

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.

Neutral Citation No: [2024] EWCA Crim 286

CASE NO: 202400398 A3

IN THE COURT OF APPEAL

CRIMINAL DIVISION



Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 14 March 2024

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE

MR JUSTICE GOOSE

and

HIS HONOUR JUDGE LICKLEY KC

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

REX
v
DARREN STANLEY FEVE

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

MR TOM LITTLE KC appeared on behalf of the Solicitor General
MR NICHOLAS de la POER KC appeared on behalf of the Offender

J U D G M E N T
(Approved)

THE VICE-PRESIDENT:

1. After a trial in the Crown Court at Kingston upon Hull before His Honour Judge Thackray KC and a jury, Darren Feve (“the offender”) was convicted of doing an act tending and intended to pervert the course of public justice.
2. On 8 January 2024 he was sentenced to 12 months' imprisonment, suspended for 12 months, with a requirement of 200 hours' unpaid work. His Majesty's Solicitor General believes that sentence to be unduly lenient. Application is accordingly made, pursuant to s.36 Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.
3. A brief summary of the facts is sufficient for present purposes. The offender's stepson, Kian Feve, and another young man, Robert Wattam, were supplying class A drugs in the Grimsby area. Around midnight on 19/20 March 2023 they were involved in an incident in Grimsby in which one of their customers, Jack Howes, was stabbed to death by Kian Feve. In the early hours of the morning of 20 March, Kian Feve and Wattam travelled by taxi to the offender's home in Scunthorpe. Kian Feve went into the house for a few minutes to change his clothes.
4. On 21 March, Kian Feve exchanged text messages with the offender in which Kian Feve was asking where his passport was.
5. On the afternoon of 23 March, police went to the offender's home in search of Kian Feve. He was not there. That evening, the offender spoke to investigating officers and made a formal witness statement. He had not been told what they were investigating, but he said that he assumed it must be something serious: he had been made aware by neighbours that armed officers were searching his home. He stated that on the evening of 19 March he had been at home. He said that Kian Feve came to the house at around about 8 pm, went upstairs to play video games with his younger brother and was still there when the offender fell asleep around 9 to 10 pm. In fact Kian Feve was in Grimsby throughout that evening.
6. The offender also explained in his statement that Kian Feve had started dealing drugs when

aged 17. The offender would not tolerate such behaviour and he had required Kian Feve to leave the family home once he attained the age of 18. He told the officers that he did not know where Kian Feve was, but would try to locate him and would bring him to a police station by midnight. He did so.

7. The particulars of the indictment against the offender alleged that on 23 March he did an act which had a tendency to pervert the course of public justice in that he told the police that Kian Feve was at home during the evening of 19 March, knowing that that was not the case.
8. The offender's case at trial was that he had given a truthful account to the police, and if he had made any error in that account it was only because he was confusing one date with another. He relied on evidence as to his diabetic condition as a possible cause of confusion.
9. The offender was convicted, as we have said. Kian Feve was convicted of murder, Wattam of manslaughter.
10. The offender (now aged 56) had no previous convictions. He had always treated his stepson as his own son. He also had other children. Following the breakdown of his marriage, he had for many years cared for them as a single parent whilst also working. At the time of sentencing he was living with a daughter aged 19, and a son aged 17, in rented accommodation which the family had occupied for several years and which he feared they would lose if he was imprisoned.
11. At the sentencing hearing the judge was assisted by a pre-sentence report. He considered the Sentencing Council's definitive guideline for offences of perverting the course of justice ("the Perverting guideline"). He found that the offence was one of category A high culpability, because the underlying offence of murder could not be more serious, but category 3 harm because in the event it had only had a limited impact on the administration of justice. The guideline's starting point was therefore 1 year's custody with a range of 9 months to 2 years. The judge identified as mitigation the fact that the offender was a hard-working family man who could not have done more to dissuade Kian Feve from the disastrous decision he had taken in adopting a life of crime.
12. The judge stated his conclusion as follows in his sentencing remarks:

"... for the offence of perverting the course of public justice, the offence is so serious that only a custodial sentence can be justified. Taking into account all of the aggravating and mitigating factors, the least sentence that could be justified is one of 12 months. In accordance with the Custodial and Community Sentence Guidelines, I have to consider whether that sentence can be suspended. I am satisfied that you can be rehabilitated in the community and your risk can be managed in the community. An immediate custodial sentence would have a devastating effect upon you and your family. I am able to achieve appropriate punishment within the community, and so the sentence will be suspended for a period of 12 months. There will be 200 hours' unpaid work."

13. For the Solicitor General, Mr Little KC submits that the sentence was unduly lenient because appropriate punishment in this case could only be achieved by immediate imprisonment, and the judge was therefore wrong to suspend the sentence. He suggests that the sentence could arguably have been longer than 12 months, but he does not submit that this court should increase its length.
14. Mr Little points to s57(2)(b) of the Sentencing Code, which states as one of the purposes of sentencing "the reduction of crime (including its reduction by deterrence)". He submits that it is clear from long-established case law that the offence of perverting the course of justice is so serious that it is almost always necessary to impose an immediate custodial sentence unless there are exceptional circumstances. He points to statements to that effect in, for example, **Attorney-General's Reference No 35 of 2009 (R v Binstead)** [2009] EWCA Crim 1375 and **Attorney-General's Reference (R v Graham)** [2020] EWCA Crim 1693. He submits that the Perverting guideline, which came into effect on 1 October 2023, was not intended to change the existing law and did not alter that established principle. In the present case, he submits, the judge identified no exceptional circumstances which could justify suspension of the sentence, and there were none.
15. Mr Little goes on to refer to the Sentencing Council's Imposition guideline in relation to the suspending of a custodial sentence. The judge in his sentencing remarks referred to the three factors identified in that guideline as indicating that suspension may be appropriate: realistic prospect of rehabilitation, strong personal mitigation, and immediate custody would

result in significant harmful impact upon others. Mr Little points out that one of the factors pointing away from suspension is that appropriate punishment can only be achieved by immediate custody. He submits that in the context of cases of perverting the course of justice, that factor must be looked at through the prism of the case law on which he relies and should in general, he submits, be determinative.

16. For the offender, Mr de la Poer KC submits that the guideline supersedes the approach set out in earlier case law, and that a sentence for an offence of this nature may be suspended even without identifying exceptional circumstances. He submits that there was therefore no error of principle in the approach taken by the judge and the sentence was not unduly lenient.
17. In the alternative, Mr de la Poer submits that if exceptional circumstances be required, they were present in this case. He points to the following matters: the offender had done his best to turn Kian Feve away from drug dealing; there was no evidence that the offender knew on 23 March that the police were investigating a murder; he had made good his assurance that he would deliver Kian Feve to the police within a short time; his false statement had no material impact on the investigation; and immediate custody would have had a devastating impact on him and his family. In those circumstances, it is submitted, a suspended sentence was within the range properly open to the judge.
18. As a further alternative, Mr de la Poer points to the reports helpfully prepared for this court which show that the offender has been carrying out his unpaid work and complying with the other requirements of his suspended sentence order, and that his health has deteriorated since sentence. We understand that the offender has already completed more than one-third of the hours of unpaid work he has to perform. It is submitted that even if the sentence is found to have been unduly lenient, the court should exercise its discretion not to increase it.
19. We are grateful to both counsel for their very helpful written and oral submissions. Having reflected on those submissions our conclusions are as follows.
20. In **R v Abdulwahab** [2018] EWCA Crim 1399 at [14] this court said:

"... conduct which tends and is intended to pervert the course of

justice strikes at the heart of the administration of justice and almost invariably calls for a custodial sentence. Deterrence is an important aim of sentencing in such cases, although, as was pointed out in *Radcliffe*, the necessary deterrence may sometimes be achieved by the imposition of an immediate custodial sentence without necessarily requiring a sentence of great length."

The court went on to say, at [20]:

"The Sentencing Council's Imposition Guideline specifically indicates that a factor indicating that it would not be appropriate to suspend a prison sentence is where appropriate punishment can only be achieved by immediate custody. That is so in this case, and will be so in most cases of attempting to pervert the course of public justice."

That decision of the court was cited in **Attorney-General's Reference (R v Graham)**, to which we have already referred. At [21] this court said:

"Overall the general trend of the authorities is that in cases of perverting the course of justice an immediate custodial sentence is almost invariably to be imposed. Although the language varies somewhat from case to case, that is the gist of all the authorities. Accordingly, there needs to be a high degree of exceptionality if an immediate custodial sentence is not to be imposed for such offending."

Those two cases, which predate the Perverting guideline, reflect the long-established principles that doing acts tending and intended to pervert the course of justice is by its nature always a very serious offence, and that the inherent seriousness of such conduct almost always requires an immediate custodial sentence. References to "exceptional circumstances", and cognate terms, are a convenient shorthand; but in our view they simply emphasise that there will be few cases in which the normal consequence of immediate custody can properly be avoided, and that very compelling reasons will be needed if immediate custody is to be avoided. We do not think it helpful to treat such references as imposing a separate legal test of exceptionality.

21. By s.59 of the Sentencing Code, every court must in sentencing follow any relevant sentencing guidelines, unless satisfied that it will be contrary to the interests of justice to do

so in all the circumstances of a particular case. It follows that in cases of this nature sentencers must now focus on the Perverting guideline.

22. The Perverting guideline requires the sentencer first to categorise an offence by reference to culpability and harm factors. One of the culpability factors is the seriousness of the underlying offence: the more serious that offence, the higher the starting point for the perverting offence. The sentencing grid sets out the starting point and category ranges for nine separate categories. In each instance the starting point is a custodial term. In the usual way, the starting point may be adjusted upwards or downwards on consideration of the balance of aggravating and mitigating factors; but it is only in category C3 (cases of lower culpability and limited harm) that the bottom end of the range encompasses a community order. It follows that a custodial sentence will be inevitable in the great majority of cases. The guideline thus reflects, and does not alter, the established principles as to the inherent seriousness, and usual consequences, of such offences.
23. Must the custodial sentence be of immediate effect? If the appropriate sentence exceeds 2 years, it can only be immediate. Where, however, the application of the Perverting guideline leads to a custodial sentence of 2 years or less, the sentencer is then required by the Imposition guideline to consider, amongst other things, whether the sentence can be suspended. As we have noted, the Imposition guideline requires the sentencer to weigh listed factors which militate in favour of or against suspension. The weight to be given to individual factors will of course vary from case to case, and on the facts of a particular case one factor may be determinative of the final decision. In the great majority of cases of perverting the course of justice, the most important factor will be one of those which indicate that it would not be appropriate to suspend: namely, that appropriate punishment can only be achieved by immediate custody. That is so because, consistently with the long-established principles we have mentioned, and giving substantial weight to the need to deter others, the inherent seriousness of such offences usually does require immediate custody, and this factor will accordingly outweigh all others. It is important to emphasise that that is the usual position even when – as will not infrequently be the case – the offender

has a realistic prospect of rehabilitation, has strong personal mitigation, and immediate custody will result in a significant harmful impact upon others.

24. It follows that application of the relevant guidelines leads to the same position as obtained before the Perverting guideline came into effect: as it was expressed at [26] of

Attorney-General's Reference (R v Graham):

"... almost invariably an immediate custodial sentence should and will be imposed in cases of perverting the course of justice."

25. Returning to the present case, the judge was faced with a difficult sentencing decision.

There was much to be said in the offender's favour: his crime had not greatly impeded the administration of justice, he had arranged for Kian Feve to go to the police, he had substantial personal mitigation, and others would suffer if he went to prison. But on the jury's verdict, he chose to tell a deliberate lie to the police investigating a crime which he knew must be serious, and which was in fact a crime of murder. We would add that he told a lie which brought his younger son into the false alibi which was put forward. He did not have the mitigation which would have been available to him if he had pleaded guilty. In our judgement, and with all respect to the judge, the offence was so serious that appropriate punishment could only be achieved by immediate imprisonment. A suspended sentence was not within the range properly open to the judge and was unduly lenient. We therefore grant leave to refer.

26. The question then arises of whether this court should exercise its discretion not to increase the sentence. We have given this anxious consideration. We bear in mind the offender's compliance to date with the suspended sentence order, including his diligent performance of the unpaid work requirement, and his deteriorating health. We also bear in mind the likely housing and other long-term consequences for him and his children of our now imposing immediate imprisonment. We conclude that we can properly exercise our discretion in the offender's favour.

27. For those reasons, whilst we grant leave to refer and have found the sentence to be unduly lenient, we do not increase it. It remains, as before, a sentence of 12 months' imprisonment

suspended for 12 months with the unpaid work requirement.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400 Email: Rcj@epiqglobal.co.uk