

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21828253

THE QUEEN

and

JOSEPH OKOH

(Sentence)

MILDREN AJ

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON WEDNESDAY 18 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Joseph Ehimen Okoh, you have pleaded guilty to one count that between 10 September 2017 and 9 March 2018 you dealt with property, namely, deposits in a bank account to the value of \$376,563.55, which property was the proceeds of crime. The maximum penalty for this offence is imprisonment for 20 years.

You were born on 1 February 1986. You are 32 years of age. You were born in Nigeria. You arrived in Australia on 9 August 2013. You are a lawful onshore temporary resident holding a temporary skilled visa.

Prior to this offending, you were employed full-time as a youth worker with Saltbush Social Enterprises. You hold a Bachelor of Applied Science from Delta State University, a post-graduate MIO State University in Nigeria and a Bachelor of Humanitarian Community Studies at Charles Darwin University, which you completed in 2016.

In November 2017, the Northern Territory Police commenced an investigation into the activities of persons suspected of being money mules and receiving funds obtained from online frauds. After being recruited by the internet fraudsters, money mules received funds into their bank account and then moved funds into a designated account either domestic or offshore. The mule received a commission payment.

During the course of this investigation, the police established that you had received funds into your bank account that were the proceeds of online frauds, that you dealt with the proceeds of those frauds by moving the funds out of your bank account by transferring to other accounts held domestically through large cash withdrawals, international money transfers and international remittance providers such as WorldRemit.

The police also established that you were trading in identification information that was not yours, such as bank accounts in other persons' names and that you were receiving a commission for the use of these accounts.

The facts of the single count in the indictment are that on 11 September 2017 criminal associates of yours sent to one LB, a text message, purported to have been sent from the Commonwealth Bank (CBA). The text message required her to verify her login details and password, which she did.

This gave the cyber criminals access to her bank account. The cyber criminals transferred \$4400 from her account into your account at the CBA Bank and over which you had control. You maintained the funds in your account until 6 November 2017, when the transaction was reversed by the bank.

In December 2017, your criminal associates compromised the email system of 'CB' Law Firm. AH had engaged the law firm and she was purchasing a property. An associate of yours sent her an email advising her that the account she was to

deposit the money in had changed and provided to her your National Australia Bank (NAB) account in which to deposit the money.

On 12 December 2017, Ms AH transferred \$20,000 from her account to your NAB account, believing it to be the legitimate trust account of CB Law Firm. She then transferred a further \$1000 to your account. Later that day, you withdraw \$18,000 in cash and you used another \$2000 to pay for personal expenses.

On 22 December 2017, \$1000 was recovered from the bank.

On 14 December 2017, 'EV' Legal, another law firm, had their email system compromised. EV Legal was acting as the executors of a deceased estate and was responsible for the distribution of a million dollars from the estate to the beneficiaries. On this date, they received a fraudulent email from your criminal associates, advising of the change of bank details for one of the beneficiaries.

In accordance with the email, EV Legal made a payment of \$239,000 from the firm's trust account to the NAB account, which you had with that bank and over which you had control, believing it to be the legitimate account of one of the beneficiaries. You maintained the funds in that account until 2 January, when \$238,536.88 was recovered by the bank.

On 28 January 2018, a gentleman by the name of DD engaged another firm of lawyers, 'DC' Lawyers, to conduct the conveyancing for a property that he was purchasing.

The email system of 'DC' Lawyers had been compromised by associates of the offending. On 20 February 2018, Mr DD received a fraudulent email sent by your associates, purporting to be from DC Lawyers, directing him to deposit \$39,920.72 into an alternative account, being your ING account.

On 22 February 2018, Mr DD transferred \$39,920.72 from his CBA account into your ING account in accordance with an email. You transferred on \$30,426 to other accounts, you withdrew \$3000 in cash in three separate \$1000 withdrawals and you authorised \$5323.75 to be spent at JB Hi-Fi on goods. None of the funds were recovered.

A mining company called 'AM' Pty Ltd entered into a lease agreement with 'ST' Portfolio Management for the lease of office space in Townsville. The AM Group receives a monthly invoice as raised by Sentinel. Your criminal associates compromised the email system of Sentinel and sent a fraudulent email to AM, advising the account to which payment was usually made was under audit, and provided to AM the NAB Bank details and account in the name of your brother, Christian Okoh for the funds to be transferred there.

On 1 March 2018, Christian Okoh sent a text message to you, in which he provided his NAB Bank account details. On the same day, the AM Group made payment of \$72,242.83 into Christian Okoh's NAB account.

On 2 March 2018, AM credited into the account of Okoh the sum of \$72,242.83 with the reference "AM Viol (inaudible)." Christian Okoh withdrew \$5000 in cash and gave it to you. Later that day, you sent a message to Christian Okoh with the details of a Chinese bank account. On the following day, Christian Okoh withdrew \$20,000 in cash, gave \$6000 of that to you.

On 5 March 2018, Christian Okoh withdrew \$45,000 and transferred to the Chinese bank account which had been provided to him by you. The same day, you sent a message to Christian Okoh, advising him to retain a receipt of the transfer. None of the funds transferred by AM were recovered.

The Crown is seeking restitution as follows: \$20,000 payable to AH, \$464.12 payable to EV Legal, \$39,920.72 payable to DD, and \$72,742.83 payable to AM Pty Ltd.

Analysis of your mobile phone revealed to the police that on numerous occasions, you had received and transferred information about the bank account details of these parties.

The prosecutor read to the court the effect that your crimes have had on some of the victim. LB was placed in financial difficulty and had to borrow money from her family in order to survive. She was only in part-time work. The offending caused her emotional stress and frustration that she lost all her savings. Fortunately, her bank reversed the transaction so it appears that she did not suffer any loss in the end.

AH, who had engaged a firm of solicitors relating to a property purchase, lost \$20,000 of the \$21,000, which was supposed to have been deposited in the firm's trust account. As a result of this fraud, an employee of the firm has given up being involved in the property sector.

JA, who worked with another firm of solicitors, EV Legal, suffered from stress and anxiety as the loss of \$239,000 paid into your account, and was no doubt relieved to some degree when \$238,563.88 was recovered by the firm's bank.

I have not been given any information on the effect of the loss to Mr DD, who lost nearly \$40,000, or the effect on the employees of AM Pty Ltd, who lost over \$72,000.

You have no prior convictions. You have been in custody since your arrest on 28 June 2018.

Your personal circumstances, I have already mentioned to some extent. You are now aged 32. You have been twice married. You have a daughter aged 13, who is living with your parents in Nigeria. You have been married to your present wife for five years and you have two young children by that union, aged 3 and 2 years old, both of whom were born in Darwin.

You are a Nigerian citizen and you grew up in Nigeria and I have mentioned already your tertiary qualification.

Between 2013 and 2017 you worked in a number of related occupations, including Department of Health as a social worker, assisting and supporting people with severe intellectual disability.

You also worked at Saltbush Social Engineering Enterprises, relaying opportunities to Indigenous people to improve their lives through work.

You also worked for Life Without Barriers, and organisation run by the Northern Territory Disability Services, specialising in accommodation and support for disable people. And also for Safe Pathways, a psychological and counselling service, dealing with disability and environment group issues.

I have received a number of letters of support from people who know you. Some of the writers of these letters refer to your honesty and hard work ethic. Your wife states that you have also helped raise money for a friend to pay for your friend's school fees. She regards you as a loving and caring husband, supportive of her and a good father to your young children. She has been in court when you pleaded guilty to this offence.

In 2014 you started to gamble, using betting sites on your telephone. Some of these sites were located in Nigeria, where you had two betting accounts. You lost money, ended up in debt and continued to gamble to clear your debts. You also gambled away the money that you were earning and you left your wife to struggle with having to pay off debts.

You hid your addiction from your wife, but she eventually found out about it, and it was a source of friction between you. It was in this situation that you were approached by the cyber criminals to launder money, proceeds of online frauds, and you saw this as a way out of your financial problems.

Offending of this nature is very serious, as indicated by the maximum penalty. It is properly classified as cybercrime. It is prevalent and incredibly difficult to detect. It affects all facets of society, including individuals or businesses that the fraud has been perpetrated upon, a breach of their security systems, the access to personal identification information to facilitate other fraud-related offending, and the use of a financial system as a conduit for the flow of illegally obtained funds.

There are also the financial consequences of this offending which affect the cash flow and reliability of businesses and individuals and the stress that this causes to the victim and their employees.

This type of offending is attractive, as technology is used to permit the offending to be carried out worldwide whilst expending minimal resources. The identity and location of the principal cybercriminal is obscured. It is a low-risk activity with a potential for higher returns.

You were complicit in this to the extent that you were aware the funds were from a fraudulent scheme, and whilst you did not participate directly in the false representations which caused the funds to be deposited into your account or into the account of others on your instructions, you were aware that they were from email-compromised schemes.

Initially, you made a conscious decision to become involved by providing the use of your bank account. Once that risk became too great, as your bank accounts were frozen and banks were communicating to you that they were no longer prepared to do business with you, you provided the bank details, in third names, for your criminal associates who used the funds to be transferred into.

The offending occurred over a period of six months. You were employed during this period. You used some of the funds which you obtained for your own personal use. I am unable to quantify the financial benefit which you received. There is a dispute between the Crown and you as to the exact amount, and which has not been resolved.

Your role in the offending was crucial to the success of the frauds. Without an Australian bank account for the funds to be deposited into, the payee would have become suspicious and not made the payments as instructed.

You participated in an interview with the police, during which you denied the offending conduct. You created a version of the events to exculpate yourself. However, the police obtained your bank records and phone communication and were able to disprove your assertion. This is relevant to any consideration of whether or not you are truly remorseful.

Because of the prevalence and difficulty of detection of crimes of this kind give rise to and the minimal chances of recovery of the funds, the primary considerations in cases of this kind are general deterrence, denunciation by the courts and protection of the community. Consequently, there must be a significant head sentence to show you and others like you that this kind of behaviour will not be tolerated.

As to the fact that you have pleaded guilty, I note that this was at a very late stage, resolved only two days before the trial was due to start. It was put on your behalf that you are remorseful, but I am unable to accept this. You may well be sorry for yourself and for the pain that you have caused your wife and children, but that does not translate into true remorse.

You have accepted, eventually, and taken responsibility for your behaviour and your plea has saved the government the cost of a lengthy trial. You are entitled to some benefit for this. Accordingly, I reduce the sentence which I would have otherwise imposed by 10 per cent.

It was put on your behalf that some leniency should be extended because your offending was the result of your gambling addiction. In the absence of any evidence that you have made any effort to seek treatment for that addiction, I am unable to infer that your prospects of rehabilitation are enhanced to any considerable degree.

I do not otherwise consider that in the circumstances of this case, that your addiction, whilst it may explain how a person of good character could become enmeshed in this kind of criminality, warrants any significant leniency.

But for your plea, I would have sentenced you to imprisonment for 6 years. I reduce that sentence to imprisonment for 5 years and 4 months. I backdate your sentence to 28 June 2018 to take into account the time already spent in custody. I fix a non-parole period of 2 years and 8 months, which will also be effective to run from 28 June 2018.

The Crown has also sought restitution, which totalled an amount to \$132,627.67. If I were to order the payment sought, restitution orders would be enforceable as fines under the provisions of the *Fines and Penalties Recovery Act*. Enforcement proceedings under that Act are not available, as a matter of practicality, while a person is serving a sentence of actual imprisonment. See s 83.

The offender could be required, after he is released, to perform up to 480 hours of community service, and if the work order was complied with, the debts would then be extinguished. See s 81(1).

It may be that as there are four different entities of whom restitution is sought, that an enforcement would be a four community order, which could result in a considerable number of hours of community service. See s 80(2).

Section 3(2) of the Act provides that the Court may order that the Act does not apply in the circumstances provided in the *Sentencing Act*.

The power to make an order for restitution is contained in Pt V of the *Sentencing Act*. See s 88(c). The court can order time to pay (s 92(c)), and can also order up to 12 months' imprisonment in default. See s 93(2).

Although no submissions were made by counsel for the prisoner, I am not inclined to make any order in this case, because of the following reasons:

First, the prisoner will be in prison for at least a further 12 months, approximately, before he is even eligible for parole.

Second, even if he is released on parole, there is little prospect, as far as I can see, of the prisoner making full restitution, unless he were to come into a large sum of money through inheritance or other fortunate circumstances.

Thirdly, even if an order is made, it does not prevent a civil action being brought to recover damages.

Fourthly, the sentence that I have imposed is based on the probability that none of the money which has been dissipated will ever be recovered.

Anything arising?

MS LOUDON: No, your Honour.

MR READ SC: No, your Honour.

HIS HONOUR: Court is adjourned.
