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Neutral Citation No. [2024] EWCA Crim 801



IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT WOOLWICH

HIS HONOUR JUDGE GRUMPERT T20220268/T20220371

CASE NO 202302682/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 4 July 2024

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE FREEDMAN
HER HONOUR JUDGE NORTON
(Sitting as a Judge of the CACD)

REX
V
AMY LOUISE BYRNE

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MISS P WOODROW appeared on behalf of the Appellant

J U D G M E N T

Approved

LORD JUSTICE DINGEMANS:

1. This is an appeal against sentence with the leave of the single judge. It raises issues relating to the care of the appellant's baby son who was nine months old when the appellant was sentenced, who was aged one year when reunited in prison with the appellant, and who will be two years old at the end of August. It is not necessary to give the name of the appellant's young son and we will refer to him as "the child".
2. The appellant and child are in Her Majesty's Prison Askham Grange where the appellant is imprisoned. That unit will only be able to accommodate the child until 7 September 2024. The appellant is not eligible for home detention curfew until 7 September 2024 but there is no guarantee that she will attain that home detention curfew and her conditional release date is, at present, 5 March 2025. If the appellant is not released on home detention curfew the child will need to be placed in foster care because there is no other suitable placement.
3. The appellant is a 31-year-old woman. She pleaded guilty on 3 March 2023, just before a trial was scheduled to take place later in March, in the Crown Court at Woolwich to a count of conspiracy to commit fraud by false representation, contrary to the Criminal Law Act 1977, and causing unnecessary suffering to a protected animal, contrary to the Animal Welfare Act 2006. In May 2023 the appellant was sentenced to 44 months' imprisonment for the conspiracy to commit fraud and there was no separate penalty imposed on the causing unnecessary suffering to a protected animal.

The factual circumstances

4. The appellant's co-defendant Mr Angell was also her partner and father of the child. The RSPCA became involved following a number of complaints from members of the public who had purchased kittens that had become sick, many of which subsequently died.

Warrants were executed by the RSPCA and on behalf of trading standards at the appellant and Mr Angell's shared property in August 2021.

5. So far as the complaints were concerned, on 6 February 2021 Mr and Mrs Plummer purchased a kitten that had been advertised on Pets4Homes by a person calling themselves 'Mia'. Mrs Plummer paid £550 and collected the kitten from the appellant and Mr Angell's address. The kitten smelt of urine, had runny faeces and by 9 February the kitten was taken to a veterinary surgeon where it died in the early hours on 10 February.
6. Mrs Plummer had thought that 'Mia' was a private seller who only had one kitten left. However she found another advert placed by 'Mia' on Pets4Homes, advertising more kittens at a cost of between £750 to £950.
7. Mrs Plummer made attempts to contact 'Mia'. On 9 March Mr Angell acknowledged the letters sent by the Plummers but there was no further response.
8. On 3 May 2021, Ms Stutley responded to an advertisement placed on Pets4Homes. She spoke to a person calling themselves 'Semeena' who confirmed that the kitten was male, micro-chipped, vaccinated and health checked. None of that was true. Ms Stutley paid a deposit into Mr Angell's account and on 4 May the appellant delivered the kitten and the balance was paid. After the appellant left, Ms Stutley discovered the kitten was female, emaciated, smelt and had diarrhoea stuck to her fur. She contacted 'Semeena' but received no response. The kitten was taken to the vets but later died. Ms Stutley messaged 'Semeena' and asked for a refund. No response was received. Ms Stutley later saw the same photo that she had responded to on a Freeads advert. However the seller's name was now given as 'Amy'.
9. James Smith paid £700 and collected a kitten from the appellant and Mr Angell in May. The appellant told him that she was a veterinary nurse and had posted the relevant

paperwork regarding changing the kitten's microchip details. When he arrived home with the kitten his wife noticed blood coming from the kitten's backside. The kitten was taken to the vets where it died that day. No paperwork was ever received. The kitten was not micro-chipped.

10. Shannon McMahon purchased a kitten believing it to have been flea and worm treated. The kitten was delivered to her on 16 May. The kitten's eyes were closing and had discharge. Ms McMahon was told that it was normal. The kitten did not improve. After a few days it was taken to a vet. The kitten had flu, conjunctivitis and worms. It recovered after a course of treatment. Ms McMahon contacted the seller, the appellant who was pretending to be 'Amy', who said there was nothing wrong with the kitten and it was the fault of the buyer.
11. On 18 May 2021, Ms Fornalska responded to an advertisement on Pets4Homes placed by 'Shannon' (again the appellant) advertising two Ragdoll kittens which were said to be flea treated, wormed and vaccinated. The price was £750 per kitten. The appellant, using the name 'Shannon' delivered the kittens and said she would post the paperwork needed. The kittens smelt of urine and had diarrhoea. A kitten was taken to the vet but had to be put to sleep a few days later. Ms Fornalska conducted research online and discovered that 'Shannon' was the appellant. She and her partner attended the address she had found online. The appellant asked them to wait outside. Mr Angell then arrived and Mr Angell was threatening and shouted they would not get a penny.
12. In May 2021, Ms Tetnowski was looking to purchase a Ragdoll kitten. She responded to an advertisement placed by 'Beth'. 'Beth' (being the appellant) said there was one kitten left and sent some pictures of the kitten and purportedly its mother. On 20 May, 'Beth' and Mr Angell delivered a kitten. Ms Tetnowski noticed that the kitten was not well but

because she was with her young son she felt she should take the kitten and paid the £700 in cash. She was given a birth certificate, vaccination certificate and a vet certificate.

The kitten was taken to the vets the following day but had to be put to sleep by 27 May.

The paperwork was false.

13. Daria Evans purchased a kitten from the appellant, on that occasion using the name 'Barbara'. The kitten also became unwell and was taken to an emergency vet. Attempts made to contact the appellant were unsuccessful. Ms Evans conducted research online and found another set of advertisements with the kittens being advertised by 'Mark'. Ms Evans rang 'Mark', however a woman who identified herself as 'Barbara' answered and then hung up the phone when she realised who Ms Evans was.
14. There were nine advertisements placed under the name of 'Mark Waldren'. When he was contacted it was found that he had purchased a kitten from Mr Angell and the appellant for £200 and provided Mr Angell with his ID documents as had been requested, which were then misused. That kitten had also been unwell and had died. Further purchasers provided similar accounts.
15. This was planned, persistent offending for financial reward which exploited animals and people's love for animals.
16. On 26 August, as a result of the complaints, a warrant was executed at the appellant and Mr Angell's property by the police, RSPCA inspectors and a vet. Both the appellant and Mr Angell were at the property. A number of kittens and adult cats were present. There were 17 kittens. They were in poor conditions, looked unwell and had diarrhoea. Of those, the vet formed the view that six were suffering and they were placed into RSPCA care. One of them subsequently died.
17. Police attempted to seize Mr Angell's mobile phones but he jumped out of the window

and tried to dispose of it in the front garden. While that was happening, the appellant tried a factory reset on her phone.

18. Three warning notices were also issued with regard to squirrels, cats and a hedgehog. A further visit to the property was undertaken to check on the welfare of the animals, however Mr Angell would not permit entry. It was made clear that the appellant would not engage further with the RSPCA.
19. In interview, Mr Angell confirmed joint ownership and responsibility for the cats and kittens. The appellant was interviewed twice. In her first interview she confirmed she had been breeding cats and selling them, but not for profit. In a second voluntary interview she refused to answer questions.
20. A total of 175 advertisements were linked to the appellant and Mr Angell and were found over the period from 1 August 2020 to 31 August 2021. Those advertisements were placed across multiple sites using both false and stolen identities. Five mobiles were seized. Four of them were analysed. The phones contained a number of messages relating to the sale of kittens and within them the appellant repeatedly said she was a veterinary nurse, she was not, and the image of a fake certificate in the name of the Royal College of Veterinary Surgeons and a name of Catherine-Mia Smith was given. Images of kittens were found on the phone.
21. An analysis of the advertisements and the 17 kittens found at the home showed that the minimum profit estimated to be made was £233,000. The criminal proceedings were initiated by the RSPCA and Trading Standards. The matter was listed in the Crown Court in April 2022. Following not guilty pleas by the appellant a trial was listed on 20 March 2023 and the appellant pleaded guilty on 3 March 2023. She was given 15 per cent credit for plea. No complaint is made about that. Mr Angell had already

pleaded guilty but on a basis which had not been accepted and in the end he did not pursue that basis of plea.

22. There were victim personal statements showing the loss felt by the purchasers and the children of the purchasers of the cats.
23. A pre-sentence report was obtained. This showed that the appellant had not considered the consequences of her actions. It also showed that she had numerous health conditions. She said she had mental health issues from childhood trauma and had attempted suicide in the past and she had self-harmed. She referred to being referred to the Court Diversion Team to be assessed. The pre-sentence report also recorded that she had an eight-month-old son, who suffered from health issues and who had been admitted to hospital twice. The writer assessed the appellant as being of low risk of re-offending and a low risk of harm to members of the public. The appellant was assessed as being suitable for an order with a curfew requirement and a rehabilitation activity requirement.
24. When sentencing, the judge recorded that both Mr Angell and the appellant fell within the high culpability of the fraud guidelines because there was significant planning over a significant period of time and a large number of victims. They played different roles but were both at the heart of the operation.
25. There had been a submission that if sales were approximately £50,000 then the offence was a Category 3 for the purposes of the offence-specific guideline with a starting point of three years but the judge was satisfied the figure was higher. When the veterinary costs were added to the figure the offence fell within Category 2 with a starting point of four years. The judge increased the starting point by six months because of the effects on the victims set out in the victim personal statements. There was a further upward increase to reflect the other offending on the indictment and the fact that the appellant

had lied about being a veterinary nurse, which was, said the judge, a cruel deceit and justified a further three month increase. That gave a total sentence of five years (60 months). The judge reduced the sentence by eight months to reflect that the appellant had no previous convictions, had shown remorse, had mental health difficulties and had a nine-month-old child. That gave a sentence of 52 months. With a discount of 15 per cent that gave a sentence of 44 months.

Events after sentence

26. It appears that the child had been brought to court by Mr Angell and the appellant and after sentencing the child was taken home by the appellant's mother. Either no arrangements had been made for the care of the child, or counsel was told that the child would be cared for by the appellant's mother. In any event the child was cared for by the appellant's mother but there were issues with feeding the child and in the end the child was reunited, as already indicated, with the appellant in prison in August 2023.
27. There are a number of further reports which are now available to us which were not available to the judge. A prison report dated 29 January 2024 showed that the appellant was being cared for on the Mother and Baby Unit with her child. The arrangement was to last until the child was originally going to be 18 months but an extension until two had been received. The recommendation was that if possible the child should remain with the appellant.
28. A prison report dated 25 March said that the appellant had gained enhanced prisoner status and received nine positive comments.
29. A psychological report from Laura Jacobs dated 9 June 2024 was obtained. That showed that while the appellant had benefitted from provisions provided to her by the Mother and Baby Unit, prison was distressing for her and was likely to have caused harm both to her

and the child over the short and long term. Separation had had a significant negative event. There would be negative outcomes for both related to behavioural development and emotional problems. The appellant was also diagnosed as suffering significant psychological distress, a mild level of depressive symptoms and a mild level of generalised symptoms. The appellant was taking medication which supported the management of those conditions. The appellant reported significant complex trauma symptoms which were consistent, so Miss Jacobs said, with a complex post-traumatic stress disorder following childhood abuse and other issues. A trauma processing intervention was recommended to help alleviate those problems.

30. We admit the updated prison reports and psychological reports as fresh evidence pursuant to section 23 of the Criminal Appeal Act. They were not available at trial because they post-date sentence. They are apparently credible reports and they relate to the grounds of appeal relevant to the child.

This appeal

31. Miss Woodrow, to whom we are grateful for her helpful written and oral submissions, relied on four main grounds of appeal. First, the judge had failed to properly consider and/or reflect at the sentencing upon the child and the appellant. Secondly, fresh evidence demonstrated that the judge had failed to take into account mental health issues. Thirdly, the judge had failed properly to reflect the cumulative impact of the mitigating circumstances. And fourthly, there was a failure to consider and reflect on the matters set out above which amounted to a breach of Article 8 of the European Convention on Human Rights.
32. An issue had been raised in earlier grounds of appeal about the amount of money that had been made by the appellant. In our judgment the judge was entitled to take the starting

point that he did for the sentencing. It was agreed that the conspiracy fell within high culpability A. The judge did not give a figure for loss intended but Category 2 covers a range from £100,000 to £500,000. It is apparent from all the material and analysis that was carried out that the figure of £233,000 was a figure about which the judge could be sure. The judge was entitled to take the starting point and increase it because of the impact on the victims and increase it further because of the aggravating features.

33. As far as mitigation is concerned, in our judgment it is not necessary to confront the specific issues of the mental health disorder and whether that would of itself have justified more of a discount than the judge gave it. That is because in the light of the evidence which is now before us, it is apparent that unless the appellant's sentence is reduced to a sentence of, at the most two years eight months, the appellant and the child will be separated and the child will be put into foster care.
34. In *R v Petherick* [2013] 1 WLR 1102 it was confirmed that interference with family life may mean that a custodial sentence which is otherwise proportionate can become disproportionate. Relevant principles were summarised in *R v Cheeseman* [2020] EWCA Crim 794 at paragraph 21 and it was noted that article 8 of the European Convention on Human Rights reflected existing case law and good sentencing practice in the courts in England and Wales. It was noted that the more serious the offence the less likely it is that imprisonment will be held to be disproportionate and that where custody cannot proportionately be avoided the effect of children or other family members might afford grounds for mitigating the length of sentence. If it does then the degree of mitigation is a matter for the court.
35. In the light of all the information which is now before us, in our judgment it is appropriate to reduce the sentence imposed on the appellant, not because the original

sentence was not justified, but because the interests of the child and the fact that the child will end up in foster care outweigh the factors that justified the length of the sentence that was originally imposed.

36. In these circumstances we will allow the appeal to the extent that we reduce the sentence of 44 months to a prison sentence of two years and eight months. On the figures calculated, and checked in court, that will mean that there is the earliest release date of 5 September 2024. To that extent this appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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