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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 1314



No. 202301411 A5

Royal Courts of Justice

Tuesday, 12 September 2023

Before:

LADY JUSTICE SIMLER
MRS JUSTICE MAY
MR JUSTICE CHAMBERLAIN

REGINA
V
LEAH JONES

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MS E. KANDOLA appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE CHAMBERLAIN:

- 1 On 7 April 2021, in the Crown Court at Woolwich before his HHJ Heathcoate-Williams KC, the appellant Leah Jones pleaded guilty to three counts of fraud contrary to s.1 of the Fraud Act 2006. These were Counts 2, 3, and 5 on a six count indictment.
- 2 On 3 April 2023, at the same court before HHJ Downing, the appellant was sentenced to concurrent terms of 31 months' imprisonment on each count. Two other counts were ordered to lie on the file.
- 3 The appellant now appeals against sentence by leave of the single judge.
- 4 Each of the three counts to which the appellant pleaded guilty alleged fraud by the appellant and another individual, Kayleigh Stonestreet, against their employer, CC Cousins Limited, a small or medium-sized family company run by two brothers carrying on a maintenance, plumbing and electrics business. Both the appellant and Ms Stonestreet were longstanding employees who worked in the company office. The appellant was the office manager.
- 5 Count 1 concerned Ms Stonestreet alone. It alleged that she had used the company account with Vodafone to order mobile phones to the value of £41,000, sold them on and kept the proceeds.
- 6 Count 2 alleged that Ms Stonestreet and the appellant had used the company's money to make payments totalling £11,040 to their own credit card accounts.
- 7 Count 3 alleged that Ms Stonestreet and the appellant had used the company's Amazon account to order goods to a total value of £68,885.
- 8 Count 5 alleged that Ms Stonestreet and the appellant had used the company Paypal account to make purchases for themselves to a total value of £135,920.
- 9 I should say that these figures were not themselves stated in the indictment, but they were made clear as part of the prosecution case. The total amount of which the company was defrauded was said to be £290,000, of which £180,000 went to Ms Stonestreet and £110,000 to the appellant. It is not entirely clear how these figures were arrived at, but the figures were stated very clearly in the prosecution opening.
- 10 During the prosecution opening of the facts the judge made clear to counsel that she was proposing to sentence on the basis of a total loss of £300,000 because "it was the two of them together that did defraud." Although Ms Stonestreet had begun defrauding on her own "thereafter ... the two of them joined in enthusiastically".
- 11 In her sentencing remarks she read out part of the victim statement from one of the brothers who ran the company. He said that the company had systems and procedures in place to protect and prevent things such as fraudulent activity from happening. Both Ms Stonestreet and the appellant were part of those processes and had conspired together to go against them for personal gain.
- 12 The judge said that Ms Stonestreet and the appellant were "in all senses of the word jointly liable" and that without the appellant the fraud could not have gone on for as long as it did and would not have gone into quite such large sums of money. Each of them, the judge said, enabled the other to go on and get exactly what they wanted to get from the company.
- 13 The judge read other parts of the victim statement which made clear the extent to which Ms Stonestreet and the appellant had been trusted members of the team, the time and

resources expended in uncovering the frauds and the impact, both in financial terms on the company and in personal terms on its directors and staff.

- 14 The judge said that although no conspiracy was charged, Ms Stonestreet and the appellant were "no doubt loyal conspirators and enabled the other to take their share". Thus, to reflect the seriousness of the offence she said that it was appropriate to take £300,000 as a starting point for both defendants. Applying the Sentencing Council's Definitive Guideline for Fraud the judge considered that culpability for both defendants was high because the offences involved a breach of trust. There is and could be no complainant about this. She then began with the starting point for a loss of £300,000 which was five years' imprisonment in each case
- 15 In Ms Stonestreet's case, she reduced this by six months to reflect her previous good character and a further three months for the delay not attributable to her late plea, giving a sentence of 51 months' imprisonment. After credit for plea, that gave a sentence of 46 months.
- 16 In the appellant's case, the judge began with a starting point of 54 months since the appellant had not been involved in Count 1. She reduced this by a further six months for previous good character and a further six months because of the delay caused by Ms Stonestreet's late plea, giving a sentence of 42 months' imprisonment before credit for plea. After 25 per cent credit for plea, that gave a sentence of 31 months' imprisonment.
- 17 The first ground of appeal, as set out in the written grounds and as elaborated upon orally by Mr Kandola of counsel today, was that the judge erred in taking as her starting point five years on the basis that the total value of the frauds committed by both defendants was £300,000.
- 18 In our judgment, the judge did err in this respect. Although Counts 2, 3, and 5 were directed at both defendants, there was no distinct allegation of conspiracy. It appears from the defence sentencing note that the appellant and Ms Stonestreet both accepted joint liability in respect of Count 3, but there is nothing to indicate such an acceptance in respect of the other counts. The judge should have sentenced the appellant on the basis of the fraud attributable to her, namely £110,000. That should have yielded a starting point of four years, given its sustained nature, taking place as it did over five years between the beginning of 2013 and the end of 2017. Taking into account her previous good character and an adjustment to reflect the delay, the sentence should have been one of three years' imprisonment before credit for plea.
- 19 The second ground of appeal is that the judge should have given credit of one-third rather than 25 per cent. We do not accept that the judge erred in this respect. The appellant chose to make only a limited admission at a very early stage. Although it is true that the judge at the PTPH made reference to the absence of statements and exhibits, this did not prevent the appellant from making admissions as to the extent of her fraud, a matter which was within her own knowledge. The judge was accordingly correct to give 25 per cent credit for the appellant's plea at the adjourned PTPH. This means that, leaving aside the effect of the sentence on the appellant's three children, the appropriate sentence would have been one of 27 months' imprisonment.
- 20 We have considered carefully whether that sentence should be reduced to take account of its impact on the appellant's three children. The youngest was only five months old at the time of sentencing. The appellant, who was then breastfeeding her baby, was initially separated from the baby but was then transferred to a mother and baby unit at HMP Bronzefield where she has remained since with the baby. Even after that, however, the impact of the sentence

has been to separate the other children from their mother and their sibling. In the circumstances, we consider that the sentence should be reduced to one of two years' imprisonment.

- 21 The question of suspension did not arise before the judge, given the sentence she imposed. Because we have concluded that the correct sentence is one of two years, that question does arise for us. We have borne in mind the seriousness of this offence. As the victim's statement made plain, the appellant was a trusted, senior and long-standing employee. Her offence was corrosive of the trust which must and did exist between managers and employees in a small company. Although she was of previous good character, these offences were not attributable to isolated errors of judgment. They were committed over a considerable period of time. However, the appellant has now served over five months in custody. That will have been a great shock, particularly because she was initially separated from her baby while breastfeeding. Custody will have had a greater impact on her than on most offenders because of her young baby. Having considered both the pre-sentence report and the prison report, there is in our view a good prospect of rehabilitation. Most importantly, further custody would have a serious adverse impact on the two children not currently with her.
- 22 In those circumstances, we consider that all the indicia for suspension are present and that the sentence should therefore now be suspended. Accordingly, we quash the sentence of 31 months' imprisonment and substitute a sentence of two years' imprisonment suspended for two years.
- 23 I should say at this point that we were addressed on the basis that we ought to take into account the considerations adverted to by this court in *R v Ali* [2023] EWCA Crim 232. We have not relied on those considerations, because, as we read it, that case is primarily dealing with the position in adult male prisons and, at any rate, does not seem to us pertinent to the position of an offender such as this in a mother and baby unit.
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CERTIFICATE

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This transcript has been approved by the Judge.