

IN THE CROWN COURT IN NORTHERN IRELAND

THE QUEEN

-v-

JOHN McDEVITT

ICOS No: 11/100668

SENTENCING REMARKS

HIS HONOUR JUDGE MILLER QC

[1] On the 29th November 2011 the Defendant was arraigned at Downpatrick Crown Court and pleaded not guilty to the three counts on the Bill of Indictment. The matter was subsequently listed for Trial on the 20th February 2012 and on that date the defendant applied to be re-arraigned pleading guilty to three counts of Fraud contrary to section 1 of the Fraud Act 2006.

[2] Count 1 is that on a date unknown between the 1st day of January 2007 and the 9th day of February 2007, in the County Court Division of Ards, the Defendant dishonestly made a false representation, namely that he would hold £75,000 on behalf of William Carville and Katrina Carville and each of them, and would return the money within a period of 6 months with the intention, by making the representation, to make a gain for himself or another or to cause loss of William Carville and Katrina Carville and each of them or to expose them to a risk of loss, in breach of section 2 of the Fraud Act 2006.

[3] Count 2 is that on the 23rd May 2008 the Defendant made a false representation that a First Trust Bank limited cheque made out in the sum of £141 was a good and valid order for the said amount, with the intention, by making the representation, to make a gain for himself or another or to cause loss to Uel Hardy. The cheque was not honoured as the bank account had been closed due to inactivity.

[4] Count 3, which is similar to the second count, is that on the 27th August 2008 the Defendant made a false representation that a First Trust Bank limited cheque made out in the sum of £210 was a good and valid order for the said amount, with

the intention, by making the representation, to make a gain for himself or another or to cause loss to Gerry Mageean. As with the second count the cheque was not honoured as the bank account had been closed due to inactivity.

[5] The Defendant was questioned over a prolonged period of time on four occasions, (11th November 2008, the 8th September 2009, the 20th November 2009 and the 29th January 2010) giving Police different, inconsistent and elaborate version of events. When further inquiries were made by Police and these details shown to be false, he continued to advance an elaborate and fictional account as to how the money advanced by the injured parties was invested for their benefit.

[6] Count 1 involved false representations made to Mr William Carville and Mrs Katrina Carville. They are a married couple who live in Downpatrick. In 2006 William Carville was working in Dublin and he was introduced to the Defendant by a colleague Liam Mongan in November of that year. They were introduced in the Jumping Bean cafe in Duleek, Co. Meath. The Defendant told Mr Carville that he secured land and properties for prospective buyers.

[7] In January 2007 the Defendant called to William Carville's house to discuss an investment opportunity. The Defendant stated that he was working with a man called Mr X from a company called Platinum Developments and stated that they were putting forward a business deal to Cardinal Asset Management. The deal involved the purchase of over 400 petrol stations in Bulgaria from a company called Petrol JSC. The Defendant stated that the company was in trouble and that he was planning to buy all the petrol stations, land and property belonging to Petrol JSC at a rock bottom price. He was trying to persuade a company called Cardinal Asset Management to provide the capital to allow this purchase to take place, and were looking for Cardinal Asset to provide \$300,000,000. When the business deal was completed and the purchase had taken place Cardinal Asset Management would help Platinum Developments to break up all of the assets, which would then he sold for a significant profit.

[8] The Defendant stated that because he was bringing the business deal to Cardinal Asset Management, he would receive a finder's fee from CAM when the business deal was complete. He stated that this could be from 1% to 7% of the \$300,000,000 being used to carry out the purchase. The Defendant stated that because he was receiving this finder's fee, he could not be associated directly with the business deal and was not entitled to any share in the profits from the subsequent sale of the assets by CAM and P D.

[9] The proposal he put forward was that Mr William Carville's name be used in the business deal in relation to the sale of assets and that the Defendant's share of the profits from the sale of the assets would be provided to Mr Carville, who could then forward these on to the Defendant, so as to conceal the involvement of the Defendant. Mr Carville was to receive a payment for putting his name to the deal and holding the profit before passing this on to the Defendant. The money that was

going to be received would be up to around \$50,000,000 and in return for allowing his name to be used Mr Carville was to be paid around \$2,000,000.

[10] The Defendant however stated that trust had to be built up before he arranged to have this vast amount of money lodged into Mr Carville's name and bank account. The Defendant said that in order to build up trust with Mr Carville for the money that he was to receive he wanted Mr Carville and Mr Mongan to provide him 250,000 Euros.

[11] This proposal was discussed throughout January 2007 and the Defendant provided Mr Carville with documentation in relation to CAM and P D, which appeared to the injured parties to confirm the Defendant's story. The Defendant told Mr Carville that he had been constantly flying back and forward to London and Bulgaria for business meetings.

[12] Mr Carville could raise £75,000 which was from Katrina Carville's mortgage account. This was discussed with the Defendant, and Mr Carville informed the Defendant that he would require the money back within 6 months to pay a CVA. The Defendant agreed to this and stated that he would have an agreement drawn up by a Solicitor, a fact that gave the proposal further credence in Mr Carville's eyes. The Defendant however stated that for tax reasons the agreement would have to state that the money was a loan, which it was not.

[13] It is apparent that Mr and Mrs Carville were somewhat bedazzled by the promises of huge wealth and were taken in by the Defendant who came across as plausible and credible, because of his manner and the various details he provided. Thus he won their trust and they agreed to enter into the deal.

[14] On the 8th February 2007 Mr Carville gave the Defendant a cheque for £75,000 signed by Katrina Carville and the agreement which purported to be a loan agreement was signed; the Defendant retaining the only original copy. The agreement stipulated that the whole deal was to be completed within a 6 month time-frame.

[15] The representations in relation to the huge investment were a complete fabrication as was the Defendant's assurance that he was simply going to hold the £75,000 and return it within 6 months. Rather than holding the money in a bank account the Defendant spent it all between the 16th February 2007 and 16th July 2007.

[16] In the following months Mr Carville kept asking the Defendant when he would need to sign documentation to hold the profit from the sale of the assets. Around May or June 2007 the Defendant stated that he had got someone else to hold the profits from sales on his behalf, but assured Mr Carville that this would not affect his return from the deal. Regardless of any return the £75,000 would be paid back in August 2007. The Defendant claimed, however that the assets had still to be broken up and if he left the cheque to the end of September 2007 Mr Carville would

receive a greater return. Despite assurances no payments were forthcoming. Mr Carville asked for the return of the money but the defendant failed to honour any of his numerous representations that it would be paid back.

[17] This situation persisted over the months up to and including January 2008 with the defendant going through the motions of obtaining Mrs Carville's bank details and assuring the couple that the money would be transferred. Mr and Mrs Carville called at the Defendant's home in early January 2008 and the Defendant stated that he had been ill and that he would phone and arrange to meet Katrina at his bank to transfer the money. Mr Carville then phoned the Defendant regularly but he would not answer his phone. Later in January 2008 after the Carvilles' managed to make contact again, the defendant made further offers to deliver a draft for 200,000 euros to their house; then to take it to Mr Carville's place of work in Dublin. None of these arrangements and others for meetings on 30th January was honoured by the Defendant. The last contact was in March 2008 with the defendant still making his empty promises.

[18] This matter was then reported to the Police and the defendant was interviewed. It was then that he put forward new, elaborate and conflicting accounts of the deal during a series of interviews spread over a period of 14 months between November 2008 and January 2010. I do not intend to set out the contents of these interviews in detail but suffice to say they amounted to self-serving accounts of complex deals involving syndicates, which upon closer scrutiny could not be substantiated and which were in reality completely fictitious. Bank accounts for companies operated by the defendant were found to contain no money and to have shown little or no activity over a period from 2007 and 2011. The defendant continued throughout to maintain his willingness and desire not only to reimburse Mr and Mrs Carville of the monies they had lost but to ensure that they receive the huge dividends on their investment as originally promised. The fact remains, however, that these assertions, claims and promises were and remain as empty as the bank accounts operated by the defendant.

[19] Counts 2 and 3 relate to two cheques proffered drawn from accounts operated by the Defendant (14153086 in relation to the cheque for £210 made out to DFG and 14153169 in relation to the cheque for £141 to CCRS). Both accounts were closed down on the 23rd May 2008 because they had been inactive for a long period of time prior to that. At interview the Defendant stated that he was not aware that the two bank accounts had been closed and denied receiving correspondence in relation to the closing of the account. When the Defendant's house at 5 Ardpark Avenue, Downpatrick was searched in November 2008 a letter dated the 23rd May 2008 was found from First Trust in relation to these accounts. The letter, which was opened, was addressed to the Defendant, the sole account holder and notified him that both accounts were closed.

[20] The principal offence (**Count 1**) occurred prior to the coming into effect of the Criminal Justice (NI) Order 2008 on 15th May of that year. Although both offences at

Counts 2 & 3 occurred after that date the Order will not apply as the defendant does not fall to be considered a “dangerous offender” within the meaning of the 2008 Order and the power to impose a determinate sentence under the Order only arises in respect of offences committed after the 8th April 2009. Thus I am sentencing you under the provisions of the Criminal Justice (NI) Order 1996. I have read Article 33 of the 1996 Order. I have taken into account the fact that you have pleaded guilty in this matter albeit at a very late stage in proceedings. I also take account of your lack of previous convictions, your personal history as set out in the report of Dr Bownes; the PSR compiled by Ms Taylor and as amplified in the submissions made on your behalf by Mr Blackburn. I am therefore imposing on you a sentence more lenient than I would otherwise have done. I must, however, strike a note of caution. It is readily apparent from any reading of the papers in this case that you are skilled in the manipulation of others and by so doing you have extracted large sums of money without any intention of using these for the benefit of anyone other than yourself. Time after time you professed first to the Carvilles’, then to the Probation Officer and finally to this Court that you intended to re-pay what you owed and that the money was available for that purpose. These are mere weasel words lacking any credibility or substance and I consider this to be nothing more than a cynical attempt on your part to put off the day of reckoning.

[21] It may be obvious to remark but it is nonetheless true that offences of obtaining services by deception and fraud by false representation vary enormously depending on the particular factual matrix relevant to each case. In assessing how any individual defendant should be sentenced, however, the court must take account of certain factors which are common to all cases. First is the level of culpability and harm. The Sentencing Guidelines (England & Wales), to which Mr McCollum referred the Court, although not binding on this court, do provide some assistance in this regard. The Council guideline *Overarching Principles: Seriousness* sets out four levels of culpability, the highest of which is an intention to cause harm. It is a general feature of fraud offences that an offender intended to bring about a gain (whether for the offender or for another person) or to cause a loss, or risk of loss, to another. Generally, therefore, fraud offences involve the highest level of culpability. Within that level, culpability will vary according to the offender’s motivation, whether the offence was planned or spontaneous and whether the offender was in a position of trust.

[22] Fraud is not a victimless crime. The monetary cost is significant, but fraud offences also cause considerable social and economic harm beyond their immediate financial impact. Fraud can be used to fund organised crime that may target vulnerable victims (drug and people trafficking, for example) and fraud offences that target individuals can ruin lives, close businesses or take life savings.

[23] In assessing the harm caused by fraud offences, the primary consideration is the loss to the victim or to the community at large. In some fraud cases, the harm that results from an offence may be greater than the harm intended by the offender. In others, the offender may have intended more harm than actually results. In these

situations, the harm caused by the offence should be judged in light of the offender's culpability. In general terms, the greater the loss the more serious will be the offence. However, the financial value of the loss may not reflect the full extent of the harm caused by the offence.

[24] In the present case the defendant's assertion that he never intended to defraud Mr and Mrs Carville has a distinctly hollow ring to it when one considers what he did with their money and how he has repeatedly failed to honour his espoused intention to repay them. Thus his level of culpability is very high. I have, however, borne in mind that you come before this court at the age of 46 years with no previous convictions and in these circumstances the clang of the prison gates will impact more heavily upon you than for someone who had a lengthy record.

[25] Pursuant to Article 19 (2) (a) of the 1996 Order, I have formed the view that these offences are sufficiently serious that only a custodial sentence could be justified as you have wilfully defrauded Mr & Mrs Carville out of a significant sum of money.

[26] I have also concluded that a sentence in excess of twelve months or more is justified for these offences. I have come to this conclusion for the same reasons as previously stated. Pursuant to Article 24 (1) of the 1996 Order I am obliged in these circumstances to then consider whether or not it is appropriate to make a Custody/Probation Order. In the circumstances of the case it is the view of the very experienced Probation Officer that you do not present with any problems which need to be addressed through Probation Supervision. Furthermore your mobility problems mean that you are incapable of undertaking a Community Service Order. In these circumstances I do not consider that such a measure is appropriate. Taking all these factors into consideration I have determined that the sentence on Count 1 should be for a specific period of 1 year 9 months.

[27] The amounts involved in Counts 2 & 3 are small but it is clear from the agreed statement of facts that the defendant was fully aware when he wrote the respective cheques that there were no funds available. In these circumstances a sentence of 3 Months on each charge is warranted. These sentences shall be concurrent to each other but consecutive to Count 1.

[28] The sentence of the Court is as follows: -

Count 1 - 1 Year 9 Months;
Count 2 - 3 months consecutive to Count 1;
Count 3 - 3 Months concurrent to Count 2.
Total Sentence - 2 Years

Count 1 - compensation order £75,000
Count 2 - compensation order £141
Count 3 - compensation order £210