No: 201800983/C4, 201800280/C4, 201800985/C4 & 201800986/C4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2019]EWCA Crim 601

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 2 April 2019

B e f o r e:

LORD JUSTICE FLAUX

MRS JUSTICE SIMLER DBE

THE RECORDER OF GREENWICH
HIS HONOUR JUDGE KINCH QC
(Sitting as a Judge of the CACD)

R E G I N A
v
DHARAM GOPEE

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(Official Shorthand Writers to the Court)

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The applicant appeared in person via video link

Mr I Hope and Miss C Brewer appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

LORD JUSTICE FLAUX:

1. The court has before it today two sets of appeals and applications on behalf of the appellant Mr Gopee. First, there is his appeal against an order of contempt of court made against him by His Honour Judge Testar QC in the Crown Court at Southwark on 30 October 2017. That is an appeal as of right under section 13 of the Administration of Justice Act 1960 on which he represents himself. The second is a renewed application for leave to appeal against his conviction at the same court on 8 February 2018 for various offences of running an unlawful money lending business, following a trial before His Honour Judge Beddoe QC and a jury, and against the sentence totalling three-and-a-half years' imprisonment with a five-year Serious Crime Prevention Order imposed by His Honour Judge Beddoe QC the following day. Leave to appeal against conviction and sentence was refused by the single judge and the application has been renewed.

2. In accordance with the usual practice of this court, the single judge in refusing leave to appeal also refused to make a representation order. The appellant on a renewed application has no rights of audience, save in exceptional circumstances. Last week, the appellant made an application to address the court which we refused since no exceptional circumstances had been demonstrated. However, since the appellant had addressed us in relation to his appeal against the order for contempt of court and was available on the video link from HMP Rochester, exceptionally we allowed him to make submissions to us today in relation to both conviction and sentence. We should add that last week the Registrar of Criminal Appeals also refused an application by the appellant to vacate this hearing to enable him to seek legal advice, also asserting that he

did not have access to papers because he had moved prison.

3. Mr Ian Hope and Miss Charlotte Brewer appeared before us on behalf of the FCA. Mr Gopee has not made any suggestion that their appearance was somehow a breach of paragraph 39(a)(6) of the Criminal Practice Direction, but lest that point be raised by him in the future, the point is misconceived, as it has been explained in correspondence. For the reasons given by this court in R v Roberts and Godber [2016] EWCA Crim. 1540, the statement in paragraph 68A.6 that "The prosecution should not attend any hearing at which the appellant is unrepresented" is only referable to a case where the appellant neither has legal representation nor is representing himself. It is not intended to preclude attendance by the prosecution at a hearing such as the present where the appellant represents himself as a litigant in person. In any event, even if the FCA had not indicated that it wished to attend the hearing with counsel, this court would have invited counsel for the FCA to attend in order to assist the court.

4. The order of contempt of court has something of a history which requires explanation. From 2015 onwards the appellant was the subject of a criminal investigation by the Financial Conduct Authority ("FCA") into unregulated and illegal money lending businesses operated by him in breach of the Consumer Credit Act 1974 and the Financial Services and Markets Act 2000. In summary, he acted as a lender of last resort, providing loans with high levels of interest secured by charges on the property of borrowers who were often extremely vulnerable people in society who could not borrow money elsewhere. There were over 1,000 such charges. The appellant often took possession of the properties through actions in the civil courts and then rented them back to the borrowers. He had amassed a portfolio of over 400 such properties.

5. On 25 June 2015 on an ex parte application made by the FCA, His Honour Judge

Pegden QC granted a Restraint Order against the appellant and a number of companies under his control. He was served with that Order shortly thereafter and was interviewed under caution by the FCA on 23 July 2015. In parallel with this criminal investigation, the appellant was subject to proceedings in the Companies Court which were instigated by the Secretary of State for Business, Innovation and Skills. On 23 September 2015, 14 of his companies, the subject of the Restraint Order, were placed in provisional liquidation by the Companies Court. The Official Receiver was appointed Provisional Liquidator but was removed by an Order dated 22 January 2016 as he was unable to carry out his functions due to lack of co-operation from the appellant. On 5 May 2016 the appellant was disqualified from acting as a company director in the United Kingdom for a period of 15 years.

6. On 5/6 April 2016, in the Crown Court at Southwark, His Honour Judge Gledhill QC refused the appellant's application to discharge the Restraint Order and found that the appellant had deliberately breached that Order. On 11 April 2016 the same judge committed the appellant to prison for contempt of court for a period of 18 months. On 16 September 2016, pursuant to Rule 81.31 of the Civil Procedure rules, His Honour Judge Gledhill QC discharged the appellant from his sentence for contempt, saying that he expected a new cooperative attitude from the appellant. That expectation was not fulfilled for reasons to which we will come.

7. The appellant appealed against that finding of contempt and that appeal was dismissed by the Full Court on 27 October 2017. That Full Court did however allow his appeal against one paragraph of an Order made by His Honour Judge Gledhill QC on 9 May 2016 on the application of a third party, Mrs Grace Frimpong, to vary the Restraint Order. Mrs Frimpong was one of the borrowers over whose property the appellant had

secured a charge and she sought the release of that charge on the basis that she had repaid the amount of the loan. The judge made an Order, the first paragraph of which was in mandatory form, requiring the appellant to procure the removal of the charge from the Charges Register. The second paragraph provided that if he did not do so Mrs Frimpong was at liberty to apply to the Land Registry for removal of the charge from the Register. The appellant did not apply to remove the charge, so Mrs Frimpong made the application pursuant to paragraph 2 to the Land Registry and had the charge removed and in fact had sold the property and moved abroad by the time of the first appeal hearing. This Court allowed the appeal against the imposition of a mandatory Order, on the grounds that the Court had no jurisdiction under the Proceeds of Crime Act regime to make a mandatory Order and that the Order should have been permissive. The appellant effectively succeeded on appeal on a technical point which had nothing whatsoever to do with his own conduct.

8. Some three days later on 30 October 2017 the appellant was sentenced by His Honour Judge Testar QC to 15 months' imprisonment for further contempt of court. He had admitted eight instances of further breaches of the Restraint Order at a hearing on 18 October 2017. It is that further committal for contempt against which the appellant now appeals.

9. The appellant's trial on the charges relating to the unlawful money lending business that he had been conducting took place over some three weeks at the Crown Court at Southwark before His Honour Judge Beddoe QC and a jury. On 8 February 2018 he was convicted of two counts of engaging in activity through which a licence was required when not a licensee, contrary to section 39(1) of the Consumer Credit Act 1974 (counts 1 and 3) and two counts of the general prohibition under section 19(1),

contrary to section 23(1) of the Financial Services and Markets Act 2000 (counts 2 and 4).

10. On 9 February 2018 he was sentenced to consecutive sentences on counts 1 and 3 of 18 months and two years' imprisonment, with concurrent sentences on counts 2 and 4 of the same length, a total of three-and-a-half years' imprisonment. That sentence was ordered to run consecutively to the sentence of 15 months' imprisonment imposed for contempt. The judge also made him the subject of a Serious Crime Prevention Order under section 19 of the Serious Crime Act 2007 for five years.

11. We will consider first the appeal against the second committal for contempt. In his sentencing remarks, His Honour Judge Testar QC noted that, after he was released from the first sentence by His Honour Judge Gledhill QC, the appellant had served a statement dated 14 October 2016 saying that the FCA now had correct information regarding all the properties in which his companies had an interest and that the list of bank accounts was correct and accurate. The judge referred to the Note for the contempt hearing dated 17 October produced by counsel for the FCA, Mr Evans QC and Ms Brewer, which showed the extent to which that statement was not accurate. The judge referred to the fact that, as set out in that Note, the appellant had deliberately been using his daughter Rochelle's bank account in relation to cheques for a Ms Jacobson in order to evade the Restraint Order.

12. The judge referred to the fact that the appellant now admitted all the breaches of the Restraint Order set out by the FCA, although he contended some of them were not deliberate; such as contending that he was unaware that the Restraint Order did not permit him to use credit card accounts. The judge rejected the suggestion that the appellant was that naive, holding that he had used credit card accounts because he

knew that he could not use bank accounts and was simply evading the Restraint Order.

13. The judge noted that the largest amount with which he was concerned was £187,655 - in fact the figure may be £191,355, but that is of no matter - which was cash from unknown sources used by the appellant to service mortgage accounts. He recorded that the appellant said that he thought he was preserving assets, but he accepted through his counsel that he was wilfully in breach of the Restraint Order by making those payments. It was impossible to test his assertion that he was preserving assets because no one knew what all the appellant's assets were.

14. Amongst other breaches were the disposals of property to the Gopal Family Trust. The judge went on to say that the real mischief was that the appellant demonstrated a continuing attitude that he could deal with his assets as he wished and he deliberately concealed matters from the FCA. Some of his activities were also concealed from the Court and arose before the first contempt proceedings. The judge took full account of the appellant's health issues and the more serious poor health of his wife. However, the deliberate and continuing flouting of a Restraint Order was the most serious aspect of his conduct. That, together with the fact that this was not the first breach, meant that the judge was obliged to take a higher starting point than before, where the sentence had been 18 months. The judge said that the appropriate reduction to take account of the appellant's admission of breach (although the court had largely not accepted his basis of plea) was 25 per cent, and he passed a sentence of 15 months' imprisonment, from which it is clear that but for the admission the sentence would have been one of 20 months' imprisonment.

15. The appellant has prepared his own manuscript grounds of appeal which are thorough, diffuse and discursive. Mr Evans QC and Ms Brewer then produced a very helpful

Respondent's Notice addressing and answering these grounds, to which the appellant has produced a 26-page response which appears to include further grounds of appeal or at least elaborates on the existing grounds. The appellant also developed three further points before this Court today, with which we will deal in due course.

16. There are four grounds which the FCA submit are of no relevance to the contempt proceedings: ground 2, that the FCA failed to mention what the appellant categorises as its own misconduct in relation to the application by Mrs Frimpong to vary the Restraint Order; ground 3, that several variations made by His Honour Judge Beddoe QC should be quashed; ground 10, that the FCA should have made proper enquiries before launching contempt proceedings against his daughter; and ground 11, that the court failed to enquire why there was mistrust between the appellant and the FCA.

17. The appellant's response to the submission that these grounds are irrelevant is that the matter should have been considered as part of his mitigation. We do not agree. These grounds are indeed irrelevant. Even if there were misconduct of some sort by the FCA, which we seriously doubt, or the variation should have been quashed, none of that is of any relevance to the appellant's deliberate and repeated flouting of the Restraint Order. Likewise, the conduct of the FCA towards his daughter could not conceivably provide the appellant with any argument by way of mitigation. If the FCA mistrusted the appellant it was with good reason, given his continuing uncooperative attitude and deliberate flouting of the Restraint Order. If he mistrusted the FCA that could not provide him with any excuse for the deliberate flouting of the Restraint Order.

18. Taking the other grounds in turn, the first is that the FCA failed to disclose to the judge that the appellant had been successful in the Court of Appeal Civil Division in

June 2016 in a case said to involve the FCA which he asserts would have shown that he is not the type of person portrayed by the FCA. This was a reference to the appeal in Barons Bridging Finance 1 Ltd v Barons Finance Ltd in Liquidation [2016] EWCA Civ 550. We have considered the judgment in that case. It concerned an appeal from a Deputy High Court Judge in the Chancery Division who had declined to permit the appellant to adduce fresh evidence at trial and had then drawn adverse inferences against him. The Court of Appeal found that there had not been a fair trial and ordered a retrial. Despite the various submissions now made by the appellant, that case was not of the slightest relevance to what was the correct sentence for the contempt of court found by the judge. In any event, as Mr Evans QC and Ms Brewer pointed out, the appellant was represented by counsel at the hearing before His Honour Judge Testar QC who could have referred the judge to that case if it were thought to be of any relevance.

19. The next ground is ground 4 which says that the judge remarked that the appellant had been preoccupied with litigation, which must be through his own doing, which was an erroneous assumption which the judge would have realised if he had been referred fully to the decision of this court three days earlier where the appeal in respect of the Frimpong variation order had been successful. As Mr Evans QC and Ms Brewer pointed out in their written submissions, this was in reality a passing comment by the judge at the sentencing hearing, during the appellant's counsel's submissions, that the appellant had been involved in a lot of litigation, which was in fact clearly correct. We have been referred to the relevant parts of the transcript where counsel, Mr Furlong, referred the judge in terms to the successful appeal hearing three days earlier and said that the litigation was thus not entirely without merit. He continued

that, in any event, the appellant accepted that he had acted in breach of the Restraint Order and he apologised to the court.

20. We agree with counsel for the FCA that there was no basis for supposing that his involvement in previous litigation was regarded by His Honour Judge Testar QC as having any impact on the penalty he was going to impose for the contempt of court. It was not referred to in his sentencing remarks. The suggestion by the appellant that if the judge had known more about his successful litigation in the Court of Appeal he might have taken a more lenient view of the contempt is completely fanciful. That litigation was of absolutely no relevance to the seriousness of the deliberate and repeated breach of the Restraint Order by the appellant.

21. Ground 5 amounts to a complaint that the sentence of imprisonment prevents the appellant from attending the FCA offices by appointment to view his files. As the FCA correctly says, this has nothing whatsoever to do with the correctness of the sentence imposed and in any event the appellant is now serving a much longer sentence following his conviction for the offences of running an unlawful money lending business.

22. Ground 6 concerns the breach of the Restraint Order constituted by the servicing of the mortgage accounts without the knowledge or consent of the FCA. The appellant asserts that he in fact increased his assets by doing so. The judge had been wrong to focus on the £187,655 paid into the accounts without taking account of the capital appreciation in crediting the appellant with increasing the assets. As Mr Evans QC and Ms Brewer pointed out in their written submissions, the seriousness of the breach of the Restraint Order was that £191,355 had been paid into the mortgage accounts since the Restraint Order, which revealed that the appellant had access to large amounts

of cash from sources he had not disclosed to the FCA. The judge found that he deliberately ignored the Order and acted as he saw fit.

23. In fact, at the sentencing hearing, Mr Furlong submitted not that the appellant had acted to increase the assets, but to preserve them. At the same time he accepted on the appellant's behalf that he was in wilful breach of the Restraint Order. The monies had been used, amongst other things, to service a mortgage account on 6 Edgar House, a property whose interest in which he had not previously disclosed. As the judge said, it was impossible to test his assertion that he was seeking to preserve the assets since the appellant had not disclosed all his assets. These particularly egregious breaches demonstrated that point. Even if the appellant were correct in his assertion that he was seeking to increase his assets, that does not diminish the seriousness of his breach in not disclosing the sources of money to the FCA or seeking their consent to the servicing of the accounts. If the appellant were really intending to increase the value of his assets, so as to benefit borrowers and creditors, then one would have thought that he would have been only too happy to inform the FCA about the source of the monies and what he was proposing to do with them. The fact that he did not suggests strongly that if that was his intention he was acting entirely for his own benefit.

24. Ground 7 asserts that the court failed to take into account that the appellant and his companies are contractually bound to discharge the securities held on properties belonging to the borrowers who have repaid. The effect of imprisoning the appellant is to deprive the borrowers of their rights under the European Convention on Human Rights. This point is wholly without merit for the reasons given by the FCA. The appellant and his companies are prohibited from exercising rights as a lender as this would constitute an offence of contravening the general prohibition, contrary to

section 23 of the Financial Services and Markets Act (the very offence of which the appellant was subsequently convicted). In any event, the appellant's imprisonment does not prevent borrowers making an application to the Court for an Order discharging the security. To the extent necessary, the appellant could be produced at Court from prison for any such hearing, as has apparently happened on a number of occasions. We note also that in response the appellant refers to the appeal in relation to Mrs Frimpong. This does not assist him on this point, as that was a case where the appellant failed to comply with an Order to procure the removal of the charge from the Charges Register with the Land Registry at a time when he was not in prison, necessitating Mrs Frimpong making the application herself pursuant to paragraph 2 of the Order. If necessary, the court could make similar Orders in favour of borrowers irrespective of whether the appellant was still imprisoned.

25. In ground 8 the appellant asserts that the judge had said that the appellant would be unable to purge his contempt in respect of paragraph 34 of the Restraint Order, which concerned the repatriation of assets outside the jurisdiction. He went on to contend that the FCA failed to inform the judge that the appellant had applied for the return of his Mauritian passport in order to travel to Mauritius to close his bank accounts there; something he asserts he is required to do because he has to reactivate the accounts before he can repatriate the assets. As Mr Evans QC and Ms Brewer pointed out, the judge did not say that it was impossible for the appellant to purge this contempt. It was his counsel Mr Furlong who commented that he was going to find it very difficult indeed to purge this contempt. Mr Furlong did not tell the judge that the appellant had requested the return of his Mauritian passport so that he could travel to Mauritius. Given that the breach relied upon by the FCA was failure to repatriate his assets, it

would have been an obvious point for his counsel to make. In any event, as the judge made clear in his sentencing remarks, the gravamen of this breach was that the appellant did not take any steps to repatriate his assets until September 2017, two years after the Restraint Order was made.

26. Finally, ground 9 relates to a loan the appellant made to Miss Akarakiri using his credit card which her solicitors repaid to the credit card company. The complaint appears to be that the FCA failed to indicate "in layman's terms that the appellant had used his credit card which was not restrained". As the FCA says, it is not clear what relevance this would have had to the penalty and in any event the FCA Note and the appellant's own counsel's submissions both referred to his having used a credit card. We note also that the judge found that the appellant was using his credit card deliberately to evade the Restraint Order.

27. As we said earlier, in his oral submissions to us today the appellant has raised three further grounds. First, he referred to the letter from the FCA of 25 February 2019 about arrangements for payment of rent into a restrained account and his response of 28 February 2019 and he submitted that if that correspondence had taken place as it should have done in September 2016, when he was released from the first sentence for contempt, these matters would not have been before the court. In answer to that submission, Ms Brewer drew our attention to page 14 of the Note provided to the court for the contempt hearing, which referred to the fact that, as required by the Restraint Order, the appellant had nominated the Santander bank account referred to in this recent correspondence as the nominated account into which any monies would be paid, but in fact what had happened is that the appellant had failed to pay any money into that account and that was one of the many reasons why the appellant was found to be in

contempt. We are entirely satisfied that this does not give rise to any basis for a challenge to the finding of contempt or the sentence that was passed.

28. Secondly, it was submitted by the appellant that the FCA had failed to disclose to the Court a request by the appellant in a letter of 28 March 2017 that the Restraint Order be varied to make payments totalling £103,000 to the mortgagee in respect of a property at 295 Eton Road. Contrary to the appellant's submission, that correspondence was disclosed at paragraph 72(v) of the Note which the FCA provided to the Court for the sentencing hearing, which referred expressly to the letter and to the fact that the FCA had objected to the application which was withdrawn later the same day and, as was said on behalf of the FCA, that demonstrated that the appellant was aware that such actions required the consent of the FCA. There is nothing in that point either.

29. Finally, the appellant submitted that the FCA had not disclosed to the Court that the appellant was collecting cash. Ms Brewer on behalf of the FCA pointed out that the FCA had no record of his having made such disclosure to them and we have little or no doubt that that is correct, since had this been a point which was available to the appellant it is inconceivable that Mr Furlong would not have raised it on his behalf at the sentencing hearing before His Honour Judge Testar QC.

30. Later, in his response document to the FCA Respondent's Notice, the appellant accuses the FCA (not for the first time) of failing to make full and frank disclosure and of deliberately suppressing material. It is only necessary to say that we have seen nothing that could begin to justify this serious allegation and in any event it does not provide the appellant with any arguable case that the sentence of 15 months' imprisonment was in any way excessive.

31. This was deliberate and repeated flouting of a court Order by a sophisticated appellant

who had committed similar breaches of the Order in contempt of court in the past. The judge was quite right to conclude that the reason why his breaches were so serious was that, as the judge put it, the appellant had 'cocked a snook at the Court and made his own decision not to comply'. Nor had he purged his contempt. Taken individually, or together, the appellant's lengthy grounds, both written and oral, do not provide any basis for challenging the correctness of a sentence which was amply justified. The appeal in respect of the contempt sentence is dismissed.

32. We turn to the renewed application for leave to appeal against conviction and sentence, following refusal by the single judge. The facts can be summarised as follows. Between 2000 and 17 August 2012, the appellant's company Reddy Corporation Limited held a consumer credit licence obtained from the Office of Fair Trading. Through that company the appellant lent money to consumers at rates of interest of three-and-a-half per cent per month. The consumers were home owners and the lending was secured on their homes. Consumers were typically unable to borrow money from another source. The appellant was a lender of last resort.

33. In April 2011 the Office of Fair Trading revoked Reddy Corporation Limited's consumer credit licence. The company was found to have consistently failed to comply with the regulations and had developed practices which include enforcing agreements which were legally unenforceable against consumers. The appeal against the revocation of the licence was dismissed by the First-tier Tribunal Regulatory Chamber in July 2012. The FCA case was that, after the revocation of the licence, none of the appellant's activities were authorised or licenced and the appellant continued to enforce loans made by Reddy Corporation Limited (count 1) and to issue new loans to vulnerable consumers (count 3), through other companies which he

operated. His operations were entirely unlicensed and then after 1 April 2014, when a licence was no longer required, they were unauthorised and therefore unlawful (counts 2 and 4), given that the appellant did not have the authorisation legally required under the Financial Services and Markets Act 2000 to carry out a consumer credit business.

34. As we have said, counts 1 and 3 were under the Consumer Credit Act 1974 and covered the period until the relevant part of the Financial Services and Markets Act came into force on 1 April 2014. Count 1 covered conducting continuing business with existing consumers, including seeking to enforce existing loans, so-called Scheme 1; count 3 covered conducting new business and creating new loans, so-called Scheme 2; in each case after Reddy Corporation Limited had had its licence revoked and had lost its appeal to the First-tier Tribunal Regulatory Chamber against the revocation of the licence. An example of this relied upon by the prosecution at trial was that, in February 2009, the appellant visited and loaned £2,000 to the complainant Grace Wynn, who was from Ghana. She owned her property in Mitcham with her sister but they were in financial difficulties. The appellant secured a charge over the property in the name of his company Barons Finance Limited which he said was acting as an agent for the Reddy Corporation Limited. In total, including subsequent loans, £11,000 was loaned. The loans were subsequently transferred between the appellant's companies and having made payments of about £20,000 in the period 2009 to 2014, in 2015 Mrs Wynn still owed £20,000.

35. Counts 2 and 4 were under the Financial Services and Markets Act 2000, which required authorisation to conduct a regulated activity. Count 2 concerned conducting continuing business including administering outstanding loans (scheme 1) after 1 April 2014 and count 4 concerned conducting new business (scheme 2) after 1 April 2014.

The new business model under scheme 2 used by the appellant involved him drawing up a Deeds of Sale between the consumer home owner and the appellant's company A, the “sale price” (typically about £5,000) was funded by the appellant's company B who loaned it to company A. The consumer was then subject to a licence to live in the property if he or she undertook to satisfy company A's interest repayments to company B. There was also an option to buy the property back for a nominal sum if the consumer made all the repayments. If repayments were not made the appellant would exercise the Deed of Sale.

36. The prosecution relied upon the fact that the properties were not in reality ever sold and the consumers believed they were obtaining a loan and not selling their property. The operating model was effectively a sham to attempt to conceal the existence of an entirely unauthorised and unlicensed consumer credit agreement business.

37. In support of its case, the prosecution relied upon:

(1) Evidence from the complainant Grace Wynn and from other similar consumers who had taken out loans from the appellant and/or his companies during the same period and been subjected to demands for payment and threats of legal action against them, including repossession of their homes.

(2) Evidence of a number of civil judgments in the High Court and Court of Appeal where the appellant had unsuccessfully relied upon the doctrine of unjust enrichment of the consumers in seeking to enforce the loans he had made which were otherwise unenforceable under the Consumer Credit Act 1974. The civil courts had consistently held that to allow the claim for unjust enrichment would be contrary to the purpose of the 1974 Act. Copies of three of the judgments were found in the appellant's possession. In interview and in his defence statement the appellant had contended that he was entitled to

recover money under the agreements with borrowers who would otherwise be unjustly enriched but that if he were wrong about that he relied upon the statutory defence under section 168 of the 1974 Act that his act or omission was a mistake and that he had taken all reasonable precautions and exercised all due diligence to avoid such an act or omission - in other words to avoid committing an offence. The prosecution relied upon the civil judgments and what he had been told in them to counter that defence of mistaken belief in exercising due diligence. The judge admitted extracts of the judgment as evidence of bad character and the extracts were reduced to agreed facts which were before the jury.

(3) An adverse inference from the appellant's failure to set out his case properly in the defence statement.

(4) The prosecution also contended that the appellant had acted dishonesty and this was put to him forcefully in cross-examination, although as the judge correctly told the jury in summing-up dishonesty was not an essential ingredient of the offences with which he was charged.

38. The defence case on counts 1 and 3 was that the appellant believed that the Reddy Corporation Limited continued to hold a consumer credit licence during the appeal proceedings and that that licence did not expire until 2 or 3 July 2013 when the application to the Upper Tribunal was refused. In the alternative and after the licence expired, he relied on the statutory defence under section 168(1) of the Consumer Credit Act 1974, that he was operating under a mistake and took all reasonable precautions and exercised all due diligence to avoid committing the offence. He also originally relied upon the defence that he believed he was entitled to enforce the agreements because otherwise the borrowers would be unjustly enriched. But he abandoned that

defence during the course of giving evidence in favour of a defence under section 173(3) of the 1974 Act that payments were made with the consent of the borrowers. In respect of the new business model for new loans and the other counts, the appellant relied on the existence of a model to show that his activities fell outside the ambit of regulation because the loan agreement was between company A and company B, and company agreements fell outside the Act. Accordingly his defence was that he did not carry out any regulated activity and/or that he had taken all reasonable precautions and exercised all due diligence to avoid carrying out any licence or regulated activity, a defence under section 23(3) of the Financial Services and Markets Act. He also relied on the section 173(3) defence.

39. The issues for the jury were thus whether they could be sure that the appellant had been operating a consumer credit business in circumstances where he was unlicensed and had no statutory defence under the Consumer Credit Act and whether he had been carrying on a regulated activity without being authorised (scheme 1) and whether the model he operated under subsequently (scheme 2) was a sham to circumvent regulation which could not in the circumstances be circumvented. They also had to be sure that there was no statutory defence to each of the counts under either Act.

40. As we have already said, the prosecution applied to admit the extracts of the civil judgments on the basis that they were evidence which had to do with the alleged facts of the offences with which the appellant was charged, under section 98(a) of the Criminal Justice Act 2003, so that it did not formally require to pass through any of the bad character gateways in section 101. Alternatively, that if the judge were against him on that point it was admissible as bad character of the appellant under section 101(1)(c) or (d).

41. In a full and careful ruling, the judge held that the extracts from the judgments were evidence which had to do with the alleged facts of the offences with which the appellant was charged within section 98(a) so that it was not necessary to consider the gateways under section 101. He went carefully through all the material and held that what he was prepared to admit was relevant to the issue of due diligence and admissible not as evidence of the correctness of the decisions made by the judges, but of the notice given to the appellant of what the courts were stating the law as it was rightly or wrongly understood to be in litigation in which he was personally involved and as might therefore inform his future conduct.

42. In sentencing the appellant, the judge set out the facts of the offending and the appellant's conduct, which he described as deliberately flouting the law. The judge found that when the appellant had lost his appeal to the First-tier Tribunal in July 2012 he had known that he could not lawfully carry on the money lending business. He had sought to deal with that situation in two ways: continuing to engage in litigation to enforce loan agreements which he knew were unenforceable, whereas his borrowers did not; and then subsequently constructing a dishonest scheme in an attempt to unlawfully circumvent the regulation. His conduct had involved one dishonest contrivance after another and he had exploited the weaknesses and vulnerabilities of many desperate and vulnerable people.

43. The figures involved were staggering. Between 2012 and 2015, £1 million or so was lent, £1 million recovered and £1 million still owed by people who believed he had a hold on their homes. The judge said that the offending was separate in relation to counts 1 and 2 on the one hand and 3 and 4 on the other, the later offending being more serious and consumers would have been terrified about losing their homes, not

knowing that the appellant could not enforce the agreements in court. The judge noted the evidence at trial about the consequences on the individuals who had been exposed to the appellant's lending. The judge had regard to totality but concluded that the offences were also very distinct from the contempt and so it would not offend justice if they were consecutive to that sentence. The appellant had no credit for plea, but the judge took into account his good character and his wife's medical problems. The judge concluded that the appellant was a deeply flawed individual who thought of no one except himself and his obsession with making money.

44. The sentences on counts 1 and 2 were concurrent sentences of 18 months' imprisonment, but these were consecutive to concurrent sentences on counts 3 and 4 of two years' imprisonment. The judge further imposed a Serious Crime Prevention Order as being necessary and proportionate in this case given the persistence of the appellant's unlawful conduct over the last six years.

45. The first ground of appeal against conviction, advanced on behalf of the appellant by Mr Furlong in his written submissions, was that the judge had been wrong to admit the extracts of the civil judgments on the basis that the opinion of a civil judge is not admissible in criminal proceedings, relying upon a number of authorities to that effect. He also submitted that, even in relation to the appellant's state of mind, the opinions of the judges could not be probative unless the jury were sure they were correct and they were not admissible to establish their correctness. He also contended that as these were opinions of Court of Appeal judges they would have a powerful effect on the minds of the jury and should have been excluded under section 78 of the Police and Criminal Evidence Act 1984.

46. We can deal with this ground shortly. As Mr Ian Hope and Ms Brewer put it in their

Respondent's Notice, this evidence was admissible not as to the correctness of the opinions of the judges, but as to what the appellant was told in those judgments which were cases in which he was personally involved, appearing in person in the two Court of Appeal cases, copies of which were found in his possession. Mr Furlong was wrong to suggest that they were only probative if the judges were correct. What the appellant was told was clearly probative of his state of mind, regardless of whether the judges were correct or not. The judge had also carefully considered section 78 in his ruling.

47. In the circumstances, we agree with the single judge that the reliance by the appellant on the statutory defence under section 168 of the 1974 Act put in issue the genuineness of his belief that he was entitled to act as he did. The prosecution were clearly entitled to rely upon the extracts from the judgments as to what the appellant had been told by judges about the unenforceability of his loan agreements from which the jury could properly draw the conclusion that he did not genuinely believe that he was entitled to act as he did.

48. The second ground of appeal is that the judge erred in failing to give the jury a direction as to the meaning of 'sham', as Mr Furlong had contended he should. Mr Furlong relied upon the classic definition of a sham by Diplock LJ in Snook v London and West Riding Investments Limited [1967] 2 QB 787 at 802 and the development of the doctrine of sham by Arden LJ in her judgment in Hitch v Stone Inspector of Taxes [2001] STC 214. These cases were cited with approval by the Court of Appeal Criminal Division in R v Quillan [2015] 1 WLR 4673 where it was said at paragraph 88:

"In the light of these principles, it is in our judgment clear that a high-level

> and unparticularised invocation by the prosecution of the concept of sham is not good enough..."

49. Mr Furlong submitted that the case as left by the judge to the jury was high level and unparticularised and they should have been given proper directions as to the interpretation of the intention of the parties in relation to formal contractual documents. The fallacy of this line of argument is that this was not a case of sham in the Snook sense, because the borrowers were not parties to sham agreements, so there was no common intention of the parties to be discerned.

50. The prosecution case was straightforward: scheme 2 represented the continuance of the appellant's money lending business in all but name. Consumers approached him for a loan and money was subsequently transferred to the consumer by one of his companies with the intention that it be repaid with interest to another company owned by the appellant. The consumer was asked to sign a document entitled "sale agreement" whereby he or she purported to sell the property to the appellant's company for the same sum of money as was sought to be borrowed. The prosecution case was that most borrowers were told: "Don't worry, sign here, it's a loan." They continued living in the property. No transfer of ownership ever took place at the Land Registry. The appellant sought to protect his interests, as he always had done under scheme 1, by notices and restrictions on the Register. There was a pretence of a paper loan from one of his companies to another. The use of the word "sham" here was, as Mr Hope and Ms Brewer said in the Respondent's Notice, used to describe the appellant's device to falsely describe as a sale what was a loan and described to the consumers as a loan. This prosecution case could not conceivably be described as high level and unparticularised and the comparison with the case of Quillan is misconceived.

51. The judge summed up this issue in an entirely correct way. In particular he said:

> "The issue here is quite straightforward, was it a genuine sale of the property in question and thus not a loan within [the relevant legislation] ... or was it in fact a loan agreement in all but name, for which a licence was required? What this means in determining and answering ... that question, is that you have to make an objective judgment of the arrangements, looking at all of its elements, examining what was done and not done and what the intention of the parties was and what was the effect of the arrangements actually made."

52. As the single judge said, there may be cases where a more precise definition of sham is necessary but this was not such a case. Further elaboration by reference to the authorities would only have served to complicate matters and confuse the jury.

53. The third ground of appeal was that the judge made a series of unfair interventions during the appellant's case and the summing-up was unfairly balanced towards the prosecution. It is not necessary to enumerate all the instances of intervention of which complaint is made, as we have considered the relevant transcripts carefully and are entirely satisfied, as was the single judge, that the interventions were proper and intended to focus the evidence on the matters which were relevant for the jury's consideration. In particular, the judge was quite right to intervene to stop Mr Furlong leading evidence from the appellant about the defence of unjust enrichment which had been abandoned.

54. Likewise, there was nothing unfair in the summing-up which we have read and considered carefully. As the single judge said, this was a very strong case and the judge's review of the evidence, though impartial, was bound to reflect that. We agree with the single judge that the guidance from Simon Brown LJ giving the judgment of the court in R v Nelson [1996] EWCA Crim. 707 is particularly apposite:

> "Every defendant, we repeat, has the right to have his defence, whatever it may be, faithfully and accurately placed before the jury. But that is not to say that he is entitled to have it rehearsed blandly and uncritically in the summing up. No defendant has the right to demand that the judge shall conceal from the jury such difficulties and deficiencies as are apparent in his case. Of course, the judge must remain impartial. But if common sense and reason demonstrate that a given defence is riddled with implausibilities, inconsistencies and illogicalities, as plainly this appellant's defence was, there is no reason for the judge to withhold from the jury the benefit of his own powers of logic and analysis. Why should pointing out those matters be thought to smack of partiality? To play a case straight down the middle requires only that a judge gives full and fair weight to the evidence and arguments of each side. The judge is not required to top up the case for one side so as to correct any substantial imbalance. He has no duty to cloud the merits either by obscuring the strengths of one side or the weaknesses of the other. Impartiality means no more and no less than that the judge shall fairly state and analyse the case for both sides. Justice moreover requires that he assists the jury to reach a logical and reasoned conclusion on the evidence."

55. The fourth ground of appeal against conviction was that the judge's interpretation of the relevant provisions of the Consumer Credit Act and the Financial Services and Markets Act as to whether the loans were enforceable and as to whether, if they were not, the consumer had been unjustly enriched was a breach of the appellant's rights in respect of his possessions in breach of Article 1 Protocol 1 of the European Convention of Human Rights.

56. Counsel's argument, although elaborate, is incoherent and the point is wholly lacking in merit. Quite apart from the fact that Parliament is entitled to enact legislation to protect vulnerable borrowers by requiring lenders to be licensed or authorised, that protective regime would be rendered ineffective if lenders in the position of this appellant could recover unlawful loans by claiming the borrowers were unjustly enriched. This argument is one that the appellant has run before the civil courts several times and failed. It has no more merit before this court.

57. We should add that in his oral submissions to us this morning, the appellant also

referred to the possibility of his being able to raise a case under section 127 of the Consumer Credit Act 1974. Whether that is the case or not, which we rather doubt in the light of the authorities which preclude those who have conducted unlawful money lending businesses from making recovery under unlawful agreements, either directly or indirectly, the point that is raised seems to us to have nothing whatsoever to do with the safety of the appellant's conviction.

58. In a further written document sent to the Criminal Appeal Office last week on 25 March 2019, and in his oral submissions to us this morning, the appellant also raised a further alleged ground of appeal against conviction which concerned the fact that, at the trial, the Financial Conduct Authority was represented by three junior counsel (as it transpires one of whom was dealing solely with disclosure), whereas he (the appellant) only had one junior counsel. Application had been made to the trial judge for a representation order in relation to leading counsel which had been refused and the appellant submitted that, in those circumstances, there had been an inequality of arms and he had not had a fair trial.

59. It seems to us that that point is entirely without merit. There are two answers to it. First, it was entirely within the discretion of the judge to refuse any further representation order. Had the judge thought that the appellant was in any way disadvantaged by being represented only by one counsel, he would no doubt have made an appropriate Order. We note that Mr Furlong, whilst a junior counsel, is extremely experienced in the area of financial crime and financial fraud and it is quite clear from the transcripts we have read that Mr Furlong fought a long, hard and sustained defence on behalf of this appellant. Secondly, and really following on from that first point, the appellant has failed to identify any specific respect in which he was disadvantaged by

being represented by Mr Furlong and we reject any suggestion that Mr Furlong's defence of the appellant was anything other than extremely well conducted.

60. A point was also raised by the appellant about alleged conflict of interest, in the sense that he submitted that the Financial Conduct Authority should have had different counsel representing it at the contempt hearing and at the trial. That point is completely misconceived and it is not necessary to consider it any further. There was simply no conflict of interest whatsoever.

61. In the circumstances, the renewed application for leave to appeal against conviction is dismissed.

62. Turning to the renewed application for leave to appeal against sentence, Mr Furlong submitted first that the judge had been wrong to refer to the appellant's conduct as dishonest when these were regulatory offences, relying on R v Stone [2012] EWCA Crim. 186. However, as Mr Hope and Ms Brewer pointed out in the Respondent's Notice, the error in cases such as Stone was in sentencing by reference to the fraud Guideline in a case of regulatory offences. The judge did not fall into that error here. The prosecution alleged that the appellant was dishonest and cross-examined him on that basis. The judge had heard all the evidence at trial and his findings as to the dishonest contrivance of the "sale" and the appellant's other dishonest and flagrant conduct were findings that he was fully entitled to make on the evidence.

63. Mr Furlong also submitted that the total sentence was excessive, especially when account was taken of the fact that it was consecutive to the sentence for contempt. He submitted that the imposition by the judge of the Serious Crime Prevention Order was wrong in principle because there were no findings on the record that the offending was sufficiently serious to be treated as if it fell into Schedule 1 of the Serious Crime Act

2007, nor was there a proper risk assessment by the judge.

64. In our judgment the appeal against the sentence of imprisonment is hopeless for the reasons given by the single judge on which we cannot improve:

> "1. The judge heard the trial and was well placed to assess the applicant's criminality. This was, as he observed, a prolonged and persistent course of conduct, by which he lent large sums of money, at high rates of interest, to unsophisticated consumers who were acutely vulnerable because of their existing debts and poor credit rating, many of whom were uneducated and some of whom had a poor understanding of English.
>
> 2. When, as commonly happened, they were unable to pay the interest, he intimidated them by threatening them with actions for possession, which he knew - but they did not - were bound to fail.
>
> 3. Furthermore, he had been previously warned as to his conduct.
>
> 4. Such conduct needs to be deterred by passing stiff sentences.
>
> 5. The sentences for these offences plainly had to be consecutive to the sentence he was serving for contempt of court. I have considered the question of totality, which was plainly within the judge's own contemplation.
>
> 6. Although the sentences passed were severe, I do not consider that they can properly be said to be manifestly excessive and the application for leave to appeal against sentence is accordingly refused."

65. Likewise we cannot improve on what the single judge said in dismissing the application in relation to the Serious Crime Prevention Order:

> "1. The application for the SCPO was authorised by a person holding the rank of Deputy Chief Crown Prosecutor, who had properly delegated authority to make it.
>
> 2. Although it may perhaps have been better if the judge had spelt out in terms that he found that the offence was sufficiently serious to be treated as if it was specified under the Act, it is quite clear from the submissions made to them, both orally and in writing, and from the context of his other sentencing remarks, that he had so found.

3. The judge was quite entitled to make the Order without a pre-sentence report. In nearly every case involving consumer credit frauds of this sophistication, the trial judge would be in a far better position than a probation officer to assess the risk presented by the offender.

4. The judge was justified in finding that the applicant presented a high risk of re-offending to the prejudice of vulnerable borrowers having regard to:

(a) The fact that he ignored previous warnings as to his conduct.

(b) That he sought to evade the consequences of losing his licence by devising an ingenious and devious scheme.

(c) Even previous convictions and sentences for contempt had not discouraged him from continuing to operate his schemes. Whereas it might be said that for many defendants, a sentence of immediate imprisonment might offer some prospect of reforming his conduct, his track record made this very unlikely in his case.

(d) His obsessive character, as found by the judge, gave rise to an unusual risk that he would continue to prey upon the public in the future.

(e) In the circumstances, the judge would have been failing to protect the public if he had not made the Order."

66. In our judgment, on analysis the proposed appeal against sentence is as unmeritorious and hopeless as that against conviction. This renewed application is also dismissed.

67. We note that the single judge did indicate that the Full Court should consider making a loss of time order in respect of the renewed application in respect of conviction and the Serious Crime Prevention Order. The appellant has put in a detailed letter dated 26 November 2018 setting out a multitude of reasons why he says the Court should not make a loss of time order. We have read these but none of them addresses the critical point that this renewed application is wholly without merit in relation to both conviction and sentence. It has wasted many hours of precious Court time and resources and in the circumstances we propose to make a loss of time order of 56 days.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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