



JUDICIARY OF
ENGLAND AND WALES

THE HON MR JUSTICE HOLROYDE
A PRESIDING JUDGE OF THE NORTHERN CIRCUIT

IN THE CENTRAL CRIMINAL COURT
T1992 0238

THE QUEEN -v- ASIL NADIR

SENTENCING REMARKS

23 AUGUST 2012

Asil Nadir, you are a man of outstanding business skills, and in the 1980s you achieved remarkable success. In a decade you developed Polly Peck International plc into a multi-national business. You no doubt brought employment and financial benefit to many persons around the world. You are entitled to take great pride in that achievement. The company's success was in many ways your success. But the company's money was not your money. You knew that. You nonetheless helped yourself to it. You committed theft on a grand scale.

You have been convicted of 10 offences of theft. The first involved the theft by you of £5,150,000 on 14th August 1987 – 25 years ago last week. The last involved the theft of another £5 million three years later, on 6th August 1990. In all, during that three-year period, you stole from PPI sums totalling £28.6 million, and US\$500,000 with a sterling equivalent at the time of nearly £300,000. Without making any detailed analysis of changes in the value of money over the intervening years, it is fair to say that the total sum stolen equates to more than £60 million today.

You committed those thefts by authorising or instructing the transfer of monies out of PPI's bank accounts in London. The monies were then moved through various other bank accounts, in particular a bank account of a PPI subsidiary company known as

the Unipac Jersey account, to end uses which were nothing to do with PPI's business but were instead for the benefit of you, your family and associates. The flow charts which were provided to the jury showed the complex routes which the money took before reaching those end uses. That complexity was intended by you, and designed, to obscure and conceal the reality of what you were doing. The transactions were accounted for in the books and records of PPI in such a way that it appeared that funds were legitimately being transferred, for company purposes, to subsidiary companies in northern Cyprus and Turkey. The reality was that you were stealing from the company.

It is relevant to give some brief examples of the end uses to which the stolen money was applied. It was used to buy shares in PPI, both in your own name and in the names of others who were clearly your nominees and controlled by you. It was used to acquire or fund various businesses and properties from which you benefited. It was used to pay your personal expenditure, including a tax bill of over £1 million. On one occasion, stolen money was even used to make a donation to charity in your name. The fact that stolen money was used to fund an extravagant lifestyle can often be a very significant aggravating feature in cases of theft. I do not regard it as counting particularly heavily against you here, because it seems to me that you already had an extravagant lifestyle as a result of your success in business. It follows, however, that you were a wealthy man who stole out of pure greed.

The direct consequence of your crimes was that the company suffered the loss of just under £29 million. But that was not the only consequence. In the late summer and autumn of 1990, the bankers who had previously been glad to lend money to PPI began to seek repayment of short-term loans as they fell due. There was then an urgent need for cash to be remitted from the near east subsidiary companies to PPI head office in London so that the most pressing demands could be met and the confidence of the lending banks restored. But nothing was remitted. You gave a series of assurances to your fellow directors and to the banks as to particular sums being available by particular dates. None of those assurances was kept. No money was made available. After a time, the banks – unsurprisingly - would no longer accept your talk of money arriving shortly. One bank pressed particularly hard for repayment of a comparatively small loan. You were told of that demand for

repayment, and promised in a telephone call that you would fix it. The evidence makes me sure that you fixed it by arranging for one of your assistants to forge a letter which purported to be confirmation from a bank that the necessary funds would be remitted. That was not the only document which was falsified by those who were assisting you in northern Cyprus, and again the evidence makes me sure that your hand was behind the various forgeries and other false accounting records which were used to conceal the thefts of which you have been convicted.

Your fellow directors decided, entirely understandably, that there was no realistic option open to them other than to petition for PPI to be placed into administration. In your evidence to the jury you unjustly accused those directors of having been intimidated by legal advice as to their prospective personal liabilities if PPI continued trading whilst insolvent. You further accused many others of incompetence, wrong doing and malice. You blamed everyone but yourself for the collapse of PPI. I accept that there may well have been many complex factors which collectively brought about that collapse, and I agree with Mr Hackett that it would be wrong to say that you alone were responsible for it. However, the evidence makes me sure that one substantial cause of the collapse was the failure of the near east subsidiaries to remit any cash when it was so urgently needed. If all the money was where it should have been, and if there was nothing to hide, then the failure to send any of it from northern Cyprus to London was inexplicable. Whatever concerns the directors of those subsidiaries may have had as to their future, the evidence makes it entirely clear that they would obey your direct instructions. But of course the money which you had stolen was not where it should have been, and so you did have something to hide. The evidence I have heard therefore drives me to the conclusion that you, having on ten occasions stolen PPI's money, were determined to frustrate any meaningful investigation of the finances of the near east subsidiaries which would have revealed those thefts. I am sure that for that reason you were responsible for the failure to remit funds. You blame others for the collapse of PPI, but the evidence makes me sure that your conduct in committing those ten thefts, and in seeking to cover them up, was at least one of the substantial causes of it. With that collapse, of course, came financial loss to all who had invested in PPI: not just large institutional investors, but private investors and persons whose pension funds were partly invested in PPI shares.

You were arrested and charged. After lengthy preparation, your trial was set for September 1993. You did not remain in this country to stand trial. Instead, in May 1993, you fled to northern Cyprus. No doubt you had been under very great stress and pressure in the period before your departure, and I accept that for at least a short time your health suffered as a result; but you had brought the stress of criminal and civil proceedings upon yourself by your thefts from PPI. Mr Hackett asks me to have regard to what were on any view extraordinary events in the proceedings around that time, which he submits would have shaken the confidence of anyone in your position. I am not persuaded by that point; but even if I were, it does not begin to explain your then staying in northern Cyprus. You remained absent from this country for 17 years, and so delayed for nearly two decades the day of reckoning which has finally arrived.

It is important that I should make clear to you and to the public the sentencing principles which I have applied.

First, the jury heard evidence about many transfers of money which were not the subject of counts in the indictment. Although that evidence was properly considered by them, the law provides that the court can sentence only for the specific offences of which you have been convicted. I make it plain that is what I will do.

Next, the approach the court must take in sentencing for crimes committed long ago has been indicated by the Court of Appeal in the recent case of R v H & Others [2012] 1 WLR 1416. I must apply current statutory provisions. You therefore gain the benefit of a statutory amendment which has come into force since you committed your crimes, the effect of which is that the maximum sentence for any one offence is now 7 years imprisonment even though it was 10 years at the time when the offences were committed. I must have regard to the purposes of sentencing set out in section 142 of the Criminal Justice Act 2003, and by section 143 of that Act I must have regard to the seriousness of the offences, taking into account your culpability and the harm which your offending caused.

Next, I must also have regard to the sentencing guidelines which are now in force, notwithstanding that they did not exist when the offences were committed. The relevant guideline is that applicable to offences of theft committed in breach of trust.

It indicates a starting point of 3 years' imprisonment, and a range of 2 to 6 years, for a man of previous good character convicted after trial of a single offence of theft of a sum of £125,000 or more. You, of course, have been convicted of ten offences, involving far larger sums.

In assessing the seriousness of your offences, I regard the following as aggravating features.

First, the combination of your breach of the trust reposed in you by your fellow directors, and your abuse of your position of authority and control over PPI in general and the near east subsidiaries in particular. It is true that you were but one director in a board of directors; but the evidence in this trial has shown very clearly that you were a dominant figure, especially so in relation to anything to do with the near east subsidiaries. You were in a position to use that dominance for good or for ill. You chose to use it in ways which enabled you to commit theft. A particular example of that is your determined retention of your sole signatory status in respect of the Unipac Jersey account, a status which you cynically exploited by using that account to disguise what was really happening to the funds which had left PPI.

Secondly, the number of your offences and the extent of the loss which you caused.

Thirdly, your persistence in stealing over a period of time. In this regard, I take particular note of the evidence that in October 1989 you were spoken to by one of the company's auditors, who had cause to question a particular transaction. You gave him an untruthful explanation, which concealed what had really happened. Even on that basis, he advised you that what you had done was extremely unwise. You were not deterred by that warning. You went on to commit three further offences.

Fourthly, the sophistication of the manner in which the thefts were committed, and your concealment of your crimes by causing others to make false entries in the company's books and records. You were assisted by a number of persons in this country and abroad: each of them was an employee of PPI or of a company which had been set up to manage your personal wealth, and in that way you exploited the fact that you were in effective charge of both companies.

As to matters of mitigation, I take into account the following points which individually and collectively enable me to reduce to some extent the sentences which would otherwise be appropriate.

First, your previous good character. Allied to that, I accept Mr Hackett's submission that the court can be confident you will not reoffend.

Secondly, your central role in the successful development of PPI and the benefits it brought to many employees and investors before its collapse.

Thirdly, and importantly, your voluntary return to this country. The jury's verdicts establish that you did not return because you were an innocent man who had been the victim of injustice. But whatever its true motivation may have been, that voluntary return enabled the trial to proceed.

Fourthly, the fact that having returned the conditions of your bail required you to observe a nightly curfew which continued for nearly two years. Although not qualifying by statute for a specific reduction in your sentence, I accept that it constituted a significant restraint upon your liberty which I should take into account. I similarly take into account the short periods which you spent in police custody.

Fifthly, your current state of health. I have at an earlier stage of these proceedings received medical evidence, in particular the reports of two consultant cardiologists. I am aware that you underwent a medical procedure in 2005, and that your condition requires medication and regular monitoring. It appears however that your cardiovascular condition is stable under this medication, and has not worsened since 2005. You must understand that in the ordinary way, the ill health of a person sentenced to imprisonment is a matter for the prison authorities, not a reason to reduce what would otherwise be the appropriate sentence. As Mr Hackett realistically accepts, the evidence I have heard as to your state of health does not indicate that it is so poor as to render imprisonment unusually difficult or onerous in your case. I nonetheless think it appropriate to take your poor health into account when considering your voluntary return to this country: it provided another reason why you

might have chosen to remain in the near east, and it is to your credit that you nonetheless returned.

In a similar way, I take into account your age as another factor relevant to your voluntary return. You were aged 69 at that time, which was another reason why you might have chosen to remain in northern Cyprus. On that ground alone, your age is a factor which counts to some extent in your favour. I make it plain however that in my judgment your age does not assist you in any other way, for the simple reason that you chose to flee the jurisdiction and remain absent from this country for 17 years. If you had stood trial in 1993, as you should have done, you would have been 52 years old.

I have considered but rejected other possible mitigating features. You are not assisted by the fact that you yourself lost a lot of money when PPI's share price collapsed: that was another self-inflicted wound.

Finally I should mention that there is here no mitigation in the nature of remorse for your past offending. You were entitled to have your trial, and you were entitled before that trial to make the several applications you did seeking on legal grounds to prevent the trial ever going ahead. The fact that you exercised those rights does not make your crimes more serious than they already are, and does not in any way increase the sentences which would otherwise be appropriate. But it does mean that I have had the opportunity to observe you not only throughout the months which this trial has occupied but also at the many pre-trial hearings which I have conducted since late 2010. You are a man of considerable charm and unfailing courtesy, and it is sad to see the waste of your undoubted talents. But I have no hesitation in concluding that you have shown not the slightest remorse for your crime. Your sole concern throughout has been to avoid any acceptance of your own responsibility.

Balancing those various factors, it is in my judgment clear that the aggravating features substantially outweigh the mitigating features. I am nonetheless able to reflect such mitigation as there is by reducing the total sentence which I would otherwise have passed. That total is reduced by 2 years to reflect the mitigating features which I have identified.

I take into account the submissions ably made on your behalf by Mr Hackett. I take into account also the recent cases which counsel have put before me as indications of the appropriate level of sentence. I agree with Mr Hackett that none of them is closely analogous to your case.

I have no doubt that each of your ten offences is so very serious that only a sentence of imprisonment is appropriate, and that the starting point for each individual offence should be a sentence at or near the top of the range indicated by the sentencing guidelines. But of course you are not to be sentenced for only one offence. Where offences are committed over a significant period of time, the court has to consider whether concurrent sentences would properly reflect the overall criminality. In your case, they would not. There must be some consecutive sentencing to mark your persistence in offending repeatedly over a lengthy period. In particular, it would in my judgment be wholly wrong not to mark by way of consecutive sentencing your continuing to offend after the warning given to you in October 1989. The fact that consecutive sentences produce a total which exceeds the statutory maximum for a single offence is no bar. Indeed, there is no bar in principle to the court imposing the maximum sentence on each of two or more offences and ordering them to run consecutively.

That brings me to the final consideration which the court must have in mind, namely the principle of totality. If I simply passed the appropriate prison sentence on each count, and made each of them consecutive to all others, the total would be far too high. I must therefore step back and limit the aggregate sentencing to a total which is proportionate to the overall criminality. I make it clear that in doing so my primary consideration is the totality of my sentencing, not the precise structure by which that totality is achieved.

My duty is to determine the appropriate sentence, not to direct when you will be released. I must however explain to you the practical effect of my sentence. Counsel have researched the relevant statutory provisions, and I accept that the effect of them is as follows. You will serve half of the total sentence which I am about to pronounce. You will then be released on licence for the remainder of the total term. When so

released, you will be subject to the conditions of your licence, and the Secretary of State will have the power to withdraw your licence and order your return to prison.

On counts 1, 2, 3, 5, 6, 7 and 8 there will be concurrent sentences of 5 years' imprisonment. On counts 10, 12 and 13 there will be sentences of 5 years' imprisonment: those three sentences will be concurrent with each other but consecutive to the other seven sentences. Your total sentence, accordingly, is one of 10 years' imprisonment.