

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

THE QUEEN

v

DAMIEN MURRAY

WEIR J

[1] Damien Murray, you have pleaded guilty to one count of theft that relates to the misappropriation by you between June 1999 and December 2003 of sums from your clients' account totalling some £811,000 or thereabouts. It is now my responsibility to sentence you for that offence.

[2] The circumstances surrounding the thefts are to say the least unusual and, but for the fact that they have been agreed in a detailed Statement of Facts between the prosecution and defence, I should have found them difficult to credit. You were admitted as a solicitor in December 1988 and worked as an assistant in a well-known Belfast firm until you commenced to practice on your own account in March 1995. Your practice seems to have flourished in terms of the amount of business you were able to attract, notably from a substantial individual in the property world, whom I shall call Mr S. Unfortunately you do not seem to have been as successful at managing the business you attracted with the result that some clients' work was neglected and you apparently made payments to them to deal with their dissatisfaction.

[3] As a result you incurred financial problems and sought to deal with them, not by reporting them to the Law Society and obtaining the protection of its Professional Indemnity Insurers nor by approaching the Bank, a friend or colleague or your largest client Mr S. Even now he has said in a recent written statement to this court that he would have assisted you had you approached him with your problems despite the fact that he has since irrecoverably lost £175,000 as a result of your dishonesty.

[4] You chose instead to accept a loan from another client, a Mr B, in the sum of £27,500 around the start of the year 2000. Even allowing for inflation since then it may be seen that, especially given the success of your practice, the scale of your then financial problems was not insuperable. However it is agreed that that lender soon “assigned” your debt to an associate of his, a Mr A, who indicated to you around July 2000 that from that point you were dealing with the UVF and thereafter insistent demands for repayment coupled with extortionate additions for “interest” and threats of violence to you and your family caused the removal of more and more money from your clients’ account in a futile attempt to satisfy your tormentor. It is accepted that over the ensuing 4 years until the Law Society began to discover the irregularities in your account, you were in understandable fear of Mr A whom you then believed and still believe to have been connected to the UVF.

[5] The fraud was unsophisticated and without any hope of permanent concealment was certain to be uncovered by the Law Society in due course as indeed it was in about February 2004, 10 years ago. In April 2004 you were interviewed by the Law Society about the defalcations and fully admitted what had happened, why it had happened and explained in detail how the frauds had been committed. You have never practised as a solicitor since and it seems most unlikely that those responsible will ever admit you to practice again.

[6] On 19 August 2004 your solicitor, Mr Tony Caher, wrote to an officer of the PSNI Fraud Squad in the following terms:

“I understand that you and your squad are carrying out an investigation into the affairs of Mr Murray’s former practice that ultimately led to its closure and the considerable shortfall in his clients’ account.

My client has co-operated to date with the Law Society in its investigations into the matter and I have no doubt that you are aware that he has also assisted the Forensic Accountants retained by the Society and indeed the Society’s solicitors in identifying so far as possible the source of the monies leaving his account and the reasons for its so doing.

I am anxious that you be made aware that my client is willing to co-operate with you and your squad in its investigations and would be willing to attend any interview whether as a witness or indeed if you require as a suspect under PACE at your convenience.”

As a result the Police carried out a search of your house on 16 September 2004 and took away papers. The Police then wrote to Mr Caher on 29 September 2004 saying

they would be in contact in due course when they were in a position to interview you. Five years were then to elapse before you heard from the Police again following which you were interviewed by them in October 2009 and February and August 2010. You then told them exactly what you had told the Law Society 5 years previously. Even then you were not committed for trial for a further 3 years until 9 October 2013.

[7] I have attempted without success to understand why you were not interviewed by the Police for more than 5 years after their investigation began and your solicitor had written clearly setting out your willingness to co-operate. The PSNI has provided me with an activity log extending to 42 pages for the period between 21 June 2004 and 27 April 2009 which indicates much to-ing and fro-ing between the Police, Forensic Accountants, the Law Society and solicitors acting for the Law Society. Why you could not have been interviewed at any time throughout that period, even as an initial step, utterly escapes me.

[8] It is agreed between the defence and the prosecution that no evidence has emerged during the investigation to suggest that you enjoyed any personal financial benefit from your criminality. It appears that when the offences came to light you had only limited assets and you were adjudicated bankrupt on 13 December 2004 and erased from the Roll of Solicitors on 10 February 2006.

[9] You are now almost 51, married with three children, two of whom are at university and one still in secondary education. You and your family have been existing under the dismal shadow of these events since about the year 2000 although it was not until 2004 that your family learned what had been happening. The prosecution acknowledges that throughout that period of some 14 years you have in consequence been suffering from acute psychiatric illness which has been exacerbated by the delay between the detection in 2004 and today, none of which period is attributable to you.

[10] I have had the benefit of three medical reports from Dr Quigley, Consultant Psychiatrist, amplified by his oral evidence, a report from Amanda Crossan, Consultant Clinical Psychologist, and reports from Dr Martin Donnelly, your family doctor, on both you and your wife whose health has also been affected. You have plainly suffered very greatly and have never been free of symptoms which flared up again when the Police re-activated the matter in 2009. Dr Quigley, who saw you initially for medico-legal purposes, was so concerned by your presentation that he took what he described as the highly unusual step of arranging for you to attend his hospital clinic where you remain under his care. You have been seen intensively by a Clinical Psychologist and the present diagnosis is one of Post Traumatic Stress Disorder due to the threats made against you. In Dr Quigley's opinion your condition has persisted due to the "decade of delay". In his view your condition would have resolved sooner had the proceedings been brought to a conclusion. He

estimates that it will take a further 2 years to achieve recovery following the termination of this case.

[11] As an offence of this nature committed by someone in a position of trust such as you calls for the imposition of a prison sentence I inquired of Dr Quigley as to the psychiatric and psychological services available within Maghaberry Prison which are, coincidentally, provided by the South-Eastern Health Trust of which Dr Quigley is the Director of Mental Health Services. He informed me that the service within the prison is “more rudimentary” than that available in the community on the NHS. The psychological service is not so available or reactive and the psychiatric service is not as easily accessed.

[12] The sentencing guidelines for cases of dishonesty by persons in positions of trust set out R v Barrick (1985) 7 Cr App R (S) 142 at 7 were adopted for use in this jurisdiction by the Court of Appeal in R v Gault [1989] NI 232. As Hart J observed in R v Nurse [2010] NICC 3 solicitors are in a particular position of trust because they are permitted by law to handle clients’ money. Members of the public place their affairs in their hands and they abuse that trust by committing offences of this nature. This abuse of trust is the most serious aspect of these offences because, as Hodge J observed in R v Miles [2007] 2 Cr App R (S) 5 at page 23:

“Here we have a solicitor who was, as are all solicitors, permitted by legislation to handle clients’ money. Solicitors are officers of the court. They owe a duty of utmost good faith to their clients and to the public at large. Any breach of that damages the victims, it damages their colleagues, it damages the profession at large and reduces public confidence in the profession.”

[13] As I said at the outset, this is a most unusual case in many respects. The imposition of a custodial sentence is inevitable not least in view of the very large sum of money taken none of which has or will be repaid. I have however decided, exceptionally and after anxious consideration, to suspend the immediate operation of the sentence for the following principle reasons:

- (1) The monies were stolen as a result of the extreme pressure to which it is agreed you were subjected resulting in a serious and enduring psychiatric condition.
- (2) You have not been shown nor are you thought to have benefited personally from your dishonest actions.
- (3) The quite inordinate and inexplicable delay in bringing this prosecution has meant that you, your wife and children have all effectively served a sentence of 10 years which has delayed your recovery, impaired your wife’s health and

cast a heavy cloud over what should have been the carefree years of your children's childhood. You have lived the life of a virtual recluse, withdrawn from your professional, sporting and social connections and acquaintances and incapable of employment except for a short period which was due to the good offices of a friend. You have spent the last 14 years literally looking over your shoulder.

- (4) The nature of your psychiatric illness is such that I am not satisfied it would receive the quality and intensity of treatment that it requires within the prison setting.

[14] I take as my starting point for a theft of these proportions a term of 6 years. It is agreed that by your admissions in 2004 you effectively admitted your guilt at the first opportunity and you have pleaded guilty to the charge thereby avoiding a lengthy and complex trial. You assisted the authorities by explaining in detail what you had done and how you had done it. Finally I take into account your previous excellent character. I reflect all these factors by reducing your sentence to one of 3 years' imprisonment which, by reason of what I stress are the quite exceptional circumstances earlier described, I suspend for 3 years. That means that if you commit no further offences for a period of 3 years from now you will hear nothing further about this matter. If you were to commit a further offence the court which dealt with it would also have the power to put the present sentence into effect at that time.