Neutral Citation Number: [2025] EWCA Crim 352

Case No: 202404542 A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM BRADFORD CROWN COURT
Mr Recorder Gordon

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/04/2025

Before :

LORD JUSTICE EDIS
MRS JUSTICE STACEY
and
HIS HONOUR JUDGE LOCKHART, K.C.
The Honorary Recorder of Coventry
(Sitting as a judge of the Court of Appeal Criminal Division)

- -

Between :

SAM RICE	**Appellant**
- and -	
THE KING	**Respondent**

- -
- -

Rodney Ferm (assigned by the **Registrar**) for the **Appellant**

Hearing dates : 12 March 2025

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APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on 1 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Edis:

1. This is the judgment of the court, to which we have all contributed.

2. This appellant, who is now aged 27, appeals by leave of the single judge against the sentence of 30 months imprisonment passed upon him by Mr Recorder Gordon at the Crown Court at Bradford on 15 November 2024 following his pleas of guilty before the court on 16 September. He was arraigned alongside his father, Richard Rice, who received a suspended sentence, being jointly indicted for the same offences. It is not necessary to say anything further about him. The case was disposed of when the prosecution added a new count 5 alleging inflicting grievous bodily harm upon Keelan Calcott, contrary to section 20 of the Offences Against the Person Act 1861, and offered no evidence on count 1 which alleged an offence contrary to section 18 of the Act arising out of the same act of violence. The appellant pleaded guilty to the new count, and that plea was accepted. He also entered guilty pleas on the same day to counts 2 and 3.

3. The sole ground of appeal is that the appellant spent 496 days on a non-qualifying curfew before he was sentenced, most of it awaiting a trial which never happened. The judge referred to the fact of the curfew but made no reduction to the sentence to take account of it, and did not explain why. The appellant's case is that he should have reduced the sentence to make an allowance for the curfew.

4. The sentence was imposed for three violent offences committed during the same incident on the 10 December 2022 in a bar. Count 2 alleged assaulting Thane Perry by beating, contrary to section 39 of the Criminal Justice Act 1988. Count 3 alleged assaulting Natasha Parry by beating. The sentence was 1 month's imprisonment consecutive on each of these two counts. The most serious offence was the new count 5, for which the sentence was 28 months' imprisonment consecutive.

The chronology

5. In the context of this appeal it is important to understand these offences in the chronology of the appellant's life. This may also shed some light on how he came to be subject to a non-qualifying curfew for about 16 months in a case which was resolved without a trial.

6. At the time of sentence for these offences, the appellant had 2 previous convictions for 6 offences between 2022 and 2024:

    i) On 27 June 2022 he received a community order for offences committed on 5, 7 and 8 September 2021 of assault occasioning actual bodily harm, battery, assault by beating of an emergency worker, and 2 offences of criminal damage. These were offences involving his ex-partner and were committed in drink.

    ii) On 10 December 2022, the incident resulting in the sentences currently under appeal took place. At this time, he was subject to the community order, and had also been released under investigation in respect of the offence at (iv) below. Instead of being charged and remanded in custody, he was, again, released under investigation.

iii) He eventually appeared before the magistrates' court for the offences from 10 December on 7 July 2023. Bail conditions were imposed in respect of the offences with which we are concerned. This included a 12 hour curfew, not subject to tagging, and therefore not automatically qualifying for a reduction of sentence of half the days spent on the curfew. It was subject to further conditions:-

> Conditions: Residence - live and sleep each night at [home address]. Curfew - curfew between 19:00 and 07:00 daily. The defendant must present him/herself to a police officer who asks to see them between these times, Exclusion - not to enter The New Roxy bar in Sowerby Bridge, Exclusion – not to contact directly or indirectly Keelan Calcott, Amy Kerr, James Barry, Thane Parry and Natasha Parry.

iv) On 30 January 2024 he received a Suspended Sentence Order of 16 weeks imprisonment suspended for 12 months for assault occasioning actual bodily harm, which was an offence committed on 11 July 2021. If this matter had been sentenced at the same time as the December 2022 offences under appeal the outcome would have been different, but the appellant had avoided that by pleading not guilty to the December 2022 offences when arraigned in the Crown Court on 7 August 2023. He had not offered a plea to section 20. The PTPH Form records the "Real Issue" as "self-defence" and further says, when asked if the defendant was willing to tender a plea to a lesser offence "may be an alternative - will depend on the disclosure - none yet provided". This echoed some similar observations on the BCM Form completed on 7 July. This fell far short of an offer to plead to the lesser offence, but might usefully have triggered a process whereby that possibility was explored long before it was.

v) The sentencing on 15 November caused the January 2024 suspended sentence to cease to have effect.

7. In the Prosecution Sentencing Note prepared after the change of plea in September 2024 and in advance of the sentencing hearing on 15 November 2024, prosecuting counsel said:-

> "The defendants pleaded guilty on 16/9/24 to causing grievous bodily harm [Count 5] and other offences of assault arising out of an incident on the night of 10/12/22 at The New Roxy bar in Sowerby Bridge. Sam RICE pleaded guilty to assaulting Thane PARRY and his sister Natasha PARRY [Counts 2 and 3] and Richard RICE to assaulting James BARRY [Count 4].
>
> The plea to Count 5 is an alternative to Count 1 [s18] and the Crown will offer no evidence in relation to Count 1 in due course.
>
> Those pleas were the subject of discussions between Counsel from around March 2024."

8. Neither the Crown Court nor this court has received any explanation of the delay between July 2023 and March 2024 before any discussions about the pleas took place, or the yet further delay between March and September 2024 which occurred before the case was resolved.

The facts of case with which this appeal is concerned.

9. The appellant and his father Richard Rice worked together at a haulage firm and on 10 December 22, they went to a bar with others for the works Christmas party. The appellant had drunk a good deal by mid-afternoon. He then, alongside his father, behaved in an abusive manner and was asked to leave. In the course of the prolonged altercation that followed he fought first with his father. In the course of this his father head butted a member of staff.

10. Other staff members then became involved and during the violence which followed the appellant punched one of the staff, Thane Parry, to the face, (Count 2). When Natasha Perry a female member of staff came to assist she too was punched, (Count 3.)

11. The appellant and his father then turned their full attention to Mr Calcott and in the course of a sustained joint attack he was punched, kicked, and was said to have been bitten to the ear all whilst on the ground. In the course of the attack Mr Calcott was heard to shout of the appellant: "Get him off me, he's biting me."

12. The Police attended, Mr Calcott was taken to A&E. He was noted to be drunk. He had sustained a wound to the forehead which was closed with glue, a wound from the back of the right ear to the rim of the right ear about ten millimetres by three millimetres exposing the cartilage, and a superficial bite mark to the right forearm. In his Victim Personal Statement he said that he had had a skin graft to his ear to cover the injury just after Christmas 2022. He set out other effects that the assault had had upon him.

13. The Pre-Sentence Report said that the appellant had manifested a pattern of alcohol-fuelled violent behaviour. The probation officer formed the view that he "poses a direct risk of harm to members of the public and those that know him."

The sentence

14. There is no appeal against the sentence on the merits. In all the circumstances, it was entirely justified. The Recorder allowed 15% credit for the late pleas and announced his sentences as above.

15. On the issue which arises on this appeal, the Recorder then said:-

> "Of course I have to bear in mind the principle of totality, the guidelines for totality. I have to bear in mind and factor in the guidelines for the imposition of community and custodial sentences. I also have to bear in mind the case of *R v Ali* [2023] EWCA Crim 232. I have to bear in mind that each of you were on a curfew for a significant period of time, albeit not a qualifying curfew."

The grounds of appeal

16. The ground of appeal that he raises and upon which leave was granted concerns just one aspect of the sentencing exercise and is in these terms:

> "The judge failed to exercise his discretion to allow for the 496 days spent by the appellant on a non-qualifying curfew as against the sentence of 30 months passed for the offences on the indictment."

17. One consequence of the absence of a tag is that there is no certainty as to the level of compliance with the curfew. There was no evidence of any breach of it.

18. Mr Ferm relied on the decision of this court in *R v. Whitehouse* [2019] EWCA Crim 970; [2019] 2 Cr. App. R. (S.) 48 ["*Whitehouse"*], which was uploaded to the Digital Case System before the sentencing hearing.

19. Arguing the appeal in short and well-considered submissions Mr Ferm has amplified his grounds. He complains that the appellant should have been given some credit against sentence for the very long period of time spent on the restrictive curfew. He also submits that the Recorder did not refer to his discretion in this regard or explain how he had approached it.

20. Mr. Ferm submits that this discretion should not be exercised applying a mathematical calculation, to mirror that required by s. 325 of the Sentencing Act 2020 where there has been a qualifying curfew. He submits, rather, that the court should make such adjustment as it thinks right in order to achieve a just and proportionate sentence taking all relevant matters into account, including the curfew.

The statutory scheme

21. Section 325 of the Sentencing Act 2020 provides:-

> "**325 Time on bail under certain conditions: declaration by court**
>
> (1) This section applies where—
>
> (a) a court passes a determinate sentence on an offender in respect of an offence (see subsection (5)),
>
> (b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, and
>
> (c) the offender's bail was subject to a qualifying curfew condition and an electronic monitoring condition ("the relevant conditions").
>
> (2) The court must specify the credit period for the purposes of section 240A of the Criminal Justice Act 2003 (time remanded on bail to count towards time served) in relation to the sentence.

(3) The credit period is calculated by taking the following steps.

Step 1

Add—

(a) the day on which the offender's bail was first subject to the relevant conditions (and for this purpose a condition is not prevented from being a relevant condition by the fact that it does not apply for the whole of the day in question), and

(b) the number of other days on which the offender's bail was subject to those conditions (but exclude the last of those days if the offender spends the last part of it in custody).

Step 2

Deduct the number of days on which the offender, whilst on bail subject to the relevant conditions, was also—

(a) subject to any requirement imposed for the purpose of securing the electronic monitoring of the offender's compliance with a curfew requirement, or

(b) on temporary release under rules made under section 47 of the Prison Act 1952.

Step 3

From the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions.

Step 4

Divide the result by 2.

Step 5

If necessary, round up to the nearest whole number.

(4) Where the court makes a declaration under subsection (2) it must state in open court—

(a) the number of days on which the offender was subject to the relevant conditions, and

(b) the number of days (if any) which it deducted under each of steps 2 and 3.

22. This is a mandatory scheme. By section 326(3) of the Act some terms are defined:-

> "curfew requirement" means a requirement (however described) to remain at one or more specified places for a specified number of hours in any given day, which—
>
> (a) is imposed by a court or the Secretary of State, and
>
> (b) arises as a result of a conviction;
>
> "electronic monitoring condition" means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for the purpose of securing the electronic monitoring of a person's compliance with a qualifying curfew condition;
>
> "qualifying curfew condition" means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day.

23. Section 3(6ZAA) of the Bail Act 1976 says that the power to impose conditions on bail includes the power to impose an electronic monitoring required, subject to section 3(AB), for those over 18. This provides:-

> **"3AB Conditions for the imposition of electronic monitoring requirements: other persons**
>
> (1)A court may not impose electronic monitoring requirements on a person who has attained the age of eighteen unless each of the following conditions is met.
>
> (2)The first condition is that the court is satisfied that without the electronic monitoring requirements the person would not be granted bail.
>
> (3)The second condition is that the court is satisfied that the necessary provision for dealing with the person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area."

24. We do not know why the magistrates did not impose an electronic monitoring requirement, but consider it highly likely that they decided that section 3AB(2) prevented them from imposing one. The appellant appeared before them for the first time in July 2023 answering an allegation which had resulted in his arrest in December 2022. In the meantime he had been on bail, had not re-offended, and had been made subject to a suspended sentence for other earlier offending. Would they have remanded him in custody if no electronic monitoring were available? This produces the apparently absurd result that those who represent the gravest bail risks are entitled to credit for their curfew under section 325, while those who would have been granted bail anyway are not. Moreover, given the backlogs in the courts, many people will attend for sentence having spent so long on their qualifying curfew that a court which

decides that immediate imprisonment is required is, in effect, deprived of the power to impose it. This court cannot do anything about that, but the issue which arises here is not governed by this statute, and we do not think that we are required to bestow the terms of the statutory scheme on those who are outside it. The court in such circumstances is required to attempt to impose a sentence which is just and proportionate having regard to all the circumstances of the case.

Some previous decisions of this court

25. The issue in this appeal has arisen in earlier decisions. Archbold at 5A-734 says this:-

> "In *Barrett* [2009] EWCA Crim 2213; [2010] 1 Cr. App. R. (S.) 87 ["*Barrett*"], the court said that where an offender falls outside the ambit of s.325 of the Sentencing Code, by virtue of not having been electronically tagged whilst on bail, there is no obligation to give credit against a custodial sentence for the time spent on bail. This is despite the fact that the offender would have been entitled to such credit had he been electronically tagged during that time. While a discretion exists to credit periods of time falling outside of the ambit of s.325, as identified in *Kerrigan* [2014] EWCA Crim 2348; [2015] 1 Cr. App. R. (S.) 29 ["*Kerrigan*"] and *Prenga* [2017] EWCA Crim 2149; [2018] 1 Cr. App. R. (S.) 41 [*Prenga*"],the exercise of this power will be rare."

26. At first blush, this is a surprising statement of the law. People attending from conditional bail for sentence very frequently receive custodial sentences. Why should it only be in an "exceptional" or "rare" case that the court makes an allowance where the conditions have imposed significant restrictions on liberty over a significant period of time? There will be many cases where it is appropriate to do so, and many others where it is not.

27. In *Barrett* the court rejected an argument that those on non-qualifying curfews should be placed in the same position as if their curfew qualified under the Act. The court held that it was not manifestly excessive or wrong in principle to impose a custodial sentence on an appellant who had spent 126 days on a night time curfew, where no adjustment was made to the length of the sentence to take that into account. Rix LJ, giving the judgment of the court, cited *R v. Glover* [2008] EWCA Crim 1782 ["*Glover*"] with approval saying:-

> 'Nevertheless, it was in some such context that Hughes L.J., [in *Glover*] while pointing out that it was wrong to equate time spent under a home curfew with imprisonment because life at home was clearly preferable to life in prison, went on to say:-
>
> > "It is possible that in some circumstances a judge might be persuaded by the facts of a particular case to make some modest adjustment in the final sentence in circumstances of this kind, but it seems to us that that is a question of assessment by the judge in each case."'

28. *R v Monaghan* [2009] EWCA Crim 2699 and *R v Cahill* [2009] EWCA Crim 1918 were examples of cases where *Glover* was followed and applied. Whether credit falls to be given and how much is a matter for the judge to take into account given all the facts of the case before the court.

29. *Kerrigan* was a case dealing with the anomalies which may result when a person is recalled under a licence and then falls to be sentenced for an another offence. The court set out the relevant principles at paragraph [40], not mentioning curfews, and its conclusions began with this at [41]:-

> "41. Applying those principles to the facts here, the appellants do not qualify for any automatic reduction in their sentences. They breached their licence, they were recalled to serve the balance, or part of the balance, of an existing sentence and they were, therefore, detained pursuant to a custodial sentence for most, if not all, the time they were on remand in relation to the subsequent offence. In those circumstances Parliament's intention is clear: a day counts as time served in relation to only one sentence. Section 240ZA prohibits double counting. Unless, therefore, the appellants can bring themselves within the judge's general discretion to do justice, the periods they spent on remand which coincided with time spent in custody on recall should not be counted twice."

30. It seems unlikely that the court would have accepted that the judge's "general discretion to do justice" can only be exercised in rare or exceptional circumstances. It is likely that adjustments for this kind of reason are unusual but that does not mean that they must be found to be so before they can be applied. Given the volume of criminal cases passing through the courts even something which affects only a small proportion of those cases may actually happen quite often.

31. *Prenga* is perhaps the most persuasive source of the suggestion that a case has to be "rare" or "exceptional" before a judge can proceed as explained in these earlier decisions. It was not a case about curfews. It was a case where the court had to consider the statutory rule that time spent on remand for one matter does not count against a sentence imposed for another. It arose in the context of an appellant who was on bail for serious drugs offences when he was arrested pursuant to a European Arrest Warrant, and held in custody for that. By the time he was to be sentenced for the original drugs case, the European Arrest Warrant had come to nothing, and on appeal it was argued that he ought to have some acknowledgement against his sentence for the period held under it. The court said that "It is…..well established that a sentencing judge may reduce the sentence that would otherwise be imposed to achieve justice and to reflect exceptional factors." But then at [45] said:-

> "First, the discretion to modify a sentence, which is otherwise lawful is, on the basis of case law, an exceptional jurisdiction. This is because the rules laid down in the CJA 2003 for the according of credit against sentence for periods spent on remand or on qualifying bail are intended to lay down a comprehensive scheme governing the issue. A defendant's entitlement to "credit" is thus fixed by statute. Parliament has made policy

> choices in approving this regime, for instance as to the amount of credit for time spent on qualifying curfew (50% of the actual days). Parliament has also made clear that time spent on remand in cases unrelated to the case under consideration should not prima facie warrant any adjustment to the sentence. The cases where the statutory regime does not ensure justice should therefore be rare."

32. The court did not address in terms the position of a person who has been subject to a non-qualifying curfew which was identical in all respects to a qualifying curfew except that there was no electronic monitoring. The judgment should not be read as if it did. That case was about whether any form of adjustment to the drugs sentence should be made for time spent in custody because of an unrelated European Arrest Warrant. It was held that an adjustment could be lawfully be made, but that a judge had not erred in declining to do so in that case. It is binding authority for that proposition, but the rest is *obiter*. It is also relevant to point out that conditions in the criminal justice system have changed since 2017. It would almost certainly have been "rare" in 2017 for a person to spend 496 days on a curfew awaiting trial in a simple and short case. It isn't now. Does that mean that those who would have received a "modest adjustment" in 2017 should be denied it now? This perhaps illustrates the difficulty created by seeking to impose some filter through which a case must pass before a judge may exercise a discretion.

33. In *R v Cornelius* [2019] EWCA Crim 2154 ["*Cornelius*"], the Recorder was informed by defence counsel after he had passed sentence that, whilst on bail, the appellant had been subject to a non-qualifying curfew. This court held that the Recorder had been wrong to hold that he had no discretion to take that fact into account, but said:-

> "15. This was a night-time curfew which was imposed against a background of the appellant failing to attend the Court when required so to do and then remaining at large for a period of nearly four months. Whilst it is correct that the appellant was thereafter subject to the curfew for a period of nearly eight months, that was entirely of his own making in that he chose to contest the charge, rather than to plead guilty at the first opportunity.
>
> 16. In our judgment, this is not one of those exceptional or rare cases where, in order to do justice, credit should be given to reflect the time the appellant was subject to the curfew."

34. This decision makes perfect sense for the reasons given in paragraph 15. It seems that the denial of credit for time spent on the curfew was the only adverse consequence to the appellant for his serious breach of bail. The suggestion in paragraph 16 that the case would have had to be rare or exceptional before an allowance could be made is surplus and, perhaps, inconsistent with the reasoning in the previous paragraph. The "modest adjustment" was properly denied having regard to all the circumstances of the case, in particular the misconduct of the appellant. Whether those circumstances were "rare" or "common", or somewhere in between, seems to us to be a matter of interest (if to anyone) to statisticians rather than sentencers.

35. *Whitehouse* was the case cited to the judge by the appellant in this case. Whitehouse had been on bail for a little over 20 months and was subject to a number of conditions: he was to reside at a given address; he was to abide by a curfew between the hours of 7pm and 5am daily, he was required to present himself to a police officer upon request; and he had to report to a police station every Saturday and Sunday. This court held that the justice of the case dictated that this should have been taken into account and that it was open to this Court to do that. The court did not apply a precise calculation to assess the adjustment, and decided that a period of 9 months was "fair and reasonable" and so reduced the sentence by that figure.

36. There was nothing rare or exceptional about *Whitehouse's* case and the court did not suggest there had to be in order to make the allowance which it did. To the extent that this is inconsistent with *Prenga* and *Cornelius* we consider that we should follow *Whitehouse. Prenga* was not about curfews, and the last paragraph of *Cornelius* is *obiter*, the decisive reasoning being in the penultimate paragraph. Our decision in this case is entirely consistent with the approach taken in that paragraph of *Cornelius*.

Analysis and discussion

37. We do not accept that the ability of a sentencer to take into account time spent on non-qualifying curfews is limited to "rare" or "exceptional" cases. We do not consider, for the reasons given, that we are bound to reach that conclusion by previously decided cases. The ability to do this is based on the requirements of justice and is not prescribed or circumscribed by statute. The fact of the statutory scheme supports a conclusion that Parliament considers that qualifying curfews constitute a significant constraint on liberty. That proposition can be carried across into the non-qualifying curfew case, without carrying with it the unfortunate or even sometimes absurd aspects of the statutory scheme, see [24] above. The court, when dealing with the issue in cases which are outside the statutory scheme for credit, should address the issue in a non-mechanistic way and neither simply apply the statute (which does not apply) nor refuse to make any adjustment on the grounds that the case is not "rare" or "exceptional".

38. At all times during the currency of the present proceedings the "Better Case Management Revival Handbook" was current, having been published in January 2023. This is available on a link (https://www.judiciary.uk/guidance-and-resources/better-case-management-revival-handbook-january-2023/) visible every time a user logs into the Digital Case System, which is a necessary first step in doing any work in connection with almost all cases in the Crown Court. It emphasises the extent of the engagement between the parties which is expected take place before the PTPH, in this case the 7 August 2023. Paragraph 5 includes this (with underlining added):-

> "CrimPR 3.3 requires parties to engage with each other about the issues in the case from the earliest opportunity and throughout the proceedings, to nominate someone responsible for progressing that case, and to tell other parties and the court who that is and how to contact that person.

> There must be a renewed emphasis on these duties. Where possible that should be before the first hearing in the Magistrates' Court and it is required BEFORE the PTPH."

39. The Criminal Procedure Rules (CrimPR) impose obligations on the court and the parties in order to ensure that cases are managed efficiently and disposed of as soon as they properly can be. This aim appears in the overriding objective, CrimPR 1. Rule 3.3 is in these terms:-

> **The duty of the parties**
>
> **3.3**
>
> (1) Each party must—
>
> a) actively assist the court in fulfilling its duty under rule 3.2, without or if necessary with a direction; and
>
> b) apply for a direction if needed to further the overriding objective.
>
> (2) Active assistance for the purposes of this rule includes—
>
> (a) at the beginning of the case, communication between the prosecutor and the defendant at the first available opportunity and in any event no later than the beginning of the day of the first hearing;
>
> (b)after that, communication between the parties and with the court officer until the conclusion of the case;
>
> (c) by such communication establishing, among other things—
>
> (i) whether the defendant is likely to plead guilty or not guilty,…

34. The judge did not investigate what had been going on in this case between 7 July 2023 (sending) and 16 September 2024 when the case was listed for arraignment and acceptable pleas were tendered. We asked Mr. Ferm whether he could assist in this respect, but he told us that he had been instructed for the sentencing hearing and did not know what had happened previously.

35. We have already observed that one consequence of the delay was that the appellant avoided being dealt with on the same occasion for the offences committed on 11 July 2021 and 10 December 2022. He was sentenced for the 11 July 2021 offences in January 2024 while he was on bail to the Crown Court in respect of the December 2022 offences, ostensibly awaiting trial.

40. There were other adverse consequences of the passage of time before this case was resolved. First, this case featured as a trial in the court backlog when it was ultimately resolved without a trial. The existence of such cases causes longer waiting times for those cases which actually do require resolution by a jury. Cases which resolve late in the day, which could have resolved much earlier, are a serious cause of delays to

other cases and of the distress and grief which that involves. Secondly, the victims of this serious offending had to wait much longer than necessary for the resolution of the case in which they were involved. Thirdly, the appellant was subject to a restrictive curfew for a very long time. It is, however, reasonable to infer that the prime cause of this was his failure to enter a plea to the lesser alternative to count 1 and the two assaults in counts 2 and 3 at PTPH or to offer to do so at any reasonable time thereafter. If a straight arithmetical reduction in sentence were allowed so that he was treated as if he had served 8 months or so actually in custody, this would mean that he would serve only 4 months imprisonment for the December 2022 offences and, in effect, nothing at all for the July 2021 offences. If the curfew had been a qualifying curfew, the 2020 Act would have required an order that 248 days should count against the sentence of 30 months. Under the current release provisions at the 40% point of the sentence, the appellant is entitled to release after 12 months, and this would mean he would actually be in prison for less than 4 months, having served the rest at home in his own bed. That would not achieve the purpose of imposing the sentence in the first place, which was to punish the appellant for a very serious and prolonged episode of drunken violence in a public place. It would also create an incentive for people in that position to prolong proceedings in order to mitigate the punishment they have deserved. Where section 325 of the 2020 Act requires this outcome, then it cannot be avoided. Where it does not, it can and should be.

41. There will be many factors which may be relevant in deciding whether or not to exercise the discretion to reduce the final sentence to reflect time spent on a non-qualifying curfew. It may be helpful to identify some of those which feature in this case. This is not an exhaustive list of all possible relevant factors. The level of restriction actually imposed on the accused by the non-qualifying curfew is of great importance. It is unlikely that most bail conditions will justify any adjustment at all. Where there is a 12 hour curfew with a "doorstep" condition this is likely to be enough to start the process of deciding whether and, if so, how to make an adjustment to sentence. The length of time that the accused had spent on the non-qualifying curfew will also be important. It is likely that only long periods of time will lead to an adjustment. If the reason for the onerous bail conditions is some further misconduct by the accused, this may negative or reduce any adjustment. Any evidence of non-compliance with those conditions is likely to have the same effect. Evidence of particular difficulty caused to the accused, over and above the simple fact of the restriction caused by the non-qualifying curfew, may lead to a more generous adjustment.

42. Where the court concludes that there was a lack of engagement with the proceedings by or on behalf of the accused and the case was not progressed efficiently as a result, this may lead to an adjustment to sentence being refused or reduced. The CrimPR impose a duty to engage, and a breach of this duty is important. The court will also seek to ensure that the final sentence is not deprived of its intended effect, because it has already been served while the offender is not in custody, but rather at home. These are, in our judgment, the critical factors in the present case.

43. We consider that a judge addressing this issue ought not to attempt to mirror the calculations required by the statute in the case of a qualifying curfew, but only to address the issue and state briefly whether an allowance is appropriate and if so to what extent. Short reasons only are required.

44. There are cases where the legislation produces an inappropriately generous result for an accused, but only Parliament can change that. That does not mean that sentencing courts are, by analogy, compelled to produce similar results in non-qualifying curfew cases.

45. In the instant case, although the judge was referred to *Whitehouse*, he did not explain what factors caused him to refuse any allowance at all for the 496 days of non-qualifying curfew. We are therefore unsure whether he actually exercised his discretion and, if he did, we do not know what factors he took into account. In those circumstances we propose to consider the question afresh ourselves.

46. We consider that an allowance to reflect the constraint attached to the appellant's bail was required because of the long duration and significance of the restriction. That allowance should be substantially less than it would have been if it had been a qualifying curfew because that would be too generous to the appellant. Further, the appellant had played an important part in causing that delay by withholding his true pleas, and the way in which his case was dealt with was dilatory. Finally, it is necessary that he should be punished by a significant period of imprisonment for his offending.

47. Taking all of those matters together we consider that an allowance of three months against the sentence which was imposed would achieve justice in this case. The result is a total sentence of 30 months less 3 months.

48. Having exercised our discretion afresh and reached this conclusion we do not think it right to deprive the appellant of the benefit of it on the ground that it is "tinkering", although the reduction is relatively modest.

49. Thus we reduce the sentence to one of 27 months. The sentence imposed by the judge of 28 months on count 5 is quashed and a sentence of 25 months is substituted. The two 1 month consecutive terms continue unamended. To this extent the appeal is allowed.