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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT PLYMOUTH
(MR RECORDER GIBNEY) [50EL0015023]
Case No 2023/02724/A2
Neutral Citation Number: [2024] EWCA Crim 1596

Tuesday 10 December 2024

B e f o r e:

LORD JUSTICE HOLGATE

MR JUSTICE BRYAN

MRS JUSTICE THORNTON

R E X

- v -

LUKE PHILLIP EAMES

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Non-Counsel Application

APPROVED JUDGMENT

Tuesday 10 December 2024

LORD JUSTICE HOLGATE: I shall ask Mrs Justice Thornton to give the judgment of the court.

MRS JUSTICE THORNTON:

Introduction

1. The Applicant renews his application for leave to appeal against a suspended sentence order of 40 weeks' imprisonment, suspended for two years, with an unpaid work requirement of 100 hours; leave having been refused by the single judge. He also applies for an extension of time of 225 days in which to renew his application for leave to appeal against sentence.

Background

2. The background is set out in the Criminal Appeal Office summary and we do not repeat it here, save to say that the Applicant was automatically subject to notification requirements, pursuant to sections 80 - 92 of the Sexual Offences Act 2003, following convictions in 2015 for offences of possession, making, taking and distribution of indecent photographs of children, which is offending specified in Schedule 3 to the Act. As part of the notification requirements, the Applicant was obliged to provide an annual notification to the police. In 2022, that was due by 27 April. The Applicant did not do so until 4 July 2022.

Grounds of appeal

3. The proposed grounds of appeal, as drafted by the Applicant, are as follows:

(1) The Applicant represented himself at the hearing and contends that the judge did not give him the chance to speak.

(2) It was not the Applicant's intention to be late in registering, but a change of address and a period in temporary and unsuitable accommodation meant that he did not have all the paperwork together.

(3) The police had failed to remind the Applicant of his obligation to register, or he would have done so straight away.

(4) The Judge failed to take account of the difficulties the Applicant had had

with his mental health and the fact that as a result of his arrest he lost his employment.

(5) The Judge erred in placing the offence in category B2 under the guidelines; it should have been C3.

Analysis

4. The Recorder's sentencing remarks are brief. As well as those remarks, we have considered the transcript of the opening of the facts by the prosecution and the oral report from the Probation Service explaining the Applicant's diagnosis of autism.

5. We see no error in categorising the offending as B2 in the relevant guideline. The Applicant accepts that his action was deliberate; and there is an obvious risk of harm of police not knowing where he was, given the underlying offending. The starting point for B2 offending is 36 weeks' custody. The Applicant's previous notification breaches in 2015 and 2019, and his elusiveness with the Probation Service are aggravating features. His mitigation includes his diagnosis of autism and the oral report from the probation officer that the Applicant struggles to remember things. In this regard, we have taken account of the Sentencing Council Guidelines on sentencing offenders with mental disorders, developmental disorders, or neurological impairments.

6. It is apparent that the Recorder accepted that the Applicant was entitled to credit of 1/3 for his guilty plea, which leads to a sentence of 60 weeks' custody, before the application of credit reduced it to 40 weeks. The Applicant was also given an unpaid work requirement of 100 hours.

7. In our view, the sentence is not arguably manifestly excessive, given the repeated previous breaches and the Applicant's elusiveness in his dealings with the Probation Service, which are of obvious concern, and given that the purpose of the notification requirements is

to prevent and deter further offending. Given the view we have taken on the merits of the application, it is not necessary for us to consider the application to extend time.

8. Accordingly, the renewed application is refused.

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