



Press Summary

18 August 2022

R v Andrewes (Respondent)

[2022] UKSC 24

On appeal from [2020] EWCA Crim 1055

Justices: Lord Hodge (Deputy President), Lord Kitchin, Lord Hamblen, Lord Burrows, Lord Stephens

Background to the Appeal

This appeal concerns an important issue on the confiscation regime under the Proceeds of Crime Act 2002 (“POCA”) in the context of a case of CV (curriculum vitae) fraud, where a job applicant lies about his or her qualifications and as a result is employed and paid a salary. The question is whether when such a person is convicted for fraud, should a confiscation order be made so as to strip the fraudster of his earnings (net of tax and national insurance)? In particular, would such a confiscation order be disproportionate under section 6(5) of POCA?

Jon Andrewes successfully applied for the role of CEO at St Margaret’s Hospice, Taunton, having claimed that he had university degrees, as well as significant relevant work experience. These claims were untrue. Mr Andrewes was appointed CEO in December 2004 and remained in post until March 2015 when his employment was terminated. It was clear that he would not have been appointed had the truth about his education and job experience been known. In 2006, he told staff that he had obtained a PhD from Plymouth University that he had been working towards. This was untrue. He insisted that he should thereafter be referred to as Dr Jon Andrewes, a title which in due course appeared in, for example, staff structure diagrams and his email footers. During his time as CEO, Mr Andrewes did a good job as CEO and was regularly appraised as either strong or outstanding.

Using the same or similar lies, he was also appointed to two remunerated roles as a director and then Chair of the Torbay NHS Care Trust and as Chair of the Royal Cornwall NHS Hospital Trust. In January 2017 Mr Andrewes pleaded guilty to one count of obtaining a pecuniary advantage by deception and two counts of fraud. He was sentenced to two years’ imprisonment. Following his conviction, the Crown sought a confiscation order against him.

Mr Andrewes' full net earnings during the relevant period were £643,602.91. The "available amount" (which, somewhat simplified, is the amount which the criminal has free to pay a confiscation order) and hence the "recoverable amount" was agreed to be £96,737.24, and the judge ordered confiscation of that sum. Mr Andrewes appealed. The Court of Appeal allowed Mr Andrewes' appeal, making no confiscation order, and certified the question of whether or not a confiscation order in such circumstances would be disproportionate as a point of law of general public importance. The Crown appealed to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lord Hodge and Lord Burrows give the judgment, with which Lord Kitchin, Lord Hamblen and Lord Stephens agree.

Reasons for the Judgment

The Supreme Court finds that as a starting point, it would be disproportionate to make a confiscation order of the full net earnings in this case (i.e. of £643,602.91) [40]. To do so without making any deduction for the value of the services rendered would amount to "double confiscation" and a penalty [41]. Importantly, this reasoning does not extend to cases where, different to the present case, the actual rendering of services was illegal. This would arise, for example, if a surgeon performed operations without the required qualifications. In such a scenario, it would not be disproportionate to confiscate the full net earnings [42].

However, contrary to the decision of the Court of Appeal, the Supreme Court also finds that it is unacceptable for no confiscation order to be made. The Supreme Court decides that when considering proportionality, the court should seek to confiscate the difference between the higher earnings obtained through fraud and the lower earnings that would have been obtained if there had been no fraud. As such, Mr Andrewes would have to give up any "profit" he made through his lies, but account would be taken of the fact that his employers did receive value in the form of services rendered, in exchange for paying his salary [44-46]. This is to adopt a principled "middle way" in contrast to either a "take all" approach (as advocated by the Crown) or a "take nothing" approach (as adopted by the Court of Appeal) [40],[43],[45].

Applying this principled middle way to the facts, a confiscation order of £244,568 would be proportionate (assuming not exceeding the recoverable amount) [51]. But as, on the facts, the recoverable amount is only £96,737.24, the Supreme Court holds that a confiscation order in the amount of £96,737.24 is proportionate [52]. The Supreme Court therefore allows the Crown's appeal and restores, but for different reasoning, the confiscation order made by the judge [57].

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)