



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2022] HCJAC 32
HCA/2022/000196/XC

Lord Justice Clerk
Lord Matthews
Lord Boyd of Duncansby

OPINION OF THE COURT

delivered by LADY DORRIAN, the LORD JUSTICE CLERK

in

APPEAL AGAINST SENTENCE

by

CONOR CLARK

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

**Appellant: Kerrigan QC, Hay; John Pryde & Co
Respondent: Edwards QC, AD; Crown Agent**

11 August 2022

[1] On 16 May 2022, the appellant was sentenced to a period of 8 years imprisonment for offences of assault, robbery and theft by housebreaking, backdated to 14 April 2022. The trial judge selected a headline sentence of 9 years. This was reduced by 2 months to reflect the timing of the pleas, which came on the eighth day of the trial. The appellant had been remanded on two separate occasions, from 7 October 2019 to 19 August 2020; and from

14 April 2022 to the date of sentence. As to the first period on remand, having regard to section 210 of the Criminal Procedure (Scotland) Act 1995, the trial judge further discounted the headline sentence by a period of 10 months to reflect the time spent on remand (316 days). The second of period on remand was addressed by means of the backdating of the sentence.

[2] The trial judge determined that whilst full credit should be given for the whole time spent on remand he could only backdate in respect of the second period. In respect of the first period credit required to be given by means of deduction.

[3] The issue touches upon the changes effected by the Prisoners (Control of Release) (Scotland) Act 2015 to the early release provisions of the Prisoners and Criminal Proceedings (Scotland) Act 1993 in respect of long term prisoners, introduced with effect from 1 February 2016. The issue is discussed in detail in *HMA v O'Doherty* 2022 HCJAC 31. In that case the trial judge had discounted by double the period spent on remand. The ground of appeal in the present case submitted that such an approach should have been taken in the present case. The trial judge in the present case concluded that the appellant's position was not comparable to that of a short-term prisoner with entitlement to unconditional release after serving half of his sentence. The matter has been settled by the determination in the case of *O'Doherty*. The trial judge having determined that the appellant was entitled to credit for the whole time spent on remand, should simply have backdated by the relevant period, namely to 31 May 2021. We will allow the appeal to that extent, by imposing a sentence of 8 years and 10 months backdated to 31 May 2021.