

IN THE CROWN COURT OF NORTHERN IRELAND
SITTING AT LAGANSIDE CROWN COURT, BELFAST

Icos No. 15/111045

THE QUEEN

v

DOLORES SAVAGE & SAMUEL NOEL SAVAGE

Sentencing 3 June & 3 September 2016

TREACY J

[1] The first-named defendant Dolores Savage was arraigned on 11 March 2016 and pleaded not guilty to all counts. On 8 April 2016 she was re-arraigned and pleaded guilty to count 1, namely obtaining a money transfer by deception and count 2 being fraud by abuse of position.

[2] The second-named defendant Samuel Noel Savage was arraigned on 11 March 2016 and pleaded guilty to count 3, namely entering into an arrangement to acquire criminal property and count 12 converting criminal property.

[3] On 3 June 2016, with the consent of all parties, I sentenced the first defendant and further adjourned the sentencing of the second defendant as he was then in hospital. The second defendant was not fit to attend for sentencing until 3 September 2016.

Background

[4] The facts are that the first-named defendant Dolores Savage was employed by Arjo Huntleigh from August 2003 as a purchase ledger clerk in the accounts department at their Belfast branch in the Belfast Harbour Estate. Arjo Huntleigh is a leading global provider of medical technology products and solutions to hospitals and care homes. Dolores Savage was responsible for the payment of invoices and

would write cheques and present them for signature to either the general manager or the financial accountants.

[5] In or about July 2006 she began to defraud her employer. The offending covers the period between July 2006 and October 2013 and the total amount obtained by the defendants was £1,044,113.21. The method of fraud used was that Dolores Savage would create a false duplicate invoice identical to that on the system for a legitimate supplier with a duplicate cheque. The company would then make duplicate payments, the first being to the legitimate supplier and the second being made to either Savmac or Dolores Savage. On other occasions electronic entries on the computer system relating to two or three legitimate payments were duplicated and added together to form one single payment in order to reduce the possibility of detection by other staff. Only one duplicate invoice was recovered, it is believed that the remaining invoices were destroyed by Dolores Savage.

Approximate amounts on a year on year basis are as follows:

Year	Amount (nearest 1000)
2006	9,000
2007	71,000
2008	93,000
2009	154,000
2010	196,000
2011	241,000
2012	276,000
2013	4,000

[6] On 8 November 2013 Arjo Huntleigh reported an incident of forgery to the PSNI which was investigated by Belfast Harbour Police. This related to a single cheque for £2,006.40 dated 31 October 2013 made payable to a company called "Savmac". The signature on the cheque which purported to be from the general manager William Dorrian had been forged. This forgery had been identified by the company bank's signature recognition system. In addition "Savmac" was not a company who did any business with Arjo Huntleigh and in fact was a company owned by the second-named defendant Noel Savage.

[7] On 14 November 2013 Dolores Savage attended Milewater Basin Police Station as a voluntary attender and was interviewed about this single cheque. At interview she admitted writing the cheque, making it payable to her husband's company, forging William Dorrian's signature and lodging the cheque into her husband's business account "Savmac" at Danske Bank in Connswater in Belfast. Mrs Savage explained that her husband had been out of work for a few months due to an injury, that she had bills mounting up, that she panicked and forged the signature but always intended to pay the money back. She said that she had never

done anything like this in her life before. She was very upset during interview. She was asked if there were any further offences of a similar nature and assured police that this was a one-off incident.

[8] Mrs Savage then resigned from the Company with immediate effect. She apologised for stealing the sum in question and outlined her intention to re-pay that amount. It was never repaid.

[9] An initial internal audit by Arjo Huntleigh did not reveal any discrepancies, however a bank audit by Barclay's Bank and Svenska Handelsbanke in respect of payments to Savmac from 2012 to 2013 revealed total payments of approximately £47,000. Mrs Savage again attended voluntarily for interview on 21 January 2014 and initially stated that apart from two further cheques nothing else had been taken. When the further cheques were put to her she admitted that she had carried out the fraud by creating a duplicate of an original invoice for the same amount but that the second cheque was payable to Savmac. She also admitted forging signatures on the cheques. She initially claimed that her husband was unaware of the money going into his business account but later admitted that he must also have lodged some of the cheques as they were lodged at times when she was at work and that he was fully aware of what was happening. She also admitted lodging cheques in her own name and her husband's name into their joint bank account in the Ulster Bank.

[10] On 23 January 2014 Noel Savage was interviewed by police and denied any involvement in the offences. He said that he took nothing to do with the paperwork in respect of his business account and was completely shocked as to what his wife was doing. Police later obtained Tax returns and VAT returns in respect of the Savmac business account which showed that in the seven year period from June 2006 to November 2013 only some £54,000 in legitimate funds were lodged into the Savmac account.

[11] On 12 February 2014 police obtained Court orders in respect of the Savmac business account and the defendants' joint bank account and obtained the relevant bank statements. These established that the offending commenced on 30 June 2006, the total number of cheques over the entire period was 808, of those transactions 98 were not supported by cheques as the banks were unable to supply cheques prior to October 2007, however from examining the bank statements from the accounts it was established that corresponding amounts of money were being debited from the Arjo Huntleigh account and were then being credited to either the Savage's joint account or the Savmac account. In total £314,000 was paid into the Savage's joint account and £730,000 was paid into the Savmac business account.

[12] On 22 October 2014 Noel Savage was again interviewed by police and was asked about his signatures being on debit cheques from the account. He initially claimed that his wife was unable to sign cheques and that she would normally have to ask him to sign. In fact Danske Bank confirmed that she was authorised to sign cheques. Mr Savage again maintained that he was entirely ignorant of the financial

details of his business account and simply lodged cheques and withdrew money as he was told to. He denied any involvement in the fraud or knowing that the funds in his bank were stolen.

[13] On 6 November Dolores Savage was interviewed for a final time. The total amount obtained was put to her at interview and she made a full admission in respect of all of the cheques. She stated that her son had been in the army in Afghanistan, that he had recently returned home and that he was suffering from Post Traumatic Stress Disorder. She said that she wanted to help her son, that her husband wasn't getting much work and that she was the sole bread-winner. She also admitted that once she wrote one cheque and got away with it, it seemed easy and so she carried on. This is reflected in the year on year totals which got progressively larger until there was a break from 21 December 2012 until 9 October 2013 because the company procedures had changed.

[14] In respect of the dissipation of the funds, there is evidence of a lavish lifestyle. Large amounts of cash were withdrawn by the defendants particularly Noel Savage and spending was at a level which would have been impossible to fund on their own legitimate income. In particular, a total of seven vehicles were bought by the defendants for their own use and their children's use. These were purchased with cash deposits and hire purchase agreements and comprised a second-hand Nissan Navara jeep, a new Peugeot 207, a used Peugeot 308, a new Mercedes Vito van, a new Ford Focus, a new Peugeot RCZ coupe and a new Peugeot 207. In September 2011 monthly car payments of £1,561.57 were coming out of the Savmac account, a figure which far exceeded the legitimate income. Monies were also given to the defendants' children. This included funding trips to foreign locations for their son and obtaining sailing qualifications and mountaineering courses for him in preparation of a prospective business venture which did not come to fruition. The defendants also rented apartments for their son as well as providing large sums of money and cars. They also funded a business venture for their daughter but this did not succeed.

[15] At present the defendants do not appear to have any assets and are in debt with credit cards. They do not own their own home and all cars have been sold or repossessed. The company continues to trade but due to the method used by Dolores Savage in duplicating invoices the company claimed the VAT back on invoices twice. This amount is now being repaid to HMRC under a repayment plan. The company has now put a number of control measures in place within their Finance Department to prevent repetition of the practices used by Dolores Savage.

Sentencing

[16] It is now my duty to sentence you for the offences to which you have pleaded guilty. In respect of the second defendant I accept the Prosecution submission that, given the amount of money involved, the extent of his involvement and his knowledge as to the nature of the offending and of the source of the proceeds of

crime that there should be no distinction made with the first defendant in terms of sentence.

[17] The sentencing guidelines for cases of dishonesty by persons in positions of trust set out in R v Barrick [1985] 7 Cr App R (S) 142 were adopted for use in this jurisdiction by the Court of Appeal in Northern Ireland in R v Gault [1989] NI 232. See also R v Alan Nurse [2010] NICC 3 (Hart J) at paras 9 - 11 and 27.

[18] It is useful to recall what the court said in R v Barrick at p81:

“The type of case with which we are concerned is where a person in a position of trust, for example, an accountant, solicitor, bank employee or postman, has used that privileged and trusted position to defraud his partners or clients or employers or the general public of sizeable sums of money. He will usually, as in this case, be a person of hitherto impeccable character. It is practically certain, again as in this case, that he will never offend again and, in the nature of things, he will never again in his life be able to secure similar employment with all that that means in the shape of disgrace for himself and hardship for himself and also his family.”

And at p82 the court stated that the relevant factors were:

- “(i) the quality and degree of trust reposed in the offender including his rank;
- (ii) the period over which the fraud or the thefts have been perpetrated;
- (iii) the use to which the money or property dishonestly taken was put;
- (iv) the effect upon the victim;
- (v) the impact of the offences on the public and public confidence;
- (vi) the effect on fellow-employees or partners;
- (vii) the effect on the offender himself;
- (viii) his own history;
- (ix) those matters of mitigation special to himself such

as illness; being placed under great strain by excessive responsibility or the like; where, as sometimes happens, there has been a long delay, say over two years, between his being confronted with his dishonesty by his professional body or the police and the start of his trial; finally, any help given by him to the police.”

[19] These guidelines have been applied in a number of cases in this jurisdiction in cases comparable to this one, so it is possible to deduce guidance in relation to the starting point for sentencing in cases such as this. In the case of Nurse the defendant (following his pleas of guilty to one count of theft of £481,465.24, one of forgery and twelve of false accounting, committed by him whilst practising as a solicitor) was given an effective sentence of 3 years imprisonment. Hart J said at para27 that had the defendant contested the charges and been convicted the sentence would have been at least 7 years imprisonment. In R v Patrick Small and Mary Small [2010] NICC 6 the defendants (following their pleas of guilty to cheating the revenue and, in the case of Mrs Small specimen charges of false accounting) were respectively sentenced to three and a half years and two and a half years. At para37 Hart J said that had the defendant contested the charge and been convicted the sentence would have been one of 6 years imprisonment. In Small the total which the defendants were required to pay for unpaid tax, VAT and interest was £4,636,903). In R v Damien Murray [2014] NICC 14 the defendant, (following his plea of guilty to one count of theft relating to the misappropriation between June 1999 and December 2003 of £811,000 from his clients’ account, committed by him whilst practising as a solicitor) Weir J (as he then was) sentenced him to 3 years imprisonment but decided “exceptionally, and after anxious consideration “to suspend it for three years for the reasons he summarised at para[13]. Weir J took as his starting point for a theft of these proportions a term of 6 years (para 14). In R v Francis Gerard D’Arcy [2015] NICC 5 the defendant, a distinguished ENT surgeon, (following his pleas of guilty to four counts of cheating the public revenue by under declaring tax for the years 2009-2013 in the combined sum of £458,920) was sentenced to 2 years imprisonment suspended for 3 years and a fine of £230,000. The sentence was suspended for the reasons set out at para12-13.

[20] Had the defendants in this case contested the charges and been convicted the starting point would have been 6 years.

Other Factors

[21] The starting point can rise or reduce in response to other relevant factors specific to the case in hand.

Aggravating Factors

[22] The statement of facts agreed by both the prosecution and the defence set out

the aggravating factors as follows:

- (i) The total amount defrauded was very high.
- (ii) The fraud occurred over a seven year period and concerned 808 separate transactions.
- (iii) There was a degree of sophistication in creating duplicate invoices which was designed to conceal the offending.
- (iv) There was an abuse of trust by the defendant Dolores Savage.
- (v) There was a financial effect on the victim, albeit that they were of sufficient size that it did not affect their ability to trade.

Mitigating Factors

[23] The agreed statement of facts set out the mitigating factors as follows:

- (i) Dolores Savage has a clear record. Samuel Noel Savage has a very minor record for common assault and criminal damage and does not have any convictions for dishonesty.
- (ii) Dolores Savage pleaded guilty at an early stage. Whilst she eventually made full admissions, she only made admissions to the offences when the evidence was put to her. The prosecution submit that given the strength of the evidence, that following R v Pollock [2005] NICA 43 at paragraph 18, the degree of discount should be less where the offender is caught red-handed and no viable defence is available. The defendant Dolores Savage does not accept that R v Pollock applies.
- (iii) Samuel Noel Savage pleaded guilty at the earliest opportunity, however he did not make any admissions at interview.
- (iv) There is personal mitigation with regard to Samuel Noel Savage's medical condition.

[24] The prosecution accept that both defendants are to be treated as having entered their pleas at the first opportunity. The principles governing credit to be given for a guilty plea have recently been re-stated by McBride J in R v Ruddy [2016] NICA 17 at paras 20-26. When determining the level of credit to be given for a guilty plea, the Court must consider the time at which the plea was entered and whether, in all the circumstances of the case, the plea indicates remorse, whether it led to saving of time or convenience of witnesses and if so, the extent of such saving and convenience.

The Relevance of the Second Defendant's Medical Condition

[25] There is a well-established line of authority that in certain cases the court can impose a lighter sentence than that which would ordinarily be appropriate when the offender suffers from some physical or mental disability. Thus in determining the appropriate sentence it is permissible to have regard to any physical disability or illness which will subject the offender to any unusual degree of hardship if he is imprisoned. An offender's serious medical condition may enable a court, as an act of mercy in the exceptional circumstances of a particular case, rather than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate: see AG's Reference (Number 1 of 2006) Gary McDonald & Others' [2006] NICA 4 where, at para39, Kerr LCJ stated:

"[39] It is permissible to have regard to any physical disability or illness which will subject the offender to an unusual degree of a hardship if he is imprisoned – see, for instance, *R v Leatherbarrow* (1992) 13 Cr App R (S) 632; *R v Green* (1992) 13 Cr App R (S) 613. It is less clear that the illness of a relative can be taken into account for the same purpose. The effect that personal circumstances may have on the selection of a sentence was discussed by this court in *R v Sloan* (Neutral Citation No.(2000) 2132). In that case Carswell LCJ said:

"There is a well settled line of authority that in certain cases the court can impose a lighter sentence than that which would normally be appropriate for the type of offence where the offender suffers from some physical or mental disability: see, *e.g.*, the discussion in *R v Bernard* [1997] 1 Cr App R (S) 135 and the principles deduced from the previous reported cases by Rose LJ at pages 138-9:

'(i) a medical condition which may at some unidentified future date affect either life expectancy or the prison authorities' ability to treat a prisoner satisfactorily may call into operation the Home Secretary's powers of release by reference to the Royal Prerogative of mercy or otherwise but is not a reason for this Court to interfere with an otherwise appropriate sentence (*Archibald Moore*);

(ii) the fact that an offender is HIV positive, or has a reduced life expectancy, is not generally a reason which should affect sentence (*Archibald Moore and Richard Moore*);

(iii) a serious medical condition, even when it is difficult to treat in prison, will not automatically entitle an offender to a lesser sentence than would otherwise be appropriate (*Wynne*);

(iv) an offender's serious medical condition may enable a court, as an act of mercy in the exceptional circumstances of a particular case, rather than by virtue of any general principle, to impose a lesser sentence than would otherwise be appropriate.'

We respectfully agree with the approach of the court in that case, but would emphasise that it is important to bear in mind the passage which Rose LJ earlier cited from *R v Wynne* (1994, unreported):

'It is always to be borne in mind that a person who has committed a criminal offence, especially one who has committed a serious criminal offence, cannot expect this or any other court automatically to show such sympathy so as to reduce, or to do away with altogether, a prison sentence purely on the basis of a medical reason. It is only in an exceptional case that an exceptional view can be taken of a sentence properly passed. In this case a proper sentence was passed for a serious offence.'"

[26] In light of the medical evidence filed on behalf of Mr Savage the prosecution acknowledged that his medical condition constitutes exceptional circumstances. For the purposes of the sentencing hearing the court was furnished with a report from Dr Whiteside. He was not the defendant's GP. Following the sentencing hearing the court requested and was furnished with a report from the defendant's GP, Dr Bisset. His report noted that the defendant has three main significant medical conditions namely (i) diabetes which is "fairly well controlled" and that he remains on insulin and under Diabetic Clinic review; (ii) cardiac condition - he suffered an acute myocardial infarction in November 2014, spent a considerable amount of time in

hospital requiring a pacemaker to be inserted and aortic valve replacement due to bacterial endocarditis, remains significantly decompensated post-surgery with significant shortness of breath on exertion and he remains under the care of cardiologists; and (iii) ankle osteoarthritis with quite extensive degeneration in the joint and surgery was advised in 2015 but put on hold re his cardiac problems. The GP records that since early 2014 his mobility significantly deteriorated requiring him to use crutches and requires a wheelchair for longer journeys. Dr Whiteside sets out this defendant's background medical history. The report confirms that he suffers from a very serious cardiac condition, type 2 diabetes, serious orthopaedic conditions and asymmetrical hearing loss. As a result of these he has considerable care needs. He is in receipt of Disability Living Allowance (DLA) and gets high rate mobility and middle rate care. Dr Whiteside says this means he has been assessed as virtually unable to walk and needs substantial assistance with his personal care for a significant portion of the day or night. Due to his documented diabetic neuropathy and small joint arthritis affecting his hands he has poor functional ability of his hands especially the right hand. As a result he needs help accessing and sorting his medications and help testing his blood sugar levels and injecting his insulin - both 4-5 times daily. Due to his limited hand function, his ankle arthritis and his complex cardiac state he is unable to carry out the Activities of Daily Living (ADL's) without considerable help. His mobility is severely limited and he uses a wheelchair. He is on the waiting list for an electric wheelchair so that he will be less dependent on his wife and main carer. The medical report also states that due to the complexity and lability of his medical condition he requires to attend both his GP surgery or hospital on a regular basis, that he needs his wife to drive him there, help him into his wheelchair and push him to his ultimate destination and back again.

[27] The report notes that the cardiac condition, in particular, has been significantly life threatening and requires careful ongoing monitoring and surveillance with regular attendance at both his GP surgery and hospital outpatient departments. His cardiac condition, coupled with his ankle arthritis, leads to substantial impairment of mobility as evidenced by the award of High Rate Mobility (virtually unable to walk). The combination of his conditions means that he is unable to cope independently with Activities of Daily Living and basic personal care such as washing and dressing. He has a high level of care needs as evidenced by the award of Middle Rate Care (provided by his wife). He also needs specific help with monitoring his sugars 4-5 times daily, setting his insulin pens appropriately and injecting his insulin 4-5 times daily. He needs care both organising and administering his medication. I have also been provided with a report from Dr Lau, Consultant Cardiologist and Electrophysiologist dated 15 August 2016. Having reviewed Mr Savage's condition and general health he concluded as follows:

“Because of his multiple severe chronic irreversible progressive medical conditions, his life expectancy will be curtailed even with the best medical care. To maximise Mr Savage's chance of survival and life expectancy, Mr Savage needs regular medical

attention from a large number of medical specialities that will be logistically very difficult to provide from a confined environment.”

Conclusion

[28] As I noted earlier had the defendants been convicted following a contested trial the starting point would have been 6 years. The second defendant pleaded guilty on first arraignment and is entitled to credit for that. But he is not entitled to full credit since he provided no assistance whatsoever to the police during interview. Despite this non-disclosure I will give him substantial credit for his early guilty pleas. I am persuaded that his medical condition justifies a further reduction in light of the authorities set out above. However, his medical condition is not such as to justify dispensing altogether with an immediate custodial penalty. Your offending is aggravated by the factors previously set out which includes the huge sum defrauded and that it occurred over a 7 year period involving 808 separate transactions. No mitigation by way of restitution is offered, all of the money has apparently been dissipated and the sums lost are irrecoverable as you apparently have no assets and you are currently in receipt of state benefits. You offer no credible explanation for the dissipation of over one million pounds maintaining in the pre-sentence report that with a few exceptions “the money was spent on rent and clearing regular bills that came into the home”. This is surprising since your company Savmac was the principal beneficiary of the dishonest conduct with £730,000 being paid into its business account. I consider that the minimum sentence that I can impose is a determinate custodial sentence of 2 years imprisonment on each count (1 year custody and 1 year licence). These sentences are concurrent.

[29] In the case of the first defendant, had she been convicted following a contested trial the starting point would have been 6 years. The only mitigating factor in your case is your plea of guilty. It is accepted that you are to be treated as having pleaded guilty at the first opportunity. I will give you substantial but not full credit for your plea since you lied to the police. Only belatedly, when confronted with overwhelming evidence, did you confess the extent of your involvement to the police. Like your husband you can offer no credible explanation for what became of the huge sums you defrauded from your employer. Your pre-sentence report records that you could identify no expenditure in your lifestyle to account for such a colossal sum of money. Your offending is aggravated by your breach of trust, the sums involved and the fact that your offending went on for 7 years. You do not have any medical condition that would justify the reduction afforded to your husband but I take into account that you have been his main carer and that the prosecution has not sought to distinguish between you and I therefore sentence you also to a determinate custodial sentence of 2 years imprisonment on each count (1 year custody and 1 year licence). These sentences are concurrent.