

JERSEY / JUDGMENT

AG v King [2019] JRC 079 (06 May 2019)

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JUDGMENT

THE COMMISSIONER: 1. On 23 rd April, 2019, the Court sentenced the defendant to a total of 6 years imprisonment for five counts of fraudulent conversion of a total of £740,286, committed over a period of some 3 months in the summer of 2008, following the death of the defendant's de facto partner, Mr Duncan Hickman, in the financial services business operating under the name of Belgravia. We now set out our reasons. 2. There are two sets of victims to these frauds, firstly, the creditors of Belgravia Financial Services Group Limited (the holding company of the Belgravia group of companies) ("BFSG") who were defrauded of £671,213 and the estate of the late Mr Hickman, which was defrauded of £69,073. Having carried out these frauds, the defendant then left Jersey to live in Bahrain from where he was extradited in July 2018. 3. It is well established that in fraud cases, the Court will have regard to the criteria set out in the case of *R v Barrick*

(1985) 81 Cr. App. R. (S.) 78, which we take in turn:- (i) The quality and degree of trust reposed in the offender including his rank. Although the defendant held no formal office in the Belgravia businesses, he was not only a shadow director but wielded considerable authority and power over the employees. As the prosecution say, the quality and degree of trust reposed in the defendant could hardly have been more substantial. In relation to the estate, he was trusted by the executor to sell a number of cherished number plates and to account to the estate for the proceeds of sale. (ii) The period over which the frauds were perpetrated The period was short, some three months, but as the prosecution say, the gravity of the case lies in the nature of that period. The defendant cynically exploited his business partner's death and the power which he enjoyed as a consequence to steal substantial sums of money. (iii) The use to which the money taken was put The money was used for his and his wife's personal benefit and, it would seem, for commercial investments of his own in Bahrain. (iv) The effect upon the victims Because of the existing indebtedness of the estate of Mr Hickman, the prosecution accepts that the effect upon the heirs was modest, but the prosecution calculate that, but for the frauds, the unsecured creditors of BFSG would have received 46p in the Pound as opposed to the 4.2p in the Pound they actually received. The effect upon the creditors was therefore considerable. (v) Impact of the offences on the public and public confidence The prosecution submitted that other than the impact on BFSG's creditors, the impact of the offending on the public and public confidence was indirect and limited, although we are informed that members

of the public who invested in the Belgravia group lost money. We were not taken into the complexities of the liquidation of the various Belgravia companies, but the business of the group was the provision of financial services in the form of investment funds, and we think a fraud against the holding company committed by a person in the position of the defendant would indeed have an impact on public confidence and upon the reputation and integrity of financial businesses in the Island. (vi) The effect on fellow employees In carrying out the frauds on BFSG, the defendant involved the Finance Officer, Mr Paul Barber, in signing fraudulent payment instructions. Mr Barber was described at the time as a "nervous wreck" and indeed, as a result of his involvement, found himself jointly indicted with the defendant for these offences. He was discharged only upon the prosecution accepting the defendant's guilty pleas. It would seem that the Belgravia businesses were about to fold in any event, and so the impact upon other employees is difficult to assess. (vii) The effect on the offender himself As with any defendant in his position, his arrest has meant his enforced separation from his wife and daughter, but as the prosecution say, through these offences he has enriched himself to the tune of three-quarters of a million pounds, money for which he has never accounted. He has pre-existing health issues to which we will come shortly. (viii) His own history The defendant has a previous conviction for fraud, some 28 years ago, for which he was imprisoned for 2 years. In his discussion with the Probation Department, he insisted that he was wrongly convicted for this offence. Apart from that, the Social Inquiry Report shows that he had a happy childhood with loving parents and has been married to his wife for the last 42 years. He had a varied career in marketing, and after he and his family moved to Jersey in 1997, they lived a lavish lifestyle at the expense, it would seem, of the Belgravia businesses. (ix) Those matters of mitigation special to the defendant The defendant offered a plea of guilty to these counts on 22 nd January, 2019, thus avoiding what would have been a lengthy and complex trial. The prosecution submit that he should get a full one third discount for doing so. However, the defendant entered not guilty pleas to all of the counts against him on 24 th August, 2018, and it was only some five months later, after a number of administrative hearings and no doubt a great deal of preparatory work, that these guilty pleas were offered on a basis acceptable to the prosecution. It seems to the Court that those who plead guilty at the very earliest opportunity should get the fullest credit for so doing, namely a full one third discount, and that logically, the benefit of a guilty plea will reduce the closer a case gets to trial. The Court agreed that the defendant's plea was valuable in that it has avoided a lengthy and complex trial, but not to the extent of the full one third. We now turn to the defendant's health. 4. The defendant has severe osteoarthritis affecting both hips at grade 4, the severest grade, as a result of which his mobility is severely reduced. The Court had a report from Dr Mark Earley who advised that the only solution is a bilateral total hip replacement. If they were to go ahead, they would be performed on separate occasions, probably about six months apart. Dr Earley questioned whether the prison would be able to give the defendant the support he would need post-operatively, but in an e-mail of 12 th April, 2019, the prison authorities have confirmed that whatever surgery was undertaken and whatever his condition post-

operatively, it would endeavour to make every possible adjustment to ensure that he received the same access to care as he would expect to receive outside the prison. 5. The report from Dr Earley indicated a number of other conditions affecting the defendant, but all of these appeared to be under control, and indeed, there appeared to have been some improvement since he has been in custody. 6. Guidance as to the approach of the Court to the medical needs of a defendant can be found in the case of *R v Daniel Patrick Hall*

[2013] EWCA Crim 82 , where Hughes LJ said this at paragraphs 13 and 14:- "The law The law was very clearly set out quite recently in *Qazi*

[2010] EWCA Crim 2579 . The extensive treatment of it there given makes it unnecessary to repeat it at any length. The medical needs of prisoners are a well understood factor in the administration of prisons. Sophisticated arrangements exist under which these needs are ordinarily met A court which is passing sentence ought not to concern itself with the adequacy of these arrangements in an individual case, except in one circumstance. The sole circumstance in which this is necessary is if the mere fact of imprisonment will inevitably expose the prisoner to inhuman or degrading treatment contrary to art. 3; in other words, that there cannot be made any arrangements in prison or out of it for his care which will avoid that consequence. The Court in *Qazi* expressed itself doubtful, given the detailed protocols for the treatment of prisoners, that this would ever arise. If it were to do so, it would be impossible for the sentencing court to pass a sentence of imprisonment which brought with it an inevitable breach of art. 3. Independently of that exceptional possibility, the sentencing court is fully entitled to take account of a medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the appellant, or as a matter of generally expressed mercy in the individual circumstances of the case: see *Bernard*

[1997] 1 Cr. App. R. (S.) 135. It will not necessarily do so, and normally will not do so if, for example, the powers of release under the Prerogative powers will provide sufficient response if it is a case of possible future deterioration, nor will it normally do so if the prisoner represents a danger from which the public needs to be protected. But in an appropriate case, it may be right to do so." 7. Advocate Harrison did not suggest that this was a case in which the mere fact of imprisonment would expose the defendant to inhuman or degrading treatment. His submission was based on the Court taking into account the defendant's medical condition by way of mitigation, as a reason for reducing the length of his sentence on the grounds of the impact which imprisonment would have on the defendant. The prosecution observed that his condition did not prevent the defendant offending, nor prevent him remaining a fugitive from justice in Bahrain. The Court gave this issue careful consideration, but concluded that there was nothing exceptional about the defendant's health which justified a reduction in what would otherwise be the appropriate term of imprisonment for his offending. 8. The prosecution accepted that there has been delay on its part prior to the defendant's extradition, 18 months of which it conceded was inexcusable, and which it had taken into account by

giving an allowance of six months on the sentence moved for. Advocate Harrison submitted that wherever the fault lay, the fact of the matter was that some ten years had elapsed before his client was extradited and that a greater allowance for delay should be given in sentencing. 9. It is worth setting out in full what R v Barrick says in relation to the issue of delay:- "Those matters of mitigation special to himself such as illness; being placed under great strain by excessive responsibility or the like, where, as sometimes happens, there had been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the Police and the start of his trial ; finally, any help given by him to the Police." (our emphasis) 10. The defendant was not confronted with his dishonesty, as we understand it, until the extradition proceedings in Bahrain in June, 2018. Prior to that, he was a fugitive from justice, knowing he had committed these frauds but living freely and enjoying the fruits of his criminality. He no doubt hoped that with the passage of time he might be able to evade justice altogether. Advocate Harrison objected to him being described in this way, but we think the description is apt. We did not regard the time between his offending in 2008 and his extradition in 2018 as providing any mitigation to him. There has been no undue delay between his extradition in 2018, when he was confronted with his dishonesty, and his sentencing before this Court. 11. The Court of Appeal in Arthur v AG

[2018] JCA 217 has eschewed the use of starting points in cases such as this, although it emphasised that the Court should have regard to previous cases by way of a cross check for consistency. The prosecution referred the Court to the case of AG v Arthur

[2018] JRC 129, where the defendant, the managing director of BDO, an accountancy firm with an international network, was sentenced to 7 years for frauds totalling £1.9 million committed over seven years, conduct which we accept is more serious than the conduct of the defendant in the case before us. 12. We were also referred to AG v Lewis and Others

[2012] JRC 177 , where 4½ year sentences were imposed on defendants for intentionally deceiving investors. In terms of the amounts taken and used for personal use, the offending is less serious. As the Court of Appeal said in Arthur v AG , at paragraph 58, the defendants in AG v Lewis were charged under the Investors (Prevention of Fraud) (Jersey) Law 1967 , where the maximum sentence is 7 years. 13. In AG v Bryce-Richards

[2005] JRC 138A , the defendant, a trust company administrator, had defrauded a trust holding property valued at £2.5 million over 18 months, a trust of which she was the intended ultimate beneficiary. She was sentenced to 7 years imprisonment following a trial. The value of the property defrauded is not entirely clear from the report. We were also referred to the cases of AG v Morgan

[2006] JRC 176 and AG v Garraway

[2014] JRC 120 . 14. The prosecution had given an assurance to Advocate Harrison that in the course of identifying acceptable guilty pleas to the indictment it would move for the sentences to be concurrent, notwithstanding the fact that there were two separate victims.

The prosecution therefore moved for 5½ years' imprisonment in respect of the frauds on BFSG and 3 years' imprisonment concurrent in respect of the frauds on the estate of Mr Hickman. Taking into account the totality principle that would come into play if consecutive sentences were imposed, we accepted that concurrent sentences were appropriate. 15. We agreed with the prosecution that these were serious and cynical breaches of trust by a man with a significant degree of power and authority within a financial services business, who exploited the death of his de facto partner and abused his power over those subordinate to him, to enrich himself dishonestly. The Social Inquiry Report states at paragraph 15 that the defendant's attitude fell short of a whole-hearted acceptance of culpability. Up to the date of the hearing, there was little intimation of any remorse on his part. At the hearing, we were given a letter from the defendant expressing remorse and apologising, but genuine remorse would, in our view, be accompanied by an account of what he had done with the monies stolen and proposals as to how they were to be repaid. Confiscation proceedings are in hand. 16. In all and having taken into account everything put forward by Advocate Harrison on the defendant's behalf, we concluded that apart from the plea of guilty, there was little personal mitigation available to the defendant. Adopting the words used by the prosecution, these offences were gratuitous and committed out of pure greed by a man who had already spent some years living the high life at Belgravia's expense. 17. Having considered the Barrick criteria, and the cases cited to the Court, together with the mitigation available to the defendant, the Court determined that a total sentence of 6 years' imprisonment more properly reflected the criminality in this case. The defendant was therefore sentenced to 6 years' imprisonment in relation to the frauds on BFSG and 3 years' imprisonment concurrent in respect of the frauds committed on the estate of Mr Hickman, making a total of 6 years' imprisonment. 18. The Court also disqualified the defendant from participation in corporate management or directorship for a period of 10 years, pursuant to Article 78(1)(a)(b) and (c) of the Companies (Jersey) Law 1991 as amended, which disqualification was not opposed by the defendant. Authorities *R v Barrick* (1985) 81 Cr. App. R. (S.) 78. *R v Daniel Patrick Hall*

[2013] EWCA Crim 82 . *Arthur v AG*

[2018] JCA 217 . *AG v Arthur*

[2018] JRC 129. *AG v Lewis and Others*

[2012] JRC 177 . *Investors (Prevention of Fraud) (Jersey) Law 1967. AG v Bryce-Richards*

[2005] JRC 138A . *AG v Morgan*

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