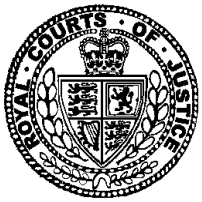

Neutral Citation Number: [2019] EWCA Crim 106

Case No: 201804100 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE MANCHESTER CROWN COURT
HHJ STOCKDALE QC, THE HONORARY RECORDER OF MANCHESTER
T20177563

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/02/2019

Before :

LORD JUSTICE HOLROYDE
MR JUSTICE SWEENEY
and
HER HONOUR JUDGE WENDY JOSEPH QC
(sitting as a Judge of the CACD)

- -

Between :

R E G I N A	**Appellant**
- and -	
A	**Respondent**

- -
- -

Ms S Duckworth for the **Appellant**
Mr NJ Johnson QC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing date : Tuesday 15 January 2019

- -

Approved Judgment

Mr Justice Sweeney :

Introduction

1. On 15 January 2019, following referral by the Registrar, we granted an extension of time and permission to appeal against sentence, and ultimately allowed the appeal. In so doing we quashed the sentence of 5 years' detention under s.91 of the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act") imposed on the Appellant (who is now aged 17) by HHJ Stockdale QC, the Honorary Recorder of Manchester, on 11 May 2018, and substituted for it a sentence of 4 years 269 days' detention, again under s.91.

2. We also continued the order made in the Crown Court at Manchester, under s.45 of the Youth Justice and Criminal Evidence Act 1999, prohibiting, whilst he remains under 18, the publication of anything likely to lead members of the public to identify the Appellant as a person concerned in these proceedings. We have anonymised our judgment accordingly.

3. The appeal was concerned with three main issues, namely:

   (1) The need (albeit that judges carry the primary responsibility for their sentences) for practitioners who appear before the courts, particularly prosecutors, to give accurate assistance to judges in relation to sentencing issues.

   (2) The extent, if at all, to which time spent on remand in local authority accommodation under s.91(3) of the Legal Aid Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") can be taken into account when passing sentence.

   (3) If it can be taken into account, what the appropriate mechanism is by which to achieve any consequent reduction.

4. We reserved our reasons, which we now set out below.

Background

5. In the evening of 17 October 2017, the Appellant and his co-accused Michael Idehen had a pre-arranged meeting with a 15-year-old boy called Kyron Webb in a street in the Moston area of Manchester. Idehen was armed with a knife and the Appellant, then aged 16, was armed with a metal pole or cosh. CCTV footage of the meeting showed the Appellant and Idehen intimidating Kyron Webb and then moving in on him in a pincer movement – during which, without any provocation, Idehen stabbed Kyron Webb in the heart, mortally wounding him. Idehen and the Appellant then moved away but returned after about a minute and attacked Kyron Webb again – with Idehen stabbing him in the back. Idehen and the Appellant then ran off.

6. Kyron Webb, who had done nothing whatsoever to justify the brutal and cowardly attack upon him, died three days later. His parents and wider family were devastated by his loss – as attested to by his mother in her moving Victim Personal Statement.

7. Idehen and the Appellant were arrested on the day that Kyron Webb died, and both were subsequently charged with his murder.

8. From 23 October 2017 to 30 October 2017 (a total of 8 days) the Appellant was remanded in custody, under the provisions of s.91(4) of the 2012 Act, to HMYOI Wetherby. Thereafter, from 30 October 2017 to 11 May 2017 (a total of 192 days) the Appellant was remanded, under the provisions of s.91(3) of the 2012 Act, into local authority accommodation in Preston. Throughout the latter period, he was subject to an electronically monitored curfew from 7pm to 7am which was imposed under the provisions of ss. 93 & 94 of the 2012 Act. Amongst other conditions imposed upon him, the Appellant was excluded from Greater Manchester; was made subject to supervision for a minimum of 25 hours per week; and was required to report to Preston Police Station every Saturday and Sunday between 12pm and 5pm.

9. Idehen pleaded guilty to murder. The Appellant eventually pleaded guilty to manslaughter, which was accepted by the Prosecution.

10. As touched on above, the sentencing hearing took place before the Honorary Recorder of Manchester on 11 May 2018. Idehen was sentenced to detention at Her Majesty's pleasure, with a minimum term of 15 years.

11. Regrettably, the parties failed to inform the judge about the two different types of remand to which the Appellant had been subject. Nor was the judge's attention drawn to the significance of the electronically monitored curfew to which the Appellant had latterly been subject. Equally, it is clear from the transcripts of the proceedings that the judge repeatedly sought the help of the parties as to whether, if he was to impose a custodial term under the provisions of s.91 of the 2000 Act, account was to be taken by the court of time spent on remand, rather than there being a specific reduction by the number of days. Thereafter the judge was variously informed by the parties that that was correct; then that the Appellant had been on remand for a period of 198 days and that if a sentence under s.91 was imposed there was no statutory credit for that time, which the judge would have to take into account when deciding the length of the sentence; and ultimately (by both sides) that all the time spent on remand would automatically be deducted by the authorities in calculating the date of the Appellant's release.

12. In the result, the judge imposed the sentence of 5 years' detention. In so doing he explained that, had the Appellant been an adult, the notional sentence after trial that he would have imposed would have been one of 9 years' custody; that he had reduced that by a third to reflect the Appellant's age; and that he had then reduced that by a further year to reflect the Appellant's eventual plea.

13. Subsequently, on 8 August 2018, those representing the Appellant were informed by the authorities at HMYOI Wetherby that only the 8 days spent remanded there under s.91(4) of the 2012 Act could be automatically credited to the Appellant, and not the 192 days remanded to local authority accommodation under s.91(3). By then it was too late to invite the judge to reconsider the matter under the slip rule provisions of s.155 of the 2000 Act. That was why the Appellant's application for permission to appeal sentence was made out of time.

Grounds of Appeal

14. There are two Grounds of Appeal, namely that:

(1) The judge was led into error in passing a sentence which was not adjusted to take into account the period of time which the Appellant had spent on remand in local authority accommodation. Had he been aware that the days would not automatically be deducted from the sentence, an adjustment would have been made to reduce the sentence of 5 years' detention.

(2) In the alternative, had the judge been made aware that the days would not automatically be deducted from the sentence, an adjustment would have been made to take into account the period of time that the Appellant had been subject to an electronically monitored curfew.

Legal Framework

(1) Bail with electronic monitoring requirements

15. Applying the definition in section 2(2) of the Bail Act 1976 ("the 1976 Act") the Appellant was, at all material times, a young person – i.e. he had attained the age of 14 but was under 18.

16. Section 1(1) of the 1976 Act provides that:

> "*In this Act "bail in criminal proceedings" means:*
>
> *(a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or*
>
> *(b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued, or*
>
> *……"*

17. Section 3(6) of the 1976 Act makes provision for the requirements to which a person granted bail may be made subject, as follows:

> "*He may be required…to comply, before release on bail or later, with such requirements as appear to the court to be necessary –*
>
> *(a) to secure that he surrenders to custody,*
>
> *(b) to secure that he does not commit an offence whilst on bail,*
>
> *(c) to secure that he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person,*
>
> *(ca) for his own protection or, if he is a child or young person, for his own welfare or in his own interests,*

(d) to secure that he makes himself available for the purpose of enabling enquiries or a report to be made to assist the court in dealing with him for the offence,

(e) to secure that before the time appointed for him to surrender to custody, he attends an interview with a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)

and, in any Act, "the normal powers to impose conditions of bail" means the powers to impose conditions under paragraph (a), (b), (c) or (ca) above."

18. Section 3(6ZAA) of the 1976 Act provides that:

"*The requirements that may be imposed under subsection (6) include electronic monitoring requirements."*

19. Section 3(6ZAB) of the 1976 Act provides that:

"*In this section and sections 3AA to 3AC "electronic monitoring requirements" means requirements imposed for the purpose of securing the electronic monitoring of a person's compliance with any other requirement imposed on him as a condition of bail*."

20. Section 3AA of the 1976 Act provides that:

"*(1) A court may not impose electronic monitoring requirements on a child or young person released on bail in criminal proceedings of the kind mentioned in section 1(1)(a) or (b) unless each of the following conditions is met.*

(2) The first condition is that the child or young person has attained the age of twelve years.

(3) The second condition is that –

(a) the child or young person is charged with or has been convicted of a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of fourteen years or more; or

(b) he is charged with or been convicted of one or more imprisonable offences which, together with any other imprisonable offences of which he has been convicted in any proceedings –

(i) amount, or

(ii) would, if he were convicted of the offences with which he is charged,

amount to a recent history of repeatedly committing imprisonable offences while remanded on bail or subject to a custodial remand.

(4) The third condition is that the court is satisfied that the necessary provision for dealing with the person concerned can be made under arrangements for the electronic monitoring of persons released on bail that are currently available in each local justice area which is a relevant area.

(5) The fourth condition is that a youth offending team has informed the court that in its opinion the imposition of electronic monitoring requirements will be suitable in the case of the child or young person.

…….

(12) The reference in subsection 3(b) to a child or young person being subject to a custodial remand is to the child or young person being –

(a) remanded to local authority accommodation or youth detention accommodation under section 91 of the Legal Aid, Sentencing and punishment of offenders Act 2012,

……."

(2) Credit on sentence – bail with electronic monitoring requirements

21. Section 240A (12) of the Criminal Justice Act 2003 ("the 2003 Act") provides that:

"In this section –

……

"electronic monitoring condition" means any electronic monitoring requirements imposed under section 3(6ZAA) of the Bail Act 1976 for the purpose of securing the electronic monitoring of a person's compliance with a qualifying curfew condition;

"qualifying curfew condition" means a condition of bail which requires the person granted bail to remain at one or more specified places for a total of not less than 9 hours in any given day…"

22. Section 240A (1) – (3B) & (8) of the 2003 Act provide (our emphasis) that:

> "*(1) This section applies where –*
>
> *(a) a court sentences an offender to imprisonment for a term in respect of an offence,*
>
> *(b) the offender was remanded on bail by a court in course of or in connection with proceedings for the offence, or any related offence, after the coming into force of section 21 of the Criminal Justice and Immigration Act 2008, and*
>
> *(c)* ***the offender's bail*** *was subject to a qualifying curfew condition and an electronic monitoring condition ("the relevant conditions").*
>
> *(2) Subject to subsections (3A) and (3B)* ***the court must direct that the credit period is to count as time served by the offender as part of the sentence****.*
>
> *(3) The credit period is calculated by taking the following steps."*
>
> *Step 1*
>
> *Add –*
>
> *(a) the day on which the offender's bail was first subject to the relevant conditions (and for this purpose a condition is not prevented from being a relevant condition by the fact that it does not apply for the whole of the day in question) and*
>
> *(b) the number of other days on which the offender's bail was subject to those conditions (but exclude the last of those days if the offender spends the last part of it in custody).*
>
> *Step 2*
>
> *Deduct the number of days on which the offender, whilst on bail subject to the relevant conditions, was also –*
>
> *(a) subject to any requirement imposed for the purpose of securing the electronic monitoring of the offender's compliance with a curfew requirement, or*
>
> *(b) on temporary release under rules made under section 47 of the Prison Act 1952.*
>
> *Step 3*

From the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions.

Step 4

Divide the result by 2.

Step 5

If necessary, round up to the nearest whole number.

(3A) A day of the credit period counts as time served –

(a) in relation to only one sentence, and

(b) only once in relation to that sentence.

(3B) A day of the credit period is not to count as time served as part of any period of 28 days served by the offender before automatic release……

(8) Where the court gives a direction under subsection (2) it shall state in open court –

(a) the number of days on which the offender was subject to the relevant conditions, and

(b) the number of days (if any) which it deducted under each of steps 2 and 3

……."

(3) Remands under s.91 of the 2012 Act

23. Applying the definition in s.91(6) of the 2012 Act, the Appellant was, at all material times, a child – i.e. under the age of 18.

24. Section 91 further provides, in so far as relevant, that:

"(1) This section applies where –

(a) a court deals with a child charged with or convicted of one or more offences by remanding the child, and

(b) the child is not released on bail

……..

(3) Subject to subsection (4) the court must remand the child to local authority accommodation in accordance with section 92.

> *(4) The court may instead remand the child to youth detention accommodation in accordance with section 102 where –*
>
> *(a) in the case of a child remanded under subsection (1) the first or second set of conditions for such a remand (see sections 98 and 99) is met in relation to the child……"*

25. Section 92 of the 2012 Act provides that:

> "*(1) A remand to local authority accommodation is a remand to accommodation provided by or on behalf of a local authority.*
>
> ……..
>
> *(5) Where a child is remanded to local authority accommodation, it is lawful for any person acting on behalf of the designated authority to detain the child."*

26. As to conditions on remands to local authority accommodation, section 93 of the 2012 Act provides that:

> "*(1) A court remanding a child to local authority accommodation may require the child to comply with any conditions that could be imposed under section 3(6) of the Bail Act 1976 if the child were then being granted bail.*
>
> *(2) The court may also require the child to comply with any conditions imposed for the purpose of securing the electronic monitoring of the child's compliance with the conditions imposed under subsection (1) if –*
>
> *(a) in the case of a child remanded under section 91(1) (proceedings other than extradition proceedings), the requirements in section 94 are met, or*
>
> ……..
>
> *(4) A court may only impose a condition under subsection (1) or (2) ……. after consultation with the designated authority.*
>
> *(5) Where a child has been remanded to local authority accommodation, a relevant court –*
>
> *(a) may, on the application of the designated authority, impose on that child any conditions that could be imposed under subsection (1) or (2) if the*

court were then remanding the child to local authority accommodation, and

(b) where it does so, may impose on the authority requirements for securing compliance with the conditions imposed under paragraph (a).

……"

27. As to requirements for electronic monitoring, section 94 of the 2012 Act provides that:

"*(1) The requirements referred to in section 93(2)(a) (requirements for imposing electronic monitoring condition: non-extradition cases) are those set out in subsections (2) to (6).*

(2) The first requirement is that the child has reached the age of 12.

(3) The second requirement is that the offence mentioned in section 91(1), or one or more of those offences, is an imprisonable offence.

(4) The third requirement is that –

(a) the offence mentioned in section 91(1), or one or more of those offences, is a violent or sexual offence, or an offence punishable in the case of an adult with imprisonment for a term of 14 years or more, or

(b) the offence or offences mentioned in section 91(1), together with any other imprisonable offences of which the child has been convicted in any proceedings, amount or would, if the child were convicted of that offence or those offences, amount to a recent history of committing imprisonable offences while on bail or subject to a custodial remand.

(5) The fourth requirement is that the court is satisfied that the necessary provision for electronic monitoring can be made under arrangements currently in each local justice area which is a relevant area.

(6) The fifth requirement is that a youth offending team has informed the court that, in its opinion, the imposition of an electronic monitoring condition will be suitable in the child's case.

……

> *(8) In this Chapter –*
>
> *"electronic monitoring condition" means a condition imposed on a child remanded to local authority accommodation for the purpose of securing the electronic monitoring of the child's compliance with conditions imposed under section 93(1) or (5).*
>
> ……
>
> *(9) References in this Chapter to a child being subject to a custodial remand are to the child being –*
>
> *(a) remanded to local authority accommodation or youth detention accommodation……*"

28. Under the provisions of s.97 of the 2012 Act, if a child has been remanded to local authority accommodation under s.91(3), and conditions have been imposed on him under s.93, and a constable has reasonable grounds for suspecting that the child has broken any of those conditions, the constable may arrest the child without warrant.

29. There are two alternative sets of conditions (set out in ss 98 & 99 of the 2012 Act) before a child can be remanded to youth detention accommodation under s.91(4). In both instances the child must have reached the age of 12.

30. Section 102 of the 2012 Act provides that:

> "*(1) A remand to youth detention accommodation is a remand to such accommodation of a kind listed in subsection (2) as the Secretary of State directs in the child's case.*
>
> *(2) Those kinds of accommodation are –*
>
> *(a) a secure children's home,*
>
> *(aa) a secure college,*
>
> *(b) a secure training centre,*
>
> *(c) a young offender institution, and*
>
> *(d) accommodation, or accommodation of a description, for the time specified by order under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for purposes of detention and training order provisions).*
>
> *(3) A child's detention in one of those kinds of accommodation pursuant to a remand to youth detention accommodation is lawful.*

…….”

(4) Credit on sentence – remands under s.91 of the 2012 Act

31. Provision for the automatic administrative deduction from sentence of time spent on remand in custody is made under section 240ZA of the 2003 Act, as amended. Section 242(2)(b) of that Act provides (our emphasis) that:

> “*References in sections 240ZA and 241 to an offender’s being remanded in custody are references to his being:*
>
> *(a) remanded in or committed to custody by order of a court,*
>
> *(b)* ***remanded to youth detention accommodation under s.91(4) of the Legal Aid Sentencing and Punishment of Offenders Act 2012****, or*
>
> *(c) remanded admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.”*

32. Section 240ZA itself provides, in so far as is relevant (our emphasis) that:

> *“(1) This section applies where –*
>
> *(a) an offender is serving a term of imprisonment in respect of an offence, and*
>
> *(b) the offender has been remanded in custody* ***(within the meaning given by section 242****) in connection with the offence or a related offence.*
>
> *(2) It is immaterial for that purpose whether, for all or part of the period during which the offender was remanded in custody, the offender was also remanded in custody in connection with other offences (but see subsection (5)).*
>
> *(3)* ***The number of days for which the offender was remanded in custody in connection with the offence or with a related offence is to count as time served by the offender as part of the sentence****.*
>
> *But this is subject to subsections (4) to (6).*
>
> *(4) If, on any day on which the offender was remanded in custody, the offender was also detained in connection with any other matter, that day is not to count as time reserved.*
>
> *(5) A day counts as time served –*

(a) in relation to only one sentence, and

(b) only once in relation to that sentence.

(6) A day is not to count as time served as part of any automatic release period served by the offender (see section 255B (1))

……

(8) In this section "related offence" means an offence, other than the offence for which the sentence is imposed ("offence A"), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A.

……

(11) This section applies to a determinate sentence of detention under s.91……. of the Sentencing Act…… as it applies to an equivalent sentence of imprisonment."

(5) Authorities

33. In *R v D & H* [2016] EWCA Crim 1807, the offenders were both aged over 12 but under 18 and had both pleaded guilty to causing grievous bodily harm with intent. The judge was addressed about periods that they had spent on remand in custody or when subject to a qualifying curfew (whether whilst on bail or whilst remanded to local authority accommodation under s.91(3) of the 2012 Act). However, the judge had decided that he was making no directions as to any discount for curfews saying: "*If the prison authorities decide that there are allowances to be made so be it.*"

34. Having considered aspects of the 1976 and 2003 Acts, this Court concluded (at [10] of the judgment) that:

> *"If a young offender is remanded to detention pursuant to LASPO, time spent in custody or on electronic curfew will count. That is because it is a remand in custody for the purposes of the Criminal Justice Act. However, there is an anomaly in the statutory provisions, because if a young person is remanded into local authority accommodation with an electronic curfew provision, that does not amount to a remand in custody for the purposes of the 2003 Act. In those circumstances counsel appearing for young persons remanded into local authority accommodation and subjected as a condition of bail to curfew should raise the issue with the sentencing judge, as indeed should those who have been the subject of an electronic curfew when remanded into what is equivalent to custody."*

35. The position in relation to *H* was relatively straightforward. He had been remanded into the care of the local authority and had been placed at the home of his aunt with an

electronically monitored curfew. He had then been granted bail on the same terms, resulting in 182 qualifying days. *H's* appeal was therefore allowed with a direction that he should have credit for 91 days.

36. As to *D*, at [16] this Court continued:

> "*The issue then is whether the time spent by the applicant D when remanded into local authority accommodation with an electronic curfew [counts]. The relevant periods are between 15 and 22 May and between 9 and 16 June 2015. This is a case where the provisions of section 240A (2) do not directly assist the applicant D because he was remanded into local authority accommodation. However, as noted above, the issue had been fairly raised with the judge, and because of the statutory anomaly the same provisions which apply for section 240A (2) should, in our judgment, apply by way of analogy. That is because the person has suffered effectively the same loss of freedom when on curfew in local authority accommodation and should have the same credit as the person who is remanded under an electronic curfew under the Criminal Justice Act.*"

37. This Court therefore ordered that 7 days (i.e. half the 14-day period spent on electronic curfew whilst remanded in local authority accommodation) should count towards *D*'s sentence.

38. In *R v Anderson* [2017] EWCA Crim 2604; [2018] 2 Cr. App. R. (S.) 21 the Appellant (who was aged 15 at the time of sentence) had spent 14 days on remand in youth detention accommodation under s.91(4) of the 2012 Act, followed by 28 weeks on remand to local authority accommodation under s.91(3) of the 2012 Act. Throughout the latter period he had also been subject each night to a 10-hour electronically monitored curfew. Ultimately, from a starting point of 5 years' custody, and after deduction of full credit for plea and a further reduction for "other problems", the judge had imposed a sentence of 3 years' detention under s.91 of the 2000 Act. It was only after time had passed that it was appreciated that time spent on remand in local authority accommodation would not count towards the sentence. It then transpired that the judge had purported to make an order that time spent on local authority remand would count towards the sentence. At all events, the judge declined to vary his original order – upon the basis that the application to do so had been made out of time.

39. In this Court, it was argued on *Anderson's* behalf that it was clear that the judge had intended that the time that he had spent on remand in local authority accommodation should count towards his sentence. Indeed, it was asserted that the judge had stated that his intention was that the offender would spend approximately 12 months in custody in addition to the approximately 6-month period that he had spent on remand in local authority accommodation.

40. In allowing the appeal in part, the Court variously concluded that:

    (1) No account would be taken of the order which the judge had purported to make – as the Court was doubtful not just as to its provenance, but also as to whether there was jurisdiction to make such an order in the first place.

(2) Analysis of the relevant aspects of sections 240ZA & 242 of the 2003 Act and of section 91 of the 2012 Act showed that time spent on remand was automatically deducted if the remand was to youth detention accommodation under section 91(4) of the 2012 Act, but not otherwise – and so not when the remand was to local authority accommodation under s.91(3) of the 2012 Act.

(3) The likely rationale for the different approach between the two types of remand was that youth detention entailed an offender being kept in custody in a secure environment akin to a remand in custody; whereas local authority accommodation was not necessarily secure.

(4) At all events whilst, under the statutory scheme, *Anderson* was entitled to automatic deduction by the prison authorities of the 14 days that he had spent on remand under s.91(4), the 28 weeks that he had spent on remand in local authority accommodation under s.91(3) did not count as time served and did not fall to be deducted from his sentence.

(5) If the judge had intended that the 28 weeks should count, then he was mistaken. In any event, it was not clear that that was what the judge had intended – and even if he had, that did not alter the statutory position and was not a reason why the appeal should be allowed.

(6) Indeed, by reference to the authorities in relation to the analogous situation of incorrect pronouncements by judges in relation to release provisions (see e.g. *R v Giga* [2008] EWCA Crim 703) even if the judge had addressed the issue in his sentencing remarks, and had expressly led the offender to believe that s.91(3) remand time would count, that would only have created a situation which might be different (but no more than that, as stressed in the judgment).

(7) However, by reference to the decision in *R v D & H* (above), it was agreed between the parties that the relevant credit to which the appellant was entitled, by analogy with s.240 of the 2003 Act, for being on a qualifying electronically monitored curfew whilst on remand to local authority accommodation under s.91(3) of the 2012 Act, was 98 days.

(8) The appeal was therefore allowed to the extent that the court directed and made clear to the relevant authorities that credit should be given in respect of a total of 112 days – made up of the 14 days that the appellant was remanded in youth detention accommodation under s.91(4) and the 98 days.

Submissions

41. Counsel on both sides recognised that they had not given the Honorary Recorder of Manchester the accurate assistance to which he was entitled, and that the need for an appeal to put that right had added to the distress of the victim's family and friends. In the result, both counsel made fulsome apologies at the outset of their submissions to us.

42. However, we regret to record that, initially, both failed to give accurate assistance to this Court as well. Mr Johnson QC had not discovered *Anderson*, and neither he nor Ms Duckworth had obtained the judgment in *R v D & H* (which is referred to in *Anderson*). Ultimately, at our request, the judgment in *R v D & H* was provided by the

Registrar and the appeal had to be adjourned for a time whilst the parties re-considered their submissions.

43. In the result, Ms Duckworth submitted that the combination of all the conditions imposed upon the Appellant during the period that he was remanded to local authority accommodation amounted to such a restriction on his liberty that credit should have been given for that whole period when calculating the Appellant's sentence.

44. In the alternative, Ms Duckworth submitted that, in accordance with the analogy recognised in *R v D & H*, credit of 96 days should have been given in calculating the Appellant's sentence – being half the time that he had spent on qualifying curfew whilst remanded to local authority accommodation.

45. Mr Johnson submitted that it was not appropriate to give credit for the whole period that the Appellant was remanded to local authority accommodation but accepted that it was appropriate to give the credit of 96 days to reflect half the time spent on qualifying curfew.

46. Ultimately, Ms Duckworth and Mr Johnson were agreed that neither the Crown Court nor this Court has the power to order the authorities to give credit for time spent on remand in local authority accommodation – whether generally, or when the offender has been subject to a qualifying curfew whilst on such remand. Rather, any such credit must be deducted in the process of calculating the sentence – with the sentence announced being net of any credit deducted.

Our reasons

47. We reminded ourselves that, as originally enacted, section 240(3), (5) & (10) of the 2003 Act required a court, in passing a custodial sentence (including one under s.91 of the 2000 Act) to state the number of days that the offender had spent on remand in custody (as defined in section 242 of the same Act) and the number of days in relation to which a direction was given that they were to count towards the service of the sentence imposed. As originally enacted, s.242(2)(b) included within the definition of a remand in custody a remand or committal to local authority custody under s.23 of the Children and Young Persons Act 1969 and was kept in secure accommodation or was detained in a secure training centre under s.23(7A).

48. It was because of all the practical difficulties that arose in the conduct of that system that it was changed to the current administrative system (described above) which involves automatically crediting time spent on remand after sentence has been imposed.

49. However, it is plain that a period of remand in local authority accommodation under s.91(3) of the 2012 Act cannot be the subject of automatic credit under the current administrative system – given that section 242(2)(b) of the 2003 Act refers only to remand under s.91(4) of the 2012 Act.

50. That, in our view, was the critical conclusion in *Anderson*, and whilst there are passages in the judgment (e.g at [35] & [37]) upon the basis of which it can be argued that the court went further, we do not regard the statutory framework as excluding altogether the possibility of a judge giving credit for time spent on remand under s.91(3) of the 2012 Act when calculating the length of the sentence to be imposed. After all, *R v D*

& H illustrates that the requisite proportion of such time ought to be credited when the offender has been subject to a qualifying curfew. There may be cases in which the interests of justice require that the length of the remand combined with the restrictive nature of the conditions ought to be reflected (beyond any credit for qualifying curfew) in the calculation of sentence – albeit that, as this case perhaps illustrates, such occasions are likely to be rare. In any event the amount, if any, of such credit will all depend on the facts of the particular case, and the judge's assessment of what the interests of justice require. It will not be a purely mathematical exercise.

51. In the circumstances of this case, we concluded that the interests of justice did not require the giving of any further credit beyond 96 days for the time spent on qualifying curfew in accordance with *R v D & H*.

52. Finally, and notwithstanding the ultimate orders made by this Court in *R v D & H* and *R v Anderson*, we concluded that, given the statutory framework, and whether in the Crown Court or in this Court, there is no power to order the authorities to give credit for time spent on remand under s.91(3), and/or for time spent on qualifying curfew whilst on remand under s.91(3). As the parties in this case agreed, the only way that such credit can be awarded is for it to be included in the calculation of sentence, with the sentence imposed being net of the credit given.

Conclusion

53. Therefore, we quashed the sentence imposed and substituted for it a sentence which reflected the fact that we had given credit of 96 days for the time spent on qualifying curfew. The appellant will continue to receive automatic credit for the 8 days that he spent on remand under s.91(4) of the 2012 Act.