

IN THE CROWN COURT IN NORTHERN IRELAND

SITTING AT BELFAST

R

v

FRANCIS GERARD D'ARCY

WEIR J

[1] Francis Gerard D'Arcy, you have pleaded guilty to four counts of cheating the public revenue contrary to common law and it is now my responsibility to sentence you for those offences.

[2] Each offence relates to an individual tax year in 2009, 2010, 2011 and 2012 when you under-declared income tax due to HM Revenue and Customs ("HMRC"). In 2009 the under-declaration was £37,906.80, in 2010 it was £20,620.00, in 2011 it was £147,843.00 and in 2012 it was £252,555.00, a total for the 4 years in question of £458,920.00.

[3] The background to your offences was that in recent years a large number of claims relating to deafness have been launched by members and former members of the armed forces and the police service alleging the provision of inadequate protection while firing weapons in the course of their duties leading to a diminution in their hearing acuity and other associated hearing problems. Expert evidence has been required for both the claimants and the defendants and you were instructed on behalf of very many claimants to examine and report on their claims.

[4] In 2008 you were 67 years old and in the final stages of a long and distinguished NHS career as an ENT Consultant Surgeon from which you finally retired at the age of 70. It must have been a great surprise and pleasure to you to discover in those twilight years of your career that you were suddenly much in demand to assist with these claims. The work was extremely demanding but the

commensurate rewards were very considerable and you appear to have accepted all the instructions you were offered so that you were examining and reporting on 30-40 claimants each week, a daunting task but one for which you were handsomely remunerated.

[5] Mr O'Donoghue QC has urged me to accept that your under-declarations of income tax were due to your being overwhelmed by the task of administering this huge volume of work and to your primitive book and record-keeping arrangements. I do not accept that submission. Among the methods used by you to conceal your earnings was arranging for solicitors to un-cross cheques that they had sent you in payment of your fees so that you would not have to lodge them to your bank account but could cash them and pocket the money without creating any written record. What those solicitors thought they were doing when they received these requests is not apparent but they seem to have been willing to oblige. Another ploy was to pay cheques made out to you as "Dr D'Arcy" directly into accounts in the names of your children, who are also doctors, which they for some reason maintained in Northern Ireland despite their living in the Republic of Ireland and Australia, thereby effectively laundering those sums. These are not the actions of a hard-pressed professional but rather thought-through schemes deliberately designed to seek to conceal your true earnings from HMRC. Mr O'Donoghue described a cumbersome scheme which he said you employed to record your receipts which consisted of photocopying the un-crossed cheques that you received and their accompanying letters, a system which he said broke down under the pressure of work. There are obvious answers to this hypothesis. Firstly, there was no need for any photocopying of cheques or letters. All that you needed to do was to keep the original covering letters in a box and produce them to your accountant at each year end when the amounts could be totalled from those letters and returned for tax purposes. Secondly, you could easily have afforded to employ a part-time book-keeper to keep your financial affairs in order but that would, of course, have required you to honestly disclose all your income to that person which I am satisfied you would have been unwilling to do, intent as you were on defrauding the revenue.

[6] These were avaricious crimes prompted by a desire not merely to earn and keep the very large sum that legitimately accrued to you after payment of your proper tax but also wrongly to keep for yourself a very substantial proportion of that tax. It was also a very stupid course of action on your part which was almost certain to be discovered despite what you no doubt thought were clever stratagems for concealment. I say that because, these claims being brought against government departments, when the cases were settled the fees and outlays would be payable by those government departments which would include the amounts of your fee accounts in each of them. This meant that HMRC could readily check by reference to the records of those other government departments exactly what fees you had been paid in each of the tax years in question and your under-declarations would have immediately been detected and their amounts precisely ascertained. Put shortly, you were bound to be caught.

[7] Mr McCollum QC who presented the case for the prosecution with admirable restraint, acknowledged that when confronted with your actions you admitted what you had done and then co-operated by making documents available to the investigators. However, he did not accept that these offences were, as has been claimed, solely the result of inefficient book-keeping but submitted that there had been deliberate cheating, a proposition which, for the reasons earlier given, I have no hesitation in accepting.

[8] These were serious crimes and no less so because the intended victim was the public at large rather than a single private individual or company. Mr McCollum submitted and Mr O'Donoghue readily accepted that the custody threshold has been passed. I consider that the imposition of a sentence of imprisonment is inevitable given the period over which the crimes were committed, the total amount involved and, as I find, the deliberate nature of the evasion.

[9] I must now consider what sentence ought properly to be imposed. You are 74 years old without a criminal record and now find yourself in disgrace after a lifetime of public service. I have received letters from a number of eminent medical practitioners attesting to your skill as a surgeon and your helpful and agreeable nature both as a colleague and a friend and to your unpaid work on various medical bodies. The probation officer has assessed your likelihood of re-offending as low and I take account of your co-operation with HMRC as soon as you were challenged and of the fact that you immediately paid all the monies that you had sought to conceal so that confiscation proceedings were not required. You did not plead guilty at the first opportunity but that was because of legal advice; a challenge was mounted to the charges that you faced which in the event was partially successful leading to a reduction to the present four charges to which you then pleaded guilty. I therefore do not propose to reduce the credit due to you for your plea of guilty.

[10] Having regard to all the factors that I have mentioned I have concluded that the starting point for the sentences to be imposed in this case is one of 3 years' imprisonment concurrently on each count. I reduce that figure by reason of the various mitigating factors to one of 2 years' imprisonment concurrently on each count. I also propose to fine you approximately half of the tax that you sought to evade in each of the four years to make it clear to you and anyone else who may be thinking of attempting to defraud the revenue that this crime does not pay.

[11] Mr O'Donoghue has however urged me to consider whether the sentences of imprisonment might properly be suspended given your age and the significant medical problems afflicting both you and your wife. Mr McCollum did not dissent from the proposition that such a course was open to me. In support of his submission, Mr O'Donoghue has presented a formidable bundle of medical reports from the doctors who have been dealing with those problems, some of which pre-existed these offences and others of which have come to light since the offences were detected. It is clear that your health is fragile in a number of respects both

medical and psychological. One of your medical complaints has necessitated a number of operations since 2005 and requires to be kept under close review. It has left you with ongoing problems that your consultant advises would be exacerbated by living in a stressful environment. The same view is expressed by a consultant dealing with another of your medical problems. Your wife also suffers from a long-standing condition made worse by the strains under which you and she are currently living because of these proceedings. Again in her case the medical view is expressed that should you be sent to prison it will have an extremely detrimental effect upon her condition.

[12] I do not think it necessary for today's purposes to publicly describe in detail the nature of your medical problems nor those of your wife. I have read with great care the reports provided and they are of course available on the file. I have concluded, after anxious consideration, that this is a case in which, most exceptionally, the varied nature and extent of the medical and psychological problems of you and your wife justify me in suspending the prison sentences which I propose to impose in your case. I am now satisfied that because of those problems both you and she would suffer quite disproportionately if you were obliged to immediately serve those sentences of imprisonment.

[13] Accordingly, I sentence you as follows:

On count one, 2 years' imprisonment suspended for 3 years and a fine of £20,000.

On count two, 2 years' imprisonment suspended for 3 years and a fine of £10,000.

On count three, a sentence of 2 years' imprisonment suspended for 3 years and a fine of £75,000.

On count four, a sentence of 2 years' imprisonment suspended for 3 years and a fine of £125,000 together with an offender levy of £15.

The prison sentences will each be concurrent. I am obliged to explain to you that if you commit no further offences for a period of three years you will hear no more of those suspended sentences. If, on the other hand, you were to commit a further offence the court dealing with that offence would have power to put these suspended sentences into effect.

[14] The fines total £230,000. Upon the application of Mr O'Donoghue I will allow 13 weeks for payment of that sum.

[15] The prosecution also seek an order in respect of their costs of the case which they measure at £5,842 and Mr O'Donoghue has informed me that you are willing to agree to pay those costs. I therefore order them to be paid.