NEUTRAL CITATION NUMBER: [2022] EWCA Crim 1603

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/01838/A4

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 2nd December 2022

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE SWEENEY

HIS HONOUR JUDGE FORSTER KC

R E X

- v -

GARETH COATES

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Miss H Towers appeared on behalf of the Appellant

J U D G M E N T

Friday 2nd December 2022

LORD JUSTICE MALES: I shall ask Mr Justice Sweeney to give the judgment of the court.

MR JUSTICE SWEENEY:

1. This is an appeal against sentence brought by leave of the single judge.

2. On 25 March 2022, in the Crown Court at Newcastle Upon Tyne, the appellant, who is now aged 28, pleaded guilty, with a basis of plea that was accepted, to an offence of putting a person in fear of violence by harassment, which carries a maximum sentence of ten years' imprisonment.

3. On 6 June 2022, by which time he had spent 101 days (i.e. just over 13 weeks) on remand in custody, the appellant was sentenced, by Miss Recorder Melly QC, to a community order for two years, with an unpaid work requirement of 150 hours and a rehabilitation activity requirement for 40 days. The appropriate surcharge order was also made, together with a Restraining Order for five years.

4. The sole ground of appeal is that the Recorder failed to take sufficient account of the time that the appellant had spent on remand in custody prior to being sentenced, and that in consequence the community order should be reduced to one of 12 months in length, there should no unpaid work requirement, and a shorter number of days of rehabilitation activity requirement should be imposed.

5. The facts of the offence may be shortly stated by reference to the accepted basis of plea, which was in the following terms:

> "1. The [appellant] accepts that over a four-day period between 20th February 2022 and 24th February 2022 he sent five text messages and two voice notes to [the complainant] that harassed her and caused her fear;
>
> 2. The background to this was that [the complainant] and [the appellant] had disagreed about contact with their child, with [the appellant] being prevented access to his daughter, who he usually saw overnight every Wednesday and Friday;
>
> 3. As a result [the appellant] became upset and sent the texts and voice notes that he did;
>
> 4. At no stage did [the appellant] threaten or harass the parents of [the complainant]. He wanted to contact them to try and get their help in resolving the contact issue."

It is further accepted that, within the various messages, the appellant made threats and insulted the complainant, the terms of which were, we observe, thoroughly unpleasant.

6. The appellant had seven previous convictions for 11 offences, including in 2019 for an offence of using threatening, abusive, or insulting words or behaviour with intent to cause fear or provocation of violence, for which he received a suspended sentence order for 12 months.

7. A victim personal statement, which was before the court, made clear that the complainant had been left fearing for her safety, and also fearing that the appellant might seek revenge.

8. There was also a pre-sentence report, from the content of which the Recorder initially inferred that the appellant felt no remorse, had minimised his actions and level of culpability, and was disinclined to work with the Probation Service. The author of the report concluded that, nevertheless, the appellant would very much benefit from completing a programme of work focusing on relationships, minimising the risk of future offences, and helping him to deal with his anger and frustration if problems did arise.

9. During the course of her mitigation Miss Towers, appearing then as now on the appellant's

behalf, persuaded the Recorder that the appellant did wish to work with the Probation Service in order that he and the complainant could find a way through their parenting issues. Miss Towers also advanced a number of other points in mitigation, including that Social Services had no concerns about the appellant's contact with his daughter; that he had successfully run his self-employed business as a motor trader for three years; that he had a close relationship with his paternal grandmother; the fact that he had successfully completed his 2019 suspended sentence order; and the fact that he had already served the equivalent of a six and a half month custodial sentence.

10. In her sentencing remarks, the Recorder concluded that the offence fell into category 2C of the relevant guideline and thus attracted a starting point of 12 weeks' custody, with a range from a community order to 36 weeks' custody. She declined to regard any of the appellant's convictions as aggravating the instant offence. She continued, as follows:

> "So the court has concluded that although this case falls within the sentencing guidelines of a starting point of a sentence of immediate custody, this court has concluded, bearing in mind all that has been said about your attitude to now wishing to work with the Probation Service, your guilty plea for which of course credit is given at the 25 per cent level, the other factors of personal mitigation, but most significantly the significant period that you have had remanded already, that the conclusion of this court is that a community order in this case will properly be commensurate with the seriousness of this offence."

It was against that background that the Recorder imposed the sentence to which we have already referred.

11. Given that this was an offence that attracted a starting point of 12 weeks' custody, that the Recorder proceeded on the basis that there were no aggravating factors, but that there were a number of mitigating factors, and that 25 per cent was the appropriate discount for the guilty

plea, it follows that the appellant had already served, on remand, a custodial term equivalent to one that was substantially in excess of any that was warranted by the offence.

12. It is in that context that Miss Towers has referred us to *R v Mohamed Rakib* [2012] 1 Cr App R(S) 1 and *R v Fahiya* [2020] EWCA Crim 1546, which are part of a line of authorities that includes: *R v Pereira-Lee* [2016] EWCA Crim 1705, [2017] 1 Cr App R(S) 17; *R v Page* [2017] EWCA Crim 1015; and *R v Sutherland* [2017] EWCA Crim 2259. The principles identified in those authorities include:

> 1. Whilst it may be that time served on remand will be sufficient punishment in a particular case, against the background that the punishment of offenders is not the only purpose of sentence, and that the rehabilitation of offenders and the protection of the public are other purposes of sentence (see now section 57(2) of the Sentencing Act 2020), the fact that an offender has been remanded in custody for a period equal to, or in excess of, the time that he would have served under the term of imprisonment warranted for his offence does not, in itself, prevent the court exercising its discretion to impose a community order with both punitive and rehabilitative requirements, as the value of such an order in terms of the rehabilitation of the offender, or the protection of the public, might make such an order an appropriate sentence, particularly where there are great potential benefits for the offender himself and the public, if the offender obtains the support, training or courses that might form part of a community order.
>
> 2. In determining the restrictions on liberty to be imposed by the community order, the court may, and usually will, have regard to the period for which the offender has been remanded in custody for the offence and for any other offence, the charge for which was founded on the same facts or evidence (see

now section 205(1) of the Sentencing Act 2020).

3. Whilst legislation requires that a community order must include at least one requirement imposed for the purpose of punishment, that does not apply when there are exceptional circumstances (see now section 208(10) and (11) of the Sentencing Act 2020).

4. The circumstances will be exceptional when the offender has been remanded in custody for a period equal to, or in excess of, the time that he would have served under the term of imprisonment warranted for his offence, unless the relevant requirement or requirements would assist the offender's rehabilitation or the protection of the public.

13. Against that background, and given the length of time that the appellant was remanded in custody, Miss Towers submits, in effect, that there are exceptional circumstances, in that the unpaid work requirement will not assist the appellant's rehabilitation, and nor can it be justified by reference to the protection of the public. Therefore, she submits, that requirement should not have been imposed.

14. We observe that the length of the community order, and the number of days of rehabilitation activity requirement, were both rightly imposed with the protection of the public, and the rehabilitation of the appellant, in mind. Hence we are not persuaded that the length of either should be reduced.

15. However, we agree with the submission that the unpaid work requirement was inappropriate in the circumstances to which we have referred. In the result, we quash that requirement and, to that extent alone, the appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
