Neutral Citation Number: [2024] EWCA Crim 1537

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT TRURO
HHJ LINFORD 50AC0152124

CASE NO 202403604/A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 19 November 2024

Before:

LORD JUSTICE SINGH

MRS JUSTICE McGOWAN

MR JUSTICE SWIFT

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REX
V
AIDEN CHRISTOPHER DREW

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MS G WHITE appeared on behalf of the Solicitor General.
MR M MORTIMER appeared on behalf of the Offender.

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

Introduction

1. This is an application by His Majesty's Solicitor General for leave, under section 36 of the Criminal Justice Act 1988 ("the 1988 Act"), to refer sentences to this Court on the ground that they were unduly lenient.

2. On 7 August 2024, in the Crown Court at Plymouth, the respondent offender pleaded guilty upon re-arraignment to two offences. On 10 September 2024, in the Crown Court at Truro, the offender was sentenced by HHJ Robert Linford as follows: on count 1, an offence of controlling or coercive behaviour in an intimate relationship, contrary to section 76(1) and (11) of the Serious Crime Act 2015, there was a sentence of 2 years' imprisonment suspended for 2 years, apparently with a concurrent community order for 2 years; on count 4, which was an offence of intentional strangulation, contrary to section 75A of the Serious Crime Act 2015, there was a concurrent sentence of 18 months' imprisonment suspended for 2 years. The judge appears to have intended to pass a suspended sentence order of 2 years' imprisonment suspended for 2 years. He attached the following requirements to that order - a programme requirement of 30 days and a rehabilitation activity requirement of up to 10 days.

3. As we have mentioned, there appears to have been reference, incorrectly, to there being a concurrent sentence of a community order for 2 years. As we understand it and for the avoidance of doubt, we make clear the sentence in fact passed was clearly a suspended sentence order in the terms that we have described.

The Facts

4. The facts can be taken for present purposes from the Final Reference, which is agreed so far as material. In summary, the respondent was in a relationship with the victim for a period of approximately 6 years. They have two children together, a son aged 4 and a daughter, now aged 2. The indictment period was 1 January 2018 to 25 March 2024. During their relationship, from the very beginning, the offender subjected the victim to a protracted campaign of coercive and controlling behaviour and repeated physical assaults. This behaviour included restricting her access to doctors and not allowing her to work, so that she was financially dependent upon him. She was not allowed to have her own mobile phone or social media accounts and was isolated from her family.

5. The offender strangled and bit his victim on multiple occasions, so numerous that she was not able to recall the exact details of them all. Some of these are documented through photographs of injuries sustained by her. These depicted injuries sustained following being strangled by the offender on multiple occasions between 2021 and 2023. The offender punched her, and photographs of significant bruising and bite marks were also provided. The offender threatened her with violence, including threatening her with a knife and pouring bleach over her head.

6. The facts are set out in more detail in the Final Reference but, for present purposes, it will suffice to give a flavour of events if we turn to the description of what happened on 24 March 2024, which is the subject of the separate offence on count 4. The victim was at home in the afternoon using her phone, when the offender suspected that she was sending messages to other people. He accused her of cheating on him. She asked him to

leave but he would not. She then tried to leave herself but he blocked her exit. He then held her back from getting to the door. They argued and the offender put his hands around her neck. He squeezed tight, so that she could not breathe. She estimated that he did this for about 10 seconds. His face was red with anger. He let go and she said that she was going to call the police. The offender's response was to grab her around the neck again and strangle her, this time for longer, about 20 seconds. The offender then left the house, telling her that he was going to find someone else. The offender walked off but he returned about half-an-hour later. He started banging the front window with his hand, he was screaming names at her, telling her that he was going to burn the house down. As he said this he held up his lighter. She told him that she was calling the police and showed him her phone to prove it. The offender ran away. The offender then sent her several threatening text messages, stating he hoped that she was raped and that someone would kill her.

7. The offender handed himself into the police station three days later. When interviewed by the police in relation to the events of 24 March, he said that the victim was the aggressor in the incident and any injuries she had sustained occurred when he tried to defend himself. In relation to the earlier matters, he said he was always acting in self-defence. He said that he did not recall biting her, but may have done so if she was attacking him. He then said that she had sex with other men while he was not in the property and so the injuries to her must have been caused during those incidents. He said that he had never seen the injuries shown in the photographs. In terms of the two black eyes, they must have been caused by others during a fortnight period when he had left the family home.

The Sentencing Process

8. The respondent was born on 29 January 1994 and was aged 30 at the time of both conviction and sentence. He was aged between 23 and 30 during the offending period from the start of 2018 to March 2024. The offender has 12 previous convictions recorded for a total of 21 offences, between 30 November 2009 and 8 December 2023. Specifically, in relation to violence, in November 2010, the offender was convicted of battery. In December 2015, he was sent to prison for 2 months for an offence of battery and made subject to a restraining order. That offence was committed against a former partner. This order was breached in August 2016 and he was fined. The offender was last before the courts in January 2024 for driving matters. He was made the subject of a community order for 12 months for driving a motor vehicle with a concentration of a controlled drug of above the prescribed limit. His community order was operational at the time of the commission of the offence which is the subject of count 4.

9. The offender attended Bodmin Magistrates' Court on 13 June 2024. No pleas were indicated although, as the respondent's written submissions point out, a draft basis of plea was put forward. This was not acceptable to the prosecution. The case was allocated to the Crown Court. The offender was remanded on conditional bail which prohibited contact with the victim. On 9 July 2024, an indictment containing three counts was uploaded to the system. On 25 July 2024, a four-count fully particularised indictment was preferred. The offender was arraigned on this indictment.

10. On 26 July 2024, there was a plea and trial preparation hearing ("PTPH") at the Crown

Court at Truro. The offender entered not guilty pleas to all four counts. A little more detail is provided in the respondent's submissions. The judge was of the opinion that the matter was unlikely to proceed to trial. The judge invited counsel, who was Mr Mortimer at the time, to set out the issues, it being stated that one of the main issues was the respondent's potential imprisonment. The judge then, without request, indicated to the respondent that, if pleas to counts 1 and 4 were forthcoming, the sentence would be suspended. From the dock the respondent indicated that he did wish to change his plea. The judge informed the respondent that he must only plead guilty if he was indeed guilty of the offence. We have seen a transcript of the hearing on 26 July 2024. A flavour of what occurred can be taken from the following passage where the judge stated:

> "All right, then I, I've read, it'll be obvious from what I've said, the only thing I haven't seen is this man's previous convictions, all right? I am prepared to give you the one indication that the law does not permit me give [sic], that in my view a plea of guilty at this stage converts the case from being immediate to suspended. Now, having said that, having said that, I'm not permitted to give that indication, but having said that, there's no way he should be pleading guilty unless he is guilty. But if he is guilty, stop worrying about the outcome, because I'll suspend it. If he's not, he has his trial. "

11. Returning to the procedural chronology. At the hearing on 26 July 2024, prosecution counsel indicated that full facts guilty pleas to counts 1 and 4 were likely to be considered acceptable. The PTPH was therefore adjourned for this to be reviewed. On 7 August 2024, there was a further PTPH in the Crown Court at Plymouth. On this occasion, as we have mentioned, the offender was re-arraigned and entered guilty pleas on counts 1 and 4. Still however, no basis of plea was advanced. Again, an indication was given from the judge, although it was not sought by the defence, that there would not be an immediate sentence of imprisonment. Sentence was then adjourned for the preparation of a

pre-sentence report. The sentencing hearing took place in the Crown Court at Truro on 10 September 2024. Counts 2 and 3 were ordered to lie on the file. The judge reiterated his previous indication that he would pass a suspended sentence. The judge had, by that stage, a Prosecution Sentencing Note and a pre-sentence report prepared by the Probation Service. There were no victim impact statements but the victim set out the impact of the offending on her in two passages of her witness statement which we have read.

12. The maximum sentence for each of the relevant offences is 5 years' imprisonment. There are Definitive Guidelines issued by the Sentencing Council in relation to most but not all of the matters which arise. There is a Definitive Guideline on controlling and coercive behaviour in an intimate family relationship, to which we will return. There are also guidelines in relation to domestic abuse, totality, the imposition of community and custodial sentences and reduction of sentence for guilty pleas. There is currently no Definitive Guideline available for the offence of intentional strangulation. However, guidance has been given by this Court, in particular in the judgment in *R v Cook* [2023] EWCA Crim 452; [2023] 4 WLR 71.

13. One particular passage in the relevant guidelines deserves particular citation at this stage. This is the guideline on Overarching Principles: Domestic Abuse, which states at paragraphs 7 and 8:

> "The domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship. Additionally, there may be a continuing threat to the victim's safety, and in the worst cases a threat to their life or the lives of others around them.
>
> Domestic abuse offences are regarded as particularly serious

> within the criminal justice system. Domestic abuse is likely to become increasingly frequent and more serious the longer it continues, and may result in death. Domestic abuse can inflict lasting trauma on victims and their extended families, especially children and young people who either witness the abuse or are aware of it having occurred. Domestic abuse is rarely a one-off incident and it is the cumulative and interlinked physical, psychological, sexual, emotional or financial abuse that has a particularly damaging effect on the victims and those around them."

14. Like the sentencing court, we have seen a pre-sentence report dated 19 August 2024. To some extent, this report was drafted on the understanding which the court had indicated that the court would consider imposing a suspended sentence order. It is important, however, to note that under the heading "Risk of serious harm" the report stated that the nature of the current offences evidenced a risk of harm to known adults, specific to the offender's ex-partner. The nature of this risk is physical and psychological harm due to his use of controlling and abusive behaviours within intimate relationships. The impact of this behaviour will be serious and long lasting and includes the risk of serious injury due to the strangulation offence. The report assessed the level of harm as "high", although it did not assess the risk as imminent, since the respondent no longer had contact with the victim or was living in the family home. The report also assessed that there was a risk of harm to members of the public, specifically females with whom the offender forms intimate relationships in the future. Lastly, there was a risk to children who reside in a house with the respondent, including his own children. The nature of this risk is physical and psychological harm due to the risks associated with any child growing up in a household where domestic abuse is present. The author of the report was mindful that the offender's two young children had been present in the house when a lot of the abuse occurred - they both being under the age of 5, with their young ages increasing their

vulnerability. The author was also mindful from past risk assessments that children had been present at the time of the assault the offender had committed in a similar setting in 2015.

15. In his sentencing remarks the judge said that the offence in count 1 fell into category 1A of the Definitive Guideline. The starting point was therefore 2½ years' imprisonment, with aggravating features that would be increased to 3 years. The judge took the view that "in reality" the respondent had pleaded guilty at the earliest possible opportunity. It was his pleas of guilty that saved him from the imposition of an immediate sentence of imprisonment. Accordingly, the judge passed a sentence of 2 years' imprisonment on count 1, suspended for 2 years on the terms we have set out earlier. There would be a concurrent sentence in relation to count 4, of 18 months' imprisonment again suspended for 2 years.

Submissions on behalf of the Solicitor General

16. On behalf of the Solicitor General, Ms White makes the following submissions. First, it was, and is common ground, that the offence on count 1 fell into category 1A and so the recommended starting point was 2½ years' custody with a range of 1 to 4 years.
Ms White submits that the judge failed sufficiently to adjust the sentence upwards in that range to take account of the combination of aggravating features, as a result of the multiple high culpability factors and additional aggravating features. Such an adjustment would result in a sentence close to the top of the category range, something in the region of 4 years' custody. Secondly, Ms White submits that in relation to the offence on count 4, the judge failed to take into account the guidance provided in *Cook*. That recommends

a starting point of 18 months' custody and states that ordinarily that will be a sentence of immediate custody. The judge did not aggravate the sentence to take account of the presence of multiple aggravating features again. Thirdly, although concurrent sentences were in principle appropriate, the judge did not sufficiently increase the sentence on the lead offence of count 1 to take account of the fact that there was an additional offence and so to impose a sentence which reflected the totality of the offending. Fourthly, the judge afforded too much credit for the offender's guilty pleas in circumstances where a full one-third discount was not justified. Fifthly, had the sentence been sufficiently aggravated and the appropriate amount of credit afforded, the sentence would have been outside the range of sentences where suspension was available, since it would have had to be more than 2 years' custody. Sixthly, even if an overall sentence of 2 years was appropriate, punishment for the seriousness of these offences could only lead to the imposition of an immediate custodial sentence.

17. In relation to the offence on count 1, Ms White accepts that the judge correctly identified a starting point for a single offence of 2½ years' custody. This was due to the prolonged and persistent nature of the offending, the use of multiple methods of controlling behaviour and the fact that the victim was caused a fear of violence on many occasions. But she submits that the presence of so many aggravating factors rather simply one meant that the starting point should have been towards the top, if not actually at the top of, the range, in other words 4 years' custody.

18. Turning to the other offence of intentional strangulation, Ms White submits that, even taken in isolation, the starting point for this offence should have been 18 months' custody

(see *Cook* at [16] in the judgment given by William Davis LJ).

19. So far as the guilty pleas are concerned, Ms White submits that the judge was wrong to say in his sentencing remarks that the offender had pleaded guilty at the earliest possible opportunity. The chronology of proceedings confirms that in the Magistrates' Court he entered no plea, the case was then allocated to the Crown Court. The judge did not properly explain why he took the view the offender was entitled to the full discount of one-third rather than the usual discount of 25 per cent for those who plead guilty at the PTPH stage.

20. Further, Ms White submits that the judge made no reference to the factors which tend to for or against suspension of a sentence, as set out in the Definitive Guideline on the Imposition of Community and Custodial Sentences. It is apparent that the judge had given the offender an indication at an earlier stage that he would not go immediately to prison if he pleaded guilty. Having given such an indication, he then passed a suspended sentence order but did not sufficiently explain which factors tending towards suspension were present and why the seriousness of the offending did not require immediate imprisonment.

21. Moreover, it has to be noted that the procedure which the judge adopted did not accord with that set out by this Court in *R v Goodyear* [2005] EWCA Crim 888; [2005] 2 Cr App R 20 in the judgment of Lord Woolf CJ. As this Court explained in that judgment, even an indication as to the maximum sentence which does accord with the *Goodyear* process does not prevent the Law Officers from applying for Reference to this Court.

22. Finally, Ms White submits that there were in this case no mitigating features available to the offender save for his guilty pleas.

Submissions on behalf of the Respondent

23. On behalf of the respondent Mr Mortimer, who did not appear at the sentencing hearing but had appeared at earlier hearings on behalf of the defence, makes the following principal submissions. First, the judge gave the respondent a genuine belief that he would not be imprisoned. Secondly, the judge correctly aggravated the offence of controlling and coercive behaviour. Thirdly, the judge correctly handed down a sentence of 18 months in relation to the offence of strangulation, correctly making the offence of controlling and coercive behaviour the lead offence. Fourthly, the judge was correct to suspend the sentence. Fifthly, the judge was correct to apply a one-third discount for the guilty pleas in the light of the particular procedural history of this case.

24. Mr Mortimer accepts that the judge may not have complied with the procedure laid down in *Goodyear*, but submits that the judge's indication was in the interests of good case management. At the hearing before us, he described it as an example of "aggressive case management". He submits that the judge no doubt had in mind the state of the prison estate in this country at present and also the backlog of cases in the Crown Court.

25. Mr Mortimer also accepts that the respondent was advised that he should only plead guilty if he was in fact guilty and that the matter could be referred to this Court by the Law Officers. Nevertheless, he submits the respondent will have been left with a legitimate expectation that he would receive a non-immediate custodial sentence and so an uneasiness will be created if the respondent now has taken away from him something of which he was assured.

26. Mr Mortimer accepts that the judge correctly identified the starting point for the single offence of coercive and controlling behaviour of 2½ years' custody, noting that it fell into category 1A. Mr Mortimer observes that it is clear that the judge did increase that to take account of aggravating features, because he took a notional starting point of 3 years' custody. Further, Mr Mortimer submits that, while the judge may not have referred to *Cook* expressly, it appears to have been followed. We note that it was cited to him, both in the Sentencing Note by the prosecution and at the sentencing hearing, of which we have seen the transcript. *Cook* recommends a starting point of 18 months' custody, which is what the judge in fact imposed. Mr Mortimer also submits that the date of the offence of strangulation in count 4 was 24 March 2024, it therefore falls within the offending period covered by count 1, which ends on 25 March 2024. There is therefore an overlap, he submits, such that to have further aggravated sentence for strangulation would have led to double counting.

27. Mr Mortimer submits that given the judge's indications as to sentence, no mitigation was put forward about the sentencing hearing by Mr Murray, who then appeared for the respondent. In effect therefore, Mr Mortimer now feels compelled to put forward matters in mitigation which were not previously put to the Crown Court. He submits that these go both to the appropriateness of suspending the custodial sentence by reference to the Overarching Guideline on Imposition of Community and Custodial Sentences and in relation to the length of the appropriate sentences passed. In particular, Mr Mortimer submits in writing that there was, and is, strong personal mitigation available to the respondent. This includes the impact on others, particularly on two young children, who are now aged 2 and 5 respectively. He submits that a custodial sentence would further

lengthen the time in which the respondent will not see his children and this will no doubt have a negative effect on them, at their young age.

28. Mr Mortimer also submits that the discount of one-third for the guilty pleas was appropriate in this case given the unusual procedural history. He submits that the respondent did attempt to offer a plea of guilty on a basis of plea at the first appearance before the Magistrates' Court but it was not possible for prosecution to consider this on that occasion. This is why there was no indication as to plea at that stage. Further, he submits that the judge's indications as to sentence, which were unsolicited, in particular, at the PTPH on 26 July 2024, meant that in a sense, in effect, the clock started to run again. This led to the procedural turn which was taken in the Crown Court and which we have described earlier.

Our Assessment

29. The principles to be applied on an application under section 36 of the 1988 Act are well established and were summarised in *Attorney-General's Reference (R v Azad)* [2021] EWCA Crim 1846; [2022] 2 Cr App R(S) 10 at [72], in a judgment given by the Chancellor of the High Court as follows:

> "1. The judge at first instance is particularly well placed to assess the weight to be given to competing factors in considering sentence.
>
> 2. A sentence is only unduly lenient where it falls outside the range of sentences which the judge at first instance might reasonably consider appropriate.
>
> 3. Leave to refer a sentence should only be granted by this court in exceptional circumstances and not in borderline cases.

> 4. Section 36 of the 1988 Act is designed to deal with cases where judges have fallen into 'gross error'."

30. In giving the judgment of this Court in the seminal case of *Attorney-General's Reference No 4 of 1989* (1990) 90 Cr App R(S) 366 at 379, Lord Lane CJ emphasised, as this Court has done ever since, that its role is not simply to retake the sentencing decision as if it were the sentencing court, that mercy is a virtue and does not necessarily mean a sentence was unduly lenient.

31. We should also mention *Attorney-General's Reference No 132 of 2001 (Bryn Dorian Johnson)* [2002] EWCA Crim 1418; [2003] 1 Cr App R(S) 41, in which the judgment of this Court was given by Potter LJ. At paragraph 24, he said:

> "... there is a line to be drawn... between the leniency of a sentence in any given case and a sentence which is 'unduly' lenient, in the words of the statute... The purpose of the system of Attorney-General's References in particular cases seems to us to be the avoidance of gross error, the allaying of widespread concern at what may appear to be an unduly lenient sentence, and the preservation of public confidence in cases where a judge appears to have departed to a substantial extent from the norms of sentencing generally applied by the courts in cases of a particular type."

32. Applying those principles to the present case, in essence we accept the submissions which have been made on behalf of the Solicitor General. The fundamental difficulty which occurred in this case is that the judge did not follow the procedure which should be followed when giving an indication of sentence. That procedure was set out by this Court in *Goodyear*, and is now governed by the Criminal Procedure Rules 2020, at rule 3.31, and the Criminal Practice Direction 2023, at paragraph 9.4.1 to 9.4.9. As the Practice

Direction makes clear at paragraph 9.4.4, a judge should only give a *Goodyear* indication if one is requested by the defendant, although the judge can, in an appropriate case, remind the defence advocate of their entitlement to seek an advance indication of sentence. As the Practice Direction states at paragraph 9.4.2, an indication may be sought only when (a) the plea is entered on the full facts of the prosecution case or (b) a written basis of plea is agreed by the prosecution or (c) if there an issue between the prosecution and the defence, this is properly identified and the judge is satisfied that the issue is not material and does not require a *Newton* hearing to resolve it. As the Practice Direction goes on to state in paragraph 9.4.3, any advance indication given should be of the maximum sentence if a guilty plea were to be tendered at that stage of the proceedings only. The judge should not indicate the maximum possible sentence following conviction by a jury after trial.

33. Further, as Lord Woolf CJ made clear in *Goodyear* itself at paragraph 65, a defence advocate is personally responsible for ensuring that his client fully appreciates that (a) he should not plead guilty unless he is guilty and (b) any sentence indication given by a judge remains subject to the entitlement of the Law Officers to refer an unduly lenient sentence to the Court of Appeal. Again, at paragraph 71, Lord Woolf said that the discretion of the Attorney General to refer a sentence would be wholly unaffected by the advance sentence indication process.

34. This brings us to the second error into which we consider the judge fell. It was clearly wrong to give full credit for the guilty pleas in circumstances where those pleas were not entered at the earliest possible stage; in fact, there was a not guilty plea entered to all four

counts, even at the PTPH stage on 26 July 2024. The PTPH was then adjourned so that prosecuting counsel could review the situation, having indicated the full-facts guilty pleas to counts 1 and 4 were likely to be considered acceptable. Guilty pleas to those two counts were entered on 7 August 2024 but still no basis of plea was given. Sentence was adjourned for the preparation of a pre-sentence report until 10 July 2024. Having said in his sentencing remarks that the notional sentence after trial would have been one of 3 years' imprisonment, it may be the only way in which the judge could arrive at a sentence which could be suspended was to give a full one-third discount for the guilty pleas. This may explain why he chose that course. But be that as it may, we turn to the third error which occurred in this case.

35. The judge correctly said that the starting point for a single offence on count 1 would have been 2½ years' custody. However, as has been submitted on behalf of the Solicitor General, a considerable uplift from that starting point was then required, both to reflect the aggravating features of count 1 but also to reflect the fact there was a second count, for which there had to be a sentence passed. The appropriate sentence simply for count 4 would have been one of 18 months' custody, as a minimum, even before taking account of aggravating features. As the Solicitor General accepts, there is nothing wrong in principle in making the two sentences concurrent, but once that had been done the total sentence had to reflect the true gravity of the overall offending. It was important to avoid double counting. Nevertheless, in our judgment, an increase from 2½ years to 3 years' custody was insufficient in the circumstances of this case.

36. In our judgment, the minimum sentence that could reasonably have been passed after

trial, in total, would have been one of 40 months, that is 3 years and 4 months' imprisonment. A longer sentence could have been justified but we bear in mind all that has been said on the respondent's behalf and that he has begun to serve the sentences that were in fact passed on him. After giving appropriate credit for the guilty pleas which would have been no more than 25 per cent, that leads to a sentence of 30 months, that is 2½ years' imprisonment. That is the sentence which should be imposed on count 1. We do not consider it necessary to alter the sentence on count 4 of 18 months, but it must be made immediate although concurrent.

Conclusion

37. For the reasons we have given, we grant the Solicitor General's application for leave to refer these sentences under section 36 of the 1988 Act, we quash the sentences imposed by the Crown Court and substitute the following sentences: on count 1, there will be a sentence of 2½ years' imprisonment; on count 2, there will be a concurrent sentence of 18 months' imprisonment. The starting date for those sentences will be the date when the respondent surrenders to custody. We will hear submissions as to the time and place where he should surrender to custody.

38. MS WHITE: My Lord, can I say the location has been identified as The Newquay Custody Suite. We understand that it is something in the region of 20 miles from where the offender resides in Bodmin. Its opening hours are until 6.00 pm.
39. LORD JUSTICE SINGH: Do you want to say anything about surrendering to custody?
40. MR MORTIMER: My Lady, my Lords, in relation to that matter, I note from the offender's previous convictions he does not have the ability to drive and therefore he will

be making his way there by public transport. I also note that the situation today particularly with the weather, so there may be some difficulties. Naturally he will be contacted forthwith in relation to that. I am a little concerned about the 6 o'clock closing of that police station.

(The Bench Conferred)

41. LORD JUSTICE SINGH: Can you assist us on what time the custody suite will open tomorrow morning?
42. MS WHITE: Eight o'clock tomorrow morning.
43. LORD JUSTICE SINGH: On that basis and bearing in mind what has been said about the possible conditions today and when the suite closes today, we are minded to make it tomorrow morning. If we said 10.00 am tomorrow morning, would that give him a reasonable opportunity to get there?
44. MR MORTIMER: Indeed, most grateful.
45. LORD JUSTICE SINGH: We will therefore order the respondent must surrender to custody at that suite which has been mentioned by 10.00 am on Wednesday 20 November 2024. May I check if there is anything else?
46. MS WHITE: No, unfortunately my DCS access is not operating now so I am just asking my learned friend to check whether there was a qualifying curfew on part of his bail condition but I do not believe there was, so nothing to raise in respect of that, so no other matters. Thank you.
47. LORD JUSTICE SINGH: Thank you both very much **(Pause)**. I am just told that we need to clarify the surcharge in the previous case has therefore increased to £190. I want to make that clear. For the record I make that clear, it is increased from what was imposed which I think was £156.

48. MS WHITE: It should have been £187 on the basis of a suspended sentence order. My understanding is it was £187 regardless, but the guideline appears to say, "suspended sentence order available to 6 months" would £187, an immediate custodial sentence of over 6 months is again £187.
49. LORD JUSTICE SINGH: Can I ask the Associate if that accords with what we understand. It may be this can be corrected under the slip rule but I just want to make sure if possible we get it right now **(Pause)**. We will specify £187 on that basis that that is what counsel have informed us of.
50. MS WHITE: Certainly that is what the guidelines suggest.

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Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk