

JERSEY / JUDGMENT

The Attorney General v Darius James Pearce

COURT

Royal Court

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**Superior Number Sentencing - converting the proceeds of criminal property
- reasons for the sentence imposed**

[2021]JRC203

Royal Court

(Samedi)

4 August 2021

Before :

J. A. Clyde-Smith O.B.E., Commissioner, and
Jurats Thomas, Ronge and Austin-Vautier.
The Attorney General
-v-
Darius James Pearce
M. R. Maletroit Esq., Crown Advocate.
Mr Pearce appeared on his own behalf.
(Advocate I. C. Jones attended to assist the
Court).

JUDGMENT

THE COMMISSIONER: 1. On 5th July 2021, the Defendant was sentenced to a total of 7½ years for three counts of money laundering offences for which he had been found guilty by the Inferior Number, following a six-day trial which ended on 17th December 2020 (AG v Pearce [2021] JRC 182). We now give our reasons. 2. The case stems from what is described by the prosecution as the most complex drug related and money laundering investigation ever undertaken by the Jersey authorities. The operation culminated in the seizure of MDMA, cocaine and cannabis resin, with a street value of up to £919,000 imported by yacht at Bel Val Bay on 21st June 2019. Seven of those involved in the importation were sentenced by the Superior Number on 23rd September 2020, following guilty pleas (AG v Thurban Sait Brown Riles Roy Wolff Hughes [2020] JRC 212). 3. Such an operation requires the movement of cash from Jersey to the UK where the drugs were sourced. A variety of methods were used by members of the enterprise to launder

money, including physically carrying the cash out of the Island; a risky undertaking, as evidenced by the seizure of £30,000 in cash hidden in the boot lining of the car of one of the members of the enterprise. 4. The Defendant's involvement came to the attention of the authorities when members of the enterprise were seen going into his shop in the market, from where he conducted a jewellery and gold bullion business through his company. He facilitated the movement of cash in the following way: (i) A sum of cash would be handed to him in his shop by a member of the enterprise. (ii) The Defendant would deposit that cash in his personal and business bank accounts. (iii) The Defendant would purchase gold bullion from a dealer in London. (iv) The gold or its proceeds of sale would be made available to members of the enterprise in the UK. 5. The Defendant was convicted of laundering money in this way on three separate occasions, namely on 13th March 2019, 24th April 2019 and 1st May 2019. Whilst the precise amount of money received by the Defendant for laundering is unknown, the prosecution put its case on the basis that the gold bullion purchased from the London dealers (for a combined sum of £63,917) was funded using criminal property on behalf of the criminal enterprise. 6. The prosecution referred us to the case of *AG v Goodwin* [2016] JRC 165, which summarised the principles to be considered when sentencing money laundering offences, namely that: (i) There is not necessarily a direct relationship between the sentence for the laundering offence and predicate offence. Where, however, the predicate offence can be identified, some regard will be had to the appropriate sentence for that offence when considering the appropriate sentence for the laundering offences. (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 predicate offence, but the Court has subsequently considered that a lack of knowledge is not to be treated as a mitigating factor (see *AG v Fish and Hinds* [2016] JRC 181A at paragraph 3). (iv) The amount of money laundered is a relevant factor.

(v) 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. (vi) The duration, sophistication and scale of money laundering are all relevant considerations. (vii) The interest of Jersey as a finance centre justifies a deterrent element. 7. Applying these principles, the Court agreed with the prosecution that the predicate offence here was the trafficking in Class A and B drugs in commercial quantities, imported into the Island to be sold and consumed here, with the damage that does to our society. The seriousness of the predicate offences can be shown by the sentences imposed by the Court on the members of the enterprise, ranging from 8 years 2 months' imprisonment for the defendant Riley (from a starting point of 14 years 6 months) to 14 years 3 months' imprisonment for the defendant Hughes (from a starting point of 19 years). The amount of money laundered was substantial and in effect, the Defendant provided a money laundering service, crucial for the funding of the enterprise. The method used by him was sophisticated and it involved the use of a Jersey company. 8. The prosecution referred the Court to a number of cases for comparative purposes. We accept that the cases of *AG v Michel* [2007] JRC 120 and *AG v Bojwani*

- [2010] JRC 116 are now no longer comparable; the sentencing policy has moved on. We were referred to the case of AG v Rae and Spinola [2017] JRC 080 and AG v Hagin [2020] JRC 157, where sentences of 4 years were imposed for offences that were less sophisticated. In Goodwin itself, the amount involved was £596,893 laundered over some five years and the Court considered that a starting point of between 11 and 12 years was appropriate, having regard to the starting points for the predicate drug offences. The defendant was sentenced to 6 years' imprisonment, taking into account his guilty plea, his good character, his remorse and cooperation. 9. The defendants Roy, Riley, Hughes and Wolff also pleaded guilty to money laundering offences. In the case of Hughes, he was the Defendant's co-accused in counts 11 and 12, for which he received a concurrent sentence of 4 years' imprisonment following a guilty plea and mitigation. The prosecution's case is that the Defendant undertook a very different and more sophisticated form of laundering than his co-defendants, whose involvement was limited to a physical handover of cash or the removal of cash from the jurisdiction on a flight to London. The prosecution say the Defendant is far more culpable than Wolff, for example, who was only a cash courier using unsophisticated means. The prosecution submitted that the Defendant's laundering activities should be sentenced more severely than the laundering activities of his co-defendants.
10. The prosecution took a starting point of 8½ years for each count to be applied concurrently. From that, the prosecution allowed a year for mitigation, reducing the sentence moved for to 7½ years' imprisonment on each count concurrently. Mitigation
 11. At the commencement of the hearing, Advocate Jones informed the Court that he had been placed into a position of professional difficulty. He had been in receipt of unequivocal instructions from the Defendant, but this was no longer the case, and the Defendant would therefore be representing himself, which the Defendant confirmed to the Court. There was no application for an adjournment. However, Advocate Jones stayed on for the hearing to assist the Court and, with the leave of the Court and at the request of the Defendant, made a number of more technical submissions on the Defendant's behalf for consideration by the Court.
 12. The Defendant started by challenging many of the facts put forward by the prosecution in its Summary of Facts (which we note had been in his possession and that of Advocate Jones from at least March 2021), much of which he said constituted suspicion and supposition, which were not sustainable unless tested at a Newton hearing. He would only accept a penalty on the basis that he had misunderstood the Proceeds of Crime (Jersey) Law 1999 ("the 1999 Law") which he had interpreted as meaning that if the sum of cash received by him on each occasion was less than €15,000 there was no need to worry and that he had taken photo ID from every UK based customer who collected gold from the London dealers incorrectly believing this was sufficient to protect himself from prosecution.

13. The Court did not accept the Defendant's attempt to decide the basis on which he was to be sentenced, and to amend the careful and fair summary produced by the prosecution in its Summary of Facts. It should be noted that the Commissioner and Jurat Range sat on the Defendant's trial.
14. It is the case that the Defendant has very little mitigation available to him in that he pleaded not guilty and has previous convictions, which in the main were historical, save for a conviction for attempted fraud in 2008. He was uncooperative with the police and with the Court in its management of the case. Significant wasted costs were incurred by the prosecution as a result of the Defendant reneging on matters agreed at interlocutory hearings. He made vexatious applications and various allegations of wrongdoing against those involved in the investigation and prosecution, continually threatened legal proceedings if the prosecution was not dropped. He continued to maintain his innocence following conviction and therefore showed no remorse, save that he did express regret about the way he had responded to the police at the investigation, an investigation which he said had made him very angry. He said he found it difficult to convey to the Court the measure of distress he was then under. The freezing of his bank accounts (we understand by the bank concerned) was catastrophic and put him in a position of debt from which there was no recovery. He ceased to care about the consequences of his actions but accepted that he had no one else to blame but himself.
15. The Defendant argued that unlike the Goodwin case, there was no link between his money laundering offences and the drugs offences for which the other defendants had been sentenced, relying in part on bases of pleas made by the defendant Hughes, which had not been accepted by the prosecution (none of the bases of pleas submitted by the other defendants had been accepted). He said that unlike him, the other defendants knew exactly what they were doing.
16. The Defendant challenged the prosecution's assessment of the amount of money laundered, arguing that at most it was £7,000, an amount which was below the figure which the Jersey Financial Services Commission advised transactions had to be reported. In his view, his activities were not sophisticated. He simply accepted orders from persons who came into his shop and there were only two orders involving two individuals, namely Hughes and Cloonan.
17. The Defendant submitted that the best comparator case was AG v Brennan [2016] JRC 234, in which the defendant had been sentenced for one attempt to remove criminal property from Jersey by secreting some £11,660 in his car, for which he was sentenced to 12 months' imprisonment.
18. Advocate Jones made a number of submissions: (i) He referred to the decision of the Court of Appeal in Hagin v AG [2020] JCA 247 where it said at paragraph 26 that best practice requires the Royal Court to incorporate into its own sentencing remarks any of the prosecution's conclusions or Summary of Facts it adopts because these two documents are

not available to the public, media or legal practitioners. (ii) In the sentencing judgment for the other defendants ([2020] JRC 212) and in the context of the money laundering offences faced by Hughes, Roy, Riley and Wolff, the Court declined to explain the starting points for any of these offences because, having regard to the totality principle, the prosecution had moved for the sentences to run concurrently with the drugs offences and the sentences imposed for the money laundering offences made no difference to the totality of imprisonment each defendant would serve. The defendant Hughes was the co-accused for counts 11 and 12, and he was sentenced to 4 years' imprisonment on each concurrent. Allowing for the 25% discount for his guilty plea and other mitigation, it would seem that the starting point would have been around 5 years. This was the very same offence for which the Defendant was to be sentenced and Hughes was a principal member of the criminal enterprise. It was quite wrong, said Advocate Jones, for the Defendant to receive a greater sentence than that imposed upon Hughes for these two money laundering offences. The sentence should at least be the same if not lower. There had to be a rationale for the Defendant to be treated so differently from his co-accused, and none had been provided by the prosecution. (iii) In AG v Hagin, the amount of money laundered was very similar namely £66,480 on two occasions and the starting point in that case was 5 years, reduced to 3 years after mitigation. How was it fair that the prosecution was moving for the Defendant in the case before us to be sentenced to some 4½ years more for money laundering in amounts that according to the prosecution were similar? (iv) In regard to the amount said to be laundered, the prosecution had taken the highest figure possible, just under £64,000 when it had never proved how much was contained in the box and rucksacks handed over to the Defendant on the three occasions involved. The amount of money laundered was a relevant factor for the Court to take into consideration as per Goodwin and it was wrong for the prosecution to proceed on the basis of £64,000, when it simply did not know how much had been handed in. This factual basis was disputed by the Defendant, and, failing a Newton hearing, he should be sentenced on the basis he had put forward, namely that it was a maximum of £7,000 that had been handed over to him.

19. We rejected all of these arguments for the following reasons: (i) Whilst it is true that Hughes received a sentence of 4 years for each of the two offences in which he was jointly accused with the Defendant, the Court agreed with the prosecution that his involvement in money laundering was very much less than that of the Defendant. His role simply involved the handing over of cash on two occasions to the Defendant, who was then involved in an arrangement for the laundering of that cash through to members of the criminal enterprise in the UK. The Defendant was providing a sophisticated money laundering service to the criminal enterprise which avoided for them the risk of detection if they attempted to take the money out of the Island physically. The difference in their involvement fully justified the difference in their sentences. (ii) There was a clear link between the Defendant's money laundering offences and the drugs offences for which the other defendants had been sentenced; those were the predicate offences. The sentence imposed in the case of Hagin is to be distinguished because the predicate drug offence in his case was the local sale of

cannabis, for which he was sentenced to 3 years' imprisonment after a starting point of 5 years. Indeed, in that case, the sentence for the money laundering offences and the predicate drug offences were the same. (iii) In Goodwin, the Court had regard to the predicate offence in that case in arriving at a starting point of between 11 to 12 years and in this case the Court had regard to a predicate offence which involved a very substantial commercial importation of class A and B drugs. A starting point of 8½ years was appropriate when regard was had to that predicate offence-- the starting point for the defendant Hughes, for example, for the drugs offence was 19 years. (iv) In terms of the amount laundered, the Court agreed with Crown Advocate Maletroit that it would be impossible for the prosecution ever to prove precisely how much was contained in the box/rucksack when handed over to the Defendant. However, the matter has to be seen in the context of the prosecution's case as a whole, and in particular, the timing of the money being handed over, the timing of the subsequent payments into the Defendant's personal and company bank accounts, the timing of the subsequent purchases of the gold bullion, the amount shown in the bank accounts both before and after those credits and purchases and the complete absence of any explanation or record of what happened to that gold bullion or its proceeds in the UK. It was all of these transactions that formed part of the prosecution's case, and upon which the Defendant was found guilty.

- (v) Furthermore, whilst the prosecution may be unable to prove precisely how much was handed over by Hughes and Cloonan, cash was handed over and paid into those accounts thereby rendering those accounts criminal property (see the definition of criminal property in Article 29 of the 1999 Law). Those accounts were then used to purchase the gold bullion. The prosecution is therefore correct to say that the purchases of £64,000 worth of gold bullion was funded from criminal property on behalf of the criminal enterprise. The amount the Defendant now says was handed over to him, something which is exclusively within his knowledge, does not contradict the prosecution's case that the gold bullion was purchased with criminal property and therefore constitutes extraneous mitigation, the truth of which the Court is not bound to and did not accept —see *R v Cairns* [2013] EWCA Crim 467. (vi) The case of Brennan was not comparable to the very much more serious money laundering offences for the which the Defendant had been found guilty.

Conclusion

20. We agreed with the prosecution that in the context of these very serious predicate offences in which Class A and Class B controlled drugs had been imported into Jersey on a commercial scale, the starting point for each of the money laundering offences committed by the Defendant is 8½ years. He successfully provided a method of moving significant quantities of cash to the UK without members of the enterprise having to expose themselves to the risks of being caught in possession of the cash. We agreed with the prosecution that it was a crucial part of the operation.

21. There was little mitigation available to the Defendant, but we considered the two references provided by members of his family and the psychiatric report. That report showed that the Defendant had no mental illness and has capacity, although he presents with traits of a personality disorder.
22. The Court agreed with the deduction of 1 year proposed by the prosecution to allow for mitigation, which, if anything was on the generous side.
23. The Court, therefore, imposed a sentence of 7½ years on each of the three counts against the Defendant, to run concurrently, making a total of 7½ years' imprisonment.
24. The Court saw no discrepancy between the sentence of 7½ years imposed upon the Defendant and the 4 years imposed upon his co-accused, Hughes, bearing in mind their differing roles in the money laundering or with the comparator cases placed before us, in particular AG v Hagin. The sentence imposed on the Defendant was, in our view, consistent with that imposed in Goodwin, where the higher starting point of 11 – 12 years reflected the larger sums involved in that case, and the final sentence of 6 years, reflected the very considerable mitigation available to Goodwin and not available to the Defendant.

Confiscation

25. The Court granted the prosecution an adjournment of the confiscation proceedings brought by the Attorney General to be adjourned to a date to be fixed, finding that there were exceptional circumstances justifying such an adjournment, pursuant to Article 6 of the 1999 Law. The Viscount had been left with what was described as a vast number of assets to be inventoried, and that has not yet been completed. The Defendant was directed to confirm within 14 days whether or not he agreed that the property listed in the inventory can be returned to the third parties making claim to it. We left to the Viscount the Defendant's suggestion that inquiry should be made of his brother, Thaddeus Pearce, who the Defendant says has been running his business. Authorities AG v Pearce [2021] JRC 182. AG v Thurban Sait Brown Riles Roy Wolff Hughes

[2020] JRC 212. AG v Goodwin [2016] JRC 165. AG v Fish and Hinds [2016] JRC 181A. AG v Michel [2007] JRC 120. AG v Bojwani [2010] JRC 116. AG v Rae and Spinola [2017] JRC 080. AG v Hagin [2020] JRC 157. Proceeds of Crime (Jersey) Law 1999. AG v Brennan [2016] JRC 234. Hagin v AG [2020] JCA 247. R v Cairns [2013] EWCA Crim 467

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