



Courts and Tribunals Judiciary

R v CARLA FOSTER

SUMMARY OF THE DECISION OF THE COURT OF APPEAL, CRIMINAL DIVISION ON
18 JULY 2023

(Dame Victoria Sharp, President of the King’s Bench Division, Holroyde LJ, Vice-President of the Court of Appeal, Criminal Division and Lambert J)

Dame Victoria Sharp, President of the King’s Bench Division:

On 6 March 2023, at the Crown Court sitting at Stoke on Trent, Carla Foster pleaded guilty to administering poison with intent to procure her own miscarriage, contrary to section 58 of the Offences against the Person Act 1861 (count 2 on the indictment). On 12th June 2023, for that offence she was sentenced at the same court to 28 months’ imprisonment. She had earlier pleaded not guilty to a charge of child destruction contrary to section 1(1) of the Infant (Life) Preservation Act 1929, count 1 on the indictment. No evidence was offered against her on count 1, and a not guilty verdict was entered pursuant to section 17 of the Criminal Justice Act 1967.

Ms Foster’s application for leave to appeal against sentence has been referred to the Full Court by the Registrar. We give leave.

Ms Foster is present by video link today. We say straightaway that we have concluded that her appeal against sentence should be allowed. Her sentence of 28 months’ imprisonment should be quashed and there should be substituted for it, a sentence of 14 months’ imprisonment.

This reduction means we must consider whether the sentence should be suspended. We have decided the sentence should be suspended. We will come shortly to the precise details, but the effect of our decision is that Ms Foster can now be immediately released from custody.

Full reasons for our decision will be given in a judgment that will be handed down in due course. For present purposes we need only give a brief overview.

Carla Foster is now 45. Up until the events with which this appeal is concerned, she was a person of good character. She has three children, with her partner, Stephen Birks. During a period of

separation from her partner, she had brief relationships with two men, and in about late September or early October 2019 became pregnant by one of them, though she did not know by which one. She subsequently moved back with her partner when lockdown began, but concealed the pregnancy from him. As was to emerge from later investigations by the police, Ms Foster made web searches in February 2020 about how to conceal her pregnancy, and later in February and throughout March and April, about miscarriages, how to obtain abortion pills, and how to have an abortion at home. It was clear from some of the search terms used that Ms Foster knew she was in an advanced state of pregnancy.

In May 2020, during the height of the pandemic, Ms Foster illegally procured a late abortion of the child she was carrying. Ms Foster obtained abortifacients by lying to the British Pregnancy Advisory Service (BPAS). The information she gave to BPAS led them to conclude she was about 7 weeks pregnant, when in fact, by then, as Ms Foster knew, she was more than 24 weeks pregnant. Ms Foster took the abortifacients BPAS provided to her by post, and gave birth at home on 11 May 2020 to a daughter, Lily. Lily was stillborn. A subsequent postmortem determined Lily was between 32 and 34 weeks gestation at the time of delivery and her cause of death was a combination of stillbirth and maternal use of abortifacients.

Prior to the events in question, Ms Foster lived a useful and law-abiding life, contributing to her local community. She is the mother to three children. The two youngest of her children are in their teens. One of her children is autistic and needs her at home. The events we have briefly described, occurred during the height of the first lockdown, when Ms Foster did not have any access to the sort of support and counselling that was available to women in her situation in normal times. It is obvious from the evidence that throughout this period she was in turmoil.

After Lily's birth, and whilst still in hospital, Ms Foster made admissions to the hospital staff. She then made admissions to the police in her voluntary first interview (at which she was unrepresented) and which took place 4 days after the stillbirth. It must be doubtful whether she would have been prosecuted but for those admissions.

There was then a significant delay of more than 2 years before she was charged. There was then a further period of delay before she was sentenced. This meant she was sentenced for administering poison with intent to procure her own miscarriage, more than three years after the miscarriage had occurred.

Ms Foster was at the time, extremely distressed, and she was and remains deeply and genuinely remorseful. She presents no risk to her family or the wider public, and there is no prospect of a repetition of this offence.

This is a very sad case. Not least because of the length of gestation when the offence was committed, we consider this was a case where the custodial threshold was passed. Though the custody threshold has been passed however, there is exceptionally strong mitigation. It is case in our view that calls for compassion, not punishment, and it is one where no useful purpose is achieved by detaining Ms Foster in custody.

Ms Foster, you may remain seated but I must explain to you the effect of our decision.

As I have said, the sentence of 28 months' imprisonment will be quashed. There will be substituted for it a sentence of 14 months' imprisonment, which will be suspended. The operational period of suspension will be 18 months from the date when you were sentenced. There will be a rehabilitation activity requirement of up to 50 days. This will provide you with an opportunity for various interventions in relation to the offence, designed to assist you, including counselling.

The effect of this and of the sentence overall, will be explained to you by your counsel after this hearing.

NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://caselaw.nationalarchives.gov.uk/>