

Appeals

Inadequate Professional Advice

R v Ayankoya [2011] EWCA Crim 1488

24th May, 2011

1. The appellant and his two co-defendants, one of which was his wife, pleaded guilty to conspiracy to defraud. He was sentenced to four years' imprisonment and the court recommended that he be deported. At the confiscation proceedings the appellant and his wife were represented by employees of the same firm.
2. On the day of the confiscation proceedings counsel for the appellant asked for an adjournment to gather previously unseen bank statements which were alleged to show how the appellant's assets were spent. During those proceedings a conflict arose due to the need for an adjournment. Counsel for the appellant's wife and the prosecution objected to the appellant's adjournment. This application was made in the appellant's absence as he had not been produced at court at that time. The judge did not rule on the adjournment application.
3. The appellant was then informed by his counsel that he had a simple choice between giving evidence in the confiscation hearing without any supporting evidence or agreeing to a confiscation order in the sum of £88,000, which included a hitherto disputed sum of £22,000. He agreed to the confiscation order.
4. The appellant appealed against the confiscation order on the basis that he should have had a full confiscation hearing and thus given evidence about he disputed £22,000, but had been prevented from doing so by his legal representatives. At paragraph 12 of the judgement the court expressed a number of grave concerns about the conduct of the appellant's representatives.
5. The issue was whether there were exceptional circumstances enough to overturn the decision. This reasoning was in line with the courts decision in *R v Hirani [2008] EWCA Crim 1463*. This stated that the circumstances would have to be exceptional, which meant that the whole process needed to be unfair, for an appeal to succeed.
6. This high standard was necessary as agreed orders were usually at a lower figure than the prosecution originally contented for and the court could not raise that amount on appeal only decrease it. The court found that in the circumstances of this

case that the appellant had been misled by his counsel on the issue of an adjournment and, consequently, it was one in which it was appropriate for the Court to intervene.

7. As a result the parties agreed a new figure and confiscation order was reduced to £82,297.53.

Quinton Newcomb Barnaby Hone

Chambers of Michael Hubbard Q.C. and Karim Khail Q.C.

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