**IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

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**THE QUEEN**

**-v-**

**GREGORY FAYE**

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HUTTON LCJ

This is an appeal by Gregory Faye, who, on 1 September 1988, was convicted before His Honour Judge Watt at the Crown Court sitting at Newtownards and he pleaded guilty to 5 counts of conspiracy, to 9 counts of false accounting and to 5 counts of theft, the counts of theft relating to the theft of a Tax Exemption Voucher. Mr Campbell, who has presented this appeal in a way in which the Court would compliment him, in a very frank and fair and at the same time in a very helpful way, informed the Court that these were really only sample charges and that this course of dishonesty lasted for a period in excess of 4 years from June 1983 to November 1987.

Without wishing to state the actual process of the fraud dishonesty in strictly technical terms, the Court thinks it is clear that in essence what happened was that the appellant, who worked in the building trade, was issued with, or was in a position to obtain from the Revenue authorities, tax vouchers which entitled him as a sub-contractor working for a main building contractor to be paid his wages without deduction of tax and he was then liable to, in fact, pay that tax to the Revenue directly and of course that was a considerable advantage because it means that the sub-contractor received his weekly pay in full without deduction of tax and what this appellant did was this and unfortunately it appears that this is a practice which is not uncommon, he lent his tax vouchers to other men working on building sites, who were not entitled to them, so that they by dishonesty could obtain from the contractor their wages without deduction of tax and in return for that those other workmen paid what in effect was a commission to the appellant and it appears that he would receive a sum of about £80 per week and whilst it appears that he commenced this dishonest practice whilst he was working on a site with persons who were either friends or relatives of his, it seems that having started it he extended it and, in fact, went to other people on other sites and carried on this dishonest practice. Mr Campbell has informed the Court that the amount of monies wrongly paid over by contractors to other workmen who wrongly produced these vouchers was a sum of about £38,000, that that constituted a fraud on the Revenue of

about £10,000, that it appeared on the calculations of the Revenue authorities that this appellant had dishonestly made £7,600 out of these fraudulent transactions, although the appellant himself said that he only made £4,000.

These are serious offences, they are a fraud on the Revenue, they also as other cases have stated constitute a fraud on honest citizens who pay their taxes and they are offences which clearly call for a prison sentence. The question before this Court is whether the sentence, or the concurrent sentences of 18 months passed by the learned trial judge are either manifestly excessive or wrong in principle.

Mr Campbell made really 2 points on behalf of the appellant. The first point was that the appellant had not been given sufficient weight by the trial judge for his plea of guilty and by his co-operation with the police and Mr Campbell made the point which we consider is a fair and proper point that if the appellant had not pleaded guilty, very many man-hours would have been taken up both on the part of the police and the Revenue authorities in seeking to assemble evidence that would prove these offences in Court. Secondly, that, applying what has been termed the "clang of the prison gates" principle, these sentences were too great, bearing in mind that this man had a good work record, that he had reached the age of 32, that he was married with a young family and that his only criminal record related to minor driving offences so that for all practical purposes he had a completely clear record. But Mr Campbell also accepted that these were serious offences which called for sentences of imprisonment.

It was the view of this Court when they first read the papers in this case that the sentences imposed by the learned trial judge could not be faulted and that view was taken for the reasons that the Court has already referred to, namely that these are serious offences again the Revenue, that they require a lot of work to detect and they must therefore be punished by imprisonment when an accused comes before the Court and there was the further factor that these offences had gone on in excess of 4 years, that they related to a considerable number of workmen and that the fraud on the Revenue was not a insubstantial sum.

The learned judge who sits at first instance, who has to sentence in a case of this nature, has a difficult task to perform and he does not have the advantage of the authorities before him which this Court has and the judge at first instance has to make up his mind on really his feel of the case and as we have already stated we consider that his feel of the case cannot really be criticised. But we have had the opportunity to look at a number of authorities in England and they include the case of R -v- Ford [1981] 3 Cr.App.R(S) at p.15; the case of R -v- Thornhill [1980] 2 Cr.App.R(S) at p.310; and the case of R -v- Beale [1981] 3 Cr.App.R(S) at p.289. Those are all cases of fraud on the Revenue and whilst, of course, their facts and their circumstances differ, they are all cases where the Court has applied the "clang of the prison gates" principle to a man who hitherto had a clear record and where the Court reduced sentences on that basis. For example, in the case of R -v- Ford, the

appellant, who was aged 53, pleaded guilty to 9 counts of making false statements and was sentenced to 18 months' imprisonment. He had concealed income over a period of years with the result that about £14,500 was lost to the Revenue and Lord Justice Watkins stated that in sentencing for this kind of fraud a balance should usually be sought by imposing a prison sentence to be served forthwith and imposing a swinging fine in addition. In this manner the punishment is likely to fit the crime as well as acting as a deterrent to others. That does not apply here, where it is not appropriate to impose a fine, but Lord Justice Watkins went on to say:

"The appellant has been respectability itself apart from the crime of defrauding the Inland Revenue. 18 months is too long a time in the view of this Court to keep him locked up."

The clang of the prison gates was loud and clear for him and the sentence was varied to 6 months' imprisonment with fines totalling £9,000.

In the case of R -v- Thornhill the appellant was a man of 51 of previous good character. He pleaded guilty to conspiring to defraud the Revenue. He had conducted a business over a period of years and had paid some of his employee's money from which tax was not deducted, concealing the failure to deduct tax in various ways. The total loss to the Revenue over a period of 5 years was estimated at £3,278. He was sentenced to 6 months' imprisonment and Mr Justice Glidewell stated:

"Defrauding the Inland Revenue is a serious offence because it means defrauding the vast body of honest taxpayers. It should be generally known that an immediate sentence of imprisonment may well be the result of pleading guilty to, or being convicted of such an offence."

But he then went on to say that the sentence should be reduced and that the first point to be made was that, with a man of this kind, it is the effect of imprisonment, rather than perhaps the length of it, which is important and then the Court went on to reduce the sentence of 6 months' to one of 2 months' imprisonment.

Finally, in the case of R -v- Beale [1981] 3 Cr.App.R at p.289, where the Court was presided over by Lord Lane, the Lord Chief Justice, as was the position in R -v- Thornhill, a man there of 29 with no previous convictions was the proprietor of two retail shops. He pleaded guilty to conspiring to defraud the Revenue. Over a period of about 4 years he had paid certain employees various bonuses or commissions from which tax was not deducted and in respect of which no tax was paid. He sentenced to 2 months' immediate imprisonment, fined £2,000 and ordered to pay the costs of the prosecution not exceeding £600. His co-defendant, the manager of one of the shops, was sentenced to 2 months' imprisonment suspended, fined £500 and ordered to pay £200 towards the costs of the prosecution. In delivering the

judgment of the Court, Mr Justice McCullough said and this is a highly relevant passage to which My Lord, Mr Justice Carswell, has referred me:

"Until not very long ago sentences for this kind of offence would have been of the order of 18 months' imprisonment. Nowadays it is thought possible to pass very much shorter sentences but the need to mark the gravity of such offences by immediate sentences of imprisonment remains."

and the appeal was dismissed. But, of course, that was a case where the sentence passed in the Court below, in addition to fines, was 2 months' immediate imprisonment.

We consider that these authorities clearly establish that in this type of case, even though the offence is a serious one where the offender has for all practical purposes a clear record, then the Court applies the "clang of the prison gates" principle and the Court considers that a short sentence of imprisonment serves as appropriate punishment and as we have stated the learned judge in the Crown Court did not have the advantage of these authorities being open to him and applying them to this case, we consider that the sentence was wrong in principle and we consider that the appropriate sentence to pass is 12 months' imprisonment and we consider 12 months is the appropriate period because of the length of time for which the offences were committed and for the amount of money which was involved. So, therefore, the leave to appeal is granted, the Court treats the application as the hearing of the appeal, the Court allows the appeal and substitute a period of 12 months' imprisonment.