Using the proceeds of crime and money laundering

[2019]GRC028

ROYAL COURT
FULL COURT

22 March 2019

Before: John Russell Finch, Esq., O.B.E., Judge of the Royal Court and:
Stephen Murray Jones OBE, Claire Helen Le Pelley, Terry John Ferbrache, David James Mortimer, Joanne Marie Wyatt, Peter Francis Gill, David John Robilliard, Marilyn Jasmine King, Jurats.

THE LAW OFFICERS OF THE CROWN

- v -

Peter Edward DAWSON-BALL

And

Samanta Beate MACPANE

Advocate W L Giles appeared for the Crown

Advocate M G A Dunster appeared for the First Defendant (P E Dawson-Ball)
Advocate C M Fooks appeared for the Second Defendant (S B MacPane)

JUDGE OF THE ROYAL COURT:

Background

You appear here today for sentence on an Indictment comprising 3 counts. The male defendant pleaded 'not guilty' to all three, but was convicted after a fully-contested trial on the 4th – 11th February this year. The female defendant faces one count, Count 1 only, but entered a 'guilty' plea on the 23rd January, 2019. The history of the case shows that there was a contested committal by both defendants on the 24th July, 2018, where a case to answer was found. Both of you have been on bail throughout. The maximum sentence on each count is 14 years. You are aged 64 and 32 respectively.

The surrounding circumstances were very thoroughly examined at Mr Dawson-Ball's contested trial. You were concerned in the illegal activities of David Noakes and his business Immuno-Biotech Limited. Mr Dawson-Ball was financial controller, Miss MacPane the office manager, but acting in a rather elevated role in the business. The court is aware of the male defendant's activities from the evidence at the trial. The facts set out in the three counts of the Indictment speak for themselves. The business was the sale and/or distribution of the unlicensed medicinal products GcMaf and Goleic. Mr Noakes and various of his confederates pleaded 'guilty' in England and were sentenced. We have had the benefit of the careful observations of His Honour Judge Lorraine-Smith who heard evidence to determine the role of Noakes, who went to gaol for 15 months. We pay careful and respectful attention to the learned judge's remarks. It has to be noted that both defendants here played significant parts in the financial side of an illegal operation, involving unlicensed products that were marketed by Noakes as a cure for many conditions. People, often in very difficult circumstances, were taken-in and exploited. The financial operation of these activities, including directorships and business reputation were essential to the running of this large-scale scam. We have heard today that Samanta MacPane was a director of various companies and "business representative" in the Netherlands. These companies were intermingled as were the associated bank accounts. It is to be

noted that a good deal of the evidence against the male defendant came from lawful intercepts by the French authorities, and today we have been referred to part of a conversation from Samanta MacPane, 18 days before Mr Noakes was arrested in England. We note the relevant dates on the charges before us.

Sentencing Considerations

In these cases we need to be guided by the observations of the Court of Appeal in the case of Taylor, an early money-laundering case. Guernsey is a finance centre and its reputation is of primary importance. So to protect this reputation, which is frequently a topic of attention outside the Bailiwick, appropriate sentencing for this type of offence is necessary. We take note of the English guidelines, but, and we shall need to return to this, this is a different jurisdiction and whilst consideration of the mitigating and aggravating factors set-out in them is instructive and frequently useful, we are under a duty to sentence on Guernsey considerations.

In our judgment the following aggravating factors exist:

(i) on the facts you had significant roles in the business, which you helped conduct on an international scale;
(ii) there was a degree of planning and cunning;
(iii) the activities were not a one-off, but sustained;
(iv) the offences took place across borders; and
(v) the money-laundering was an integral part of the serious criminal activity of supplying unlicensed medicinal products that had to be closed down via the relevant regulatory authorities.

We turn now once more to the English case. The principal offending by Noakes and his confederates involved the unlicensed products. The statutory maximum there in England was 2 years. As the learned judge correctly said, this is "comparatively low" and in sentencing for four such offences and a money-laundering matter had, as we must, to take regard of the totality principle and adjust the sentences accordingly. Our maximum here, as stated, is 14 years.

Where does that leave us? We have already made the point that this is a different jurisdiction. We must, we repeat, apply local considerations. Noakes and his fellow-accused's cases in England were different. Our starting-point, before we apply relevant mitigation, reflect the aggravating factors just mentioned and we emphasize again that this court sentences on factors applicable to this jurisdiction. Mr Dawson-Ball faces three counts, Miss MacPane one. There is therefore a difference in the starting-points on that basis. We start at 2 years for Dawson-Ball and 15 months for Miss MacPane. We note that the two extra counts found by Mr Dawson-Ball were specific incidents rather than the main general count faced by both of you in Count 1.

Mitigation

Mr Dawson-Ball is of previous good character. His ban from fiduciary business is not an offence and was on a civil standard of proof, for the avoidance of doubt we do not take it into account against him.

Miss MacPane has a previous conviction back in 2010 for theft in England and was fined £300. It is noted, but does not go to reduce applicable mitigation.

We take careful note of the written material put before us and the detailed submissions of learned counsel, together with the Probation reports. The main and weighty mitigation for Miss MacPane is her eventual 'guilty' plea, but after a contested committal. We have also carefully noted her own letter and observations to us. There has also been a rather unpleasant account of alleged abuse, in various forms, at the hands of Mr Noakes. We must remember that these assertions have not been ventilated in this court and that he is not here, nor could he be here to rebut them or anything else said. We are satisfied that whatever the truth of these allegations, two things have emerged in this case: firstly, Mr Noakes is not a nice person, as is evidenced by the convictions in London, but secondly, we are by no means convinced that you, Miss

MacPane are, despite what we have heard, entirely a 'shrinking violet', as is for example shown by the intercept excerpt we heard today.

We note that Mr Dawson-Ball is still unable to admit his guilt when considering the Probation report, despite the weight of evidence and the nonsense put forward to explain incriminating remarks in the French intercepts.

In his favour, and in other cases the Court of Appeal has encouraged us to do this, is that a considerable degree of evidence was agreed by his Advocate and the length and complexity of the case watered-down. This is certainly a mitigating factor we must take account of. The references on his behalf are in parts naïve and fail to take account of the serious matters proved against him beyond a reasonable doubt. But we have tried to factor it all in carefully. Of course this Court heard the evidence and is able to come to an informed view, particularly noting what Mr Dawson-Ball said in the witness-box but we bear in mind Advocate Fooks' submissions on that case and the evidence heard.

Sentence

Mr Dawson-Ball, you have been convicted on clear evidence of these three offences. You were well-represented by an Advocate with long years of experience in the courts, who put forward all that he could in your favour. But it boils down to serious criminality with ramifications beyond our borders. An appropriate sentence is called-for and we will observe the totality principle.

Miss MacPane, we have nothing to add regarding the facts on the count you pleaded 'guilty' to. On considering these facts, we take careful note of the sentences in England, especially on the main villain, Mr Noakes.

Again, on the facts, without underestimating the extent of these offences, we think that the appropriate sentences are as follows. We pause to add that the principal offender would have received condign punishment had he appeared here.

Each case is judged on its own merits. We reflect these merits as follows, noting everything we have heard and the roles you have played:

Mr Dawson-Ball:

- In respect of Count 1 – as a direct alternative to 15 months' imprisonment there will be a maximum 180 hours Community Service Order.
- In respect of Count 2 and Count 3 – 15 months' imprisonment, concurrent on each, suspended for a period of 2 years.

Miss MacPane:

- In respect of Count 1 – 9 months' imprisonment, suspended for 2 years.

In relation to Mr Dawson-Ball, as your Advocate will no doubt tell you should you ask, that means 180 hours has got to be put back into the community as a reparation for the offences that you have committed. If you don't do every single minute of that 180 hours (and the only excuse the court will consider is a valid medical certificate), you will get the 15 months' imprisonment straight off. If you do anything else wrong in the next two years, you also have the custodial sentence of 15 months hanging over your head. That applies also in relation to Miss MacPane for her 9 months, suspended for a period of 2 years.

As stated, we have taken everything carefully into account, including the case in London and the learned Judges' sentencing remarks.

The Proceeds of Crime time-table agreed as requested by the Prosecution for the submission of documents. The Court will then decide on the civil standard of proof what appropriate Order will be made there.

Judge J R Finch OBE
Judge of the Royal Court

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