Neutral Citation Number: [2011] EWCA Crim 644
Case No. 2010/06306/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Date: Tuesday 1 March 2011

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
(Lord Judge)

MR JUSTICE HENRIQUES

and

MR JUSTICE DAVIS

R E G I N A

- v -

JULIAN JEFFREY MESSENT

Computer Aided Transcription by
Wordwave International Ltd (a Merrill Communications Company)
165 Fleet Street, London EC4
Telephone No: 020 7404 1400; Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr Simon Ray appeared on behalf of the Appellant

J U D G M E N T

THE LORD CHIEF JUSTICE:

1. This is an appeal by Julian Messent, a man now aged 50, of previous positive good character, who, on 22 October 2010, in the Crown Court at Southwark, before His Honour Judge Rivlin QC (the Recorder of Westminster), pleaded guilty to two counts of corruption. 39 other offences of corruption were taken into consideration when, on 26 October 2010, he was sentenced to a total of 21 months' imprisonment on each count to run concurrently, disqualified for five years under section 2 of the Company Directors Disqualification Act 1986 and ordered to pay £100,000 in compensation within 28 days. He appeals against sentence by leave of the single judge.

2. The essential facts can be fitted into a brief compass. Between 1995 and 2003 the appellant was the Head of the Property (Americas) Division of a firm of London-based reinsurance brokers called PWS International Limited ("PWS"). Between 1999 and 2002 PWS made a series of corrupt payments to two state-owned institutions in Costa Rica. The appellant resigned from his job in 2006 following an internal investigation.

3. In March 1997 PWS was appointed as the sole broker for a series of insurance and reinsurance policy contracts covering the activities of the Costa Rican state-run electricity and communications company, Instituto Costarricense de Electricidad ("ICE"). The president of the organisation at the time with which we are concerned was a man called Ramirez. This group of contracts was known collectively as U-500. The contract was renewed in March 1999, September 2000, March 2002, March 2003 and March 2004.

4. The initial appointment of PWS as the broker to U-500 was negotiated between a representative of PWS and a representative of another Costa Rican organisation, Instiuto Nacional de Seguros ("INS"). The name of that representative was Acuna. INS was the state-owned monopoly supplier of insurance services to the government of Costa Rica. Its president was a man called Zawadski. Acuna was the head of reinsurance.

5. The appellant oversaw 41 corrupt payments to the three individuals already identified in this judgment between 1999 and 2002, whether directly to them, or to their spouses, or to companies associated with them.

6. In Costa Rica Zawadski and Ramirez were government-appointed employees. Both they and Acuna were in a position with their organisations to influence or determine whether PWS retained the contract to broker the reinsurance of the U-500 policy and indeed its renewal. According to the law of Costa Rica, in accepting these corrupt payments, they, too, were acting unlawfully.

7. The contracts were substantial. In order to cover the risks, INS needed to re-insure almost all of the arrangements through PWS. For PWS this was a very significant policy in terms of its size, its value and the payments. The corruption over the years meant that just under $2 million (the equivalent of just over £1,260,000) was paid by way of corrupt payments. The result was that PWS

earned not far short of £5 million worth of brokerage from the U-500 contractual arrangements alone. The appellant's bonus was tied to the brokerage that he was able to earn and so his bonus was substantially increased as a result of these corrupt activities. The best estimate that could be made was that his bonuses were increased by £428,000 (which after tax was something like £265,000 net).

8. That is not an end of the story. The corrupt payments made by PWS to the organisations and individuals in Costa Rica were clawed back from Costa Rica by sums of money being returned to PWS disguised as insurance premiums. The arrangement was put through the books at PWS under "ceding commissions" or "third party commissions". That was a euphemism. In reality these sums were part of the payment into a slush fund to enable this corruption to continue and succeed. The government of Costa Rica, and therefore the citizens of Costa Rica, were in effect made to pay for the corruption of their own officials by foreigners and therefore they suffered a loss of not far short of the original $2 million as a result of the appellant's corrupt behaviour.

9. In March 2002 there was a presidential election in Costa Rica. The senior personnel at INS and ICE then changed. In February 2005 the U-500 contract was reviewed in Costa Rica. Eventually the unexplained payments back into PWS were revealed and the matter was then investigated. The president of INS was unhappy with the response offered by PWS and so the matter was referred on to the chairman of PWS. Further inquiries revealed what had happened and led to the involvement of the authorities in this country.

10. On 30 January 2007 the appellant was arrested. When he was first interviewed he denied that he had paid any bribes to officials at INS and ICE. He asserted his belief that the payments were made for legitimate travel and training requests. Ultimately, however, after a long investigation the corruption was revealed. In December 2008 he was interviewed again. On this occasion he declined to comment.

11. The judge approached the sentencing decision with his customary, meticulous care. We have studied the detail of his sentencing remarks. They identify the essential features of this case. The appellant was in a position of trust and influence with PWS. He had come to, and did not personally initiate, the corrupt arrangements between PWS and PWS's Costa Rican accomplices. Others in PWS were aware of what was going on, but these corrupt arrangements were very much in their infancy at the time when the appellant became involved. Like anyone in the position which he enjoyed, he was also in a position immediately to bring the corrupt activity to an end. Perhaps, as Judge Rivlin thought possible, the appellant did not fully appreciate the seriousness of the offences which he committed, but he entered into these criminal activities with some energy. Over the three years with which we are concerned, some 41 corrupt payments were made on separate occasions for these substantial sums of money. They were then in effect retrieved through what was a carefully structured, dishonest system which meant that PWS were compensated for the cost of the corrupt payments. It was impressed on the judge, and in the oral submissions impressed on us, that PWS "delivered on their contracts". In short, having obtained the contracts through major corruption, the contracts which were obtained were then properly performed. Nevertheless, the end result was that Costa Rica funded these corrupt activities and paid nearly $2 million more than they should have

paid for the successful performance of the contracts. The end result was a significant personal financial advantage to the appellant in the form of the inflated bonus packages.

12. At the outset of the inquiry the appellant did not co-operate. He offered an untruthful explanation. Eventually, having declined to comment following the lengthy investigation, he was invited to consider entering into a plea agreement and he did so. Thereafter, he co-operated fully with the investigating authority. He admitted his guilt and in due course pleaded guilty at the Crown Court.

13. The judge approached the case on the basis that the appellant was entitled to full credit for his guilty plea. We respectfully question whether, in reality, that was appropriate. But it does not affect the view which we have formed of the sentence. There had been a lengthy delay of which the judge took full account. He recognised the personal impact upon the appellant and upon his family. He reminded himself, however, that it is hardly open to a defendant in a case like this, whose immediate response to inquiries was to direct attention away from himself, to complain at a subsequent delay in the process of bringing the case to trial and to justice.

14. The appellant is a man of positive good character. The discovery of his criminal activities, now informed publicly by his convictions, has had a devastating effect on his financial affairs and his future employment prospects. It is to his credit that he eventually provided a full and frank statement of his assets and did not seek to dissipate them, so that some substantial sums were available to enable a compensation order to be made in favour of the losers. The judge was aware, as are we, of the impact of the last few years on the appellant's life and, no less important in the present context, on the life of his wife and family. They were not overlooked by Judge Rivlin. Nor do we overlook them. However, when apparently decent, reputable people dishonestly inflate their income and improve their own lifestyles and that of their family, the emergence of the truth almost always does have a devastating impact on them all.

15. Mr Simon Ray, who appears on behalf of the appellant, was direct in his submissions which he made with clarity. He declined to elaborate them unnecessarily. He is to be commended. In essence the submissions were a repetition of the written submissions. In summary, it is said that the sentencing range identified by the Recorder of Westminster at four to five years' imprisonment before appropriate discounts for mitigation, was excessive; the focus was that the corruption in this case was "commercial rather than political"; and accordingly, on the basis of an observation by Thomas LJ in R v Innospec Limited (26 March 2010), not at the top of the range of criminality for this type of offence.

16. Developing the submissions it was suggested that four to five years, given a number of other sentencing decisions to which attention was drawn in the course of the written submissions, and Innospec and R v Dougall [2010] EWCA Crim 1048, this starting point was too high. The sentencing decisions in those cases were drawn to the attention of the Recorder of Westminster in the course of the hearing before him. We, too, have considered them in our pre-reading for this hearing.

17. Two points may be made. First, individual sentencing decisions are fact-specific decisions. They may offer some broad assistance to a sentencing judge to help him reach the appropriate approach to the sentencing responsibility, but they do not bind him. If they are not said to be guidelines cases (and none of these was said to be a guideline case), they are not guideline cases. Secondly, we must make it clear that in sentencing remarks a judge is not normally expected to refer to a whole series of fact-specific sentencing decisions which have been drawn to his attention and address them one by one, taking each of the individual decisions and demonstrating how and why they do or do not assist him, in relation to the decision in the individual case. In other words, these decisions do not constitute binding precedents which he must apply or distinguish. The system would collapse if judges were required to do that.

18. In the result we are satisfied that Judge Rivlin approached the case correctly, having carefully informed himself of its essential features in the light of the authorities drawn to his attention. The more specific point arose from the consideration of the observations of Thomas LJ in Innospec where he said:

> "30. There can be no doubt that corruption of foreign government officials or foreign government ministers is at the top end of serious corporate offending both in terms of culpability and harm."

We accept that proposition, but we do not see the top end of serious corporate offending in this context as confined to, or limited by, corruption of foreign government officials or foreign government ministers. That is partly because of the words which follow in Thomas LJ's judgment:

> "It is deliberate and intentional wrongdoing. It causes serious harm."

Thomas LJ then recited the language of the United Nations 2004 Convention against Corruption for this further reason:

> "Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries -- big and small, rich and poor -- but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding

> inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development."

That language is graphic; it is clear and unequivocal. We adopt it without hesitation.

19. We come to examine what we believe to be a distinction without a difference in the context of this case. In its opening before Judge Rivlin the Crown made it clear that, during the course of the interview when the appellant began to acknowledge his criminality, he accepted that he knew that he was dealing with government bodies. Whether he knew it or not, these were government bodies the heads of which were personally appointed by the President of Costa Rica. It is also clear that the money held by INS represented state funds. The premiums were paid out of state fund and, as we have explained, it was from state funds that the corrupt bribes were eventually funded. This was corruption involving government-selected employees in Costa Rica who lost their jobs following a president election. They were employed by the state and the ultimate loss was suffered by the state of Costa Rica. We do not comment on the economic position of Costa Rica, but in the context of the observations in the 2004 United Convention against Corruption, we remind ourselves that corruption "undermines a government's ability to provide basic services".

20. In these circumstances the culpability of the appellant was not reduced because a commercial organisation rather than political corruption was involved. In the context of this case, as we have said, that would be a distinction without a difference.

21. Having considered all the authorities drawn to our attention and to the attention of the Recorder of Westminster, we do not accept that the judge took an excessive starting point when he began his consideration of the appropriate sentence. In his carefully crafted submission Mr Ray was less than realistic when he suggested that a two year starting point would have been appropriate for this case. We have concluded that the judge's starting point was within the appropriate range, that he gave as much discount as he could for the mitigation that he found, but that the end result is that the sentence is not open to criticism in any respect.

22. Accordingly, this appeal against sentence will be dismissed.

_____