[2019] EWCA 300 (Crim)
No: 201804981/A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 22 February 2019

B e f o r e:

MR JUSTICE WILLIAM DAVIS

THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE GOLDSTONE QC
(Sitting as a Judge of the CACD)

R E G I N A
v
SHARON KOFFI

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(Official Shorthand Writers to the Court)

Mr S Fidler (Solicitor Advocate) appeared on behalf of the **Applicant**

Mr R Livingstone appeared on behalf of the **Crown**

J U D G M E N T
(Draft for approval)

MR JUSTICE WILLIAM DAVIS: Sharon Koffi was born in December 2000, so she is now 18. In June 2016, when she was aged 15, she allowed her bank account to be used to launder £3,600. This was part of a sum totalling £10,000 which had been obtained by fraud from a lady who had had building work done at her home. Those responsible for the fraud had hacked the lady's email account and from email correspondence gleaned that (a) she had had building work done, and (b) the builder had not been paid. So it was that they sent a bogus email purporting to be from the builder providing new bank details. The bank account in fact belonged to a man in his twenties name Katula. He was eventually convicted after trial of an offence of money laundering and sentenced to nine months' imprisonment, the sentence being suspended for two years.

From his account £3,600 was withdrawn and paid into Sharon Koffi's account. It was withdrawn almost immediately and dissipated. Sharon Koffi's part was to give her bank card to another co-accused to enable the laundering to take place. She had been promised £300 for the use of her account. When she was arrested in October 2016 she admitted providing her friend with a bank card, she accepted she had been promised £300, but she said she had not been paid. Her case in interview was that she was unaware that it was fraudulent money that had been paid into and then taken out of her account.

She now applies for an extension of time for leave to appeal against sentence, her application having been referred to the full court by the Registrar. Her application for leave to appeal was 24 days out of time. The reason for the delay was that her solicitor only became aware of a particular decision of this court after that period of delay and consequently came to the conclusion that there were proper grounds of appeal. We accept the reasons why there was a delay and entirely without prejudice we shall give leave to appeal against

sentence.

There was a long delay before Sharon Koffi was charged. The postal requisition was not issued until November 2017. There was no proper reason we can identify for such a long delay. Although this was a clever fraud, it was hardly complicated. This kind of delay has become endemic in the criminal justice system. That is a delay of something approaching 12 months in what is a relatively straightforward set of criminal proceedings. Such delays are always to be considered unacceptable but that is particularly so where the proceedings include a defendant who at the time of the offence was aged only 15. The result in her case was that she was eventually sentenced more than two years after the offence.

Her first appearance at the Magistrates' Court was on 11 December 2017. The adult co-defendant elected trial. The magistrates clearly considered the interests of justice test and having applied it concluded that this appellant had to be sent for trial along with the adult. In our view a much more sensible course would have been to remit her case at that point to the Youth Court. This was what might be termed a paper case. There were no victims in the true sense. The entire case depended upon the defendants' explanations for monies going into and out of their bank accounts. There was no doubt that a fraud had occurred. The only issue in relation to this appellant was her knowledge or belief. There was no conceivable disadvantage to the prosecution or the defence for her to be tried separately.

However, that allocation decision meant that she was sent to the Crown Court. She pleaded guilty at the first effective hearing in the Crown Court, which was the PTPH hearing on 2 February 2018. The judge could then have remitted the appellant to the Youth Court for sentence. We understand from the papers we have seen that no application was made at that point because there was no pre-sentence report. That is how it was explained later to

the judge who eventually sentenced. In our view that makes no sense on the facts of this case. There was no conceivable basis upon which a Youth Court would not have had appropriate sentencing powers. We remind ourselves the Youth Court could in an appropriate case impose a sentence up to two years' detention and training order. Self-evidently this case fell far short of that. Why no application was made in February 2018 is not apparent to us.

The result was that the sentence of this young woman was adjourned to the conclusion of the trial of the co-accused and so the sentencing hearing was on 12 October 2018. In the meantime, this appellant had lived her life in a perfectly decent and law-abiding fashion, with no offending in the intervening 27 months. The pre-sentence report prepared by the Youth Offending Team unsurprisingly concluded that custody was not appropriate. Three non-custodial options were discussed: (1) a youth rehabilitation order with an ISS requirement - that is the most robust form of youth rehabilitation order, usually regarded as an alternative to immediate custody; (2) a youth rehabilitation order with a curfew requirement; (3) a referral order. That last option was not open to the judge in the Crown Court. It is a sentence that can only be imposed by the Youth Court. In any event, the report from the Youth Offending Team noted that a referral order would focus on supervision. Whatever the appellant's needs in 2016, by 2018 (that is October of that year when she was to be sentenced) she had not offended again, she was at college and she had no needs or requirements that would be assisted by supervision. The pre-sentence report made it clear that the author did not believe that the appellant required a supervision requirement which would be automatic within a referral order. Despite that, application was made to remit the appellant's case to the Youth Court. Had that happened, the Youth Court would have been faced with only three options: Custody, a referral order or an

absolute discharge. That is the consequence of section 16 of the Powers of Criminal Courts (Sentencing) Act 2000 for somebody in this appellant's position, namely an appellant not having been convicted of any criminal offence before. The Youth Court would have been faced with a report from the Youth Offending Team that in clear terms indicated that the normal structure of a referral order would not be suitable for this particular person.

The judge decided that it was undesirable to remit to the Youth Court. That was a decision he was entitled to take in law and on the facts he concluded it was the right decision given the long delay and the contents of the report prepared by the Youth Offending Team. The sentence he in fact imposed was a youth rehabilitation order for 12 months with a single requirement, namely requirement to perform 60 hours of unpaid work. We have made enquiry of the current position. The appellant's case is now supervised by the Probation Service because she has reached 18. She has completed slightly less than half of the hours required under the order, but the order is, according to the Probation Service, to use their words "going well"; the appellant apparently does her work at a large London teaching hospital.

The grounds of appeal cite and rely upon the decision of this court in Dillon [2017] EWCA Crim. 2671, to which we shall return in a moment. The grounds in writing conclude with these words:

> "There is a good and arguable ground of appeal which should be dealt with expeditiously by the making of a referral order."

As we have already identified, there is an immediate problem with that ground and that argument. As Dillon confirms, and as we have already outlined, the Youth Court has

exclusive jurisdiction to make a referral order and we have already referred to the terms of section 16 of the 2000 Act. Neither the judge in the Crown Court nor a member of this court reconstitute as a District Judge under section 66 of the Courts Act 2003. In neither circumstance would the judge be sitting in the Youth Court.

What is submitted today by Mr Fidler on behalf of the appellant is that the judge either should have remitted the case to the Youth Court or, failing that, should have imposed a conditional discharge which was, as it happens, the outcome of the appeal in Dillon. The judge can hardly be criticised for not taking that course since nobody invited him to do so. All he was invited to do was to remit the case to the Youth Court. On the history we have already outlined, we see absolutely no error in principle in him declining to take that course.

We sit as a court of review. We are here to review whether the decision of the judge sitting below led to a sentence that was either manifestly excessive or wrong in principle. The essence of the argument put today on behalf of the appellant is that were she to be conditionally discharged, as happened in Dillon, then the rehabilitation period would be the conclusion of whatever the period of conditional discharge was, whereas under a youth rehabilitation order the rehabilitation period expires six months after the expiry of the order. We remind ourselves that the order in this case commenced on 12 October 2018. It follows that since it was a 12-month order at the very latest the appellant will be rehabilitated some time early in 2020. When she will be rehabilitated were she to be conditionally discharged today would of course depend entirely on the period of conditional discharge.

We re-emphasise that we are a court of review. It is not for us to adjust a sentence passed in a legitimate way by the court below simply because that would affect some notional

rehabilitation period affecting this particular appellant. It is true that the period of unpaid work under the youth rehabilitation order on the face of it is a more severe sentence than a referral order. It is a sentence that a Youth Court would not have been able to impose. But we cannot conclude that the sentence was wrong in principle or manifestly excessive. The offence committed was not trivial by any manner of means. Although the defendant was very young, she committed an offence which enabled a significant fraud to be perpetrated. We are not assisted with respect by a comparison of the precise facts in Dillon as opposed to the facts in this case. Dillon was a fact-specific decision in relation to the sentence imposed.

In all those circumstances, although we have given leave to appeal, we have come to the conclusion that this sentence was not manifestly excessive or wrong in principle. We have noted throughout this judgment the various bases upon which the progress of the case can properly be criticised, which has led us to this position and led the judge to the position he was faced with in October of last year, but we cannot use this appeal process to cure those failings in the criminal justice system.

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