

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

WILLIAM RONALD MARKS
JAMES DANIEL McGEOWN
JOHN SYMINGTON

McLAUGHLIN J

[1] Each of the accused has pleaded guilty to the counts referable to them individually on Bill of Indictment No. 10/029368 which contained a total of 38 counts. These may be broken down as follows:

Counts 1-11 - Refer to Marks and allege that he was guilty of the offence of corruption with agents, contrary to Section 1(1) of the Prevention of Corruption Act 1906 by accepting various sums of money from McGeown.

Counts 12-22 - Allege a similar offence in each instance against McGeown with reference to the same payments made to Marks by McGeown.

Counts 23-26 - Allege similar offences against Symington based on payments made to him by McGeown.

Counts 27-30 - Allege similar offences against McGeown with reference to Symington.

[2] The core of the allegations in short is that the defendant McGeown paid sums of money to Marks and Symington as inducements or rewards for them showing favour towards him in the tendering for and continuation of contracts in respect of his company, Vis Security Solutions Limited, formerly Vis Limited, of which he was a director. By way of example Count 12 alleges that he paid Marks the sum of £2,500 for this purpose. Count 1 on the other hand mirrors that allegation by alleging that Marks corruptly accepted that payment from McGeown as an inducement or reward to show such favour.

[3] Thus Counts 12-22 allege the payments made to Marks by McGeown were corrupt payments contrary to the 1906 Act whilst Counts 1-11 allege the payments were accepted by Marks from McGeown.

[4] In similar fashion Counts 27-30 allege that McGeown paid Symington sums of money corruptly whilst Counts 23-26 allege that Symington accepted these sums from McGeown.

[5] Counts 32-34 relate to Marks only and allege offences contrary to Article 47(1)(b) of the Proceeds of Crime (NI) Order 1996 in that he converted or transferred various sums, being proceeds of criminal conduct, by crediting sums of money to the account of Carol Kealey for the purposes of avoiding prosecution for an offence to which the 1996 Order applied (Count 32); by using the money to fund the purchase of a number of properties in Northern Ireland (Count 33) and to fund the purchase of a property in Spain (Count 34).

[6] Count 37 refers to a further charge of corruption referable to McGeown in that he made payments to AB - contrary to the 1906 Act. No mirror charge is laid in respect of the recipient as he was not before the court; there is in place an order restricting reporting of this matter so as not to prejudice any future proceedings.

[7] Count 38 refers to Carol Kealey only and alleges the offence of obstructing a constable. The particulars allege that she did so by conducting transactions for Marks, her brother, through a bank account in her name. She pleaded guilty some time ago and was sentenced then. She is no longer before the court.

[8] Counts 31, 35 and 36 have been left on the books marked "Not to be proceeded with without the leave of the Crown Court or the Court of Appeal".

Consequences and nature of the offending

[9] The defendant McGeown operated a substantial and successful electrical contracting business for very many years and from the earliest stage of the troubles he did work for various Government agencies, including the Ministry of Defence. It will be appreciated that this was regarded as potentially very dangerous as many people in similar circumstances were killed, injured, intimidated or terrorised in various way for providing such services. It is important not to forget the dangers faced, and the sacrifices made, by people such as him doing this work, even though it was well rewarded. The nature of the work could only be entrusted to a certain group of contractors due to the sensitivity of the tasks e.g. McGeown was shot in 1974 yet continued to carry out this work for the MOD, and by dint thereof to serve the community, until these offences came to light in 2002-3.

[10] The contracts he carried out included the installation of electrical plant and equipment, including vital CCTV systems to help secure army bases and to keep them functioning. It is essential to understand what form the offending took and its

consequences in order to assess the culpability of each accused. Much of this material is agreed and I shall summarise it in the following way.

- (1) Although the contracts involved were worth a lot of money all were subject to a tendering process. McGeown's company was awarded the contracts from which he benefited on the basis that his price was the lowest and/or provided the most economically advantageous option. The taxpayer suffered no loss as a result.
- (2) The monies paid to Marks and Symington (and also AB) were never claimed by McGeown as business expenses so the company's profit and loss account was not affected in any way. The consequence is that all proper personal and corporate taxes were paid.
- (3) All of the work which was the subject of these contracts was carried out to the requisite quality standards. There is no complaint that any shortcuts were taken or that the work was in any way prejudiced as a result of the corrupt payments that were made.
- (4) The prosecution accept the corrupt nature of the payments did not actually cause McGeown to secure any of these contracts. I shall return to this in a little more detail later. The reason for this is that neither Marks nor Symington had any authority to actually award the contracts and so therefore the payments can be seen exclusively in the context of McGeown acquiring what might be loosely described as "insider" type information. I emphasise however that the crimes consist of payment or receipt of the money by the accused: the prosecution need not prove the payments caused or contributed to McGeown winning the contracts in question.
- (5) The "benefit" achieved by the payments made by McGeown to the MOD employees seems to have been for the purpose of finding out who the other select tenderers were. This may have helped him in framing his bid to secure the work but, I repeat, he could only obtain the contract by offering the lowest price or the most economically advantageous tender.
- (6) The environment in which these contracts were awarded, and carried out, has changed vastly in recent years. This is due to a combination of the implementation of European Union Procurement Directives, European and national competition laws and other national legislation. The system which prevailed in Northern Ireland during the relevant years was a product of our own special circumstances which have greatly altered in the intervening years due to the Good Friday Agreement and subsequent political developments.

The mitigating factors advanced by each of the defendants

(1) McGeown

[11] Mr John McCrudden QC, on behalf of the defendant McGeown has relied upon each of the factors just enumerated as part of the underlying basis of his plea. Although McGeown appeared second on the indictment I propose to deal with him first by way of sentence.

[12] The accused is now 73 years old, he was born in 1939 and left school as a 14 year old taking up employment as a tea boy/messenger. He has a completely clear record. He progressed to become an apprentice electrician and at 22 started his own electrical contracting business. For the last 50 years therefore he has carried on this trade. He has been highly successful in the work and even today, in the depressed economic climate within the construction sector, he employs 60 people. The future welfare of the company is therefore of intimate concern to each of those people. He is also a married man of some 50 years standing and has five children. I have been shown some medical evidence which satisfies me that he has paid loving attention to his wife over very many years, attention which has been necessitated by her very difficult health situation. I do not propose to analyse that further in the public arena.

[13] It has also been pointed out that this has been an extremely long drawn out process for him, as it has for the others. They were each first questioned about these matters in 2004. The delay can be explained, whether it emanated from the prosecution or the defence side, nevertheless it is legitimate to take into account that facing charges of this kind, with the consequent uncertainty, inevitably results in a significant disruption of life and undermining of one's ability to conduct one's affairs. I have no doubt this had a very disruptive effect on his legitimate business and personal life for approximately eight years.

[14] Mr McCrudden has also pointed out that this would have been a very long trial, certainly it would have taken at least three months to hear given that there were four defendants originally. Whilst the defendant McGeown has pleaded guilty to each of these charges it has been argued on his behalf that he did have a potential working defence, certainly prior to a ruling just before summer 2011 when a definitive ruling was given by the court admitting extensive hearsay evidence. It has been said on his behalf that he has pleaded guilty at a relatively early stage because following upon the decision to admit the hearsay evidence a considerable stocktaking exercise had to be carried out in order to assess the extent of that evidence and its potential impact on the final outcome. It is also said that Count 37 (which relates to AB) would have involved a separate trial had he not pleaded guilty to that count and asked for it to be added to the indictment. There is no doubt that the pleas have saved a very considerable amount of court time in each of these cases. Whilst it may be arguable that the pleas could have been entered at an earlier stage I

accept that it was the admission of the very extensive hearsay evidence which proved to be the significant turning point and that thereafter some period of time was necessary in order to be able to assess its full impact. I think it is not inappropriate that some credit should be given for the plea, albeit that it was entered after the actual start date of the trial. I do not have to decide the strengths or weaknesses of the prosecution case now though I am satisfied it would have entitled a jury to convict McGeown, and the others.

[15] In addition to the very difficult domestic circumstances faced by McGeown due to his wife's ill-health, I have also been made aware of considerable health difficulties on his own part. I have read the medical evidence which has been submitted on his behalf and this includes a report from Professor Davison. This details the difficulties he would have experienced in coping with a long trial. Indeed an application to stay the proceedings based on his impaired capacity to defend the case, and on delay generally, was abandoned in order to enter the pleas to the various counts laid against him. His inability to follow the evidence over an extended period, had a normal court day been insisted upon, would have led to injustice and the inevitable consequence would have been sitting for short periods with multiple breaks or for short days. Either way the effect would have been to considerably lengthen the trial for reasons over which he had no immediate control. The fact that his house was so comprehensively searched had a significant impact on his wife and family as did the intervening period of eight years of uncertainty and again this is something which I can take into account legitimately.

[16] It is further argued on his behalf that although sums totalling £265,000 could be shown by the prosecution to have been lodged to the account of the co-defendant Marks over several years that only some £66,500 can be linked to McGeown. It seems that a percentage of the balance represented his salary over the relevant period.

[17] I have already alluded to the backdrop of the troubles in Northern Ireland which was part and parcel of the way in which these works were conducted over very many years. It is acknowledged by the prosecution that McGeown was shot and wounded in 1974 in a terrorist attack when he was coming from an army base and that the shots were fired at him. Building upon that Mr McCrudden has emphasised how McGeown could be relied upon by the MOD throughout the troubles to carry out all necessary works at short notice where required and to carry out contracts at any stage at their direction. He undoubtedly built up very personal connections over those years, including with Marks and Symington. The ethos of the company he ran, and of the client, was that the work "must be done now" rather than "can be done soon".

[18] It is also emphasised that the value and quality of the work is not in question and that is relied upon and emphasised on his behalf. Equally the fact that it cannot be shown that the MOD overpaid for any of this work, or that there has been any loss to the revenue through depleted tax payments, is of considerable significance.

[19] There is no doubt that McGeown, via his company, has benefited considerably from winning these contracts. In view of the circumstances which I have already outlined it would probably be virtually impossible to make a fair estimate of what part of this might be said to be “ill-gotten gains”. It might be open to argument that he did not get any added benefit as a result of the payments if his tender price was accepted as the lowest or most commercially advantageous. Nevertheless acknowledging the culpability which has been demonstrated by the prosecution it has been agreed by him that he will repay a sum of £1m, I accept that this will not be readily found, particularly in the current depressed economic circumstances, but the undertaking has been given and I shall assume that it will be met. This represents a significant factor in the case as it will be underwritten by a court order.

[20] I am informed, and the prosecution agrees, that he will be subject to director disqualification proceedings and that ultimately he will have to discharge himself from any further connection with the operation of a business which he built up over the last 50 years.

(2) Marks

[21] Mr Barry Macdonald QC on behalf of Marks has asked me to take account of a number of mitigating factors and I shall set those out seriatim.

- (1) Mr Macdonald has told me from the Bar that he advised Mr Marks that the case against him was based entirely on circumstantial and hearsay evidence which was capable of being contested as to the impact of it in total. Nevertheless he has accepted his guilt, seeks clemency from the court and out of a desire to set this matter behind him he decided to face up to his responsibilities and plead guilty. I accept that Mr Marks is genuine in pleading in this way and shall allow credit for that. His approach has, for the reasons already mentioned resulted in a considerable saving of court time and public money.
- (2) Mr Macdonald also seeks to rely upon the fact that there is no evidence McGeown was favoured in the winning of these contracts by any action of Marks, in the sense that he did not have authority to award the contracts in the first place.
- (3) It is said that the role of Marks can be confined to the fact that he gave McGeown information relating to the names of the various companies which were invited to tender and/or which had submitted a tender. He did not disclose what the price or work/labour rates were as all of these were part of a closed bidding situation. Finally, he had no part in agreeing any price to be paid, assessing the quality of the work once it

was done or in placing the contract initially in any of the instances referred to in the evidence.

- (4) Reliance is also placed upon the fact that the prosecution has accepted there is no complaint about the quality of the work or any allegation of a loss to the taxpayer in general or the MOD in particular.

[22] There is no doubt that for a period Mr Marks did enjoy the fruits of his criminal behaviour. He was able to buy property and for a while led a more affluent lifestyle than he would have been able to justify on his salary. It has been pointed out on his behalf however that the benefits were short-lived and indeed he has now been ruined financially by over-stretching himself in the property market. He has many debts that he cannot repay. I have been shown a list of property valuations carried out by the firm of Morton Pinpoint showing that the properties which he bought with the proceeds of the offences are in negative equity of £160,000.

[23] I accept that by virtue of his offending, the fact that he has been under suspension for so many years and intervening ill-health; he has now no prospect of working. He has lost full-time and secure employment in the Civil Service and is financially broken. He ought at this stage of his life to have been approaching a reasonably comfortable and secure retirement had it not been for succumbing to the temptation to take what seemed like "easy money".

[24] It has also been urged upon me that Marks has suffered a sense of moral retribution for what he has done quite apart from the financial ruin which he finds himself in. His house was raided in 2004 and this caused very considerable strife in his marriage. His wife was already in a fragile state psychiatrically, she quite properly blamed him for bringing about that situation; her health deteriorated rapidly thereafter and she took her own life within four months. The Coroner's verdict recorded an accidental overdose as the cause of death but it seems that a suicide note was left by her. The ripple effects went out much wider than his own family however, because his father's house was searched (he is bedridden), he was disowned by his brothers whilst his sister, Carol Kealey, ended up in the dock.

[25] In the case of Marks there is also a significant psychiatric background and I note that due to his mental state it was deemed necessary to have an appropriate adult present during his police interviews. In the course of the last number of years he has played a key role in looking after his elderly mother. I have read the letter which she wrote asking me to show clemency towards him in which she explained in some considerable detail the extent to which she is dependent upon him for care and assistance with daily living.

[26] Marks has a completely clear record, he has worked since he was 17 years old and has completed 30 years in the Northern Ireland Civil Service. Throughout that time his Annual Performance Reviews were all positive and these are relied upon as showing that he otherwise has discharged his duties appropriately. Accordingly Mr

Macdonald has asked me to take the view that Marks acted so foolishly through a lack of judgment rather than any sense of disgruntlement with, or desire to damage, his employer, or out of any intention to cause harm to the Ministry and this is a case of failing to reflect sufficiently on the implications of what he was doing and of now paying a very heavy price for that failure.

(3) Symington

[27] Mr Paul Ramsey QC on behalf of Symington has urged a number of factors which are unique to him, but he has also relied upon the general background and circumstances which I set out earlier and which I need not repeat.

[28] He is 55 years old and also has a completely clear record. He was employed first in 1974 as an invoice clerk in a building company and then in 1979 joined the Property Services Agency, effectively becoming a civil servant. During his career he served in the Falklands, Cyprus and Berlin. He achieved the rank of Assistant District Regional Quantity Surveyor and before 2004 had completed a total of 25 years service with an exemplary record. He was suspended from his post in December 2004 and interviewed by the police in 2006.

[29] Mr Ramsey has relied upon the fact that he has pleaded guilty and asked for credit on the basis that he had a working defence, as explained earlier, to the charges. He confirmed that the delay faced by virtue of the volume and complexity of the investigation had led Symington to desire to put the whole matter behind him by accepting his guilt at this stage.

[30] Symington is married with two sons and his wife is employed as a part-time shop assistant. It is not said that he demonstrated any inappropriate or lavish lifestyle. The prosecution allegations in respect of the four counts which affect him involve a total sum of £18,000. That is a relatively modest amount but has had catastrophic long term effects on his life and financial well-being. He has now little prospect of work and a sum of £24,000 to include interest has to be repaid by him. This is said by Mr Ramsey to be a "formidable target" for someone without employment and I have little doubt that is correct.

[31] Symington also has a significant medical condition which has been explained fully by Mr Quigley, neurosurgeon, in his detailed report. The condition is known as Trigeminal Neuralgia. He has presented a considerable management challenge to the surgeons and his condition is described as one of the most painful medical conditions of its kind. The only remaining available treatment to him is in the form of surgery but that would present a high risk of long term side effects and I am told that he is at present undecided as to whether he should undergo the surgery or not. I am told he has postponed any decision until the outcome of the case is known as he is not able to decide what to do in the current state of uncertainty in his life.

The authorities

[32] There are no guideline cases or advices from the Sentence Advisory Council available in these cases. A number of previously decided cases have been put before me and I have read these although every case must be taken individually and on their own merits. I am satisfied however that cases of the category with which I am now dealing as a general proposition may be said to be so serious that only a custodial sentence would suffice in order to reflect the urgent public necessity of ensuring integrity in the public service and deterring those who are minded to attempt to corrupt it. Nothing less can be required of those who are paid by taxpayers to promote and safeguard their interests. It is however equally important that justice should be administered on an individual basis and therefore I have taken some time to set out the personal circumstances and the mitigating factors relied upon.

[33] I have concluded that by virtue of the combination of all of the circumstances which I have just itemised that I can approach each of these cases on an exceptional basis. I consider that each person must be subject to a term of imprisonment but I propose to acknowledge the special circumstances of these cases by deciding they can be dealt with by way of prison sentences the immediate implementation of which may be suspended. I shall therefore impose one sentence to reflect the whole of the charges against each of the accused and to respect the principle of totality which is applicable in cases of this kind where there are multiple charges spread out over a period of time. I am satisfied that by reason of their clear records and mature years there is no real risk of reoffending.

[34] In the case of McGeown he shall be subject to a period of three years imprisonment which shall be suspended for a period of two years. In the case of Marks he shall be subject to a period of imprisonment of two years which likewise shall be suspended for two years. In the case of Symington, having regard to the lesser number of charges and the lesser value involved, I shall impose a sentence of nine months imprisonment suspended for two years.

[35] The same sentence shall be imposed on each count for each accused and they shall all run concurrently.

[36] In view of the sentences imposed no question of a custody-probation order arises.

[37] The effect of these sentences is that in each case if you do not commit any offences within the next two years you will not be liable to serve these terms of imprisonment. If you do commit any further offence in the next two years you shall be brought back to this court and shall have these sentences put into effect in addition to any penalty imposed for that further sentence.