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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202301967/A4
[2023] EWCA Crim 964



Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 28 July 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE JEREMY BAKER

SIR ROBIN SPENCER

REX

V

JAMIESON GREEN MARSHALL

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MS B BRASOVEANU appeared on behalf of the Appellant .
MS C PICARDO appeared on behalf of the Crown.

J U D G M E N T

SIR ROBIN SPENCER:

1. On 16 March 2022 in the Crown Court at Nottingham, the appellant, who is now 26 years old, was sentenced by Mr Recorder Sprawson for an offence of dangerous driving. The appellant had pleaded guilty in the Magistrates' Court 16 months earlier, on 11 November 2020, and had been committed to the Crown Court for sentence. The Magistrates imposed an interim disqualification from driving, pursuant to section 26 of the Road Traffic Offenders Act 1988. However, an interim disqualification can only last for a maximum of 6 months: see section 26(4) of the Act. Regrettably, that provision was not drawn to the attention of the Recorder. It is a trap for the unwary. He proceeded on the basis that the disqualification he went on to impose would run from the date when the order for interim disqualification was made 16 months earlier.
2. The problem came to light much later and prompted this application for leave to appeal and for an extension of time within which to appeal. The matter has been referred to the Full Court by the Registrar. We grant the necessary extension of time, and we grant leave to appeal.
3. For the offence of dangerous driving the Recorder imposed a sentence of 10 months' imprisonment, suspended for a period of 18 months, with a rehabilitation activity requirement for 20 days and an electronically monitored curfew for 2 months. The Recorder imposed a disqualification from driving for 30 months, which he said would begin to run from the date when the interim disqualification was imposed, together with a mandatory order for a re-test. The problem was that the interim disqualification had been imposed some 16 months earlier and by law, as we have indicated, only 6 months of the

interim disqualification could count towards the period of 30 months' disqualification.

This unforeseen consequence was only discovered by the appellant when he applied recently for his re-test with a view to regaining his licence.

4. Before addressing the solution to the problem which has arisen, we need to say a little more about the procedural history of the case which explains why there was such a long delay before sentencing in the Crown Court. This history has brought to light several more traps for the unwary.
5. The delay arose from the fact that the appellant was also facing trial in the Magistrates' Court for offences of common assault and criminal damage. On 12 December 2020, a judge in the Crown Court purported to remit the appellant to the Magistrates' Court, despite the committal, so that all matters could be dealt with together at that court. In fact, the Crown Court had no power to remit an offender to the Magistrates' Court in such circumstances where the offender had been duly convicted in the Magistrates' Court and was properly before the Crown Court having been committed for sentence. All this was happening just around the time when the Sentencing Act 2020 was about to come into force, but section 25A of the Act, which would have permitted such a course, was not in force at the relevant date. We are satisfied that the purported remittal to the Magistrates' Court was therefore a nullity, with the consequence that the offence of dangerous driving remained properly in the Crown Court for sentence pursuant to the earlier committal.
6. In the event, 9 months later, on 24 August 2021, the prosecution offered no evidence on the offences for which the appellant was facing trial in the Magistrates' Court. The

Magistrates purported, however, to commit the appellant to the Crown Court once again for sentence for the offence of dangerous driving. Technically that purported committal was also a nullity because the offence of dangerous driving was already before the Crown Court for sentence for the reasons we have explained.

7. To complicate matters further, on that same date, 24 August 2021, pursuant to section 20 of the Sentencing Act 2020, the Magistrates also purported to commit the appellant to the Crown Court for sentence for an offence of failure to surrender to custody, contrary to section 6(1) of the Bail Act 1976. However, that purported committal for sentence was also unlawful and a nullity because the appellant had pleaded guilty to the offence before 1 December 2020 and thus before the Sentencing Act 2020 came into force. In those circumstances, the appellant could only be lawfully committed for sentence to the Crown Court under the previous provisions in section 6(6) of the Bail Act 1976, and only if the circumstances of the offence were such that greater punishment should be inflicted for the offence than the court had power to inflict. The maximum sentence was 3 months' imprisonment. This provision could therefore not apply because the appropriate sentence was bound to be far less than 3 months.
8. The Recorder, in the end, dealt with the Bail Act offence at the same time as the offence of dangerous driving. He imposed a concurrent suspended sentence of 7 days' imprisonment. Regrettably, that too was an unlawful sentence because the minimum period of imprisonment for a suspended sentence is 14 days. More fundamentally, because the committal for sentence for that offence was a nullity, the sentence was unlawful in any event.

9. We are extremely grateful to the case lawyer in the Criminal Appeal Office for identifying all these technical problems. We are also grateful to Ms Coverley, on behalf of the appellant, and to Ms Picardo, on behalf of the Crown, for their written submissions, and we are grateful to Ms Picardo on behalf of the Crown and Ms Brasoveanu, standing in this morning for Ms Coverley, for their oral submissions. It is clear to us that they have expended a good deal of time and effort in careful consideration of the labyrinthine problems that have arisen in this case.
10. When the error in relation to the interim disqualification came to light Ms Coverley checked with the Crown Court that the Recorder had indeed intended that the disqualification should end 30 months after the interim disqualification was imposed. The Recorder confirmed that this had been his intention. It was, of course, far too late by then to correct the error under the slip rule.
11. Because the issue in the appeal is so narrow it is unnecessary to set out the facts of the dangerous driving. Suffice it to say, it was a serious case of its kind which thoroughly justified the custodial sentence of 10 months' imprisonment. There was powerful mitigation, however, which enabled the Recorder to suspend the sentence. In passing sentence, the Recorder said:

“You will be disqualified from driving for a period of thirty months and until you pass an extended driving test...”

12. A little later, in explaining this to the appellant, the Recorder said:

“You are now disqualified. Your ban will start on your interim disqualification date; it still has a little while to run as I understand

it.”

13. It is important to emphasise that there is no power to backdate the commencement of a driving disqualification. The disqualification runs from the date it is imposed.

14. As for interim disqualification, section 26(4) of the 1988 Act provides:

“... an order under this section shall cease to have effect at the end of the period of six months beginning with the day on which it is made, if it has not ceased to have effect before that time.”

15. Section 26(12) provides:

“Where on any occasion a court deals with an offender—
(a) for an offence in respect of which an order was made under this section, or
(b) for two or more offences in respect of any of which such an order was made,
any period of disqualification which is on that occasion imposed under section 34 or 35 of this Act shall be treated as reduced by any period during which he was disqualified by reason only of order made under this section in respect of any of those offences.”

16. It follows that it is unnecessary for the court to order or direct that the period of interim disqualification shall count towards the eventual disqualification. That happens automatically as an administrative exercise, as this Court explained in R v Copper [2018] EWCA Crim 1958.

17. We accept that the Recorder did intend to impose a period of disqualification which would end 30 months after 11 November 2020 when the interim disqualification had been imposed; that is to say, expiring on 10 May 2023. The period of disqualification which he actually imposed, with only 6 months deducted for the interim disqualification,

would not expire until 15 March 2024. We shall therefore allow the appeal and substitute a period of disqualification which achieves what the Recorder intended.

18. Counsel have diligently calculated that the precise period which the Court should substitute as the order for disqualification is 19 months and 25 days. We therefore allow the appeal, we quash the disqualification of 30 months and substitute a disqualification of 19 months and 25 days. The order for a re-test, which is mandatory, remains intact. To that extent the appeal against sentence is allowed.

19. That leaves the question of the unlawful sentence for the Bail Act offence. It might be regarded as a purely technical error as the sentence was made concurrent. However, we are urged by Ms Picardo on behalf of the Crown in her written submissions, and it is agreed on behalf of the appellant, that it is important to correct the error for otherwise it might be necessary for the matter to be dealt with afresh by the Magistrates' Court, in view of the fact that the committal sentence was unlawful. That would involve unnecessary further expense and delay.

20. The Registrar has helpfully suggested a way of dealing with the matter practically and economically which we propose to adopt.

21. My Lords, Dingemans LJ and Jeremy Baker J, will reconstitute this Court as a Divisional Court of the King's Bench Division to quash the unlawful committal. To this end, they will grant permission to apply for judicial review, dispense with the issue and service of the judicial review claim form, abridge all necessary time limits, and quash the

committal for the Bail Act offence. As the Divisional Court, they will direct that Jeremy Baker J will sit as a District Judge, pursuant to section 66 of the Courts Act 2003, and proceed to sentence as a Magistrates' Court for the Bail Act offence, to which the appellant had pleaded guilty in the lower court.

22. LORD JUSTICE DINGEMANS: This Court will now reconstitute itself as a Divisional Court. My Lord, Sir Robin Spencer, is authorised to sit in the Court of Appeal (Criminal Division) and Crown Court in retirement, but not the Divisional Court, so I will ask him to leave the Bench briefly while we reconstitute ourselves.

(Sir Robin Spencer withdrew from the Bench and the Court reconstituted)

23. LORD JUSTICE DINGEMANS: We have now reconstituted ourselves as a Divisional Court. We will grant permission to apply for judicial review of the unlawful committal for sentence. We will dispense with the issue and service of the judicial review claim form. We will abridge all times necessary, and we will now hear the application for judicial review, and we will quash the unlawful committal. The final thing that we will now do is direct that Jeremy Baker J will sit as a Magistrate, as already indicated by my Lord, Sir Robin Spencer, pursuant to section 66 of the Courts Act.

(The Court heard submissions from counsel)

24. MR JUSTICE JEREMY BAKER: In view of the submissions that have been made, I will resentence for the Bail Act offence simply by imposing a conditional discharge for a

period of 6 months The conditional discharge will run from today.

25. LORD JUSTICE DINGEMANS: Let me get Sir Robin Spencer back and we can all finish.

(Sir Robin Spencer returned to form the constitution)

LORD JUSTICE DINGEMANS: Thank you both very much for your assistance.

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

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