



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 16  
HCA/2018/000282/XC

Lord Menzies  
Lord Turnbull

OPINION OF THE COURT

delivered by LORD MENZIES

in

APPEAL AGAINST SENTENCE

by

**RAMEEZ HAMID**

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

**Appellant: Macintosh; Faculty Services Limited**  
**Respondent: McSporrán QC (sol adv) AD; Crown Agent**

11 December 2018

[1] The appellant Rameez Hamid played an essential and major role with others in obtaining the personal details of customers of the bank where he worked and stole large sums of money from their accounts in a fraudulent scheme which lasted over several months. The sheriff observes in his report to this court:

“In the whole circumstances I considered that the gravity of the offence before me was such that no other method of dealing with the appellant was appropriate other

than a custodial sentence. An increasing proportion of personal banking transactions in society are conducted either via telephone or online. Bank customers should rightly expect the highest standards of probity from bank employees dealing with their accounts. The criminality committed by a bank employee involved a grave breach of trust.”

We agree with those observations.

[2] The appellant pled guilty at first diet, and was sentenced at Glasgow Sheriff Court on 17 May 2018 in respect of embezzlement of some £51,000 from his employer’s bank. The sentencing sheriff sentenced him to 3 years imprisonment, that being discounted from a headline sentence of 4 years imprisonment to reflect the early plea of guilty.

[3] The appellant was aged 31 at the date of sentence, married with a young child. He had no previous convictions and had a good employment history. It was stated to the sheriff that he was put under pressure to get involved in this scheme and he did so because of financial difficulties that he was experiencing at that time. It was accepted in the grounds of appeal that the sheriff was correct to impose a custodial sentence, but it was submitted that the headline sentence of 4 years was excessive.

[4] It was submitted on behalf of the appellant that he had taken steps before sentence to sell his house in order to repay the sums embezzled and the sale would have been completed and repayment effected if the sheriff had deferred sentence for about 1 week. However this was not done and the sale transaction collapsed at that time. We were told that the house is again on the point of being sold, although the sale transaction has not yet concluded, and we were told that it was expected that it would conclude and funds would be available later this week.

[5] It was confirmed on behalf of the Crown that, in that event, the Crown would consent to the sums being paid back to the bank and would no longer proceed with the confiscation proceedings under the Proceeds of Crime Act 2002. There was some discussion

about the effect of section 97(4) of that Act, which provides that (subject to subsection (2)) the court must leave a confiscation order out of account in deciding the appropriate sentence for the accused. However, it was made clear by counsel for the appellant that he was not arguing that the sentencer should take account of confiscation proceedings, but rather that it was a mitigatory feature that a person in the position of the appellant should intend to take steps to recompense the victim of his crime and take steps to implement that intention.

[6] It was submitted that these attempts to make repayment were mitigatory and that insufficient weight was given to this by the sheriff, although we observe that this argument does not appear to have been made to the sheriff, nor did it feature in the grounds of appeal. Our attention was drawn to several cases, including most recently the case of *Farquhar v HMA* [2018] HCJAC 56, where, at paragraph 11, the court observed that in the circumstances which pertained in that case the appellant had secured repayment of the entire sum embezzled and that this was an important consideration. The court considered the cases of *Dolan v HMA* 1986 SCCR 564 and *White v HMA* 1987 SCCR 73; in the particular circumstances of that case it quashed the sentence of 18 months imprisonment imposed on a 70 year old woman who was a first offender, and substituted a fine of £15,000.

[7] It was conceded on behalf of the appellant that there were several other factors which were relevant in the decision in *Farquhar* which are not present in this appeal. We agree that repayment of embezzled monies may be an important consideration and may in some circumstances have a mitigatory effect. In this case it was urged on us that the mitigatory effect of what has happened, together with the fact that by the date of the appeal hearing the appellant had served the equivalent of more than 13 months custodial sentence, meant that we should quash the sentence imposed and substitute a community payback order. We do not consider that that is appropriate in the present circumstances (which are

different in several material respects from those in *Farquhar v HMA*). This was a very serious offence. However, we do accept that the fact that the appellant has intended to take steps to recompense the victim of his crime and has taken steps to implement that intention does have some mitigatory effect.

[8] Accordingly, we shall quash the sentence imposed by the sheriff of 3 years imprisonment discounted from 4. We shall reduce the headline sentence from 4 years imprisonment to 3 years 6 months imprisonment to reflect the steps that were taken prior to sentence to sell the house to enable restitution to be made. We shall apply the same discount, namely one quarter, as that applied by the sheriff. This results in a sentence (in broad terms) of 32 months imprisonment. So, we shall substitute 2 years 8 months imprisonment for the sentence of 3 years imprisonment which was imposed.