Neutral Citation No. [2010] NICC 6 | **Ref: HAR7623**

Judgment: approved by the Court for handing down (subject to editorial corrections)* | **Delivered: 26/2/2010**

IN THE CROWN COURT IN NORTHERN IRELAND

BELFAST CROWN COURT

THE QUEEN

-v-

PATRICK GERARD SMALL
AND
MARY ELIZABETH SMALL

HART J

[1] The defendants have pleaded guilty to a number of counts relating to cheating the Revenue and, in the case of Mrs Small, specimen charges of false accounting between 11 November 2000 and 30 March 2004. This case was fixed for trial at the beginning of last term, and on 2 July 2009 I was asked to give a Rooney indication by counsel for both defendants, and I did so on 3 July. At the end of the indication I stated that it would remain open until 24 July 2009. Before the indication lapsed Mrs Small pleaded guilty to the first three counts on the indictment and a number of specimen counts of false accounting. Mr Small did not plead guilty to any counts until the commencement of the trial. The plea hearing for both defendants was fixed for 13 November 2009 to enable the defendants to put their domestic affairs in order. On 13 November Mr Small indicated that he wished to vacate his plea, and as a result the matter was further adjourned from time to time.

[2] On 13 November it was adjourned to 20 November at his request, and on 20 November it was again adjourned to 27 November. On that date it was confirmed that he wished to vacate his pleas of guilty, and at the request of his counsel (Mr Gallagher QC who appears with Mr Michael McComb) the matter was adjourned to 22 January 2010 to enable further medical evidence to be obtained. On 22 January it was stated on behalf of Mr Small that he no longer wished to vacate his plea, and he personally confirmed that to the court. The plea hearing was then fixed for 29 January. Mr Small did not appear on that date. He sent a message that he was unwell but there was no medical evidence to support his assertion and a bench warrant was issued. This was ultimately executed when he surrendered to the court by arrangement on Tuesday 2 February. The plea was then fixed for 12 February. Throughout these events his wife was awaiting sentence, but Mr Horner QC (who appears for her with Mr Doran) understandably wished that his client should not be sentenced before her husband. I

accepted this because it was apparent from the pre-sentence reports and other reports filed on behalf of both defendants that relations between them had markedly deteriorated, and Mr Small was asserting that he did not wish to plead guilty and that his wife bore the entire responsibility for the offences. I shall return to these events later.

[3] In the course of my indication of sentence under the Rooney procedure I set out the facts and the relevant considerations in some detail, and the account I now give is essentially a repetition of the account that I gave during the Rooney indication, with the addition of some further information provided by Mr Fowler QC (who appears for the prosecution with Miss Roseanne McCormick) in the course of his oral presentation of the facts during the hearing of the pleas in mitigation.

[4] The defendants have carried on business under the name of Greystone Builders' Merchants from at least the formation of that company on 1st June 1994. Before that both had some experience in banking. Mrs Small worked for the Ulster Bank for many years, and Mr Fowler stated without contradiction that, although he had been unemployed and was on invalidity benefit immediately before the company started up in business, Mr Small had also previously worked in a bank. The evidence reveals that from the tax year 1988/1989 Mrs Small had money on deposit in the Isle of Man on which she did not pay tax because she did not declare the interest to the tax authorities in this jurisdiction. The amounts of interest were small at first, but were very substantial indeed in later years. Thus in 1988/89 the interest was a modest £1274, but in 2004/2005 it was £89,926. In five of the eight years between the tax years 1988/1989 and 1995/1996 both Mr Small and Mrs Small had money on deposit in the Isle of Man and evaded tax on this interest by failing to disclose it.

[5] It appears that once Greystone Builders' Merchants started trading in the tax year 1994/1995 it generated substantial profits, because from December 1995 to July 1999 17 bank drafts with a cumulative value of £879,632.25 were purchased in the name of Gerard Small and his children and lodged in three different banks in the Isle of Man. Other amounts were also lodged in the Isle of Man, and altogether, including the amount of £879,632.25, a total of £1,637,000 was lodged over the period between November 1988 and 5 April 2005. The interest on these off-shore accounts has been calculated as amounting to £653,822 during that 17 year period, during which the existence of these accounts was not disclosed by the Defendants and upon which, therefore, no tax was paid.

[6] Placing cash in off-shore accounts was not the only way in which the defendants concealed money from the Inland Revenue, because they also placed very large amounts in separate accounts in various banks in Northern Ireland which were never disclosed to their accountant or to the Inland Revenue. It is clear that these deposits were generated by transactions that never went through the company's books that were presented to the company's accountant, nor were they declared to the Inland Revenue. Over the 10 year period between 1 August 1995 and 31 July 2005 these undeclared sums amounted to a total of £2,780,777.

[7] Apart from the lodgements to accounts in the Isle of Man and to banks in Northern Ireland, another method utilised by the defendants to conceal the true extent of the business carried on by Greystone Builders' Merchants was to cash cheques

which were never put through the company's books. For a period of approximately four and a half years between February 2001 and 31 July 2005 cheques to the value of £1,235,947 were cashed by the defendants, but were not recorded in the company's books. Such was the scale of this particular activity that when officials of HM Revenue and Customs searched the company's premises they found £492,238.77 in cash.

[8] Apart from the interest generated on the undeclared accounts in the Isle of Man and Northern Ireland, the defendants utilised their assets to accumulate a very substantial amount of property. Records seized revealed some 23 separate properties. Some of these were in the form of land or building sites, others were houses, not all of which were completed, and included their own 12,000 sq ft home. Even on the assumption that all of the sites would not have obtained planning permission, a valuation report by the Land and Property Services which has been submitted by way of additional evidence estimates that their value in "late 2005" was £6,690,000. Due to a number of factors the value of these assets is now somewhat less. When the investigation commenced and Restraint Orders were obtained, I have been told by Mr Gallagher on behalf of Mr Small that it meant that there were difficulties which resulted in houses not being completed.

[9] There is also the wider background of the severe economic downturn which the community has been experiencing for more than two years, particularly in the property sector in Northern Ireland, and which has resulted in a very considerable fall in property prices. Nevertheless what this amounts to is that the prosecution has identified at least 20 new houses and their 12,000 sq ft private residence on which the defendants made payments of various types using the undisclosed cash from the business to meet the labour costs incurred in the construction of these properties.

[10] Such was the scale of the defendants tax evasion that the prosecution have confirmed that this is by far the largest case of its kind to come before the Crown Court in Northern Ireland. There are a number of aggravating factors.

> 1. That when the Defendants had significant funds invested off-shore they still claimed tax credits.
>
> 2. When the Inland Revenue opened an enquiry into their affairs because of concerns created by various aspects of the accounts both deliberately concealed what they had been doing. Mrs Small expressly denied the existence of other accounts either in Northern Ireland or off-shore when interviewed by a tax official. It also emerged during the hearing that in a video Mr Small made of a meeting with a bank official from the Isle of Man in 2004, he said to that official that he had been asked about bank accounts, and that he was aware of the taxman and had told him (presumably a tax official) "I told him nothing, I told him I hadn't a penny abroad whatsoever". It is abundantly clear from these remarks, and from accounts being opened in his name in the Isle of Man, that Mr Small was not merely aware that money was being hidden from the tax authorities by placing it in the Isle of Man, but fully participated throughout in that activity.
>
> 3. The very large amounts of tax and interest involved in the charges.

4. The fact the amounts were not disclosed over a 17 year period altogether, the last 10 of which involved non-disclosure on a very large and persistent scale.

5. That very large sums were then devoted to purchasing extensive property holdings.

6. Business records were systematically falsified to conceal what they were doing. Whilst the prosecution have accepted Mr Small's pleas of not guilty to the false accounting charges, it was he who took charge of building the many properties they built, and I consider that there is no distinction between them as to their culpability. They were equal partners in the business, both in the legal and matrimonial sense.

[11] A number of mitigating factors have been advanced which are accepted by the prosecution.

1. Both defendants have essentially clear records, I do not regard their previous convictions as significant in the context of the present charges. They are persons of hitherto good character as is apparent from the character references on their behalf which were handed into court, and to which I will refer further.

2. They both provide significant employment in their locality. Before the investigation started they employed in the region of 15 to 20 people and the effect of the investigation and the difficulties that naturally created for their business in obtaining credit accentuated in more recent times by the economic downturn to which I have referred means that at the present time they employ between five and six employees.

3. They have agreed to repay £3,932,927 in tax and interest in respect of the period covered by the charges. Mr Fowler explained that the amount of tax and VAT is £3,237,733. When interest is added to that at the statutory rate which is payable by any tax payer who delays in paying tax that brings that figure up to the figure of £3,932,927 to which I have just referred.

4. In addition, they have agreed to pay a further £703,976 in tax, VAT and interest for the tax years 2004/2005 and 2005/2006. This is in respect of matters which are not subject of any charges. This brings the total which the defendants recognise that they have to pay to the authorities to £4,636,903, of which the defendants will make an immediate payment of £1,405,525. That consists of the cash to which I have already referred which was seized at the property of £492,238.77, together with interest that has accumulated thereon. To this has to be added £874,000 in an account which was frozen when the investigation started. That leaves a balance of £2,527,402.00 to be repaid by way of confiscation orders enforced by way of completion where required and ultimate sale of the 20 odd properties to which I have referred by means of orders made under the Proceeds of Crime (Northern Ireland) Order 1996.

5. The defendants are accepted by the prosecution as having been tax compliant up to 5th April 2006, that is the end of the 2005/2006 tax year, and the prosecution accept that the willingness of the defendants to settle their tax liabilities demonstrates the defendants' cooperation during these proceedings.

6. So far as Mr Small is concerned, these proceedings have had a detrimental effect on his health. I also recognise that the strain of these proceedings has had an adverse effect on Mrs Small, although one has to observe that they have brought this on themselves.

7. Their pleas of guilty entitle them to significant credit. In this context three matters are relevant, one, the attitude of the defendants when questioned and, two, the stage at which they entered their pleas, and the third is their attitude to the proceedings and co-operation with the authorities as evidence of their remorse. So far as the first is concerned it appears from what I have been told that Mrs Small made substantial admissions during interview, whereas Mr Small said that his wife looked after all the accounts and the books whilst he supervised construction of the houses. It would seem, therefore, that he did not make any relevant admissions at that stage. In Gary McDonald, John Keith McDonald and Stephen Gary Maternaghan. (AG Ref 1 of 2006) Sir Brian Kerr LCJ emphasised that the greatest discount is reserved for those cases where the defendant admits his guilt at the outset. In R v McCorry [2005] NICA 57 he pointed out that it is incumbent on a defendant who wishes to avail of the full measure of reduction in sentence that is available for a timely plea of guilty to institute discussions in cases of this sort that would lead to the plea being entered at the first available opportunity. Here the defendants were arrested on 10 November 2005, or at least that is their first remand date. It was not until 7 March 2008 that they were committed for trial.

[12] The papers in this case comprise some 46 lever arch files of exhibits. In my experience they are only exceeded in recent years by those generated by the case of R v Mahood and Culzner-Clark. The case was listed for trial in January 2009, but had to be adjourned for reasons that I need not dilate upon today and which were not the responsibility of the defendants themselves, and then again on 18 May 2009. Unfortunately delays in a number of cases resulted in this case having to be put back as other cases where the defendants were in custody had to be given priority, and it was therefore fixed for trial at the beginning of September. The defendants are therefore entitled to substantial credit for their pleas of guilty in view of the lengthy trial which such a plea avoided, resulting in a very substantial saving in public expenditure.

[13] However, that is not to say that they are entitled to the same credit. Mrs Small pleaded guilty well in advance of the trial, and has made clear at every opportunity since then that she has been anxious to have her case dealt with. Mr Small chose not to avail himself of the indication of sentence that I gave on 3 July 2009, and did not plead guilty until the commencement of the trial. As a result he is not entitled to the same credit as his wife. It is correct that he pleaded guilty to a charge involving significantly less VAT than his wife as Mr Gallagher pointed out. I make allowance for that, but I also have to take into account that he then sought to change his pleas of guilty, and persisted in doing so for a considerable period of time. The effect of his

behaviour has been considerable as it has resulted in delay in the final disposal of the case for several months, necessitating several adjournments and additional attendances for witnesses, not to mention increasing the strain on his wife by delaying the sentencing process.

[14] In addition it is clear that Mr Small has done everything he can to minimize his involvement in these offences. Not only is this unjustified because of his involvement in the process of transferring money to the Isle of Man, and his statement in 2004 that he had deliberately concealed the existence of money abroad, but it demonstrates that he does not really regret what has happened, and that he was prepared in a dishonest and unedifying fashion to shift as much of the blame onto his wife as he could. For all of these reasons I consider that he should now be given less credit for his pleas of guilty than his wife, and than would have been the case had he accepted the indication of sentence given in July 2009.

[15] There are a number of relevant authorities which I have taken into account. The first is the case of R v McCorry to which I have already referred. In that case a sentence of three years imprisonment appears to have been imposed upon a plea of guilty. It appears from the judgment of the Court of Appeal that the total amount of tax involved was in the region of £1.07 million including interest. The defendant in that case placed money in an off-shore account over a period of some 16 years despite being subject to two previous tax investigations. In the course of the second investigation he made a false declaration in which he failed to disclose the off-shore accounts. In that case there was therefore a comparable period of non disclosure to the present case. An aggravating feature of that case which is not present to the same extent in this case is that there were two previous tax investigations, whereas in the present case there was only one in relation to Mrs Small, and, it seems, one enquiry to her husband.

[16] In R v McCorry the Lord Chief Justice referred to the earlier decision of the Northern Ireland Court of Appeal in R v Blair, a decision in which judgment was given by Sir Robert Carswell LCJ on 20 June 1997 and which is to be found in the Northern Ireland Sentencing Guidelines compilation. The ultimate sentence was one of two years' imprisonment for conspiracy to defraud the Revenue by not accounting for income tax on sub contractors' tax exemption vouchers. The amount involved in that case was £428,768, although it is doubtful whether the defendant had himself directly benefited financially to that amount.

[17] A relevant decision of the English Court of Appeal is R v Czyzewski [2003] EWCA Crim 2139 (16 July 2003). That involved a number of smuggling cases and so also involved loss to the Revenue. The Court of Appeal indicated that in cases of evasion of duty of over £1 million the sentence should be in the range of five to seven years. Even allowing for the change in the value of money since 2003 this case falls within that bracket.

[18] An authority of particular significance and relevance is the decision of the Court of Appeal in R v Robert Edward Webb & Moira Simpson (AG Ref 86-87 of 1999) [2001] 1 Cr. App. R. (S.) 141. In that case Kennedy LJ reviewed a number of previous cases in which the courts had to deal with evasion of duty or evasion of tax, and he said:

> [21] "These authorities clearly indicate that first, where over a period of time taxpayers put money out of reach of the Revenue they must expect not only to have to pay the tax and to face a financial penalty but also to go to prison. Secondly, the length of the sentence would depend on a number of factors, including, first, the amount of tax evaded; secondly the period of time during which the evasion took place; thirdly the efforts made to conceal the fraud; fourthly, whether others were drawn in and corrupted; fifthly, the character of the defendant; sixthly, the extent if known, of his or her personal gain; seventhly, where there was a plea of guilty and eighthly, what was recovered."
>
> [22] Where, as here the amount of tax evaded is substantial-in this case nearly £2 million-and the fraudulent conduct extended over several years; where, as here, there were elaborate steps to conceal the fraud; where, as here, others were drawn in and the principal offender, Webb, had previously troubles with the Revenue and both offenders did have significant personal gains, then at the end of a contested case, even if the tax evaded and the prosecution costs can be recovered, it seems to us that any sentence such as that imposed on the case of R v Webb & another should have included a sentence of imprisonment in his case in the region of four and a half years."

[19] In the case of his co-accused, Simpson, the Court indicated that the original sentence should have been in the region of one and a half to two years. It is significant in that case that the company was still trading successfully with some 150 employees.

[20] I now turn to the more recent decision of Stephens J in R v McParland & Anor [2007] NICC 39. I do not propose to go through the facts of that case in detail. There were a number of aggravating factors. The first was the defendants failed to disclose other trusts, and indeed they set up two further trusts during the course of making disclosures in an earlier income tax Hansard investigation, and failed to disclose those new trusts. Again, there were mitigating factors. They had clear records, were of good character, there were health matters, they were substantial employers of some 800 people, and they had made provision to repay the amounts, together with interest, and by way of compensation and penalties.

[21] In my view in that case the most important factor was that the payments which had been made and which represented capital payments on which tax was then evaded were one-off payments made into these trusts which were not the subject of further payments or transactions.

[22] There were also possible defences in relation to the absence of tape recordings of the Hansard proceedings, and there were witness difficulties to which Stephens J

referred. He fined each defendant £1,100,000, disqualified them as company directors for seven years, and imposed sentences of four years imprisonment suspended for five years. Although Mr Horner QC relied on that case the sentences must be regarded as exceptional in view of the authorities to which I have referred.

[23] I have been provided with a pre sentence report on Mrs Small. She is now 50 and she and her husband have three children, the eldest of whom is now just 18 and the two younger children are aged 16 and 10 respectively. Mrs Small sought to explain these offences to the probation officer by asserting that as her husband's health deteriorated she and her husband were aware that they must be held accountable for the money which they had been secreting outside the jurisdiction. They therefore began to transfer it back to the business account, and asserted that it would therefore become known to their accountant and would have to be accounted for to the Revenue for tax evasion. She went on to assert that they transferred some £700,000 for this purpose by June 2005, and Mr Green gave evidence that his examination of the defendants records established that these transfers were made.

[24] This explanation does not bear examination and has been abandoned in the written submissions on behalf of Mrs Small. It was part of the agreed statement of facts that the various transactions which made up these offences were concealed from her accountant, and had she really wished to disclose the matter she could have told her accountant and the Revenue and received credit for a voluntary disclosure in the subsequent assessment of penalties. In addition, this does not explain the very substantial amount of £492,238.77 in cash which was found in the safe when the authorities searched the premises. I am satisfied that what she and her husband hoped to achieve by feeding this money back into the business was that by doing so slowly it would be possible to avoid detection by masking what they were doing as a gradual rise in profits, although, as Mr Green pointed out, it would result in the money being taxed. However, it would have evaded the penalties for non-disclosure, and the defendants had been able to acquire many properties by their practice of concealing payments in various ways, properties which they would have been able to retain had this strategy been successful.

[25] Mr Fowler stated that the prosecution view both defendants as equally culpable, and I propose to sentence them on that basis. As I made clear in the Rooney indication a custodial penalty is inevitable in view of the many aggravating features in the case. However I recognise that a prison sentence will bear particularly heavily upon Mrs Small because she will be separated from her three children, and that is an especially significant burden for someone of her years who will no doubt worry about the ability of her 18 year old daughter to look after her 16 year old and 10 year old siblings with both parents in prison. That three children will be left without the care of either parent, particularly their mother, is a substantial mitigating factor. A further substantial mitigating factor to which I have already referred is her plea of guilty in advance of the trial. This was an attempt by her to avoid the necessity for a trial and she is entitled to considerable credit for that. It is clear that Mrs Small is held in high regard in her local community, and has been a generous supporter of many good causes, as the character evidence of Father Crowley and the many testimonials lodged on her behalf make clear.

[26] Mr Horner also reminded me that Mrs Small has taken proceedings in the

Chancery Division to obtain partition of the properties and so be in a position to more readily sell them and so discharge her liabilities to HM Revenue and Customs. I accept that she has done all that she can to co-operate with the tax authorities and that were she at liberty it would be significantly easier for her to do so. I also recognise that were she at liberty it would mean that the business could continue, with the result that their employees' jobs would be more likely to be preserved.

[27] Whilst all of these mitigating factors are matters that can be taken into account to reduce the sentence , I do not accept that a suspended sentence can be imposed in her case. The amounts involved were very large indeed, and there was systematic concealment of money by various means over many years, as well as deception of the tax authorities when she was interviewed on a previous occasion. A custodial sentence is therefore inevitable. There is no basis upon which a custody probation order could be justified as I am quite satisfied that she will not re-offend in the future.

[28] Mr Small is now 56 and I have been provided with a very large number of medical reports prepared by a number of specialists in different specialities, these reports have been prepared for both the prosecution and the defence and consist primarily of reports from psychiatrists and psychologists. I do not intend to refer to them all.

[29] It is clear from the various reports of those specialists who have seen Mr Small's General Practitioners notes and records that he has a well-documented history of various forms of physical ill-health going back for many years.

(1) He has florid degenerative osteo arthritic changes in his thoracic and lumbar spine. This causes both back and leg pain and results in restriction of movement. There are references in the various reports to his using a stick at home and in court during the review hearings and at the commencement of the trial he has used a wheelchair. However, I am quite satisfied from the observations of Dr Howard that he can in fact walk, albeit no doubt with some difficulty and discomfort, for a substantial distance.

(2) He suffers from mild to moderate osteo arthritic changes in both hip joints.

(3) He suffers from Fibromyalgia, which is described as a chronic widespread soft tissue Rheumatismopic pain, which in turn results in sleep disturbance and pain.

(4) He suffers from carpal tunnel syndrome.

(5) He suffers from Type II insulin dependent diabetes and has to have insulin injections which he carries out himself.

(6) He suffers from hyper tension.

(7) He suffers from hyperlia.

(8) He is morbidly obese.

(9) He suffers from deep vein thrombosis.

(10) He suffers from Diverticulitis.

[30] These conditions are individually and collectively significant, and I accept that prison will be very uncomfortable and difficult for him, as Professor Fahy explained in his most recent report of 17 February 2010. Nevertheless I am satisfied that the scale of his offending, his lack of co-operation during questioning, his late plea and his attempt to vacate his plea combine to make a custodial sentence inevitable in his case also. However, I propose to substantially reduce the sentence I would have otherwise have imposed as an act of mercy in the light of his ill-health. I also propose to direct the court clerk, subject to any objection there may be from the defence, to supply to the prison a copy of all the medical reports that had submitted to the court so that the Prison medical authorities can be fully informed as to the various forms of medication and accommodation necessary for him to serve his sentence.

[31] He has also been examined in relation to his psychiatric and neuro-degenerative conditions by a significant number of specialists. I have reports from Professor Thomas Fahy, professor of forensic mental health at the Institute of Psychiatry, King's College, London. I also have reports from Dr Frederick Browne, a consultant forensic psychiatrist and from Dr Noel Scott who is a psychiatrist with very considerable experience of the effects of dementia and related conditions.

[32] As Dr Browne points out at paragraph 13.1 and 13.2 of his report:

> "The available information indicates that Mr Small has a history of neurotic symptoms and maladaptive coping mechanisms that date back to his adolescence. He has a history of childhood sexual abuse and although he denied to me that there was any family history of nervous disorder, Dr Chada's report from 2005 suggests otherwise. Mr Small has had contact with mental health services over the years with various anxiety-related complaints as well as alcohol abuse and gambling problems. In addition he was presented to many other medical services with a wide range of physical complaints for some of which there has been no demonstrable physical cause and for many of which he had been prescribed various treatments including large quantities of painkillers. At times his compliance with health care services has been poor. He has shown a number of illness or sick role behaviours.
>
> In my opinion Mr Small suffers from an underlying deficiency in his personality with anxious, avoidant and dependent aspects and he has chronic psychosomatic and anxiety symptoms."

[33] In his report at page 5 Dr Scott said:

> "In his 'opinion' section starting at page 19, Professor Fahy helpfully notes the range of Mr Small's physical and psychiatric complaints, including unexplained physical health problems, which in my view he correctly identifies and diagnoses as Somatoform disorder. He concludes (p 20, end of para 3),
>
> > '… it is my opinion that the underlying problem is one of a deeply neurotic personality which leads to maladaptive reactions to routine as well as out of the ordinary stressful life events.'
>
> Quite so. I agree with this.
>
> As to whether there is a 'neurodegenerative' disorder or process (ie. (a) dementia), Prof Fahy concludes (p. 21, para 3) that in his opinion, '… Mr Small's current clinical presentation, including his poor cognitive function, is largely the result of … his anxiety-prone personality … a stress reaction to life events including the court case and … an exaggeration of long-standing immersion in a sick role and pattern of dependency of others.' I agree.

Prof Fahy goes on say, 'His wife's account of a recent deterioration in function … points to the possibility of an underlying organic process. I do not rule out this possibility, but I am unable … to identify a specific neurodegenerative process. Furthermore, the assessments by Dr McCullough and … Dr Chada's description of … presentation in August 2005 … are not suggestive of a progressive neurodegenerative disorder.' I agree."

[34] Dr Scott said that he strongly agrees with Professor Fahy's diagnosis of Somatoform disorder and emphasises that:

> "… this does not imply that the sufferer is malingering. Their physical complaints are real to them. But they are not due to serious physical disease. The sufferer for some reason has difficulty understanding and accepting this, and is hard to reassure. There is a psychological need to assume the sick role, either to lessen fear of having a physical disease by knowing that medical attention is near; or to have the gain, comfort and safe urturin (sic) at a hospital environment or lavishing medical and nursing attention outside of it, might provide."

[35] I have set out the various views of Mr Small's psychiatric and neurological conditions at some length because I am entirely satisfied that whilst he has many pre-existing and significant chronic medical conditions, his apparent belief that he is suffering from dementia and has only a short time to live is not well-founded, and instead he is someone who, whether deliberately or otherwise is immaterial, has

convinced himself that his mental condition is deteriorating to a much more significant degree than is in fact the case.

[36] I have also considered a pre-sentence report upon Mr Small, but it does not add anything to the extensive medical reports. I do not consider that a custody probation order is appropriate in his case as I am satisfied that he will not re-offend.

[37] Had the defendants contested the charges and been convicted the sentence would have been one of six years' imprisonment. Taking into account the mitigating factors in his case to which I have referred I sentence Patrick Small to three and a half years' imprisonment on each count, the sentences will be concurrent. In the case of Mary Small I consider that her co-operation throughout, her genuine remorse, and in particular the effect of her imprisonment upon her children justify a more lenient sentence than that imposed upon her husband, and I sentence her to two and a half years' imprisonment on each count, the sentences will be concurrent. I make a confiscation order of £3,932,927 against each defendant.