Neutral Citation Number: [2024] EWCA Crim 1013

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT TEESIDE
HHJ STEAD 11DD0419420

CASE NO 202302201/B2

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 26 July 2024

Before:

LORD JUSTICE SINGH
MRS JUSTICE CUTTS
HIS HONOUR JUDGE TIMOTHY SPENCER KC
(Sitting as a Judge of the CACD)

REX
V
STUART BELL

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR M HARDING appeared on behalf of the Appellant.

MR P MORLEY appeared on behalf of the Crown.

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

1. This is an appeal against sentence, brought with leave of the Full Court (Popplewell LJ, Pepperall J and Cotter J) on 14 May 2024. On 5 December 2022, in the Crown Court at Teesside, the appellant (who was then aged 51) pleaded guilty to four offences. On 5 June 2023, he was sentenced by HHJ Stead as follows: on count 2, which was an offence of stalking, contrary to section 4A(1) (b) of the Protection from Harassment Act 1997, there was a sentence of 32 months' imprisonment; on count 3, which was an offence of acting in breach of a restraining order, contrary to section 5(5) of the 1997 Act, there was a sentence of 3 months' imprisonment made concurrent; on count 5, which was an offence of doing acts tending and intended to pervert the course of public justice, there was a sentence of 10 months' imprisonment made consecutive; on count 8, which was an offence of forgery, contrary to section 1 of the Forgery and Counterfeiting Act 1981, there was a sentence of 10 months' imprisonment made consecutive. In total therefore, that made a sentence of 4 years and 4 months' imprisonment. A restraining order was made until further order. Counts 1, 4 and 6 were ordered to lie on the file in the usual terms. There was a co-defendant, a Mandy Bell, who pleaded guilty to count 7, that is the offence of perverting the course of justice. She was sentenced on 4 April 2023 to a suspended sentence order.

2. We should deal with some ancillary but important matters in the interests of good order, which have been drawn to the Court's attention by the Registrar. These are not in dispute between the parties. As we have mentioned, the appellant was convicted on count 3 of acting in breach of a restraining order which had been made on 25 November 2020. The offence was charged contrary to section 5(5) of the 1997 Act. Although the order was

made on 25 November 2020 (before the Sentencing Act 2020 came into effect on 1 December 2020) the breach was committed between 17 December 2020 and 17 January 2021, after the Sentencing Act came into force.

3. In R v Jowett [2022] EWCA Crim 629; [2022] 2 Cr App R(S) 46, this Court held that following the repeal of section 5 of the 1997 Act, by section 418 of and Schedule 28 to the Sentencing Act 2020, breaches of restraining orders whenever made (committed after the 2020 Act came into force) should be charged contrary to section 363(1) of the 2020 Act. However, the Court went on to hold that because of the transitional saving provisions in paragraph 4 of Schedule 27 to the 2020 Act, the failure to do so did not invalidate the proceedings and the court can simply correct the record to show that the defendant was convicted of an offence contrary to section 363(1) of the Sentencing Act 2020 (see Jowett at [11] to [12]). Accordingly, this Court, with the agreement of the parties, does make that correction in respect of count 3.

4. The other matter that will need to be corrected is in respect of a breach of a suspended sentence order. It is acknowledged by Mr Harding, on behalf of the appellant, that there was a suspended sentence order imposed for a period of 24 weeks' custody, suspended for a period of 18 months, and that in principle it ought to be activated unless the court were to consider that it would be unjust to do so. The court also needs to bear in mind the limits on its powers on an appeal so that a sentence is not rendered more severe (see section 11(3) of the Criminal Appeal Act 1968). In the circumstances which have arisen and, again without disagreement on behalf of the Crown by Mr Morley, we consider that the appropriate course, not least in the interests of good order, is for us to activate that

suspended sentence order but to make the term of 24 weeks' custody concurrent to whatever other sentences would be appropriate in this case. We so order.

5. The facts of the case can be summarised as follows. Emma Gibson began a relationship with the appellant in 2012 which lasted for about 8 years, before ending in May 2020, by which time the appellant had met somebody else (now his wife, Nichola Bell). There was an agreement between Ms Gibson and the appellant that he should retain the family home in exchange for £10,000 and a Mercedes motor vehicle. Solicitors were involved and the process commenced. The appellant paid the £10,000 and in June 2020 Ms Gibson signed some documents (at the request of her solicitor) to set in motion the process of the transfer of the family home. However, matters between the parties then soured over the coming months, with the appellant not handing over the car as previously agreed. The transfer of the property then appears to have stalled. The appellant continued to liaise with the conveyancing solicitors in the name of Ms Gibson. He set up a false email account in her name and was sent the land transfer document to complete the property transfer. He signed it in her name and sent it back to solicitors. That forged document is dated 28 September 2020 and is the basis of count 8 (the forgery count).

6. The appellant was aided by his sister (the co-defendant) Mandy Bell, who claimed to have witnessed the complainant's signature on the land transfer document. From September 2020 onwards, as the separation became increasingly bitter, the appellant subjected Ms Gibson to abuse and threats, using various email addresses and text messages. Some of these taunted Ms Gibson about the motor vehicle. He sent intimate personal photographs as attachments, with lewd remarks which Ms Gibson

found upsetting. He also sent a recording showing Ms Gibson and her sister shopping, with the obvious implication that they had been watched by the appellant (count 2).

7. At the end of September 2020, the complainant reported the appellant to the police. Statements were then taken and the appellant interviewed. On 12 November, the appellant sent an email to the investigating officer, purportedly from Mr David Kemp (his nephew) accepting that he (Mr Kemp) was in fact behind the abusive communications that Emma Gibson had been receiving. Mr Kemp was then spoken to by the officer. He confirmed no involvement or knowledge of the text messages and emails. He confirmed however that his uncle had been in touch with him, asking him to take responsibility for them. These actions were reflected in the count of attempting to pervert the course of justice (count 5).

8. On 25 November 2020, the appellant appeared before the magistrates and pleaded guilty to harassment under the 1997 Act. He received an 18-weeks suspended sentence together with a consecutive 6-week suspended sentence for criminal damage (having entered Ms Gibson's flat and caused damage). The appellant was also made subject to a restraining order. The appellant breached that order. Two messages were sent out: on 18 December 2020, the appellant sent a message implying he was selling the disputed Mercedes on eBay; on 3 January 2021, he sent a further email, which was abusive, describing Ms Gibson as a "skank" to a third party. These messages were reflected in both counts 2 and 3.

9. The appellant pleaded guilty on the first day of trial to four counts on the indictment.

There was a written basis of plea. Sentence was adjourned. There was consideration of a Newton hearing concerning the forgery count. The issue was whether the appellant intended to cause financial loss, it being mitigation on his behalf that he had merely sought to expedite the agreed property transfer and not to cause any loss. It was submitted on his behalf that the answer to the question of whether there was any loss intended was found in the statement of Diane Hall, which made it clear that, it was only when the forgery was brought to Ms Gibson's attention, that complaint was made and, up to that point, she was happy with the transfer proceeding as agreed; indeed the transfer did proceed and was eventually completed.

The Sentencing Process

10. The appellant was born on 22 August 1971 and was therefore aged 51 at the date of conviction and the date of sentence. He had numerous convictions spanning the period from 1984 to 2020. His relevant convictions included item No 35 (which related to the same complainant) for which he was sentenced to a suspended sentence order.

11. The sentencing court had before it a pre-sentence report which said that the appellant was prepared to commit offences for his own benefit and, when he appeared before the court, he did not take full responsibility for his actions. He was assessed as posing as a medium risk of reoffending and a medium risk of serious harm to the complainant. The court also had, as do we, victim personal statements.

12. In passing sentence, the judge said that this was a case of "very serious distress or serious psychological harm". It was also persistent over a prolonged period and was undoubtedly

intended to maximise distress. The judge placed the offence of stalking into category 1B, by reference to the Definitive Guideline issued by the Sentencing Council in relation to offences of harassment (fear of violence), stalking (fear of violence) etc, which has been effective from 1 October 2018.

13. The judge considered that it was merciful to commence at 3 years' imprisonment but, having regard to the appellant's guilty plea, he reduced that to 32 months on this offence. He made the sentence for breach of the restraining order of 3 months concurrent.

14. Turning to the offence of perverting the course of justice, the judge would have started with a sentence of 12 months but, having regard to the guilty plea, reduced that to 10 months, that being the 10 per cent discount to which the appellant would normally be entitled for entering a plea on the day of trial. For the offence of forgery, the judge said the starting point would have been 12 months but he reduced that, again to reflect the guilty plea, to 10 months. That therefore made a total of 52 months' imprisonment (that is 4 years and 4 months).

Judgment of the Full Court

15. The judgment of the Full Court on 14 May 2024 was given by Cotter J. After setting out the facts at paragraphs 2 to 8, the Court decided to grant leave to appeal against sentence because it considered that it was arguable (going no further than that) that the judge had fallen into error, resulting in a manifestly excessive sentence (see paragraph 15). The reason for this was that it was not clear to this Court, for what acts and upon what basis the appellant had already been sentenced by the magistrates on 25 November 2020, when

the appellant received an 18-week suspended sentence for harassment of the victim in the period September to November 2020 (see paragraph 16). This Court stressed that they had not had the benefit of any detailed information about the sentencing hearing before the magistrates (see paragraph 21). The Court directed that further steps should be taken in order to clarify the position and that the Crown should be represented on this appeal and that it should be heard before the end of July 2024. That is indeed what has happened.

The Parties' Responses

16. In accordance with the direction of this Court, the respondent filed a response to the request for additional information, dated 2 June 2024. It explained that the harassment offence for which the Magistrates' Court had sentenced on 25 November 2020, in fact concerned the period 10 August 2020 to 28 August 2020; there was therefore no overlap with the sentence passed by the Crown Court later.

Perfected Grounds of Appeal

17. We are grateful to Mr Harding who has filed perfected grounds of appeal dated 30 June 2024. We are also grateful for his succinct submissions at the oral hearing before us today. Mr Harding concedes that the period covered by the indictment did not overlap with the harassment offence in the Magistrates' Court. Nevertheless, he submits that the judge erred in a number of significant respects when sentencing the appellant in the Crown Court. In relation to the offence of stalking at count 2 on the indictment, it is submitted that the judge wrongly categorised both the culpability and the harm suffered by Ms Gibson. The appellant had sent a total of 20 messages, on 12 separate days, over a

period of 116 days. It is submitted that this was inaccurately described as being "bombarded by daily taunts and insults of the most personal kind" (see the sentencing remarks at page 2E to G). It is conceded that the duration of the offending could properly be regarded as being "prolonged" but, it is submitted, that it was not "persistent action". It is submitted that the culpability therefore fell into category C (medium culpability). Nevertheless, it is accepted that the judge was entitled to find that the messages were intended to maximise the stress when both frequency and intent are considered together, it is accepted that the offence could be regarded as falling within category B, that is high culpability, but it is submitted that it fell at the lowest end of category B. It is further submitted that the harm occasioned could not be described as being "very serious distress" and could properly be regarded as being "some distress". It was, accordingly, category 2 harm rather than category 1. We disagree, as we consider that it did fall into category 1B but accept that it fell towards the lower end of that category.

18. Turning to the factual basis for the sentence for the offence of forgery, Mr Harding emphasises that, on the written basis of plea, there was no loss occasioned by the forgery; the appellant should have been sentenced on that basis and on the basis that the transfer of the property was completed ultimately with the knowledge and consent of both parties. He submits that, in the absence of a Newton hearing, that was the only proper basis on which sentence could be passed for this offence.

19. Mr Harding also draws attention to the decision of this Court in R v Cano-Uribe [2015] EWCA Crim 1824; [2016] 1 Cr App R(S) 36, in which the judgment of this Court was given by Spencer J. He distinguishes that case on the basis that this appellant committed

a single act of forgery in furtherance of an agreement to which the parties ultimately consented resulting in no financial loss. He submits therefore that the sentence imposed for the offence of forgery was manifestly excessive, particularly when regard is had to the principle of totality. Mr Harding further submits that, as part of the mitigation available to the appellant, the offences were of some age at the time of the sentencing hearing, the issues between the parties appeared to have been resolved and there had been no repetition of the offending behaviour in the interim. Further, the appellant had no history of similar offending. The judge fell into error when he referred to a conviction for harassment having occurred in 2014 (see the sentencing remarks at page 1B). This point is conceded on behalf of the Crown.

20. Finally, Mr Harding submits that, while the judge was entitled to impose consecutive terms for the offence of perverting the course of justice and forgery offences, the total sentence of 52 months was not just and proportionate to the offending as a whole; in other words that the sentence passed offends against the principle of totality.

Respondent's Submissions

21. We are also grateful to Mr Morley for his helpful skeleton argument (dated 14 July 2024) and his brief oral submissions to assist this Court today. Mr Morley submits that the communications with Ms Gibson were not only over a prolonged period but can be described as being "persistent". This is a question of common sense and was very much a matter for the judgment of the sentencing judge. Further, he draws attention to the impact which the messages had on Ms Gibson, as explained by her, for example, in her impact statement of 22 October 2020. She explained that her mental health was

deteriorating to a point where she had to seek medical help. Mr Morley submits that, again, it is a question of judicial discretion whether this amounts to "very serious distress". We would add simply this. It seems to us to be a matter not so much of discretion as judicial assessment or the formation of a judgment, but the point is not material to the submission Mr Morley makes.

22. Mr Morley does accept that the appellant's record did not show that he had an offence of harassment in 2014 but he goes on to submit that he did have a significant record of offending for a range of offences, which do include fraud and that this was an aggravating feature which the judge could properly take into account. Mr Morley observes that the starting point recommended in the Definitive Guideline for the offence of stalking, for an offence falling into category 1B, is 2 years 6 months' custody, with a range of 1 to 4 years. It is therefore submitted that the sentence of 32 months was in line with the guideline and was not manifestly excessive in view of the aggravating features.

23. Turning to the offence of forgery, the respondent accepts that it is arguable that the judge was obliged to sentence upon the appellant's basis because there was no Newton hearing but submits that a 10-month sentence is not manifestly excessive, even in the absence of financial loss. The maximum penalty for this offence is 10 years' imprisonment. There is no relevant guideline for the offence of forgery. However, the decision in Cano-Uribe provides a sentencing benchmark for such cases. The range in that case was from 6 months suspended (at the lower end of offending) up to 12 months' imprisonment.

Mr Morley points out that one of the defendants in that case was of good character

(unlike this appellant) and had two young children. There was no financial motive for her offending, nevertheless she still received a 9-month immediate prison sentence. The court found there was a breach of trust which justified immediate custody as she had a managerial role for other staff. While Mr Morley accepts that there was not the same breach of trust in this case, he points out that the appellant did implicate his own sister (Mandy) in the forgery. The judge observed that he had clearly recruited Mandy to try to help him.

24. Mr Morley submits that, in all the circumstances, a sentence of 10 months, after a plea, was not manifestly excessive. We consider that the case of Cano-Uribe, to which Mr Morley has drawn our attention, was materially distinguishable because it did concern a breach of trust. We consider, as will become apparent later, that a sentence considerably lower than 10 months was called for in the present case for the offence of forgery.

25. Finally, Mr Morley submits that the judge did have proper regard to the principle of totality. He was entitled to pass consecutive sentences for the offences of stalking, forgery and perverting the course of justice because they were all separate and distinct offences. In the circumstances, Mr Morley submits that the sentence of 4 years 4 months in total was just and proportionate to reflect the totality of the appellant's offending.

Our assessment

26. We see force in some, but not all, of Mr Harding's submissions. In our judgment, the

sentence for the offence of perverting the course of justice was appropriate and cannot be criticised; indeed, we did not understand Mr Harding to contend otherwise. Further, it is accepted that the offences could be made consecutive to each other so long as the principle of totality was observed.

27. In our judgment, the sentence for the offence of stalking was too high for an offence which fell towards the bottom end of the category 1B range. It should not have been as high as 32 months but should have been 22 months.

28. The sentence for the offence of forgery was also too high, it should have been 4 months not 10. The sentence of 3 months for breach of the restraining order was made concurrent and no complaint has been made about that. That sentence will remain as it was. We have already dealt with the activation of a suspended sentence order.

29. In the end, we consider that a just proportionate sentence in total would therefore have been one of 36 months' imprisonment, that is 3 years. We quash the sentences to which we have referred so far as we have indicated and substitute the sentences which we have indicated. That makes a total sentence of 3 years' imprisonment.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk