IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

---

THE QUEEN

-v-

SAMUEL COSGROVE JACKSON

---

HUTTON LCJ

This is an appeal against sentence by Samuel Cosgrove Jackson who is now aged 51. He pleaded not guilty at Ballymena Crown Court to the one count in the indictment against him which was in these terms -

"That he on a date unknown between the 10th day of October 1969 and the 30th day of June 1993, in the County Court Division of Antrim, or elsewhere within the jurisdiction of the Crown Court, dishonestly received certain stolen goods namely, a gold lunula and a bronze Penannular brooch belonging to Lord Dunraven, knowing or believing the same to be stolen goods."

He was tried by the jury and was found guilty on that count and he was sentenced by the learned trial Judge, Judge Hart QC, to 12 months' imprisonment and it is against that sentence that he now appeals.

The background to the case was this. In October 1969 there was a break in at the Limerick Municipal Museum and among the goods stolen were the gold lunula and the bronze Penannular brooch from the Dunraven collection which were the subject of the count against the appellant. About the end of 1989 a person working in the Irish National Museum was informed that a gold lunula was in the appellant's possession and that he might be willing to make it available to the Irish National Museum. This employee of the museum was also told that the appellant was in possession of one or two Penannular brooches. Then representatives of the museum including Dr Ryan, the then Keeper of Irish Antiquities, met the appellant in Belfast in March 1990 and the appellant was told that the lunula was the property of the Irish Republic and accordingly was claimed by the National Museum, which was prepared to pay an award for its return. The appellant indicated that he would be willing to return the lunula, which he said he bought in a public house, subject to an acceptable payment.

Then in April 1990 representatives of the museum met the appellant again in Belfast and saw the lunula and in June 1990 the appellant was offered £12,000 for the lunula. However, he subsequently wrote indicating that he was seeking a higher price and the National Museum then wrote to him increasing the offer to £18,000, but no reply to that letter was received. Subsequently, later in October 1990 a letter was received from Christie's in London which offered the lunula for sale by private treaty for between £30,000 - £50,000 stating that if this was not possible the lunula would be entered for public auction.

At this stage the Irish Government issued a statement claiming ownership of the lunula and stating that it had been illegally removed from the jurisdiction of the Irish Republic. In November 1990 the appellant telephoned Dr Ryan and said that he did not want to be involved in litigation and he would accept £20,000 for the lunula and the lunula was then returned to the National Museum in Dublin, and the appellant received the sum of £18,000.

During the course of 1991 a researcher engaged in a research programme on the National Museum's prehistoric gold collection, came across information which enabled her to identify the lunula recovered from the appellant as the object which had been stolen from the Limerick City Museum in October 1969. Also information was available that there was a photograph of a Penannular brooch, which had been stolen from the Dunraven Collection, which matched a photograph of a brooch which was believed to be in the possession of the appellant.

In June 1993 members of the Royal Ulster Constabulary went to the appellant's home to question him about the Penannular brooch and the appellant showed the police officer a box containing items of jewellery, but the brooch was not among those items. In the course of conversation with the police the appellant said that he bought the lunula from a man, whom he did not know, in a public house in Portglenone for £1,500. A search of the appellant's home did not reveal the Penannular brooch and subsequently the appellant got the police to take him to a house from which he retrieved the brooch. On the way back to the police station the appellant said that he brought the brooch together with the lunula from this man in the public house in Portglenone.

As we have stated, the jury after a trial convicted the appellant of handling those items as stolen goods and the trial Judge sentenced him to 12 months' imprisonment.

The main point made by Miss Philpott QC, on behalf of the appellant, this morning was that the sentence of 12 months' imprisonment was manifestly excessive because the appellant was a man of 51 with a completely clear record, and she also relied on his history of ill-health. A further point which Miss Philpott made was that the appellant acquired these artefacts in the course of his collecting, and not with the intention of receiving goods he believed to be stolen in order to make a dishonest

profit from them. But that is a point in the light of the jury verdict which we have no hesitation in rejecting.

The learned trial Judge gave a careful statement of his reasons for imposing the sentence of 12 months. He said -

"I will sentence you on the basis that you believed that they were stolen rather than that you knew they were stolen. The verdict of the jury on the basis of the evidence I consider should be interpreted as meaning that the jury has concluded that when you obtained these items there could have been no other reasonable conclusion which you could have reached in all of the circumstances in the light of all that you have seen and heard other than that these items were stolen. In particular the (inaudible) was clearly of considerable monetary value (that is a reference to the lunula). It was made of gold of course and clearly a very delicate workmanship. You paid (then the Judge said £1,000 for it although the appellant stated to the police he had paid a total of £1,500) £1,000 for it although ultimately you received £18,000 sterling from the National Museum of Ireland - an enormous profit."

Then, a little later, the learned Judge said -

"I consider that it (the sentence) must also reflect that historic items such as these have a considerable value in both scientific and cultural terms because they help archaeologists in their painstaking task of seeking to throw light on the past. Concern for the preservation of items such as these is and for a considerable period of time has been the characteristic of modern society. I consider it important that it is made clear to all of those who might be tempted to illegally profit from such items that a serious view will be taken of such action no matter from which jurisdiction the items can be shown to have originated."

That observation by the learned trial Judge is a statement which this court strongly endorses. Then the Judge also went on to say -

"I have to take into account also that you are a man who has reached the years of maturity with a clear record."

Miss Philpott at the start of her submissions argued that because of the appellant's age and completely clear record the appellant should not have received an immediate custodial sentence at all, and in support of that submission she relied on the decision of the English Court of Appeal in R v Khemlani 3 Cr.App.R(S) 208 where the relevant part of the headnote reads -

"The appellant pleaded guilty to handling 350 stolen watches, part of a batch of 1,000 watches which had been stolen from a company. The appellant was a man of previous good character. Held it was unnecessary in this case to impose a sentence of imprisonment; the justice of the matter would be far better met by imposing a fine

and a compensation order. Sentence varied to a fine of £1,000 and a compensation order for £3,325.00."

We reject Miss Philpott's submission that this appellant should not have been sentenced to an immediate custodial sentence. Having regard to the historic and cultural value of these two artefacts, and the need to deter others from handling them dishonestly, we consider that the Judge was right to impose an immediate custodial sentence. But the question which then arises is whether 12 months' imprisonment was excessive in the case of this particular man aged 51 with a good background and a completely clear record. In deciding that question this court has derived considerable assistance from the judgment of the English Court of Appeal in R v Wilson 2 Cr.App.R(S) 196. We think it is clear that that decision and the judgment in it was not before the learned trial Judge and had not been cited to him when he passed sentence so that he did not have the assistance which we have from the observations contained in the judgment. In that case the headnote reads -

"The appellant, a man of 40 of previous good character, pleaded guilty to handling 2 stolen caravans which had been found on the caravan site which he operated."

He was sentenced to 12 months' imprisonment and it was held by the Court of Appeal:

"A sentence of immediate imprisonment was the only appropriate way of dealing with offences of this kind, but for a man in the appellant's position a short immediate sentence of imprisonment perhaps coupled with a fine was likely to have all the deterrent effect it was desired to achieve."

The sentence was reduced to 2 months' imprisonment.

We think it relevant to read a passage from the judgment. The relevant passage is as follows:-

"When he came before the court, Wilson pleaded guilty (of course that was a factor in his favour which operated to permit a reduction in his sentence, and that is a comment we interpose). He had bought the two caravans for a total of £975.00 knowing that they had been stolen. In those circumstances Mr Du Cann has submitted firstly that the court should have regard to the way in which Wilson became involved. The caravans were brought to him at his premises by one of his co-defendants called Smyth. He acquired the caravans for his own use. He has lost the money that he paid out upon them. It is emphasised that he was in no sense trading in stolen goods. Mr Du Cann has emphasised the consequence of imprisonment upon his business and upon his employees in that business and he has referred to the long period of delay during which Wilson was waiting to know his fate. In the view of this Court, notwithstanding those submissions made with customary and admirable brevity by Mr Du Cann imprisonment, was the only appropriate way of

dealing with these offences and moreover by an immediate sentence of imprisonment. This property was of considerable value. Thieves must find it hard to store or dispose of caravans unless the owner of a site is willing to help them dishonestly. The consequences of imprisonment on hard working men are always disastrous and sad for their families and employees, but men who take part in such criminal dealings must expect in such cases to be sentenced to immediate terms of imprisonment.

The next question is whether it was necessary for an immediate sentence of imprisonment, on the facts of this case, to be so long as 12 months. The Court has not got a transcript of what the learned Judge said. The Court has been told that in passing sentence the learned judge took into account the good character of the appellant and the fact that the matter had been hanging over him for 2 years but said that in his view the matter could not be passed over having regard to the gravity of the offence.

It is clear to this court that it was not necessary for an immediate term of imprisonment to be as long as 12 months. This appears to be the sort of case in which a short immediate sentence of imprisonment is likely to have all the deterrent effect which it is desired to achieve upon a man in the appellant's position. That short sentence can sometimes be usefully and properly coupled with a fine."

We consider, as we have stated, that the appellant should serve a term of imprisonment, the sentence to be a deterrent to others. But having regard to what was said by the English Court of Appeal in R v Wilson and having regard to the appellant's completely clear record until this offence at the age of 51, we consider that the sentence should be reduced. We are also influenced in coming to that view by a medical report on the appellant's medical condition before trial. This medical report should have been placed before the learned trial Judge and it was a pity that it was not, but in this case notwithstanding that failure we have decided nonetheless to take the report into account. It is a report from the appellant's General Practitioner and we are satisfied that it establishes in a quite genuine way, and we mean by that that this is not just an assertion by the appellant that he suffers from ill-health, but the report from his own doctor establishes in a clear way, that he has suffered bad health for many years. We refer to parts of the report, for example, the report states -

"Mr Jackson has been a patient of mine for over 20 years. He has a long history of nervous and mental problems going back many years. He has always been a highly nervous, tense individual who, down over the years, has complained of numerous physical symptoms without any very marked physical cause being found."

Later the report states in June 1994 he was referred to a psychiatrist. He was referred for a psychiatric opinion because he was depressed and was having panic attacks and phobic symptoms for the previous few years. He was started on anti-depressants by the Consultant Psychiatrist. He was referred again for a medical

opinion in September 1994 because of feeling tired, mood swings, suicidal ideas and irritable bowel syndrome. Further investigations were carried out without any definitive diagnosis being made. Therefore the appellant has had a long history of nervous and mental disorders going back over a considerable number of years. The doctor states that these can only have been exacerbated recently by the situation he finds himself in.

That consideration relating to his medical history allied to his excellent record causes this court to consider that the sentence of 12 months was excessive. In deciding what the appropriate sentence should be we bear in mind, as we have already stated, that these are very valuable artefacts of great historical and cultural importance. In all the circumstances we consider the sentence should be 6 months' imprisonment instead of 12 months' imprisonment and we allow the appeal to the extent of substituting a sentence of 6 months' imprisonment and we consider that that sentence will be a deterrent to others, bearing in mind the excellent record of the appellant.