

Neutral Citation Number: [2019] EWCA Crim 253

No: 201804935/A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 16 January 2019

B e f o r e
LORD JUSTICE HOLROYDE

MR JUSTICE SWEENEY
HER HONOUR JUDGE WENDY JOSEPH QC
(Sitting as a Judge of the CACD)

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

R E G I N A
v
DANIEL WILLIAM ANGUS LEWIS

Ms J Ledward appeared on behalf of the **Attorney General**

Mr S Kamlsh QC appeared on behalf of the **Offender**

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd 165 Fleet Street, London EC4A 2DY Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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.

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.

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: On 31 October 2018, in the Crown Court at Lewes, Daniel Lewis pleaded guilty to seven offences of possession with intent to supply a controlled drug, contrary to section 5(3) of the Misuse of Drugs Act 1971. These included two offences involving Class A drugs, namely 41 doses of LSD (count 1) and 110 grams of cocaine (count 5). Two involved Class B drugs, namely 26 grams of methedrone (count 6) and 230 grams of dibutylone (count 7) and three involving Class C drugs, namely 54 grams of stanozol (count 2), 72 grams of oxymetholone (count 3) and 72 grams of oxandrolone (count 4). He also pleaded guilty to an offence of possession of a Class B drug, namely 22 grams of ketamine, contrary to section 5(1) of the Misuse of Drugs Act 1971 (count 8).
2. For these offences he was sentenced on 2 November 2018 to concurrent terms of 2 years' imprisonment for each of the Class A drug offences, 6 months' imprisonment for each of the other offences of possession with intent to supply and 2 months' imprisonment for the offence of simple possession. Each of those concurrent sentences were suspended for a period of 2 years and combined with requirements of 300 hours' unpaid work, a curfew requirement for a period of 4 months and a rehabilitation activity requirement for up to 15 days. Her Majesty's Attorney General believes that sentencing to be unduly lenient. The Solicitor General therefore applies, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the sentencing to this court so that it may be reviewed.
3. Mr Lewis is now 30 years old. He had received a formal police warning for an offence of a different kind committed when he was aged just 14. He had no convictions.
4. In July 2016 Mr Lewis was living with his then partner (now his wife) in a first floor flat in Brighton. Police were called to that flat on the morning of Monday 11 July. A young woman, Aimee Spencer, had fallen from a window to the ground below and sustained injuries from which, sadly, she died 7 days later without having regained consciousness. Postmortem toxicology revealed the presence of cocaine and ketamine in her blood.
5. Mr Lewis was in his flat when the police arrived. They found him to be naked, agitated, sweating profusely and clearly under the influence of drugs. Later testing of a sample of urine taken from him showed the presence of cocaine.
6. When the flat was searched the doses of LSD and quantities of Class C controlled anabolic steroids were found, as were significant quantities of prescription medicines, paperwork and paraphernalia indicative of drug dealing as well as traces of drugs suggesting personal consumption. The police also found a quantity of benzococaine, commonly used to cut controlled drugs. They found price lists thought to be from suppliers operating on the dark web, a note referring to a "birthday platter" for one of two particular dates, with a price of £310, a list of quantities of various drugs, a note referring to "the slate so far", deal bags, a pill press and a number of Post Office receipts. Also found at the flat was paperwork relating to a garage rented by Mr Lewis at another address. That garage was searched the following day. It was largely empty but there were some cardboard boxes bearing Mr Lewis' name and address. Within

one of these boxes were found cocaine, dibutylone and methedrone (the subject of counts 6 and 7). The cocaine was of a high level of purity (79%).

7. When interviewed under caution on 13 July 2016 Mr Lewis made a prepared statement to the effect that Aimee Spencer had been at his flat and that they had all consumed drugs "of our own free will". He answered "no comment" to the questions asked of him, including of course in relation to the drugs found at his flat and in the garage. His partner made a statement confirming that a party involving drug-taking had gone on at the flat for most of the weekend. When she left for work on the Monday morning, she left Ms Spencer and Mr Lewis at the flat, both still heavily intoxicated.
8. Mr Lewis' own mobile phone has not been found. The police were however able to recover and interrogate the mobile phones of Mr Lewis' partner and of Ms Spencer. Found on these phones were messages from Mr Lewis to both women indicating that he was involved in the supply of drugs. Messages included the following: a message to his partner at the end of May 2016 in which Mr Lewis spoke of "doing drops", a message to Ms Spencer in mid-May referring to "magic mushrooms", speaking of the advantageous profit margin on LSD and another Class A drug and observing that "swapping" people to magic mushrooms would need a markup. There was then a message in late June 2016 in which Mr Lewis complained that his drugs storage box had fallen off and that he had lost all his drug orders and consequently earned nothing. He expressed his anger at that turn of events. Then, in early July, in response to a question from his partner enquiring about an "after party", Mr Lewis replied that he had "sold two so far. Got £180".
9. On 9 July 2016, which would be the start of the weekend after which Ms Spencer fell to her death, Mr Lewis sent a message saying that she was going to "love the cocaine" and suggesting that upon her arrival he would "get a line under your nose that's like a yeti's leg".
10. The police returned to the flat in September. They found 22 grams of ketamine (the subject of count 8), accepted by the prosecution to have been intended for Mr Lewis' personal use. He was further interviewed under caution and again made no reply.
11. The wider investigation conducted by the police indicated, amongst other things, that Mr Lewis had made bulk purchases of padded envelopes. He had receipts for postage. Browsers capable of accessing the dark net had been installed on his computers, making it possible for him to make purchases on the Internet and/or to use cryptocurrencies which could not be detected. His bank account showed repeat deposits from purchasers in a number of locations around the country, in particular from six regular clients whose deposits into his account exceeded £20,000. The case advanced by the prosecution was that for at least a year prior to July 2016 Mr Lewis had been running a commercial business supplying controlled drugs of classes A, B and C and steroids, both in the form of local deliveries directly to users and by posting items through the postal service.
12. It was accepted ultimately by Mr Lewis that he had been supplying drugs not just to friends but to other acquaintances who he knew through the local drugs party scene.

He said that his use of the postal service was confined to the supply of steroids and Class C drugs. It was accepted by the prosecution that there was no evidence of any further supplies after 11 July 2016.

13. Expert witnesses valued the controlled drugs which were the subject of counts 1 to 8 and the prescription-only medicines which were found at the flat. The former were valued at between £8,000 and £15,000, the latter at £5,600.
14. Those being the facts, in summary, we must also outline the procedural history of the prosecution. Mr Lewis was charged with the charges which he ultimately faced on the indictment. He made a first appearance before the Magistrates' Court on 20 April 2017 and was sent for trial to the Crown Court at Lewes. At a plea and trial preparation hearing before that court on 18 May 2017 he pleaded not guilty to all counts. The case, at that stage, was placed in a warned list for trial commencing 2 October 2017.
15. In late July 2017 Mr Lewis served his defence statement, in which he accepted possession of the drugs found at his premises but claimed that all were for his recreational and personal use.
16. In late August the case was listed for mention because a prosecution witness was not available for the warned list period. The trial was then fixed for 3 April 2018. In mid-March 2018 however, the case was further mentioned before the court because both prosecution and defence now took the view that the estimated length of trial had doubled. The trial was re-fixed for 29 October. The trial date was ultimately put back to 31 October 2018 but on 29 October there was before the court a defence application for disclosure which was ordered to be made.
17. When the case came before the court for trial on 31 October 2018 the judge asked counsel to see her in chambers in order to discuss outstanding disclosure and when a jury might be sworn. Whilst in chambers defence counsel indicated that an application for a Goodyear indication was being contemplated. The judge, at that stage, made certain observations, including a reference to having a duty to rehabilitate offenders and thus to protect the public from future offending as well as to punish. Speaking of individuals addicted to drugs who had made clear efforts to turn their lives around, she asked rhetorically what was the point in sending them to prison for 3 or 4 years to live in an environment where the drug problem was out of control. She described herself as being prepared to give people one chance and one chance only.
18. In the course of this discussion prosecuting counsel indicated to the judge that the parties were agreed that the offending fell within category 3 "significant" role for the purposes of the Sentencing Council's Definitive Guideline in relation to drug offences. The starting point for such an offence under the guideline is one of four-and-a-half years' imprisonment, if the drugs involved are Class A. No Goodyear indication was in fact sought. Later that day Mr Lewis pleaded guilty to all eight counts. The case was adjourned for sentence. Mr Lewis was remanded on conditional bail.
19. At the sentencing hearing the court had a psychiatric report prepared by Dr Zaman and dated 25 June 2018. In this Dr Zaman confirmed a recent diagnosis by another

consultant psychiatrist that Mr Lewis was suffering from a mixed neuro-developmental disorder with features of ADHD and Asperger's. Dr Zaman's opinion was that Mr Lewis showed typical signs and symptoms of ADHD in adulthood justifying such a diagnosis. He referred to Mr Lewis' extensive history of drug misuse, mainly involving the use of steroids in connection with body building and the use of stimulants. He recorded that Mr Lewis has spoken of beginning to take drugs at the age of 18 "to help him socially" and had said that his use of drugs had increased in his mid-20s when his father was diagnosed with prostate cancer. He said that more recently he had also used ketamine to help with features of PTSD which he had suffered following Ms Spencer's death, although Dr Zaman reported as at May 2018 there were no significant features of PTSD.

20. Dr Zaman found Mr Lewis to be free of depressive symptoms and not experiencing significant anxiety symptoms. He took the view that the pattern of drug use reported to him by Mr Lewis suggested drug dependence syndrome. Mr Lewis had begun to see a drug counsellor in 2017. He had stopped taking drugs since 2016. Latterly he had been abstinent for at least 3 months though he had twice relapsed in the last 2 months, taking a small amount of cocaine. Dr Zaman made the observation that it was well recognised that individuals with ADHD misused drugs, in particular stimulants, with greater frequency than the general population and that a number of factors were likely to contribute to that. He was not however able to comment on any possible relationship between the mental health state of Mr Lewis and any involvement in the supplying of controlled drugs.
21. There was also before the court a pre-sentence report dated 1 November 2018 prepared by an experienced officer. Mr Lewis had given the author of the report an account of his drug use similar to that which he had given Dr Zaman. He told the probation officer that he had sent anabolic steroids to others in connection with body building. His supplying of cocaine had been limited to social functions and supplying to friends. He told the probation officer that he had not initially felt sufficiently stable mentally to accept the consequences of his actions and for that reason had initially pleaded not guilty. He also told the probation officer that his attitude to substance misuse had changed significantly with the help of the counselling he had received. He did not want to return to drug use. He had moved away from Brighton in order to distance himself and former associates. He and his partner had married. He was now undertaking volunteer work with a charity. The probation officer assessed him as presenting a low risk of re-offending and commented upon his suitability for unpaid work and a rehabilitation activity requirement if the court felt that a community based penalty was an option.
22. There were also before the court a number of impressive character references which spoke of the great changes which Mr Lewis had made in his life since his arrest. His wife and others who knew him well spoke of his kindness to others and for his enthusiasm for his charity work into which he had thrown himself wholeheartedly. A fellow worker at the charity described him as a "trusted and valued" colleague.
23. In opening the case to the judge for the purposes of sentencing prosecuting counsel indicated that there was agreement at the Bar, subject to the judge's view, that the case

fell within category 3 "significant" role under the sentencing guidelines. Counsel added:

"While there are no statutory aggravating features identified, ... the Crown would submit that given the scope of the dealing, and the scale of the drugs, the sophistication of the dark net involvement and the bank transfers, it may fall higher than the standard starting point."

24. Mr Kamlish QC, then as now appearing on behalf of Mr Lewis, acknowledged that the case passed the custody threshold by some significant margin, but submitted that the facts of the case and the personal mitigation available to Mr Lewis justified a sentence which would not involve immediate custody. As to the facts, he submitted that Mr Lewis had acted as a one-man band, supplying to a relatively small group of people in a relatively small area. He made the point that in the light of Ms Spencer's death the police had searched the premises with particular thoroughness, but that search had not revealed any evidence of dealing to a large number of customers or of seeking to recruit others to supply for him. Counsel submitted that there had been a long delay in the proceedings, not of Mr Lewis' making, during which time Mr Lewis had very clearly and very successfully turned his life around.
25. The judge began her sentencing remarks by referring to the human misery caused by drug dealing. She made clear that she accepted that Mr Lewis had no responsibility for the death of Aimee Spencer but that it had been consumption of Class A drugs which had led to that death. She referred to Mr Lewis as "peddling that misery by doing that drug dealing, and you were doing so in what seems to me very large quantities, and many different types of drugs. Conservative estimate of the value is around £10,000 worth of drugs that we are concerned with."
26. The judge then referred to Mr Lewis' personal circumstances and said that she was faced with a difficult exercise. She said this:

"... there has been a very lengthy delay in this case, which I am satisfied the delays were not your fault, other than of course the fact you were contesting the matter, but effectively we are now in excess of two years since you were first arrested, and it is clear to me from all the material I have read there have been very significant changes in your life, not least the substantial period of counselling which, if I read that report correctly, continues to this day with a drugs counsellor to ensure that you have remained drug free.

You have been honest enough to admit to both the probation officer and indeed a psychiatrist who assessed you there have been a couple of slip ups, but that on the whole you have remained drug free now for a considerable period of time.

Perhaps more importantly both the psychiatric and psychological reports make it very clear that at the time we are concerned with you had an undiagnosed medical disorder, namely Asperger's, with a dissociative

disorder, that undoubtedly underpinned your addiction to drugs. It does not explain your dealing in them, but it certainly explains why you were heavily involved in the drugs scene as you undoubtedly were. But, as has been made very clear, you are now, as I say you are drug free, you are dealing with your mental illness, you are undertaking charity work; you are a very different person from that who was arrested in 2016.

And so, it comes to this, I either apply the guidelines which, as I say, on the face of it quite clearly merit a very substantial custodial sentence or I take what many will consider to be an extremely lenient course, but I remind myself that guidelines are just that, they are not tramlines that I am bound by.

In fact, it seems to me if I were to sentence you today..., if I sent you to prison immediately today, given all the hard work you have undertaken in the last two years, that sentence would be pure punishment, and I remind myself my responsibility not only is to punish you for offending, but to encourage rehabilitation and to ensure the protection of the public in the future from further offending and, therefore, I am going to take that course."

27. The judge then imposed the sentences which we have indicated. She pointed out that the curfew requirement would restrict Mr Lewis' social activities over the Christmas period but commented that he should bear in mind that he might have been in prison for "not just this Christmas but for several Christmases to come".
28. On behalf of the Solicitor General Ms Ledward submits that the following factors are relevant to the proper application of the sentencing guideline. The offending falls within category 3 "significant" role because it involved selling directly to users and was motivated by financial or other advantage. The offending was aggravated by the high purity of the cocaine in count 5, by the multiplicity of charges and the variety of different drugs and by the sophisticated nature of the enterprise. She identifies as mitigating features Mr Lewis' previous effective good character, his demonstration of steps taken to address his addiction or offending behaviour, his mental disorder and his late guilty pleas. She invites the attention of the court to section 125 of the Coroners and Justice Act 2009 which requires every court to follow any sentencing guidelines relevant to an offender's case unless satisfied that it would be contrary to the interests of justice to do so. She also draws attention to the Definitive Guideline in relation to Reduction for a Guilty Plea, recommending a reduction of one-tenth for a plea at trial as matters stood at the relevant date. She also refers to the Imposition guideline, which speaks of community sentences not being appropriate where appropriate punishment could only be achieved by immediate custody.
29. Ms Ledward submits that the sentencing here was unduly lenient, in particular for the following reasons. First, having identified the correct starting point of four-and-a-half years' imprisonment for a single offence of possession with intent to supply of a Class A controlled drug, the judge failed to impose an immediate custodial sentence of considerable length. Secondly, she submits that there was no or no sufficient reason

for such a departure from the applicable sentencing guideline in the interests of justice so as to reach a sentence of a length capable of being suspended or so as to permit suspension. She suggests that the judge must have given excessive weight to the personal mitigation available to Mr Lewis which was not so exceptional as to be capable of justifying the course which the judge took.

30. Ms Ledward emphasises that this is not the sort of case in which a drug addict, with little to his life, is supplying drugs solely to fund the feeding of his addiction. Mr Lewis, it appears, has the advantage of some private means and Ms Ledward suggests that the text messages to which we have briefly referred indicate a clear financial motivation. She points out that both Dr Zaman and indeed the judge herself identified Mr Lewis' mental health difficulties as helping to explain why he began to use drugs as heavily as he did, but as not providing any explanation for his involvement in the supply of controlled drugs to others. She suggests, having regard to some of the case law relied upon by Mr Kamlish, that in all the circumstances of this case public confidence would be shaken by the imposition of a suspended sentence.
31. On behalf of Mr Lewis, Mr Kamlish points to four aspects of the case. First, the delay in the proceedings, in relation to which Mr Kamlish, in his written submissions, makes reference to disclosure failings by the prosecution. Secondly, Mr Kamlish refers to Mr Lewis' successful rehabilitation since his arrest. He submits that Mr Lewis' drug use had been bound up with his then life-style, that he had come into drug dealing in that way and that he had now taken very obvious and successful steps to leave that life behind him. He noted in this regard that as a result of the changes in lifestyle which Mr Lewis has successfully made the probation officer had been able to assess the risk of re-offending as "low". Thirdly, Mr Kamlish relies on the character references and testimonials, both those which were before the court and two further documents made available to this court which similarly praise the work done by Mr Lewis in recent months. Fourthly, Mr Kamlish points to what he justifiably submits has been remarkable progress by Mr Lewis in complying with the requirements of the suspended sentence orders. Of the 300 hours of community service which he was required to undertake, Mr Lewis has now completed 233.5. He has also completed some days of the rehabilitation activity requirement as he has been called upon to do.
32. Mr Kamlish tells us, and of course we accept, that Mr Lewis has recently been offered a permanent job by the charity with which he has been working and he has told us about plans which Mr Lewis and his wife have to set up a dog care centre as soon as he is in a position to do so. Mr Kamlish forcefully makes the submission that Mr Lewis has done as much as anyone could to justify the faith placed in him by the sentencing judge and to show his ability to be a useful member of society.
33. Mr Kamlish also refers to a passage in the sentencing guideline which is in these terms:

"Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 can be a proper alternative to a short or moderate length custodial sentence."

34. Mr Kamlish submits that the appropriate sentence in this case, had the judge not taken the course she did, would have been of a length which could be fairly described as "moderate". He invites our attention to the five statutory purposes of sentencing given in section 142 of the Criminal Justice Act 2003, which requires any court dealing with an offender to have regard to (a) the punishment of offenders; (b) the reduction of crime including its reduction by deterrence; (c) the reform and rehabilitation of offenders; (d) the protection of the public and (e) the making of reparation by offenders to persons affected by their offences.
35. He has referred us to a number of reported cases predating the commencement of the drugs guideline. In particular, he places reliance on the decision of this court in the case of R v Mattheson, Attorney-General's Reference 101 of 2009 [2010] EWCA Crim 238. At paragraph 21 of that judgment Hughes LJ (as he then was) spoke of the role of the judge in making difficult decisions as to whether it was an appropriate case to take a lenient course. Mr Kamlish submits that the judge here passed the sentence she did for good reason and was justified in doing so.
36. Should the court be against him on his primary submission, which is that the sentencing was not unduly lenient in all the circumstances, Mr Kamlish submits in the alternative that there are compelling reasons here why the court should nonetheless not find it necessary to increase the sentence. In addition to all the usual consequences for an offender facing the prospect of imprisonment for the first time, having been on remand on bail throughout the criminal proceedings, Mr Kamlish submits there are two exceptional circumstances. The first is that immediate imprisonment would deprive Mr Lewis of the entirety of his support network and would do so in circumstances where he would be likely to be exposed to temptation to return to drugs. Secondly, Mr Kamlish submits that there would be an adverse effect upon Mr Lewis for Mr Lewis' mental health of being sent to prison at this stage. He points out, and we can readily understand, the dread with which Mr Lewis contemplates that prospect.
37. Mr Kamlish also invited our attention to the recent decision of this court in R v Forsythe-Wilding [2018] EWCA Crim 1180, in which the court declined to indicate what is meant by the words in the Sentencing Guideline "a short or moderate length custodial sentence", indicating that would depend on all the circumstances of each case. Mr Kamlish draws support for his submissions from the outcome of that appeal, which was a finding that the sentencing of Mr Forsythe-Wilding had been unduly lenient, but that the court would not interfere with it by increasing the sentence.
38. Mr Kamlish, in short, accepts that the judge did depart entirely from the Sentencing Guideline but submits that in all the circumstances she was justified in doing so. This was a case in which there was not simply a realistic prospect of successful rehabilitation, it was a case in which the judge could see that the offender had successfully rehabilitated himself.
39. We are grateful to counsel for their very helpful submissions in this difficult case. We have reflected upon them. The judge did not indicate precisely what total term of imprisonment she would have thought appropriate if she had not felt able to take the course she did, but from the remarks which we have quoted she clearly had in mind a

sentence of significant length. She was right to do so. We agree with counsel that the case comes within category 3 "significant" role of the Sentencing Guideline and we accept the submissions of the Solicitor General that there were a number of aggravating features. Concurrent sentences were plainly appropriate, but when the overall criminality is taken into account the appropriate sentence after trial, but before consideration of mitigation, would, in our judgment, be well above the guideline starting point for a single Class A offence.

40. Mr Lewis had the advantage that he was effectively of previous good character, and there was undoubtedly strong personal mitigation in the successful efforts which he had made since his arrest to turn his life around and in the voluntary work which he had undertaken to such good effect. There was further significant mitigation available to him in the features of his mental health conditions, undiagnosed prior to the offending, which provided some explanation for his personal drug use though not, as we have said, for his supplying of drugs to others. But even giving the fullest possible weight to that personal mitigation and giving such limited credit as could be given for guilty pleas at such a very late stage, we cannot think that, as at the date of sentencing, an application of the sentencing guideline would have resulted in a total sentence of less than about four-and-a-half years. We emphasise that a sentence of that level would only be appropriate after giving full weight to the matters of mitigation, without which the appropriate sentence would be longer.
41. The judge's sentence accordingly represents, as is accepted, a departure from the guidelines which she was required to follow unless satisfied that it would be contrary to the interests of justice to do so.
42. We understand why the judge wished to focus on the rehabilitation of this offender. But with respect to her, we take the view that she attached undue weight to that aspect of the sentencing. The following considerations are, in our view, relevant. First, we are bound to say we are troubled by the circumstances in which the judge raised the issue of sentence when seeing counsel in her room initially in relation to disclosure issues. Although it was said that an application for a Goodyear indication was being considered, no such application had in fact been made. Secondly, we are not as impressed as was the judge by the feature of delay. Mr Lewis was, of course, entitled to contest the charges, to put the prosecution to proof, to prepare his case for trial, including by the obtaining of expert evidence about the quantities of drugs recovered in the context of personal use, and to apply to the court in relation to disclosure. But given that Mr Lewis knew all along that he had been supplying drugs and that the drugs seized from his premises were intended for supply to others, he could not realistically expect the court to give much weight to mitigation based upon delay. Thirdly, as the judge herself recognised, the guidelines reflect the seriousness with which the supplying of controlled drugs is viewed, having regard to the harm which it causes and the human misery which results from it. The statutory aims of punishment of offenders, the reduction of crime including by deterrence and the protection of the public should, in the circumstances of this case, have carried very considerable weight.
43. We do not discourage leniency in an appropriate case. But without seeking to define the precise scope of a short or moderate custodial sentence, we have no doubt that this

was not a proper case to treat a suspended sentence as an alternative to a sentence of the length indicated by the application of the Sentencing Guideline. We accept that the requirements attached to the suspended sentence orders have a punitive effect, but that fell far short of punishment commensurate with the gravity of the offending.

44. Lastly, although the judge identified reasons why it was desirable and in the public interest to encourage rehabilitation, she did not, in our judgment, identify compelling reasons why the rehabilitation of this offender so far outweighed the public interest in the appropriate punishment of serious crime as to make it contrary to the interests of justice for her to apply the guideline rather than depart from it to the extent that she did.
45. For all those reasons, we are satisfied that the sentencing here was unduly lenient. We then have to consider whether, at this stage, in the light of the substantial performance of the requirements of the suspended sentence orders and of the further good progress which Mr Lewis has made since sentencing it is necessary to increase his sentence. After careful consideration and fully conscious of the importance of the matter to Mr Lewis, we are satisfied that it is. We take the view that we can reflect his performance of many of the requirements of the suspended sentence orders and his continued good work by making a significant further reduction from the total sentence which would have been appropriate as at the date of the offending. We are however of the clear view that these offences demanded a total sentence of imprisonment of a length exceeding that which could be suspended. The very least total sentence appropriate in all the circumstances as they obtain today would, in our judgment, be one of 3 years' imprisonment.
46. We therefore grant leave to the Solicitor General, we quash the sentences imposed below, we substitute for them concurrent terms of imprisonment as follows. On each of counts 1 and 5, 3 years; on each of counts 6 and 7, 2 years; on each of counts 2, 3 and 4, 18 months; and on count 8, 6 months. Thus the total sentence must be one of 3 years' imprisonment.
47. LORD JUSTICE HOLROYDE: Mr Kamlish, arrangements must be made for Mr Lewis to surrender. Are you able to tell us, please, the appropriate police station?
48. MR KAMLISH: My learned friend has made enquiries and has suggested my client, whether there be any difficulty - he says "no" - I think it is called Brighton Custody Centre.
49. MS LEDWARD: Brighton Custody Centre and I have the full postal address for the court.
50. LORD JUSTICE HOLROYDE: Is there any reason why that cannot be done by 4.00 pm Mr Kamlish? We direct that Mr Lewis must surrender to the Brighton Custody Centre by 4.00 pm.

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

165 Fleet Street, London EC4A 2DY

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk