] Before sentencing the offender the court should consider the following questions which were set out in *R v Clarke (Linda)* (1982) 1 WLR 1090, 1095; (1982) 1 WLR 1090: (i) is a custodial sentence really necessary? The fraud cases dealt with in the Crown Court, as already indicated, are likely to be relatively serious and a non-custodial sentence may often be inappropriate; (ii) if a custodial sentence is necessary, can the court make a community service order as an equivalent to imprisonment, or can it suspend the whole sentence? It seems to us that a suspended sentence or, especially, a community service order may be an ideal form of punishment in many of these cases; (iii) if not, what is the shortest sentence the court can properly impose? If immediate imprisonment is necessary, a short term of up to about 9 or 12 months will usually be sufficient in a contested case where the overpayment is less than, say, £10,000. As was stated in *R v Clarke*, a partly suspended sentence may well be appropriate where a short immediate sentence is insufficient.

So far as compensation is concerned, we would add this. Where no immediate custodial sentence is imposed and the amount of overpayment is below, say, £1,000 or thereabouts, a compensation order is often of value. This will usually only be the case when the defendant is in work. Counsel for the Crown must be equipped with the relevant information to enable the court to come to a proper conclusion on this matter. For the reasons we have mentioned earlier in this judgment, we do not think that the element of deterrence should play a large part in the sentencing of this sort of case in the Crown Court. In making these suggestions, and we emphasise that they are only suggestions, we have tried to achieve some sort of parity with the proper sentences for other similar types of fraud, as exemplified in *R v Barrick* (1985) 81 Cr App R 78; (1985) 7 Cr App R (S) 142, although those are not precisely comparable with the present case, as well as incorporating what seems to us to be the trend of decisions on this type of case in this court. Where we may appear to differ from such decisions, we do so with respect to the court involved and in an endeavour to make matters easier for sentencing judges to achieve consistency. Having said that we now turn to consider the various individual cases which have been argued before us this morning.

[His Lordship stated their Lordships' considerations relating to each appeal and application, in respect of which orders were made according to the guidance in the court's judgment.]