



22 February 2012

PRESS SUMMARY

In the matter of Peacock [2012] UKSC 5

On appeal from [2010] EWCA Civ 1465

JUSTICES: Lord Hope (Deputy President); Lord Walker; Lady Hale; Lord Brown; Lord Wilson

BACKGROUND TO THE APPEAL

In January 1997, Mr Peacock was convicted of five offences of conspiracy to supply controlled drugs and sentenced to 12 years' imprisonment, reduced on appeal to ten years'. Mr Peacock was found to have benefited from his drug trafficking to the extent of £273,717.50. However, at the time of sentence, he owned realisable assets worth only £823, so, accordingly, a confiscation order was made against him just for this lesser sum. Following his release from prison in November 2000, Mr Peacock went into the property business and, entirely legitimately, acquired very substantial assets. The prosecution sought recovery of the full £273,717.50 and applied to the High Court. The High Court granted the appropriate certificate increasing the realisable amount under the original confiscation order; and, on application by the prosecution, the Crown Court substituted for the £823 originally recoverable the sum of £273,717.50. Mr Peacock appealed the lawfulness of the certificate issued by the High Court. The Court of Appeal dismissed his appeal.

Had Mr Peacock committed the drug trafficking offences of which he was convicted *after* 24 March 2003, the Proceeds of Crime Act 2002 ("POCA") would have applied and, under section 22(3) of that Act, Mr Peacock would clearly have been liable to a further court order increasing to the full extent of his criminal gain the amount recoverable under the confiscation order by reference to his 'after-acquired assets'. However, Mr Peacock committed the relevant drug trafficking offences in 1995, and the question therefore arose whether the same position had obtained under section 16(2) of the Drug Trafficking Act 1994 (the "1994 Act").

The questions for the Supreme Court were: (1) Did section 16 of the 1994 Act apply after POCA came into force on 24 March 2003? (2) If section 16 was in force after 24 March 2003, was the High Court entitled to have regard to after-acquired assets under section 16(2) when issuing a certificate to increase the amount payable under the confiscation order?

JUDGMENT

The Supreme Court dismisses the appeal by a majority (Lord Hope and Lady Hale dissenting on the second issue). Lord Brown gives the leading judgment of the Court with which Lord Walker and Lord Wilson agree.

REASONS FOR THE JUDGMENT

The first issue before the Court is dealt with swiftly and by unanimous agreement. The statutory transitional provisions implemented alongside POCA in 2003 disappplied the entire POCA confiscation order regime in respect of offences committed *prior to* 24 March 2003. In respect of such offences, the whole confiscation order scheme provided for by the 1994 Act continues in force. Accordingly, section 16 of the 1994 applies to Mr Peacock's circumstances [16].

The statutory purpose of the 1994 Act could hardly have been made clearer: to strip those convicted of serious crimes of the proceeds of their wrongdoing [33]-[34]. Section 16(2) of the 1994 Act enables

the High Court, on application, to issue a certificate certifying that “the amount that might be realised” in the case of a person against whom a confiscation order has been made “is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased)”. Nothing in the definition sections of the 1994 Act requires section 16(2) to be construed as if it refers to the amount that might have been realised *at the time* the confiscation order was made. On the contrary, section 16(2) is plainly directed to the amount that might be realised *now* and by reference to realisable property *now* held by the defendant [21]. It is common ground between the parties that, in relation to pre-acquired assets, the inquiry is into their value at the time of the application rather than their value at the time when the confiscation order was made [44]. That the provision also applies to after-acquired assets – property accruing to a person (whether as earnings or by gift, inheritance or some other windfall) without a corresponding diminution in that person’s existing assets [35] – is clear from the words in section 16(2) in parentheses which encompass all ways in which the amount might have grown [22]. Parliament would have made it clearer had its intention been to exclude after-acquired assets from the scope of section 16(2) [49].

Section 17 of the 1994 Act, enabling the High Court on application to grant a certificate that the defendant’s realisable property is inadequate to meet the amount remaining to be recovered under the confiscation order, is symmetrical to section 16 [23], [41]. They are opposite sides of the same coin [46]. It is logical that, by the same token that a defendant cannot require his after-acquired assets to be ignored in the determination of his present ability to pay, nor should they be ignored in deciding whether he can pay an additional amount up to the point when he will have disgorged an amount equivalent to all the benefit which has accrued to him from drug trafficking [23].

By enacting section 16, Parliament decided to leave it open to the courts as a matter of discretion – under section 16(4) – to deprive a defendant of his criminal gains on an ongoing basis irrespective of precisely how and when he came by any increased wealth [29]-[30], [47]. Accordingly, the section 16(2) certificate here was lawfully issued and the appeal is dismissed [31].

Lord Hope (with whom Lady Hale agrees) dissents from the outcome reached by the majority of the Court. The effect of reading section 16(2) so as to include legitimate after-acquired assets could be to penalise a defendant for the efforts of his own enterprise and hard work after he is released from custody. To deprive Mr Peacock of the increase in the value of his assets legitimately accrued following his release from custody ought not, according to well-established principles, to be assumed to have been what Parliament intended unless it provided for this in clear terms [59]. The general principle of construction, of universal application, is that a statute should not be held to take away property rights without compensation unless the intention to do so is expressed in terms which are clear and unambiguous [60]. Although there are no words that exclude after-acquired property from the scope of section 16, the confiscatory nature of the exercise under that provision requires us to be satisfied that the inclusion of after-acquired property within its scope was what Parliament really intended and to give the benefit of the doubt to the defendant if we are not [64], [71].

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:

www.supremecourt.gov.uk/decided-cases/index.html