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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2020] EWCA Crim 510



No. 202000627 A1
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Royal Courts of Justice

Tuesday, 24 March 2020

Before:

LORD JUSTICE HOLROYDE
MR JUSTICE BRYAN
HER HONOUR JUDGE ALICE ROBINSON RECORDER OF CROYDON

REGINA
V
MONICA PASHIAS
TYRONE WAUGH

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MR J. RIVET appeared on behalf of the First Applicant.
MR L. ORRETT appeared on behalf of the Second Applicant
MR P. JARVIS appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE HOLROYDE:

- 1 On 8 July 2019, the day fixed for their trial, Monica Pashias and Tyrone Waugh pleaded guilty to robbery. On 24 January 2020 they were each sentenced to a suspended sentence order as follows: Ms Pashias, two years' imprisonment suspended for two years with a mental health treatment requirement for two years and a rehabilitation activity requirement for 60 days; Mr Waugh, 18 months' imprisonment suspended for 18 months with an unpaid work requirement of 135 hours and a rehabilitation activity requirement for ten days.
- 2 Her Majesty's Solicitor General believes those sentences to be unduly lenient. Application is accordingly made, pursuant to s.36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.
- 3 The offence of robbery was committed on 2 August 2018. The facts are unusual. Ms Pashias has a friend, Ms Kaur, who had reported to the police that a laser hair removal machine, a valuable piece of equipment used in beauty salons, had been stolen from her. It seems that some time later Ms Kaur saw what she thought was her machine in a salon. It was in fact a different machine with a different registration number. Ms Kaur told Ms Pashias that she had found her stolen machine and they planned a way to recover it. They viewed the location of the premises at a time when the salon was closed. At a late stage of the planning, Ms Pashias asked her friend Mr Waugh to help them, because the machine was heavy and would be difficult to move.
- 4 On 2 August 2018 Ms Kaur went into the salon pretending to be a customer wanting a consultation. She had her face veiled and wore dark glasses. The sole member of staff present, Ms Marquez, locked the door whilst the consultation took place. Ms Kaur then unlocked it and Ms Pashias burst in, followed by Mr Waugh. Ms Pashias asserted that she was a police officer and ordered Ms Marquez to sit down. She threatened to arrest Ms Marquez and said she had to take the machine because it was stolen. She put her arm across Ms Marquez's chest, and pushed her back against the wall when Ms Marquez tried to reach for her phone. Mr Waugh meanwhile removed the machine. All three then left. Ms Kaur locked Ms Marquez into the premises. There was evidence that as they left the scene they were laughing about Ms Pashias's impersonation of a plain clothes police officer. There was also evidence that Ms Pashias was carrying an identification card or badge properly issued to her some time earlier when she had acted as an appropriate adult at a police station, which she had altered by deleting the word "appropriate adult volunteer". There was however no evidence that she had in fact showed it to Ms Marquez as part of her pretence.
- 5 Ms Marquez had provided a number of victim personal statements. She was locked in the salon for about an hour after the offenders had left, until her employer arrived and unlocked the door. Her physical injuries were pain to her chest, bruising of one arm and swelling of one foot due to exacerbation of a pre-existing injury. She was treated with painkillers. Her psychological injuries, to which we shall return shortly, were more serious.
- 6 The theft of the machine also had a significant impact on the proprietor of the salon, who had to buy a new machine at the cost of about £65,000 whilst continuing to pay hire purchase charges of more than £1,800 per month in respect of the stolen one. The stolen machine has never been recovered.
- 7 The offenders had used a car registered to Ms Kaur and had been captured on CCTV, and so the police can have had little difficulty in tracing them. When arrested and interviewed under caution, Ms Pashias admitted taking the machine, but said it was owned by her friend and they were entitled to take it. She denied using any physical force and denied

impersonating a police officer. It is relevant to note that in the course of investigating this offence the police found cannabis growing in Ms Pashias' home: this resulted in a charge which, as we understand it, is currently awaiting trial. Mr Waugh in interview said that he had been contacted by Ms Pashias on the morning of the robbery and asked for help to move a heavy item into a car. He denied using any violence and did not accept that Ms Pashias pretended to be a police officer.

- 8 As we have said, both offenders pleaded guilty to robbery at trial. It was accepted that the circumstances of the robbery included the element of false imprisonment of Ms Marquez, which had been the subject of a separate charge which was ultimately left to lie on the file. Ms Kaur contested the charges against her. She was ultimately convicted of false imprisonment and possession of an article for use in fraud.
- 9 Sentencing of these offenders had been adjourned to wait the outcome of Ms Kaur's trial. They were on bail subject to conditions for about six months. It was not until 17 January 2020 that they came before HHJ Reid, who had presided over Ms Kaur's trial. Pressure of other work meant that the judge was unable to conclude the hearing that day and the offenders were therefore sentenced on 24 January 2020. On that occasion, Ms Kaur was absent through ill-health. She has not yet been sentenced.
- 10 In the course of the sentencing proceedings relating to these offences, submissions were made to the judge about the application of the Sentencing Council's Definitive Guideline for sentencing in cases of less sophisticated commercial robbery. It was submitted by prosecution counsel that culpability straddled categories B and C and that harm was somewhere between category 1 and category 2 in that guideline. For a category C2 offence the starting point is two years' custody and the category range from one to four years. For category C1, the starting point is four years and the range three to six years.
- 11 Each of the offenders had previous convictions, but none of their convictions were particularly recent or particularly relevant to the present offence. Ms Pashias' most recent offence was a breach of a non-molestation order. This had been committed some months after the offence of robbery. She was sentenced for it on 30 May 2019, when she was made subject to a Community Order.
- 12 The judge was assisted by pre-sentence reports in relation to each of the offenders. In Ms Pashias's case he was also assisted by a report dated 13 January 2020 by a consultant psychiatrist, Dr Dale, who is the clinical lead for the personality disorder service in an area of west London. This report recorded that Ms Pashias had first been formally assessed by psychiatric services in 2014 and had been a patient of Dr Dale's clinic since March 2018. She had reported feelings of rejection since her childhood and sexual abuse as an adult. Dr Dale noted that in the months before the robbery Ms Pashias' attendances had been erratic and often precipitated by crisis. His impression was that the very act of attending the clinic for an appointment precipitated in Ms Pashias feelings of shame and anxiety. In the month after the robbery she repeatedly sought support, and reported frequent suicidal urges. She had a history of cannabis misuse, but in recent months had become largely abstinent. Dr Dale diagnosed a borderline personality disorder and an overlapping complex post-traumatic disorder. He assessed Ms Pashias as being compliant and suggestible, with a pattern of poor decision making within interpersonal relationships and more prone than others to impulsive actions. He commented upon her willingness to take at face value what she had been told by Ms Kaur, whom she was still trying to protect. He noted that Ms Pashias had been making genuine efforts to engage with the health services before this event. He felt that if imprisoned she would be vulnerable to controlling behaviour by others and there would be a high risk of suicidal impulses and self-harm. In those circumstances,

her condition could well worsen and there was a risk of undoing the progress which had so far been made towards her engaging with therapy.

13 The judge placed Mr Waugh in a lesser role than Ms Pashias and Ms Kaur, saying that he had been brought in at the end had, no interest in the machine and was doing a favour for his friend. In Ms Pashias' case, he accepted that he must sentence her on the basis that she thought Ms Kaur had found her stolen machine. He said she had altered the appropriate adult badge so that it could, if necessary, be used to pretend she was a police officer, and she had brought in Mr Waugh because his physical size would not only be useful for carrying the machine, but would also ensure the least possible resistance. He had no doubt that Ms Pashias had pretended to be a police officer in order to ensure that minimal force could be used in taking the machine. Although they both maintained that they believed Ms Kaur had a right to the machine, their pleas were admissions that they had used what they knew to be improper and illegal means to take it. They had taken the law into their own hands.

14 As to the impact of the crime, the judge at p.6D of his sentencing remarks said this:

"The impact on the business was highly significant, because they had bought the machine at hire purchase so payments still had to be made and they had to buy a replacement machine, so they were around £50,000 out of pocket. Much more significant though in my mind was the impact on Ms Marquez. The impact on her was of quite staggering severity. She suffered from mental health problems afterwards and did not go back to her job. She was unemployed for five months. She had to attend food banks. It had an impact on her, her husband and her young son, who could not understand the change in his mother."

15 The judge indicated that he was persuaded, though only just, that there was not serious psychological harm to Ms Marquez or a serious detrimental effect on the business which would put the case into category 1 harm. He found it to be a category C2 offence with a number of aggravating features, in particular the pretence at being a police officer and the restraint and detention of Ms Marquez. In mitigation, he accepted that prior to the incident both offenders had believed Ms Kaur had a legal right to the machine. He took into account Ms Pashias' mental health difficulty and noted that she was engaging well with the Community Order to which she was then subject. He said that Mr Waugh's criminal record was very light indeed, and that his culpability was reduced because he had been brought in as a favour for a friend.

16 The judge said that sentences of imprisonment were necessary. He referred again to the massive impact upon Ms Marquez, but concluded that the sentences could be suspended. In relation to Ms Pashias he said at p.8B:

"Well, it seems to me, looking at the difficulties that you have had over the previous years, looking at the fact that you are engaging with mental health services, that I can, just, take the decision that your sentence can be suspended and that is not really for you, but for people in the future, because what is necessary is for you to become rehabilitated and for you to address your personality disorder. That is the way in the future that you will be able to make proper decisions, stay away from people who are bad for you and not cause massive impact, as you have in this case, on other people."

17 In relation to Mr Waugh he said at p.9C:

"Your culpability is less and that I can take into account in two ways, both by reducing the sentence and also by suspending it as well."

- 18 The judge then imposed the sentences to which we have referred.
- 19 In addition to the material which was before the judge, this court has progress reports prepared for our assistance. These show that Ms Pashias has missed two of her five appointments to date, although there was a reasonable explanation for one of those occasions. She has expressed great regret over the offence, attributing her commission of it to her condition. She continues to attend Dr Dale's clinic at three-monthly intervals, is in full-time work and has stable accommodation. She has seen the Probation Service weekly with work focused on her consequential thinking, her engagement with the non-molestation order and her engagement with mental health. She is described as struggling significantly since being informed of this reference.
- 20 In Mr Waugh's case the progress report indicates that he has kept all appointments, complied with the supervision requirements and complied with his unpaid work instruction. He had requested to increase the number of hours of unpaid work which he carries out each week.
- 21 Her Majesty's Solicitor General submits that the sentences are unduly lenient. Mr Jarvis submits that in the light of the terms in which the judge described it, the harm caused by this offence clearly fell into category 1 under the Guideline: Ms Marquez had suffered serious psychological harm and there had been a serious detrimental effect on the business of the salon. He further submits that culpability fell into category B because features of higher and lesser culpability were absent. The starting point was therefore five years' custody. Even if the view is taken that the offence should be in a lesser category, the starting point should have been four years. The offence was aggravated by planning, by the vulnerability of Ms Marquez as the lone employee present, by the sustained nature of the incident and subsequent detention of Ms Marquez and by the pretence of being a police officer. There was, he submits, little mitigation for either offender. Although Ms Pashias' mental health problems were to be taken into account, Mr Jarvis submits that the level of planning of the offence was such that impulsivity and suggestibility did not significantly reduce her culpability. The core submission of the Solicitor General is that the appropriate prison sentences were of a length which could not be suspended. It is not separately submitted that the judge, if correct in his view that sentence of two years or less were appropriate, was not entitled to decide that they should be suspended.
- 22 For the offenders, it is submitted that the judge conducted a careful sentencing process over the course of two hearings in which he went into a good deal of detail about the relevant circumstances. The sentences which he imposed were within the range which had been identified by prosecution counsel in the court below as potentially applicable and, in the submission of counsel for the offenders, they were not unduly lenient.
- 23 We have read the full transcript of both the sentencing hearings. It is clear that the judge, who had of course presided over Ms Kaur's trial, was fully aware of all the details of the evidence and had all the relevant features of the case well in mind. He had seen Ms Marquez give evidence. He was referred by counsel to the recent decision in *R v PS, Dahir and CF* [2020] 4 WLR 13, which makes clear that mental health conditions and disorders may be relevant both to culpability and to sentence. Having reached the conclusions he did as to the appropriate length of the sentences, his approach to the issue of suspension was consistent with the principle stated in the Sentencing Council's Imposition guideline.
- 24 In relation to the issue of serious psychological harm, the judge rightly took into account the content of the victim's personal statement. As *R v Chall* [2019] EWCA Crim 864 makes clear, the judge was not called upon to make a medical judgment, but rather to make

a dispassionate judicial assessment of the factual impact of the offence upon the victim. That is what he did. He had the advantage of having seen Ms Marquez give evidence in the trial of Ms Kaur. It is clear from the passage that we have quoted that he reached his conclusions as to the psychological harm to her, and as to the detriment to the business, after careful thought and by a narrow margin.

- 25 In our judgment, it is impossible to argue that he reached a conclusion which was not open to him. Whilst we understand the submissions made by Mr Jarvis as to the language used by the judge, what seems to us to be important is that that language was used in the context of the judge, after careful reflection, having decided that the appropriate categorisation of harm was category C. In our view, his decision to place the case into that category cannot be faulted; but it was, on any view, a serious example of such harm and, as Mr Jarvis said, that fact did not cease to be relevant once the categorisation had been made.
- 26 Nor in our view can there be successful criticism of the judge's decision to put culpability into category C. We are unable to accept the Solicitor General's submission that none of the features of lesser culpability were present. One of those features is "the use of minimal force" and the judge found that that was the level of force used in this case. Again, however, it was on any view a serious example of category C culpability, and there were a number of aggravating features necessitating an upward movement from the guideline starting point before making an appropriate reduction for the mitigating factors.
- 27 Each of the offenders was able to point to significant mitigation. It cannot, however, be said that the mitigation was so powerful as to outweigh the aggravating features of the case.
- 28 Giving as much weight as we can to the submissions on behalf of the offenders and to the unusual circumstances of the offence, we conclude that after a trial the term of imprisonment in Ms Pashias' case should have been at least three and a half years and in Mr Waugh's case should have been at least three years. It follows that when the appropriate reduction of ten per cent is given to reflect their late guilty pleas, each of the offenders should have received a sentence of a length which could not be suspended. These sentences, in our view, were not merely lenient, but unduly lenient.
- 29 Even when this court finds a sentence that has been unduly lenient, it has a discretion as to whether to exercise its powers to increase the sentence: see *Attorney General's Reference (No 4 of 1989)* [1990] 1 WLR 41 per Lord Lane CJ at p.46C. In our view, the contents of the progress reports weigh in the offenders' favour in this regard, particularly when the observations contained in the report relating to Ms Pashias are read in light of Dr Dale's concerns as to the potential effect upon her of a sentence of immediate imprisonment. We also bear in mind that since the sentences were passed, each offender has complied with the community requirements of their respective suspended sentence orders, and that any sentence of immediate imprisonment would have to be reduced in length to reflect that compliance. By a narrow margin, we have come to the conclusion that it is not necessary or appropriate for us to increase or vary the sentences.
- 30 For those reasons, we grant leave. We find the sentences to have been unduly lenient, but in the exercise of our discretion we decline to vary them.
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CERTIFICATE

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This transcript has been approved by the Judge.