

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 1298



No. 202202670 A3

Royal Courts of Justice

Thursday, 15 September 2022

Before:

LORD JUSTICE SINGH
MR JUSTICE HENSHAW

REX
V
AMINA HUSSAIN

Appeal under s.13 Administration of Justice Act 1960

Computer-aided Transcript prepared from the Stenographic Notes of
Opus 2 International Ltd.
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MR A MORRIS appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE SINGH:

- 1 This is an appeal brought as of right under s.13 of the Administration of Justice Act 1960 from an order for immediate custody imposed for contempt of court.
- 2 The appellant, aged 21, on 11 May 2022 in the Crown Court at Snaresbrook admitted having committed a contempt of court there on 4 May 2022.
- 3 On 23 August 2022 an order was imposed by HHJ Canavan at the same court of four months' custody. We note in passing that although the sentencing judge's remarks referred to detention in a Young Offenders' Institution, as the appellant was 21 years old the relevant order was in fact one of custody in prison for contempt of court, as correctly recorded in the Crown Court record sheet and the formal order.
- 4 This matter arose as follows. On Wednesday, 4 May 2022 the appellant was due to be tried on a charge of assault on an emergency worker. The trial was listed before HHJ Connell. Shortly after the jury had been empanelled, it emerged that the appellant had been recording some of the proceedings on her tablet. She surrendered this at the judge's direction and appears to have instructed her counsel that she had recorded some of the judge's homily because she had a poor memory. However, on inspection, the tablet turned out also to contain two relevant deleted videos: one of these was a video recording lasting several minutes in which the jury were selected and sworn in. Although the camera was not facing the jury, the recording included their names. The other video clip showed part of the courtroom for a short time and had a graphic superimposed on it consistent with it having been shared on social media. It further emerged that the appellant had shared on Snapchat a video clip showing jurors leaving the courtroom. That clip had by the time it was identified been viewed 66 times.
- 5 The trial judge recorded that the appellant did not at any stage seek to apologise for her conduct, but conveyed through her counsel that she had not seen any of the various signs which are displayed within the building stating that it is prohibited to take videos or photographs, notwithstanding the fact that she would have been expected to pass at least three such warning signs between entering the building and entering the courtroom.
- 6 A pre-sentence report was obtained which indicated that the appellant had no previous convictions, albeit she was awaiting trial for the alleged assault which we have already mentioned. The report indicated that the appellant was remorseful for what had taken place in the courtroom and had tried to apologise to the judge. The author of the report concluded that the appellant evidently did not grasp the seriousness of being involved in the criminal justice system due to immaturity and lack of experience and being part of a generation where social media is significantly intertwined with day-to-day lives, including personal matters. The author concluded that the appellant posed a low risk of committing a harmful offence within the next two years and a low risk of serious harm to identifiable groups.
- 7 Other personal mitigation was identified in the form of significant utility and other debts, part-time employment which the appellant would lose if committed to prison, positive family relationships and community ties, and ongoing custody proceedings before the Family Court. The report also referred to the removal of the appellant's child from her care in October 2020, which had been a traumatic experience. It was submitted to the sentencing judge in this connection that committal to prison would have a harmful effect on the custody proceedings, as well as potentially the appellant's relationship with her young child for whom she cared on a regular basis. At the hearing, we were informed by Mr Morris, who has appeared on behalf of the appellant, that her child is two years old.

- 8 The sentencing judge regarded the most serious aspect of the appellant's offending as her having videoed the jury being sworn in, recording their names and having recorded and published on social media images of the jury leaving the courtroom. Such offending struck at the heart of the criminal justice system, bearing in mind that people would be reluctant to serve as jurors if they were afraid that their images could be shared with the public. The judge considered that the appellant could not have failed to see the numerous signs in the court building stating that videos and photographs must not be made. The appellant knew she had done wrong, as evidenced by her attempts to delete some of the recordings she had made. Even after taking account of the appellant's mitigation, her offending was so serious as to make immediate custody the only appropriate punishment.
- 9 On this appeal, the appellant, as we have mentioned, has been represented by Mr Andrew Morris, from whom we have received both written and oral submissions for which we are grateful. The appellant accepts that this was a serious matter and that the custody threshold was passed. However, Mr Morris submits that this was not a case where an immediate committal to prison was required in order to achieve the appropriate punishment or deterrent. There was no suggestion that the appellant posed a risk to others and she had no previous convictions. Mr Morris submits that the court could achieve the appropriate deterrence required by marking the custodial threshold as being passed, but suspending it for a fixed period while the applicant awaited her trial. The appellant had, he submits, the ability to comply with a suspended prison sentence, as she had shown since her charge for the index offence of assaulting an emergency worker, during which period she had been on bail for a significant period of time and has not reoffended.
- 10 At the hearing before us, we have had the advantage of further information on instructions which Mr Morris has been able to place before this court which, understandably, was not before the sentencing judge. In particular, Mr Morris has emphasised before us the impact which the custodial sentence imposed is having and will have on the appellant's young child. This is because of the family proceedings which are currently taking place. He informs us that as a result of her being in custody, the appellant has already missed one hearing in those proceedings in which she represents herself. He has drawn our attention to the family's circumstances and the difficulty that others, including the appellant's partner and grandmother, have had in looking after the young child. Mr Morris submits that the court can refer by analogy to the guideline on when a sentence of custody may be appropriately suspended, even though this is not strictly speaking relevant. He also reminds us that this was the first period of custody which this appellant has had to serve.
- 11 Strictly speaking, a committal for contempt of court is not a sentence of imprisonment within the ordinary criminal law regime: see s.222(2) of the Sentencing Act 2020 or the Sentencing Code and *R v Yaxley-Lennon* [2018] EWCA Crim 1856, [2018] 1 WLR 4500 at para.4 in a judgment given by Lord Burnett of Maldon, Chief Justice. The provisions of Chapter 5 of Part 10 of the Sentencing Code which deal with suspended sentences imposed for criminal offences do not apply to committals for contempt: see s.305 of the Code. Further, the community requirements referred to in Chapter 5 of the Code are not available in such cases. The closest equivalent to a suspended sentence of imprisonment is a suspended committal order on terms made under the court's inherent jurisdiction: see *Yaxley-Lennon* at para.57.
- 12 The question we have to decide is whether the order made was wrong either because the judge made an error of principle or because the punishment imposed was manifestly excessive. Although they are not directly applicable for the reasons we have given, we consider by way of analogy the guidelines on the Imposition of Community and Custodial Sentences. On that basis, the key question is whether the judge was entitled to conclude that appropriate punishment could only be achieved by immediate custody.

- 13 In our judgment, the judge was entitled to reach that conclusion and was right to do so. In particular, we endorse the judge's comments that the recording of the names of jurors and the publication of their images on social media strikes at the heart of the criminal justice system. The prohibition of the making and publication of images and court proceedings is made clear in every courtroom and exists for good reason. The protection of jurors is an especially important aspect of the restrictions that apply. The prevalence of the use of social media makes it, if anything, even more important that these matters are clearly understood. Taking and publishing images of jurors is liable to result in immediate custody. In the present case, notwithstanding the personal mitigation available to the appellant, we consider that the judge was entitled to make an order for immediate custody.
- 14 We must however consider a second submission which Mr Morris has advanced before this court. He submits that even if immediate custody was required and appropriate in this case, the court should consider reducing the term of the sentence imposed. In particular, he submits that the importance of deterrence in cases of this kind has already been achieved through the short sharp shock of the appellant having served a custodial sentence. He reminds this court that the appellant has to date been in custody for about three weeks. He invites this court to take the view that the purpose of the sentence has now been achieved and the term should be reduced in such a way as would result in effect in immediate release from custody.
- 15 Not without some hesitation, having regard to the personal mitigation available to this appellant, including in particular the impact on her young child, we have come to the conclusion that the period of four months is manifestly excessive. We emphasise that we have had the advantage of information which was not fully available to the sentencing judge. However, we do not accept Mr Morris's submission that the sentence should be reduced to the extent that he has submitted. In our judgment, the just and proportionate sentence in all the circumstances of this case will be one of two months.
- 16 For the sake of completeness, we note that the Crown Court's order was recorded in the record sheet as a contempt by breach of s.17 of the Criminal Procedure and Investigations Act 1996. That section prohibits the unauthorised disclosure of material disclosed for the purposes of criminal proceedings and is thus not the relevant provision. Rather, the conduct in question was in addition to being in breach of s.41 of the Criminal Justice Act 1925, a criminal contempt of court and punishable on that basis. This point does not, however, affect the substance or outcome.
- 17 For the reasons we have given, we allow the appeal to the extent that we substitute a custodial period of two months for that imposed by the judge.
-

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

*Transcribed by **Opus 2 International Limited**
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge