JUDICIARY OF
ENGLAND AND WALES

AT THE CENTRAL CRIMINAL COURT

R v FESTUS ONASANYA AND FIONA ONASANYA

SENTENCING REMARKS OF
MR JUSTICE STUART-SMITH
29 JANUARY 2019

Festus and Fiona Onasanya, I have to sentence you for offences of perverting the course of public justice. It is a tragedy that you find yourselves here and in this predicament; but it is a tragedy that you have brought upon yourselves.

The Background Facts

This case concerns three offences of perverting the course of public justice by providing false information to the authorities about who was driving when speeding offences were committed. The underlying speeding offences took place over a period of about two months, on 17 June 2017, 24 July 2017 and 23 August 2017. The first and third speeding offence involved your Audi A4 car, Mr Onasanya; the second involved your Nissan Micra, Ms Onasanya. In each case I am satisfied that you, Mr Onasanya, filled out the form providing information about people who you knew would not be traceable by the authorities. In this way he hoped that the trail would go cold and the true driver of the speeding cars would not be brought to justice.

On 5 November 2018 you, Mr Onasanya, pleaded guilty to each of the three charges on the indictment. You, Ms Onasanya, were convicted by the jury after a retrial in relation to what happened after the speeding offence involving your car on 24 July 2017. I am told that you do not accept the correctness of the jury's verdict; but as a solicitor you will understand that I am bound by it and must be true to it in passing sentence today. That said, and as I shall make clear, I do not accept and am not constrained by the verdict to accept all of the Prosecution's case and allegations about your conduct. Having presided over your trial, and having reviewed the evidence again in preparation for today, I have reached my own conclusions about your involvement in the second of these three offences, which I believe to be consistent with the evidence as a whole and the verdict of the jury.

In June 2017 you, Mr Onasanya, were working as a full-time driver while also pursuing a potential singing career. Your licence was endorsed with 9 points, though 6 of those subsequently went when you successfully appealed that conviction. When you received the NIP in respect of the speeding offence that had been committed on 17 June 2017, you believed that further points would probably result in your being disqualified and you feared that you would lose your livelihood as a driver if you were disqualified. So you decided to submit false details. I also accept that you deliberately selected details that would lead the prosecuting authorities up a blind

Rolls Buildings, Bream Buildings EC4A 1NL
Telephone 0207 073 4837 (Clerk) **Email** elizabeth.evans@justice.gov.uk
Website www.judiciary.gov.uk

alley but would not get anyone else into trouble. However, you persisted when the authorities questioned the information you had provided.

The circumstances surrounding the capturing of the Nissan Micra on camera on 24 July 2017 were examined in minute detail at the trial. Having heard the evidence I am sure that it was you, Ms Onasanya, driving away from the DeFeo's house when the camera was activated. I am in no doubt at all that, whatever the original time for the meeting, it took place later than originally planned and finished shortly before your car went through the camera with you driving it.

In any normal circumstances it would be incredible that you would not have realised that the NIP you received some nine days later related to a time when you were driving. But the evidence at trial showed that these were by no means normal circumstances for you. You had been elected to Parliament as the Member for Peterborough on 8 June 2017 and had first gone to Westminster on 12 June. Initially you had no staff, with your first member of staff being recruited at the end of June. You had no constituency office in Peterborough and were initially hot-desking or squatting on benches in the corridors at Westminster. Within four weeks you were appointed to the select committee for housing. You had to install additional security at home by the first week or so of July and were completely swamped by emails and post. You had no proper diary system in place. On all of the evidence, you were living a life that was extremely hectic and pretty chaotic. I also accept your evidence that others would frequently drive your car, particularly when you were in London and it was left in Cambridge or Peterborough.

In these circumstances I find your evidence that you failed to check properly what you had been doing on 24 July and that you passed the NIP to your mother's home to be credible, supported as it is by your brother's evidence that he was passed the NIP by your mother. What matters is that I am not sure that you passed it to your brother (directly or indirectly) with the intention of perverting the course of public justice.

Similarly, Mr Onasanya, I find it credible that you were passed the NIP for 24 July 2017 by your mother. At that stage you would rightly have considered that it would have been totally out of character for your sister not to take responsibility if she had realised that she had been driving. Though in some respects it stretches credulity almost to breaking point, I sentence you on the basis that you therefore assumed it was you who had been driving your sister's car and that you filled out the NIP with false details that were designed to prevent the investigating authorities identifying you as the true driver without getting anyone else into trouble. In doing so you set in train the sequence of events that ultimately led both to your conviction in relation to the second NIP and to your sister's. However, there was no conspiracy between the two of you at the outset.

Your next involvement arising out of the 24 July 2017 incident, Ms Onasanya, was when you received the letter from Mr Williams dated 14 September 2017 raising questions about the details that had been provided. I accept that you were recently out of hospital having received a confirmatory diagnosis of relapsing and remitting MS. I have seen medical evidence today that confirms the timing and the nature of that event. Your letter of reply, dated 20 September 2017, was inaccurate; but it needs to be seen in the context of your personal situation immediately after receiving your diagnosis and coming out of hospital and the evidence you gave about asking

your brother what it was all about and receiving assurances from him that it was all sorted. Once again, though it is unsatisfactory and infinitely regrettable that you, a qualified solicitor and Member of Parliament, did not take your responsibilities more seriously or tackle them more effectively, I am not sure that you sent the letter of 20 September 2017 with the intention of perverting the course of justice. You may have done; but I am not sure of it and must therefore give you the benefit of the doubt for the purpose of sentencing.

However, even if you had not realised that something was seriously wrong by 20 September 2017, the Jury's verdict and the evidence compels the conclusion that by 2 November 2017 you knew that false information had been supplied. I have no reason to doubt that Mr Williams' note was accurate. On that basis the information you provided to him must have been knowingly untrue. Even if I take the most charitable interpretation, which is that you now realised that there was a serious mess and stupidly chose to support what had initially been done by your brother, at this stage I am compelled to conclude that you deliberately committed the offence with which you were charged and of which you stand convicted. It was a disastrous decision; but it was a decision which, on the evidence and the verdict of the jury, you took.

I can deal with the facts of Count 3, arising out of the capture of Mr Onasanya's speeding Audi on 23 August more shortly. When you, Mr Onasanya, received the NIP, you did what you had done twice already: you deliberately provided false information with the intention of putting the authorities off the trail while not causing trouble for anyone else.

It is an aggravating feature that you both persisted in your dishonest support for the false information that Mr Onasanya had provided when returning the three NIPs with which we are concerned. At trial you, Ms Onansanya, said that you provided no answers when interviewed on 2 January 2018 because you were simply taking the opportunity to hear what the police had to say and thought there would be another opportunity to provide your version of events at a later date. Coming from you, an intelligent and articulate solicitor, that evidence was frankly incredible and I reject it. You both knew by 2 January 2018 what had been done and I am certain that you jointly decided to answer no questions in the belief that would maximise your chances of evading the difficulties that were now looming large.

Fortunately for the interests of justice, the Police were not deflected and your attempts to pervert the course of public justice have failed.

The Sentencing Principles to be Applied

There is no sentencing guideline for these offences and the facts of individual cases seldom provide substantial assistance when considering the different facts of others. It has been said on countless occasions that, where a person is convicted of perverting the course of justice it will only be the most exceptional of case that does not result in an immediate sentence of imprisonment: see, for example, *AG's Reference No 17 of 2008* [2008] EWCA Crim 1341. The reason is that giving a false account of events to investigating authorities undermines the very system of criminal justice and impedes its proper functioning. Hence even in cases of lesser seriousness, including cases of driving offences, sentences of imprisonment, albeit sometimes short in duration, can be expected for giving false information about the drivers' identity: see, for example,

AG's reference No 35 of 2009 [2009] EWCA Crim 1375; *R v Abdulwahab* [2018] EWCA 1399 (Crim) at [14].

A number of authorities (of which *R v Ratcliffe* [2016] EWCA Crim 27 at [13] is typical) have identified that, although all cases are fact-sensitive, matters to be taken into account may include:

1. The seriousness of the underlying offence;
2. The nature of the deceptive conduct;
3. The length of time during which the deception continued;
4. Whether the conduct cast suspicion on or let to the arrest of an innocent person;
5. The success or otherwise of the attempt to pervert the course of justice; and
6. The defendant's previous character and any personal mitigation.

This is not an exhaustive catechism; but it serves as a useful indicator of the approach that the Court follow, and I shall bear it in mind.

I have been referred to a raft of authorities, all of which are consistent with the principles I have just identified. Few of them are sufficiently similar to the facts of the present case to be of great assistance. I mention two, not to give them disproportionate importance but because there may be said to be features that bear some analogous comparison with some or all of the features of the present cases.

McGann [2002] EWCA Crim 1253 was a case of a person of positive and longstanding good character who threw away his career in the army and his future employability by giving false information after a speeding offence, when he had a clean licence and could easily have paid the speeding fine. There was a degree of planning and persistence which makes the facts marginally worse than the facts of the present case for Ms Onasanya; but the Court of Appeal upheld the Judge's approach and sentence, which was to pass an immediate custodial sentence but to make it as short as possible. The Court of Appeal did so having highlighted the Appellant's persistence but giving full weight to the disastrous effects of the conviction upon the him.

Huhne & Price has in common with the case of Ms Onasanya that the defendants were persons in positions of privilege and responsibility, Mr Huhne being an aspiring politician at the time of the offence and a Member of Parliament when the case came to Court. The paradigm sentencing remarks of Sweeney J bear reading in full. Both defendants were sent to prison for 8 months, but different factors applied to each. However, on any view, *Huhne & Price* was a more serious case than the present. Mr Huhne was at risk of disqualification if he was properly convicted. Sweeney J outlined the deliberate conspiracy from the outset for joint advantage and how the conspiracy eventually unravelled. It was, as Sweeney J said, a serious and flagrant offence of its type, the effect of which lasted for many years; and it was one which required the Judge to give effect to all the purposes of sentence – including deterrence.

I shall now consider the case of each of you in turn.

Mr Festus Onasanya

In the overall scale of underlying offences, which in the Courts' experience may include and has included anything up to and including murder, your persistent speeding offences were not the most serious. They were more serious for you than they would have been if you had had a clean licence because you put yourself at risk of deserved disqualification; and there are three separate offences for which you fall to be sentenced, taking into account the facts of each separate sentence and the principle of totality. The nature of the deceptive conduct was regrettably typical in the context of such offences, but it was deliberate and serious in providing the names of others who you knew to be innocent with details that you knew could not be followed up. The period of deception ran for months (specifically from June 2017 to January 2018) and covered the three separate cases with which I am concerned. As I have said, I accept that you chose individuals and details which meant that they would not be exposed to the jeopardy of prosecution; and, thanks to the diligence of the authorities, your attempts failed.

You are not of previous good character. You have convictions for unrelated offences, which it is not necessary for me to detail save to say that you have previous experience of a significant period of imprisonment as well as motoring and other offences for which lesser penalties have been imposed.

But your character witnesses, who have provided thoughtful and thought-provoking statements on your behalf, show that you have made substantial efforts to reform your life, with a real commitment to a Christian faith that has led you to be a mentor to others. I accept that, if you were not here, you would be on the cusp of a period of fulfilment and happiness both in pursuing a musical career and in your family life. I take all that has been said by your character witnesses into account as significant personal mitigation. The evidence of your character witnesses is also consistent with the terms of the PSR, which I have read and take into account.

I will also take into account your plea of guilty, sensibly offered after a change in representation at the end of October 2018 and formalised on 5 November 2018. It took some courage to face the music in a case such as this. It entitles you to a reduction of the sentence that I would otherwise have to impose in the order of 15%.

The approach to sentencing that I intend to adopt is, first, to identify the approximate sentence that would have been appropriate in the event that each of these offences stood on its own and fell to be sentenced in isolation. These are separate offences which could be treated consecutively. However, I shall try to reach an overall sentence that reflects and would be appropriate for the totality of your criminal offending after taking into account your personal mitigation. The principle of totality means that I shall reach this overall sentence by adjusting downwards what would otherwise be the sum of consecutive sentences imposed for each in isolation. I shall then apply the appropriate discount for your plea.

Ms Fiona Onasanya

I have already outlined my approach to the facts. I sentence you on the basis that by November 2017 you realised what was going on and took the disastrous decision to stand by the false information that had previously been submitted by your brother. For you the original offence was relatively minor in the overall scheme of such

offences. Accepting as I do for the purposes of sentence that you were driving your car when it was caught by the speed camera, you had a clean licence and were well able to pay any fine that would have been imposed; and a speeding offence would have been no real or lasting embarrassment to you as a Member of Parliament. Your attempted deception continued from 2 November 2017 to the time of your trial; but it did not involve the arrest of innocent people and was ultimately unsuccessful.

What takes your case out of the ordinary is your personal mitigation. I accept without reservation that this offence is totally out of character; and, as I have made clear, that it my have included an element of misplaced loyalty to your brother once you realised what had happened. You have no previous convictions. By your own efforts and personal qualities you have risen to a great height, which I am satisfied you intended to use not so much for personal advancement as for the cause of social justice which first persuaded you to go into politics. The character witnesses speak eloquently of your qualities and your exemplary character. You quickly made your mark as an able Member of Parliament and Parliamentarian and you have become a role model for many young black women who have been inspired by your attitude and achievements. I pay particular attention to the evidence of the person who was your school friend, now a barrister, who speaks of your ability to light up the room with your personality and who adds that even when at school you could sometimes be a little naïve and very trusting. The evidence of the witnesses is consistent with the evidence from the PSR, which I have read and taken into account. The fact remains that, both as a solicitor and as a Member of Parliament you are fully aware of the importance of upholding the proper administration of justice. You have not simply let yourself down; you have let down those who look to you for inspiration, your party, your profession and Parliament.

The impact of your conviction has been disastrous for you. You have been expelled from the Labour Party and it seems inevitable that you will be struck off as a solicitor. But as things stand, it is not right to say that you have lost everything: you have decided to remain as a Member of Parliament despite your expulsion. It is well beyond the remit of this court to speculate on what the future holds for you as Member of Parliament for Peterborough.

I also take into account your illness, though there is no medical evidence to suggest that your unfortunate condition would make a significant difference to your ability to sustain a period of imprisonment.

Standing back, this is at the lower end of offending of this type, for the reasons that I have outlined. It was totally out of character. The fact of conviction has had and will have a disastrous effect upon you for years to come. You do not accept the correctness of the conviction; but I have to sentence on the basis that the disaster which has befallen you is self-inflicted.

Ms Agnew has submitted that the facts of this case are so exceptional that I can properly suspend the inevitable prison sentence that I must pass. As I have made clear, I sentence on the basis that I am sure that you acted criminally on 2 November and am not sure that you did so before. That limits the scale and duration of your criminality, and it may be said that you were confronted with a situation that was not initially of your making. However, it was just such a situation as required you to act

in accordance with the normal principles by which you ran your life as an individual, a Solicitor and a Member of Parliament.

I have reviewed the terms of pages 7 to 9 of the Definitive Guideline on the Imposition of Community and Custodial Sentences. It does not materially assist in showing the way that I should go. On the one hand, there is strong personal mitigation; but on the other are the consistent statements that, for offences such as this, appropriate punishment can only be achieved by immediate custody, even if the resulting sentence is short. The question is whether this is a sufficiently exceptional case.

I make plain that I will not treat you more severely because of your position as an MP and former solicitor. That said, as Ms Agnew accepted on your behalf, there cannot be one law for those in positions of power, privilege and responsibility and another for those who are not.

Sentence: Mr Onasanya

(Stand up)
Adopting the approach that I outlined earlier, each of these three counts if treated individually would merit a sentence after trial and taking into account your strong personal mitigation of approximately five months imprisonment. The fact that they are three separate offences would justify the imposition of consecutive sentences. Applying the principle of totality, I consider that an overall sentence of 15 months (which would be the result of imposing three consecutive sentences of 5 months each) would result in a sentence that is longer than necessary to mark the overall criminality of your course of conduct. In my judgment, the appropriate overall sentence before reduction for your plea would be one of 12 months imprisonment. A reduction of 15% for plea would be a reduction of slightly less than 2 months, which I round up to 2 months, leaving an aggregate sentence of 10 months imprisonment. Rather than attempting to adjust individual consecutive sentences or to load all of the criminality into one of the counts, I shall impose concurrent sentences of equal length for each of the three counts.

The sentence of the Court on each of Counts 1-3 is therefore that you will go to prison for 10 months on each count, concurrent.

Unless released earlier under supervision you will serve half that sentence. Your release will not, however, bring the sentence to an end. If after your release and before the end of your sentence you commit any further offence you may be ordered to return to custody to serve the balance of the original sentence outstanding at the date of the new offence, as well as being punished for that offence.

(You may sit down.)

Sentence: Ms Onasanya

(Stand up)

I have already outlined the approach that I take to the facts of your case. You had a choice on 2 November 2017 whether to tell the truth or to attempt to pervert the course of public justice. You made the wrong choice, with disastrous consequences. As I have outlined, you have strong personal mitigation, which I take fully into account. And, given the factual basis upon which I sentence you, both the underlying offence and your commission of the this offence were towards the bottom end of the scale. However, I am quite unable to conclude that the facts of your case are so exceptional as to justify suspending the sentence that I must impose. The correct approach is to make the sentence as short as I possibly can; and that I will do.

On Count 2 of the indictment the sentence of the Court is that you will go to prison for 3 months, that being the shortest sentence that I feel able to impose consistent with my obligation to give effect to all the purposes of sentence – including deterrence.

As in the case of Mr Onasanya, you will serve half of that sentence before being released. I repeat what I said to him about what happens thereafter.

In both your cases I will adjourn the determination of costs. Each defendant may submit submissions in writing, limited to 600 words, by 4 pm on 1 February 2018. The prosecution may reply in writing, limited to 400 words, by 4 pm on 5 February. I will then make a determination on paper, unless the parties request an oral hearing.