

Philip Taylor

From: Philip Taylor
Sent: 21 April 2005 12:17
To: Richard Thomas
Cc: Nick Tyler; Janet Witkowski
Subject: Motorman
Importance: High

Richard,

I have just spoken to Nick about Friday's result. Whilst I appreciate it is a disappointment and a potential setback for our case I think it is important that the following issues are borne in mind.

When the Judge passed sentence he was unequivocal in his message to the public that for the offence of misconduct in a public office the starting point for sentencing is and should remain a custodial sentence before explaining why he felt it necessary to pass a sentence at odds with precedents.

I understand you have referred to whether there should be an approach to the AG on the basis that he should take the matter forward on the basis of the leniency of the sentence. I have looked at Archbold on this point. Archbold is clear (para 7-369) that the powers are only for the avoidance of "gross error" and the allaying of public concern at what appears to be an unduly lenient sentence.

You will see that the Judge was very clear in his sentencing remarks as to why he was departing from usual sentencing guidelines. I don't think that proceeding that route would advance our cause significantly.

The judge was presented with comments from the Police/CPS that they considered the thefts faced by Marshall to be more serious than the conspiracy to commit misconduct which he pleaded to at first instance. As a result of Marshall's suspended sentence in the theft matter the Judge was left with few options as it would not have been inappropriate for him to pass a sentence on Marshall which would have disturbed what was an exceptional sentence in the theft proceedings.

I have spoken to our Counsel, Bernard Thorogood, about this and we have arranged a conference at our offices prior to the first hearing in our case on 17th May. Sadly I note that you are unlikely to be around for it (Fri 13th May). I understand from Bernard that the Judge at Blackfriars Crown Court is one of their senior judges who deals with their heavyweight matters and is extremely well regarded as well as being a contributor to practitioner texts. I have also asked Bernard to advise in writing on any implications for our case that arises out of last week's proceedings.

Regards

Philip

11/05/2005

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