

JERSEY / JUDGMENT

AG -v- Goodwin [2016] JRC 165 (15 September 2016)

[2016] JRC 165

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

JUDGMENT

THE BAILIFF: 1. On 25 th August, 2016, the defendant was sentenced to a total of 6 years' imprisonment and fined £2,000 with default sentences. Reasons were to be given later and this judgment contains those reasons. The detail in relation to the four counts on the indictment in respect of which guilty pleas were entered is set out below. Count 2 - money laundering 2. The defendant pleaded guilty to making deposits and transfer of funds between various bank accounts in his own name or that of his business or his wife or in their joint names, both in Jersey and in the United Kingdom, knowing or having reasonable grounds to suspect that these deposits represented another person's proceeds of drug trafficking. The amount in question was £596,893, and the money laundering took place between March 2006 and 31 st December, 2011. On this count, the defendant was sentenced to 6 years' imprisonment, the Court having previously determined that the defendant had benefitted in the sum of £325,970.78, and made a confiscation order in the sum of £214,237.82, that amount to be paid within 18 months, with a 2 year imprisonment sentence in default. The charge therefore represents a considerable sum of money which was laundered, and the amount of benefit shows the extent to which the defendant would have made a profit over that period in respect of that money laundering. 3. Although the money laundering took place over a period of some five years, it became increasingly aggressive in the sense that approximately one half of the total sum laundered was deposited during 2011, the final year of the relevant period. During that year there were on average seven deposits every week, most being in the sum of being £950. Some of the laundered money was spent on luxuries - a Rolex wrist watch for the defendant and two Chanel watches for his wife, costing £7,459 and £2,805 respectively. In 2011, the defendant spent nearly £62,000 on home improvements. 4. Money laundering is a serious offence which, by virtue of the Drug Trafficking Offences (Jersey) Law 1988 ("the Law"), carries a potential sentence of 14 years' imprisonment or an unlimited fine. This Court has previously had regard to the English authority of R v Monfries

[2004] 2 Cr. App. R.(S) 3, in which the English Court of Appeal set out a number of principles:- (i) There is not necessarily a direct relationship between the sentence for the laundering offence and the original antecedent offence. Where, however, the particular antecedent offence can be identified, some regard will be had to the appropriate sentence for that offence when considering the appropriate sentence for the laundering offence. (ii) The

criminality in laundering is the assistance, support and encouragement it provides to criminal conduct. (iii) Regard should be had to the extent of the launderer's knowledge of the antecedent offence. (iv) The amount of money laundered is a relevant factor. 5. In *AG v Gomes and others*

[2007] JRC 129 , the Court indicated that in addition to these principles, regard should be had to the period of time during which the money laundering occurs. 6. In *Bhojwani v AG*

[2011] JCA 034 , the following principles were added:- (i) No distinction is to be drawn as a matter of law between the laundering of one's own proceeds of crime and the proceeds of crime committed by third parties. (ii) A professional money laundering service is not necessarily more serious than laundering the proceeds of a one off fraud

- it may be so, but each case will depend on its own facts. (iii) The interests of Jersey as a finance centre justified an element of deterrence in the sentence. 7. In *AG v Bhojwani*

[2010] JRC 116 , the Royal Court had held that the duration, sophistication and scale of money laundering are also relevant considerations. 8. In our view the factors which make this present case particularly serious are the following:- (i) The money laundering involved a considerable amount of money laundered over a long period of time. (ii) The substance of the antecedent offence was drug trafficking. The defendant therefore made his money out of the hardship and suffering which the Court recognises is caused by drug trafficking in our community. (iii) The offence was based on greed and the defendant's desire to acquire luxury products of one kind or another. (iv) This was a relatively sophisticated money laundering offence in the sense that it involved the use of many bank accounts, not only in Jersey but in the United Kingdom as well. Inevitably that made the investigation of the offence more difficult and the piecing together of a money trail more challenging. Furthermore, as was said in *Bhojwani*: "The Island relies to a considerable extent for its GDP on the finance industry. Jersey now ranks among the world's leaders for good anti-money laundering compliance and regulation, and has worked hard to establish its reputation as a jurisdiction which eschews criminal wealth and will bring offenders to book." 9. In this case, the fact that the defendant used joint accounts, which led to his wife and daughter falling under suspicion is an aggravating factor. The acknowledgement of guilt in relation to the charge of attempting to pervert the course of justice, the detail of which appears below, also aggravates the money laundering offence. 10. Advocate Gollop submitted in mitigation that the defendant did not appreciate at the outset that he was helping launder the proceeds of drug trafficking. He said that the defendant originally made the deposits in order to help a friend, but later on appreciated that these represented the proceeds of drug trafficking. He went on to say that the defendant was faced with threats to himself and his family when he tried to pull out of the arrangement, and as a result he continued. The suggestion that the defendant did not appreciate at the outset that he was laundering the proceeds of crime is not consistent with the guilty plea which has been entered, but, even on the defendant's story, there is no doubt that from a relatively early stage he was aware of the criminality in which he was engaged and he

knew that drug trafficking underlay his course of conduct. 11. We do not treat as mitigation the alleged threats which have been made against the defendant and his family. In cases of sentencing for drug trafficking, the Court's policy is clear - no mitigation is allowed where the drug trafficker has been subjected to threats, for two clear policy reasons - the first is that the drug trafficker puts himself in this position. If the trafficker is a user himself, he knows perfectly well that he is moving into an illicit world where threats are an everyday occurrence and they are regularly used. It follows that by choosing to put himself in that position, the drug trafficker cannot later claim he should be allowed mitigation for another offence he commits because of the threats made against him. We think the same rationale applies in money laundering cases. Where a person knows or has reasonable grounds to suspect that he is laundering the proceeds of drug trafficking, he chooses himself to enter the illicit world where threats are an everyday occurrence. The second reason, as a matter of policy, for not treating the threats as mitigation is that it is in most cases impossible to ascertain whether the suggestion is true. Save in the rare case of physical evidence, it is impossible for the Crown or the Court to know whether a simple submission by counsel on behalf of a person that that person has been threatened by his dealer further up the line is true or not. Once again the same logic applies in money laundering cases. 12. It is clear that the proceeds of drug trafficking in the instant case included the proceeds of trafficking in Class A drugs, because there were traces of MDMA or ecstasy found on some of the cash which was seized on a search of the defendant's home both in 2012 and again in 2015. The maximum sentence for trafficking in Class A drugs is life imprisonment; and the maximum for trafficking in Class B drugs is 14 years' imprisonment. Advocate Gollop did not dissent from the proposition that just as there would not for the most part be thieves without receivers, there would not be drug traffickers without money launderers. There would be a very much reduced purpose in drug trafficking if the proceeds could not provide a benefit to the drug trafficker. Given that the maximum sentence for trafficking in Class A drugs is life imprisonment, we think the legislature might wish to give consideration to increasing the maximum sentences under Part 3 of the Proceeds of Crime (Jersey) Law 1999 . 13. Nonetheless Advocate Gollop submitted that any analogy with drug trafficking is difficult because one could not assess the involvement in drug trafficking. Here he said that the defendant had no knowledge of the details of the underlying drug trafficking, and never handled or never saw the drugs in question. 14. Although one Jurat did not accept the analogy by way of comparison with the predicate offence, the Court considered that it was appropriate to look at what sentence might have been imposed in relation to the antecedent offence. In the case of Attorney General v Warren and others

[2009] JRC 234 the charge was conspiracy to evade the prohibition on the importation of cannabis. The amount in that case involved 180 kilograms of cannabis with a wholesale price of £720,000 and a street value of £1 million. The Court took a starting point of 13 years' imprisonment for Warren, who was considered to be the mastermind of the operation. Other conspirators in that case were sentenced on the basis of starting points

of 9 to 11 years' imprisonment. 15. It is true that we do not know in the present case whether these proceeds represented solely the laundering of Class A drugs or a mixture of classes of drugs. What we do know is that the defendant agreed to be paid a commission of some 20% plus expenses, and in the event, took an even higher commission; and for the purposes of laundering, he made trips to the Netherlands and elsewhere to deliver cash. We therefore can proceed on the basis that he was heavily involved in the drug trafficking operation albeit his participation was as a money launderer and not as a handler or supplier of the drugs. Although the Crown has not identified a starting point, we would identify a starting point of between 11 and 12 years for the money laundering in this case. We have done so on a comparison of starting points in Class A and Class B drugs having regard in particular to the value of MDMA and cannabis and recognising that there is no direct relationship with the antecedent offence, but very much taking it into account. 16. Advocate Gollop contended that it was wrong to look at so high a starting point particularly when one compared the cases of AG-v-Michel

[2007] JRC 120 and Bhojwan i. In Miche l, the defendant was sentenced on a total of 10 counts of assisting another to retain the benefit of criminal conduct under the Proceeds of Crime Law, where the antecedent offence was tax evasion. The Court took a starting point of 8 years and imposed a sentence of 6 years' imprisonment. In Bhojwani , the defendant was sentenced to 6 years' imprisonment having laundered approximately US\$34 million, this sum representing the proceeds of corruption in Nigeria. The Court adopted a starting point of 8 years' imprisonment. 17. In our judgment not only are the cases not comparable, but also it is right that sentencing policy should move on from the Michel and Bhojwani cases, decided as they were 9 and 5 years ago. As to comparability, the present case involves the laundering of drug trafficking. It would seem that at least some of the drug trafficking, and possibly all of it, occurred on the streets of Jersey and the antecedent offence therefore directly involves damage done to the people of this Island. For the avoidance of doubt, we are not saying that the laundering of drug trafficking proceeds where the trafficking involved damage to other communities would be less serious offence - for drug trafficking is a heinous crime wherever it takes place. What we do say, however, is that when comparing the cases of Michel and Bhojwani , we can take into account, and we do, that there has been direct damage caused to the people of this Island by the antecedent offence. 18. As to the second point, we consider that the evil of money laundering generally receives an increasing focus in the international community and that it is right that this Court should reflect that in the sentences which it passes. We note that in the Michel case the Court considered that it was appropriate to exercise some mercy within the overall duty to impose the proper sentence and, although it does not appear that that language was used in terms in the Bhojwani case, it may well be that some of the features highlighted by the sentencing court were really based on that principle. At all events, we accept that it is necessary for the Court to send a clear signal that the Island's financial institutions are not to be abused for business of this kind, and we think that if the Michel and Bhojwan i cases were to come to Court today, it is very

possible that higher starting points would have been taken and longer sentences might have been imposed. 19. We have noted the points which have been raised by Advocate Gollop in mitigation and say something about those now. First of all we take into account the guilty pleas which the defendant has entered to the counts on which he now falls to be sentenced. Particularly in relation to Count 2, this guilty plea is of real value because there would undoubtedly have been a long and complex trial had a not guilty plea been entered. We therefore give him full credit for that. We also note that he co-operated in relation to the confiscation order, and that he is a man of previous good character who has indicated his remorse for the offending which he has committed and for the damage which it has caused his family. He has shown good conduct on remand in the prison which also stands to his credit. We have taken into account all that is set out in the social enquiry report. Advocate Gollop suggested that some mitigation ought to be available for the fact that there has been a very lengthy investigation and that these proceedings have therefore been hanging over the defendant for some time, the first arrest and search taking place in December 2011. We do not think this is a point significantly in the defendant's favour. Where offences of this kind are committed, it is invariably difficult to investigate quickly, because the Crown does not have all the information, does not have a complainant and cannot start from the identified premise that particular transactions are unlawful. Such investigations inevitably take time and what is more they are frequently made more complex by the conduct of the defendant himself - as here where he falsified documents and used numbers of bank accounts in both Jersey and in the United Kingdom. We therefore do not think this point is available to the defendant as mitigation. 20. Having regard to those considerations the Court imposed a sentence of 6 years' imprisonment in relation to Count 2. Counts 3 and 4 - Tax evasion 21. Counts 3 and 4 relate to charges of fraudulently omitting income from income tax returns submitted in respect of the years 2006 and 2007. During this time, the defendant was allegedly unemployed, according to him suffering from severe clinical depression. He did not include in his tax returns income earned as an IT consultant, namely the sum of £15,400 during 2006 and £15,100 during 2007. It is right to note that if he had included that sum within his income tax return, no additional tax would have been payable and therefore there has been no loss to the Comptroller. 22. By Article 137(1) of the Income Tax (Jersey) Law 1961, the maximum penalty for delivering a fraudulent return at the time these offences were committed was a fine not exceeding the aggregate of a fine at Level 3 on the standard scale and a further sum based on the income tax that would have been payable had the right declaration been made. As no additional tax would have been payable, it means that the maximum fine is at Level 3 on the standard scale, which is the sum of £2,000. 23. The filing of accurate income tax returns is an essential obligation which the citizen owes to the State. If it is not conducted accurately, then an incorrect amount of tax is charged, and that does damage to the Island community as a whole. The fact that no additional tax would have been payable on this occasion means of course that the maximum fine which can be imposed is much reduced, because the actual damage caused to the Island is negligible. Nonetheless the fraudulent return is a serious matter because the efficient administration of our tax

system depends to a large extent upon the honesty of Islanders in making their tax returns. A dishonest breach of the citizen's obligation to the State, if committed by many, would undoubtedly lead to a requirement for more resources to be allocated to the problem of gathering in the taxes which are due to be paid. For these reasons we treat the offences as serious, and impose a fine of £1,000, to be paid within 18 months, and in default a sentence of 6 weeks' imprisonment concurrent, these fines, default provisions and periods for payment to apply to each of Counts 3 and 4. Count 14 - attempting to pervert the course of justice 24. In December 2011 10 Royal Mail packages addressed to the defendant were opened and found to contain a total of €24,015. The cash was seized and the defendant invited to attend for interview. He acknowledged that he was the intended recipient of the postal packages but he claimed that he had purchased the Euros using his savings and funds inherited from his late father. He handed over copies of his bank statements and email messages apparently showing that some of the Euros had been purchased during the previous few days. He offered various explanations for obtaining the Euros in this way. 25. Three days later, a further package containing €2,885 addressed to the defendant was seized, making the total amount €26,900. 26. Customs officers carried out enquiries in relation to the identified bank accounts. They established that the purported copies of the bank statements provided by the defendant during interview had been falsified and did not match the original documents issued by the bank. The falsified documents were presented by the defendant to Customs officers in order to conceal the wider money laundering which is the subject of Count 2 on the indictment. 27. Attempting to pervert the course of justice is a serious offence. It is often treated as meriting a consecutive sentence because it is distinct and because the Court frequently wishes to emphasise the seriousness of the crime. In this case the attempt to pervert the course of justice was an attempt to conceal the defendant's own guilt in respect of the more serious charge. For that reason, the Court agrees with the Crown that the charge should receive a concurrent sentence, but that nonetheless the offending aggravates the wider offence under Count 2. We consider that the matter is appropriately dealt with by a sentence of 12 months' imprisonment, concurrent. Authorities Drug Trafficking Offences (Jersey) Law 1988. R v Monfries

[2004] 2 Cr. App. R.(S) 3. AG v Gomes and others

[2007] JRC 129 . Bhojwani v AG

[2011] JCA 034 . AG v Bhojwani

[2010] JRC 116 . Proceeds of Crime (Jersey) Law 1999. Attorney General v Warren and others

[2009] JRC 234 . AG-v-Michel

[2007] JRC 120 . Income Tax (Jersey) Law 1961. Page Last Updated: 18 Oct 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2016/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/ag-v-goodwin-2016-jrc-165-15-september-2016>

Prepared on 29 October 2026 · Esheria