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THE SUPREME COURT OF
THE NORTHERN TERRITORY

SCC 21828292

THE QUEEN

and

CHRISTIAN OKOH

(Sentence)

MILDREN AJ

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON MONDAY 30 SEPTEMBER 2019

Transcribed by:
EPIQ

HIS HONOUR: Christian Okoh, you have pleaded guilty to one count of dealing with the proceeds of crime, contrary to s 231B of the *Criminal Code*. The maximum penalty for this offence is 20 years' imprisonment.

The facts of this matter are that you are a 29-year-old Nigerian national who arrived in Australia on 25 February 2016. You are currently on an onshore temporary resident visa, which is a student visa. At the time of the offending, you were enrolled in a Master of Business Administration at Charles Darwin University and you were employed part-time with NT Safe Pathways as a carer.

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. During the course of this investigation, police established that you had received funds that were the proceeds of online frauds into your bank account.

You had moved these funds by direct transfer into a Chinese bank account, bank transfers and through large cash withdrawals.

On 30 April 2018 the police received a complaint through the Australia Cybercrime Online Report Network from Adani Mining Pty Ltd, which outlined that the company had suffered a business email compromise fraud.

This kind of fraud is a form of a phishing attack, where cybercriminals compromise a victim's email system to view all emails sent and received by the victim. It allows the cybercriminals to send emails falsely representing that they are from a legitimate vendor, their bank details have been changed and to make payment into a new bank account, which is actually an account held by an associate of the cybercriminal; that is to say the money mule.

This causes money transfers to be diverted from the legitimate payment accounts to accounts held by associates of the cybercriminal. AS is an international student studying in Sydney. AS was a victim of unexpected prize and lottery fraud.

This is an advanced fee fraud involving the promise of a large sum of money in return for a relatively small upfront payment. Once the victim makes the initial payment, further hurdles are invented that involve the payment of additional fees. This is also known as the 419 fraud, which refers to the article of the Nigerian *Criminal Code*.

On 12 November 2017 Mr Sakar received a text message on his mobile phone, stating that he had been selected as a winner of the United Kingdom Coca-Cola promo lottery with a prize pool of \$175,000 British pounds. Within the text, there was a link to a website which you needed to click onto to claim the prize by using a reference number.

AS followed the link provided in the text message, directing him to a fake website that had the Coca-Cola branding and logo. He then clicked on the claim prize icon

and activated a window, requesting him to enter the reference number provided in the text message, his name, address and to upload of form of identification. After this, AS was directed to a further page that stated that he had won the Coca-Cola promo lottery and that someone would be in contact with him shortly.

On 13 November 2017 AS received an email purporting to be from Coca-Cola, stating that he had completed the verification process and that the prize was ready to be distributed. AS was then directed to a fake shipping company and directed to pay an international delivery fee of \$982 Australian dollars into a United Kingdom bank account. After making payment, he received an email acknowledging it and a fake tracking number.

On 21 November 2017 AS received an email from an email address: ukinlandrevenue@englandmail.com, purporting to be from a Ms Joanna Baldwin of the United Kingdom Inland Revenue. The internet domain name enland.mailcom is registered to World Media Group in Nigeria.

This email advised that the delivery had been stopped and that he was required to pay a non-residential fee of 5615 pounds sterling in order for the parcel to be allowed to be shipped. AS telephoned the number provided on the email and spoke to a person, who advised him that he had to pay \$10,232 Australian dollars into an Australian bank account.

On 27 November 2017 AS received a further email, purporting to be from Ms Joanna Baldwin, which contained the payment details. Those details included an account number, an account name, which was your name, and the account details for your account with the Commonwealth Bank.

The bank details provided are for a National Australia Bank account that was held and operated by you in your name. And you provided your bank account details to your brother, Joseph Okoh. He knew that the money was to be deposited into your account from fraudulent activity, although you yourself did not participate in the prize and lottery fraud.

As a result of receiving the fraudulent email, AS transferred \$10,232 into your NAB account.

On 27 November 2017 your account balance was only \$164.78. On 28 November the \$10,232 was credited to your NAB account with the recorded particulars AS.

On 29 November you used most of the \$20,232 to pay for your own personal expenses, including rent, other household expenses and to purchase items online. You transferred two accounts internationally, using WorldRemit on 5 December of \$938.99, and on 7 December, \$187.99.

AS was defrauded out of a further \$5000 before he became aware of the scam, and as a result, suffered a total loss of \$16,214 and a potential identify theft when he uploaded his personal identification to a fake Coca-Cola website.

The Adani Carmichael Mine entered into a lease agreement with Sentinel Portfolio Management for the lease of office space in Townsville. The Adani Group receives a monthly invoice which is raised by Sentinel. This invoice is forwarded by email from the address: avi.he@sentinelpq.com.au to the Adani Group for processing and payment.

On Tuesday 20 February 2018 the Adani Group received an email appearing to be from Sentinel from that email address, in which it was stated to ignore the previous invoice because that contained bank details that were of an account that was under audit and they were unable to use that account for transactions until further notice, and to ensure that the payments are made to a new bank account.

The bank account that was given was in fact your NAB account which you provided to your brother, Joseph Okoh. You knew that the money was to be deposited into your account for fraudulent activity. You did not yourself participate in the scheme otherwise.

On 1 March the Adani Group made payment of \$72,242.83 into your NAB account, ending in the numbers 1051.

On 2 March an internet transfer of \$72,242.83 was credited to your account, with the reference "Adani Min PL." On 2 March 2018 you withdrew \$5000 cash from the Palmerston branch of the NAB. You deposited \$5000 into an account held by Joe Ogbidy.

On 3 March you were in Sydney. You withdrew \$20,000 in cash from the Eastgardens branch in Sydney and you gave that \$20,000 to your brother, Joseph Okoh.

On 4 March you withdrew \$1000 cash and you gave that to you brother, Joseph Okoh.

On 5 March you withdrew \$45,000 cash at the Darwin NAB branch and transferred it by way of teletransfer to an Industrial and Commercial Bank of China account held by Hang Zhou Lujia Trade Co Limited. These account details had been provided to you by your brother, Joseph Okoh.

On 5 March you made a number of purchases of clothes items from various retail stores, including JJs, Country Road and Platypus. You received a benefit of approximately \$1000 from the funds which were transferred into your account.

On 9 March the NAB restricted your account from conducting any further transactions.

On 13 March the Adani Group became aware of the fraud and attempted to recover the funds through their bank. This was unsuccessful as there were no funds remaining in your account. No funds have been recovered by the Adani Group, resulting in a financial loss of \$72,242.83.

On Thursday 3 May and Friday 4 May 2018 you voluntarily attended at the Palmerston Police Station and participated in two separate interviews with police in relation to this matter. You lied to the police in an attempt to exculpate yourself from the offending conduct.

You told the police that you had been contacted by a male person called Guzel. You told the police that Guzel claimed to be a fellow student from a university in Nigeria, that Guzel told you that he is an international entrepreneur who travelled between Turkey and South Africa to source and purchase jewellery, high-end luxury ladies' apparel and gold. He then ships these items back to Nigeria and sells them to retail outlets in order to make a substantial profit.

You told the police that Guzel had told you that he needed a business partner to send money for him overseas and that your role was to receive the money into your bank account and then forward it overseas. You said that in payment for doing this you would receive \$5000 to \$6000 per transaction.

You told the police that at the end of February 2018 you received instructions from Guzel that he would be receiving \$60,000 into his account and that you should send the money to China for the purchase of gold. When you received the \$72,242.83 into your account, you transferred the money in accordance with instructions given to you by Guzel, which you had written down on a piece of paper for safekeeping.

During the interview, police asked to see the WhatsApp messages from Guzel. You told the police that you deleted them. You lied when you said that you had been directed by Guzel to transfer the money and that it was him who had provided you with the bank details. It was your brother, Joseph Okoh, who provided you with the Chinese bank account and directed you to transfer the \$45,000.

The Crown is asking for restitution orders on behalf of the victims.

You have no prior convictions.

You were born in Nigeria on 14 November 1988. You are now aged 30. You have a law degree, which you obtained in Nigeria. You are currently working as a support worker in disability services, earning \$800 a week. You are married and you have one child in Nigeria, who is about 1 year old.

You are supporting your wife and child with the monies that you earn. You arrived in Australia in 2016, and at the time, you were living with a group of men, including your brother, Joseph.

Most significantly, you agreed to give evidence at your brother's trial following a decision by you to plead guilty. You pleaded guilty only six weeks out from the contested trial. It is common ground that your agreement to give evidence led to your brother changing his plea, although this change of plea came rather late.

Consequently, you say that you have been significantly ostracized by your two brothers; both of whom are currently serving terms of imprisonment. You are called a turncoat or a dog and you are shunned by them and their families, who are also in Darwin. You still have contact with family in Nigeria.

It is understandable why your brothers would be upset with you and equally understandable to some degree why you would get involved in a scheme like this if you were under the impression that your brother was putting pressure on you. But having said that, you as a lawyer should have known better. By getting yourself involved in this scheme, you risk your ability to even practice as a lawyer when you return to Nigeria.

You say that you only received \$1000 out of it because you paid back some of the other money that you had taken to your brother. The Crown says that you got at least \$3000 out of it. I am not really able to decide whether you got \$1000 or \$3000. Either way, it was not very much in the scheme of things.

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 effects all facets of society, including the individual or business that the fraud has been perpetrated upon, the breach of their security systems, the access to personal 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 effect the cash flow and viability of businesses and individuals, as well as the stress that this causes to the victims 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 high 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 brother's instructions, you were aware that they were from email-compromised scams. You made a conscious decision to become involved by providing the use of your bank account.

Your offending occurred over a period of a little over three months. You were employed during this period and you also used some of these funds for your own personal use, as I have already mentioned.

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 payees would have become suspicious and not made the payments as instructed.

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

Because of the prevalence and difficulty of detection that crimes of this kind give rise 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.

On your behalf, it is put that, primarily, because of the small amount of benefit that you personally got and because of the fact that you promised to give evidence for the Crown, you had been subpoenaed, you had undertaken to give evidence in accordance with the agreed facts, that there should be a significant discount.

Although the Crown accepts that there should be a discount, they say that not all the qualifications that are dealt with in *Cartwright* in this case have been met. In particular, you did not give a statutory declaration to the police.

Whilst that it so, I have no doubt that you told the police, through your agreement to give evidence in accordance with agreed facts, pretty well everything you knew about this. The only person who may have known more than you would have been your brother.

It was put on your behalf that I should make a home detention order. The Crown submits that I ought to impose a partly suspended sentence. You have been assessed as suitable for both.

What needs to be remembered is that home detention is in itself a form of imprisonment. The only difference between it and an actual sentence of imprisonment is that the imprisonment is confined to the home. It has a number of advantages, both to the State as well as to the offender. It enables the offending, usually, to continue to work. It saves the community the cost of imprisonment, which is considerable, and by enabling the prisoner to work, it enables him to continue to support his family.

I have given some consideration to this matter, and in the circumstances, I consider that a significant home detention order will suffice.

I find the facts proved. You are convicted and sentenced to imprisonment for 2 years. In arriving at that sentence, I have taken into account the discount that I

believe you are entitled to. I think a discount in the order of 40 per cent is appropriate. Your sentence is suspended upon your entering into a home detention order for a period of 10 months as from today.

I am not going to backdate the sentence. I have taken into account that you have already spent six days in custody.

As for the order for restitution, as I said in relation to your brother, Joseph Okoh's case, there appears to be no chance that you will ever repay an order, and I have sentenced you on the basis that the monies will never be recovered.

Anything arising?

MR MALEY: No, sir.

MS LOUDON: Your Honour, just one thing, is that your Honour said in your sentencing remarks, "Told police everything you knew." That wasn't a concession made by the Crown.

HIS HONOUR: Yes, I know.

MS LOUDON: Please the court.

HIS HONOUR: It is the inference that I draw.

Yes, Mr Maley?

MR MALEY: No, sir.

HIS HONOUR: All right, thank you.

Court is adjourned.

There is something else. I forgot to mention the conditions of the home detention order. The conditions of the home detention order are as follows.

- 1) You must place yourself under the ongoing supervision of a Probation and Parole officer.
- 2) You must obey all reasonable directions from a Probation and Parole officer.
- 3) You must report to a Probation and Parole officer directly after this order comes into force.
- 4) Upon discharge from this court, you must return immediately to your home address at 10/27 Mannikan Court, Bakewell, Palmerston, unless directed otherwise by a Probation and Parole officer.

- 5) You must not leave 10/27 Mannikan Court, Bakewell, Palmerston except at the times and for the periods as prescribed or as other permitted by a Probation and Parole officer.
- 6) You must wear or have attached an approved monitoring device in accordance with the directions of a Probation and Parole officer.
- 7) You must allow the placing or installation in or retrieval from the premises or place specified in this order; that is /27 Mannikan Court, Bakewell, of such machine, equipment or device necessary for the efficient operation of the monitoring device.
- 8) You are to participate in counselling, assessment and/or treatment as directed by a Probation and Parole officer.
- 9) You must not possess a firearm without the permission of the Commissioner or Correctional Services.

Thank you.

MR MALEY: Thank you, sir.
