

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.

IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2024] EWCA Crim 62
Case No: 2023/04444/A4



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 19th January 2024

B e f o r e:

LORD JUSTICE COULSON

MRS JUSTICE FOSTER DBE

MR JUSTICE HILLIARD

R E X

- v -

SITA TAMANG

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

Mr J Fitzgerald appeared on behalf of the Applicant

Mr B Wild appeared on behalf of the Crown

J U D G M E N T

LORD JUSTICE COULSON:

Introduction

1. The applicant is now aged 33. On 15th December 2023, in the Crown Court at Canterbury, she was sentenced by Mr Recorder McDonagh (“the judge”) to two years' imprisonment, following her early guilty pleas to four counts of theft. Given the nature of the sentence and the surrounding circumstances, the applicant's application for leave to appeal sentence has been referred to the full court by the Registrar. We grant leave to appeal.

2. We have been significantly assisted in the hearing of that appeal this morning by both Mr Fitzgerald and Mr Wild. We are grateful to them for their oral and written submissions.

The Offending

3. The appellant was employed as a night carer at Highland House in Canterbury, a care home for elderly residents, which specialises in dementia care. The appellant had worked there for over six years. Her role as a night carer included providing personal care for residents in their rooms.

4. On 3rd March 2022, Ulla-Britt Woodcock, an 80 year old resident at the home, reported that her engagement ring was missing. It had her late husband's name engraved on it. The room was searched, but staff could not find the ring.

5. The following day, another resident, 89 year old Margaret Hyde, reported that her wedding ring had gone missing. Again, searches were made but without success. Two days later, on 6th March 2022, 92 year old resident June Cornish was visited at the home by her daughter. Ms Cornish has advanced dementia. Her daughter noticed that her mother's

wedding ring and a cross necklace were both missing.

6. There was an internal investigation and it was found that the appellant had been on duty on each of the nights when the items had gone missing. Thanks to the prompt action of the deputy manager of the home, inquiries were initiated with local pawnbrokers and, fortunately, all the stolen jewellery was recovered. Subsequently, the appellant was interviewed within the home and admitted that she had stolen the jewellery. She said that she had stolen it because of the financial difficulties that she and her husband were experiencing.

The Sentencing Exercise

7. The judge referred to the sentencing guidelines on theft. He concluded that this was a high culpability case because of the high degree of trust and the particularly vulnerable nature of the residents. As to harm, he acknowledged that the financial value of the items was relatively low (around £500), but that they were of substantial value to the residents themselves, regardless of their monetary worth. He also said that the emotional stress was very real, both to the residents and their loved ones. He rightly said that this would have had an impact upon the confidence of the residents and those surrounding them.

8. Accordingly, in relation to harm, the judge noted that a category 2 case had a starting point of two years' custody, whilst a category 3 case had a starting point of one year's custody. However, as the judge noted, the guidelines referred to single offences and he said that it was "a highly relevant feature that there are three victims and the trust placed in [the appellant] was abused in respect of all of them".

9. The judge took a starting point for the offending overall of three years' custody. He said that the appellant's guilty plea was the biggest item of mitigation and he allowed her a one third credit for that prompt guilty plea. That reduced the sentence to two years. The judge

then said this:

"I see no reason, notwithstanding matters urged on your behalf and with regards to the pre-sentence report, to suspend this sentence. The sentence of this court therefore is one of two years' immediate imprisonment on all four matters to run concurrently with each other ..."

The Grounds of Appeal

10. There are three grounds of appeal: first, that the judge took too high a starting point; second, that he failed to have any regard to the appellant's mitigation; and third, that he erred in not allowing the sentence to be suspended. Mr Fitzgerald made all of those points this morning with clarity and concision. We address each of them below.

Ground 1: The Starting Point

11. Mr Fitzgerald submitted that the harm fell just outside category 3, so that the starting point was 12 months' custody for one offence.

12. We do not accept that. We think that the judge was right to say that harm was not something in this case that could be categorised by reference to financial value alone. The items of jewellery were of particular value to the women concerned. There was the understandable emotional distress. Nor do we accept the submission that that was "significantly diluted by the near-immediate return of the stolen items". Plainly in such a case as this, distress and mistrust will have lingered.

13. Accordingly, we think that the starting point was somewhere between the categories 2 and 3 for a single offence, and so would have been around 18 months' custody. There were, of course, four separate offences and there were three victims; so that starting point of 18 months would have had to have been increased. But making proper allowance for totality,

we consider that the sentence of 3 years' imprisonment was simply too high. We consider that, in the round, the overall starting point for all the offending, before taking into account mitigation, was around 27 months' imprisonment.

Ground 2: Mitigation

14. In our view, there were a number of positive mitigating factors in this case. The author of the pre-sentence report talked about the appellant's genuine remorse. We note that the appellant admitted the offences immediately and co-operated fully with the investigation. She was hitherto a woman of good character. Further, there was an enormous delay of 21 months between the appellant's admissions and the sentencing hearing. Mr Wild realistically accepted that that delay was unacceptable. Whilst some of it was not down to the Crown Prosecution Service, some of it was. So even putting the appellant's personal circumstances to one side, it seems to us that there had to be a significant reduction for all these mitigating factors.

15. Surprisingly, the judge made no allowance *at all* for those mitigating factors. He referred to the credit for the guilty pleas, to which we will come, but on the face of his sentencing remarks he made no other reduction for the many mitigating factors we have identified; indeed, he does not even refer to them. He plainly should have done. In our view, they reduce the notional starting point of 27 months, to which we have referred above, down to something like 15 months after a trial. With full credit for the guilty plea, that would produce a term of 10 months' imprisonment.

Ground 3: Suspension of the Sentence

16. Although the judge was careful to refer to the sentencing guidelines for theft, he did not refer to the guideline on the imposition of custodial sentences, which sets out the approach to be taken to sentences of two years' custody or less. His remarks (which we have already

cited), could be translated as suggesting that he considered that only immediate custody was appropriate. But it is not for this court to try and translate what a judge meant, particularly in circumstances when the relevant guideline was not referred to. Accordingly, it is necessary for this court to undertake that particular part of the exercise itself.

17. As is well known, the guideline includes an easy-to-use table which identifies three factors that might indicate that it would be appropriate to suspend the custodial sentence; and three factors that would indicate the opposite. Those in the former category include: a realistic prospect of rehabilitation; strong personal mitigation; and that immediate custody would result in significant harmful impact on others. Those in the latter category include: that the offender presents a risk/danger to the public; that appropriate punishment can only be achieved by immediate custody; and that there is a history of poor compliance with court orders.

18. Looking at the factors that might indicate a suspension of the sentence, we accept that there is a realistic prospect of rehabilitation. The pre-sentence report identified the appellant as posing a low risk of serious harm to others, and a low likelihood of reconviction for both general and serious offending. In addition, as to the harmful impact on others, we accept that the appellant's immediate incarceration would have a significant harmful impact on others. The appellant has a child of 14 months, and her husband is likely to have to leave his job to take care of the child if she remains in prison.

19. As to personal mitigation, we have already referred to the large number of powerful elements of personal mitigation. Those have, of course, been used to reduce the term of imprisonment, and we must be careful about double counting. We accept that there is evidence of financial difficulty, although again, sadly, at the present time that is something faced by a lot of people, and they do not resort to stealing other people's property to get by.

But, overall, we are in no doubt that there is considerable personal mitigation. So every factor indicating suspension is in play.

20. As to the factors that would indicate that suspension was not appropriate, we have already said that the appellant does not present a risk/danger to the public; and since she is of good character, there is no history of poor compliance with court orders. Thus, as these cases so often do, the case might be said to turn on whether appropriate punishment can only be achieved by immediate custody. We have given that question anxious consideration. Does it outweigh all those factors which indicate that suspension would be appropriate?

21. In our view, stealing from the elderly and infirm, when the offender is in a position of trust, will (unless there are powerful factors to the contrary) usually be an offence for which only immediate custody is appropriate. It strikes at the heart of society's care for its elderly if those who are trusted with undertaking that care steal from their most vulnerable charges. Such sentences have a deterrent effect, and that cannot be underestimated. That approach is supported by some of the recent decisions of this court which were referred to by Mr Wild. In *R v Butt* [2022] EWCA Crim 226 and *R v Allen* [2018] EWCA Crim 2189, short terms of immediate custody were upheld in cases involving stealing from the elderly and infirm.

23. In our view, however, on the particular facts of this case, there is one powerful factor which does make it just and proportionate to suspend this sentence. That is the impact of an immediate custodial term on the appellant's young child. That is a factor which the table in the guideline expressly required the judge to have in mind, and he failed to do so. In our view, making proper allowance for that fact, the sentence should have been suspended. A child of just over a year old should not suffer the incalculable harm of its mother being in prison at such a formative stage of its young life.

25. Accordingly, for those reasons, we allow this appeal. As we have explained, we consider that the appropriate starting point was 15 months' imprisonment, making due allowance for mitigation. That starting point then fell to be reduced by one third to give full credit for the guilty plea. That reduced the term to one of ten months' imprisonment. That term of ten months' imprisonment will be suspended for a period of one year.

26. By reference to the pre-sentence report, although we acknowledge that the appellant has undertaken the equivalent of two months' imprisonment, we consider that we should impose requirements of a 10 day rehabilitation activity and 30 hours' unpaid work.

27. Accordingly, this appeal against sentence is allowed and the appellant is entitled to be released.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
