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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT KINGSTON

UPON HULL

MR RECORDER PITTER S20230076

CASE NO 202400375/B1

Neutral citation number: [2024] EWCA Crim 828

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 11 July 2024

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE GOSS
THE RECORDER OF MANCHESTER
HIS HONOUR JUDGE DEAN
(Sitting as a Judge of the CACD)

REX
V
GURPAL RAYTT

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MR N GODFREY appeared on behalf of the Applicant
MR N PEACOCK appeared on behalf of the Crown

J U D G M E N T

1. MR JUSTICE GOSS: The Registrar has referred this application by Gurbal Raytt, who is now 33 years of age, for an extension of time of 176 days in which to appeal against his conviction in the Crown Court at Kingston-upon-Hull on 5 July 2023 for an offence of failing to surrender to bail on 12 June 2023 to the full court. On the same day the applicant admitted having breached the requirements of a community order, which breach was marked on the following day by the addition of a rehabilitation activity requirement of five days. Also on 6 July, having been remanded overnight in custody, he was committed to prison for two days for the offence of failing to surrender to bail.
2. The short point in this case is that the applicant had not committed the offence to which he pleaded guilty, namely failing to surrender to bail, as he was not on bail. His failure was to obey a summons.
3. The relevant history, in a little more detail, is that on 13 February 2023 at Kingston-Upon-Hull Crown Court for the offence of breaching a restraining order the applicant was sentenced to a community order for 12 months with a curfew requirement for six months between 10.00 pm and 7.00 am daily. On 26 April the hours of the curfew were varied to between 11.00 pm and 7.00 am daily. Subsequently, an information was laid before the Crown Court by the Probation Service alleging that the applicant was in breach of his curfew between 6 and 8 May and that he had removed the electronic tag from his ankle on 9 May 2023.
4. As a result, on 2 June, the Crown Court issued a summons with a return date of 12 June. The summons was sent to the applicant by post, accompanied by a letter dated 6 June which warned him of the consequences should he fail to attend at court in the following terms:

"If you do not attend then the court may issue a warrant for your

arrest. This could mean that you will appear before the court in custody to be dealt with."

5. On 12 June the applicant failed to answer to the summons and the court issued a warrant for his arrest, not backed for bail. The applicant surrendered to custody and was produced before the court on 5 July and, as we have already recited, he admitted the breach of the community order.
6. The Recorder acceded to an invitation to have a charge put to the applicant that he had failed, without reasonable excuse, to appear on 12 June in answer to the summons. The applicant admitted that he had failed to appear when such a charge was put. The Crown Court record sheet recorded this as an admission to a "Breach of Bail Act Order" and as "Failed to surrender to custody at appointed time", albeit that the admission is erroneously recorded as having been made on 6 July. These were clearly references to the terms of section 6(1) of the Bail Act 1976 relating to a person who has been released on bail in criminal proceedings.
7. Following the prosecution opening and mitigation on behalf of the applicant, the court required that the applicant's address be confirmed and adjourned for this purpose until the next day, 6 July. On that day the applicant was produced at court. The Recorder allowed the community order to continue, marking the breach by the imposition of a rehabilitation activity requirement of five days. At the end of the proceedings on 6 July, having ascertained that the applicant had voluntarily surrendered to the breach warrant on, it would appear, 4 July, the Recorder committed him to prison for two days "to reflect his failing to surrender". By reason of the sentence being custody for two days the applicant became subject to post-sentence supervision for 12 months pursuant to section 256AA of the Criminal Justice Act 2003. Had the period been one day there would have been no

period of supervision. Having allegedly breached such supervision, proceedings have now been commenced against him in the Magistrates' Court on behalf of the Probation Service. These proceedings have been adjourned to 18 July pending the outcome of this application.

8. Pursuant to section 13 of the Administration of Justice Act 1960, an appeal lies as of right against a conviction for failure to surrender to bail in the Crown Court which is treated as criminal contempt pursuant to section 6(5) of the Bail Act 1976. Any such appeal must be made within 28 days, which period may be extended either before or after expiry: see section 18A of the Criminal Appeal Act 1968.
9. The prosecution concede that the appellant was convicted and sentenced for an offence of which, in law, he could not have been guilty. The applicant could have been considered to have been in contempt of court by not having surrendered when required but such proceedings were not commenced against him.
10. In these circumstances, we extend time and grant leave to appeal. We allow the appeal and quash the conviction. It follows that the sentence which triggered the 12-month supervision requirement falls away. The Magistrates' Court should be informed of the fact that that conviction has been overturned, and, as the court has indicated, the sentence falls away. Those proceedings should be discontinued.

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

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