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(subject to editorial corrections)

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

v

JAMES JOSEPH McCORRY

KERR LCJ

[1] This is an appeal by James Joseph McCorry against sentences of three years imprisonment imposed by Mr Justice Morgan on eleven counts of cheating the Inland Revenue, one count of making a false statement with intent to defraud and twelve counts of making a false statement with intent to defraud. Leave was granted by the single judge and this is now an appeal against those sentences. The appellant came before Mr Justice Morgan on 29 October 2004 and as well the concurrent sentences of three years imprisonment the learned judge made a Confiscation Order for £377,563.00, to be discharged within fourteen days, with a sentence of five years imprisonment in default. That was later extended to 19 November 2004 and a Compensation Order for £701,065.000 was made; £164,000.00 of that to be paid within fourteen days with five years imprisonment imposed in default, and the balance of £536,000.00 odd to be paid thereafter.

[2] The background to this case is that in 1979 the appellant was offered facilities at his local bank to place money in off-shore accounts. He opened accounts first in the Isle of Man and later in Jersey and it is now beyond question that throughout the 1980s he used the tax free off-shore accounts to place there business profits that he did not declare to the Inland Revenue. The last lodgement made was in March 1995. Therefore, for a period of something in the order of sixteen years, money was diverted from the very successful business of which he was with others the proprietor to these accounts with the consequent defrauding of the Inland Revenue. These failures to declare profits are the basis for the eleven counts of cheating the Inland Revenue. It is a significant feature of the case that in 1990 there was an Inland Revenue investigation of the appellant's affairs that came to nothing, but, as a result

of a further investigation in 1993, the appellant signed on 26 September 1994 a false declaration of full disclosure as to his assets. That statement failed to include the off-shore accounts. Until 2001 the appellant failed to include reference to the accruing interest on those accounts in his tax return. The initial false declaration of full disclosure and the subsequent failure to declare interest for the purpose of Income Tax are represented by the thirteen counts of making a false statement with intention to defraud. The matter came to the Inland Revenue's attention when in November 2001 the appellant's bank informed it of the position as it was by then obliged by law to do.

[3] In this case Mr McCollum QC who appears with Mr Talbot for the appellant has put a number of factors before the court which he suggests establish that the sentence imposed by the learned trial judge was manifestly excessive. Wisely, Mr McCollum has not sought to argue that the sentences were wrong in principle, because from the judgment of this court in the case of *Blair* it is clear that, given the prevalence of offences of this type, only a custodial sentence of some severity will meet the situation. Firstly, Mr McCollum argues that looked at in the round, while the need for a custodial sentence to satisfy the requirements of the public interest cannot be disputed, a sentence of conspicuously less severity would be sufficient in this case. Any custodial sentence, he submits, would satisfy the public's demand that custody be the consequence of conviction of offences of this type. He draws attention firstly to the devastating effect that this inquiry and conviction have had, not only on the appellant himself, but on his family, and we fully take that into account. We accept that it is for him a substantial burden to have to bear, that his previous good character has been transformed to one where he must be recognised as a criminal. We also accept and take fully into account the impact that it has had upon his personal circumstances, not only his financial circumstances, but his health. Mr McCollum has said "we consider with justification that he now stands before this court with his good character effectively obliterated". We take also closely into account that those who are near and dear to the appellant have been grievously affected by his involvement in these offences. We have noted that his elderly mother has suffered, perhaps not surprisingly, a deterioration in her health since his conviction. It has of course frequently been said by this court that while personal circumstances are to be considered carefully, they alone cannot weigh heavily in the proper disposal of cases of this type.

[4] Mr McCollum draws to our attention secondly that the appellant has made full restoration for the fraudulent offences to which he has pleaded guilty. Indeed he has submitted that in contradistinction to the circumstances in the *Blair* case, this appellant has restored what Mr McCollum claims, perhaps with some justification, rather more to the Inland Revenue than would have been their due had he met his tax liabilities in the first instance.

[5] It was submitted on the appellant's behalf that Mr Justice Morgan failed to give full credit for the appellant's timely pleas of guilty. That submission was based on the observations of the learned judge that the appellant was not entitled to full credit

under article 33 of the Criminal Justice Act (Northern Ireland) 1996 because some of the pleas were not entered immediately. Mr McCollum has submitted that in a case of this type frequently discussions between counsel are required, exchanges of representations are necessary before the full configuration of the charges can be established. We have taken that factor into account, but wish to take the opportunity to emphasise that it is incumbent on a defendant who wishes to avail of the full measure of reduction that is available for a timely plea of guilty to institute the discussions that will lead to that plea being entered at the first possible opportunity. We consider that there was nothing untoward in the manner in which Mr Justice Morgan dealt with this aspect of the case.

[6] Mr McCollum has also drawn our attention to the circumstance that the learned trial judge placed emphasis on what he described as the aggravating features in the case, those of premeditation and persistence. It was submitted that those aspects were offset, at least to some extent, by the circumstance that this appellant, in common with many businessmen who sought to maintain their business during difficult times in our recent troubled past, had to contend with strains and stresses extraneous to those which normally afflict the proper conduct of business. We do not accept that Mr Justice Morgan placed undue emphasis on these aspects of the case and we question whether there is a true mitigating countervailing factor in the matters raised by Mr Justice Morgan. The plain fact is that this man was diverting profits from his business to off-shore accounts for the obvious purpose of avoiding his tax liability. It is not a case of him diverting funds in order to sustain an ailing business. On the contrary, his business was profitable and a significant proportion of those profits were, as we have said, diverted to these off-shore accounts for the clear purpose of avoiding the liability that all citizens of this society must meet, that is the liability to pay Income Tax.

[7] We regard it as highly significant that a disclosure statement was made by this appellant in 1994 which asserted that he had made full disclosure to the Inland Revenue when that was plainly not correct. In our judgment that betokens a determined concerted effort to defraud and to conceal the frauds of which the appellant was guilty.

[8] Finally, Mr McCollum submitted that the learned trial judge should have acceded to the recommendation made in the pre-sentence report by the probation officer that custody probation was appropriate in this type of situation. Mr Justice Morgan dealt with this in the transcript at pages 131 and 132. There he said:

> "I am obliged to look at the question of custody probation, in particular having regard to the fact that it is raised within the pre-sentence report. Article 24 of the Criminal Justice Order requires the court where it is imposing a custodial sentence of twelve months or more to consider whether it would be appropriate to impose a period of custody probation. He pointed out that

> Article 24, paragraph 2 provided that the court should take into account the effect of the offenders supervision by the probation officer on his release from custody in protecting the public from harm, or in preventing the commission by him of further offences, and he concluded that neither arose in this case".

[9] We wholeheartedly agree with that judgment. But the learned trial judge went further and he said that he should stand back from the situation and consider whether there were any other public interest reasons that might justify the imposition of such an order. Having done so he concluded that there was not. We again agree. Moreover, as this court has frequently said the exercise of the discretion available to the judge under Article 24 of the Criminal Justice Order should not lightly be disturbed by this court. In the event that does not arise because we consider that the conclusions reached by the judge in relation to the sentence overall were impeccable. We are satisfied that the sentence of three years imprisonment was entirely in line with the guidance given in *Blair*. It is consonant with sentences imposed in England and Wales for similar offences. We therefore dismiss the appeal.