

NCN: [2019] EWCA (Crim) 1092  
No: 201901224 A1  
**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday, 5 June 2019

**B e f o r e:**

**LORD JUSTICE SIMON**

**MR JUSTICE LAVENDER**

**HIS HONOUR JUDGE EDMUNDS QC**

**R E G I N A**

v

**RIA WILLIAMS**

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**Ms G Reed** appeared on behalf of the **Appellant**

**J U D G M E N T**

**LORD JUSTICE SIMON:**

1. The appellant appeals against sentences of three months' imprisonment imposed by Mr Recorder Taylor in the Crown Court at Wood Green on 27 March 2019. She appeals against that sentence with the leave of the single judge.
2. The appellant had previously been sentenced to a community order for two offences of fraud, contrary to Section 1 of the Fraud Act 2006. There were two victims of these offences Rhiannon Peak and Ehtizaz Chaudhry. They had bought designer footwear from the appellant via eBay and a mobile reselling Application named Depop. The appellant did not send the items that had been purchased and made numerous requests to the victims for further funds. The total loss to the two of them was £4,125: £360 to Rhiannon Peak and £3,765 to Ehtizaz Chaudhry.
3. The appellant was arrested and interviewed by the police on 20 March 2017. In interview she admitted creating the eBay and Depop accounts which had been used to defraud the victims. In relation to Rhiannon Peak she said that there had been a problem obtaining the trainers from someone she knew and when Rhiannon Peak had begun threatening her, she ceased contact with her. She said she was willing to repay.
4. In relation to Ehtizaz Chaudhry she said that there were again problems obtaining the trainers from a friend and when this happened, Ehtizaz Chaudhry and his father began threatening her. She said that she provided some of the items ordered and probably still owed about £800, but he had not mentioned that he wanted more money and appeared happy with what had been provided.

5. Despite those explanations, the appellant pleaded guilty to the offences of fraud by false representation on 23 July 2018 on a basis acceptable to the prosecution, and the matter was listed for sentence on 7 August 2018. The mitigation advanced by Miss Reed had a number of strands. First, the appellant's conduct was not initially fraudulent. She had a genuine account with Depop and had sold items through that platform on a regular basis. However, on these occasions she had been let down by a supplier and was unable to provide the goods that she had agreed to provide. The appellant accepted that she had been dishonest by requesting more money, when she did not have the goods. That strand reflected the account she had given to the police, albeit with an additional acceptance that she had been dishonest. The second strand was that she was aged 23 and of previous good character; the third that she pleaded guilty in advance of the trial; the fourth that she was in full-time employment and so would be able to repay the money.
  
6. The writer of the Pre-sentence Report dated 24 July assessed the offending as committed for financial gain. Mr Chaudhry had not received a single item, although the appellant stated she had never intentionally planned to "rip anyone off". She had minimised the offending by saying that she had paid the supplier, and therefore, had no financial gain from the offences. That, of course, did not follow. It was noted that she had deceived the victims into thinking she was male and into making payments into an account that was not hers. She showed some understanding of the impact on the victims. However, her demonstrated remorse appeared minimal. She was assessed as a low risk of reoffending. The proposal was for a community order and she was assessed as suitable for an unpaid work requirement and compensation orders.

7. There were personal statements before the court from the two victims, both of whom talked about a loss of trust in dealing with people, which extended into their social lives; and both were concerned that the appellant knew where they lived and had reminded them of that fact.
8. The judge, his Honour Judge Dodd, deferred sentencing to 9 November so as to enable the appellant to repay the victims. It appeared that she was taking steps to do so. In any event, on 9 November the judge sentenced her to concurrent twelve-month community orders with an unpaid work requirement of 80 hours, to be completed by 8 November 2019 with compensation orders in favour of the victims of £360 and £3,765 respectively. The judge warned the appellant that if she failed to comply with the community order she would be brought back to court and would face the consequences.
9. The appellant attended at an unpaid work induction appointment on 13 November and started work on 15 December. She had asked whether she could complete the programme over a two-week period of her holiday and this appears initially to have been agreed. However, on 7 January she was told to attend work on a weekly basis on Saturdays. She failed to attend on 2 February and failed to provide acceptable supporting evidence in relation to the absence. She failed to attend on 9 February, although this was not the subject of the breach of proceedings. However, she failed to attend on 16 February and failed again to provide acceptable supporting evidence in relation to the absence.
10. Breach proceedings were then instituted. Her attendance was described as erratic.

Nevertheless, she had completed 16.4 hours by 2 February and the probation officer proposed that as this was the first instance of breach the order be allowed to continue with the imposition of a financial penalty.

11. In passing sentence, the recorder noted that the appellant had failed without any good reason to comply with the terms of the order imposed on 9 November. It was therefore open to the court to re-sentence the appellant for the offences. As she had been unwilling to comply with a non-custodial penalty, he would pass custodial sentence of three months. The recorder said that he had taken into account that she had pleaded guilty in November 2018, which reduced the sentences that the appellant would receive by one third.
12. On the appeal Miss Reed raised three grounds. First, that the recorder erred in principle in revoking the community order and re-sentencing the appellant as he had. Second, he failed to take a proper account of the mitigation in relation to the breaches. Third, he failed to consider whether immediate custody was the only sentencing option. She submitted it plainly was not.
13. Community sentences are orders of the court that must be complied with. If they are not, then the breaches will be brought to the court's attention so that it can consider the appropriate sanction for those breaches. However, in our view, the sentence of immediate imprisonment at the first breach hearing in the instant case was wrong in principle. There were compensation orders in place; and the appellant was in employment, which would enable her to pay the compensation. She was of previous

good character and there had been partial completion of 20 per cent of the work requirement. Furthermore, she had only breached on two occasions and there was email correspondence evidencing a continuing willingness to carry out the unpaid work requirement, albeit on terms which suited her and her employment. Significantly, the probation service was not suggesting that she should be sentenced to imprisonment. On the contrary, it suggested a fine as an appropriate sanction. The recorder's very short sentencing remarks did not address any of these points.

14. He also failed to consider whether immediate custody was the only option in relation to the breaches. In our view, it was plainly not. These were breaches that called for the appellant to be brought back to court so that the consequences of her casual and inadequate approach to the sentence could be made clear to her by a financial penalty or the imposition of additional hours of unpaid work. A sentence of immediate imprisonment was wrong in principle.

15. We choose not to disturb the revocation but to allow the appeal so as to vary the sentence for the two charges of fraud and substitute a conditional discharge for twelve months. We also extend the time for payment of the compensation order, which is unaffected, by six months from today's date.

16. We make it clear that we do not in any way say that the sentence passed on 9 November last year was wrong. In our view, it was the right sentence. However, having served the sentence of two months' imprisonment in the circumstances we have described, we consider it would be unjust to make her subject to the community order.