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No: 202000173 A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 25 February 2020

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE EDIS

MR JUSTICE CHAMBERLAIN

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

R E G I N A

v

JOSHUA SHAWN DALGARNO

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The Solicitor General, Mr Michael Ellis QC MP, and Mr Joel Smith appeared on behalf of
the **Applicant**
Mr Derek Perry appeared on behalf of the **Offender/Respondent**

J U D G M E N T

LORD JUSTICE SIMON:

1. Her Majesty's Solicitor General applies for leave to refer a sentence passed on the offender at the Crown Court at Taunton on 19 December 2019 under section 36 of the Criminal Justice Act 1988 as unduly lenient. We grant leave.
2. The sentence was passed by His Honour Judge Ticehurst and the offender was Joshua Dalgarno, now aged 25. He faced a four-count indictment. Count 1 was a charge of controlling or coercive behaviour in an intimate or family relationship, contrary to section 76 of the Serious Crime Act 2005; count 2 was a charge of burglary, contrary to section 9(1)(b) of the Theft Act 1968; count 3, taking a conveyance without authority, contrary to section 12(1) of the Theft Act; and count 4, damaging property, contrary to section 1(1) of the Criminal Damage Act 1971.
3. At a Plea and Trial Preparation Hearing on 25 October the offender entered guilty pleas to counts 1, 3 and 4. His plea of not guilty on count 2 was acceptable to the prosecution. Sentencing was adjourned for the preparation of a pre-sentence report and the offender was remanded in custody.
4. On 9 December the offender was produced via video link for the sentencing hearing. During the opening of the facts by the prosecution, the offender became angry and left the video link booth. He later returned and, through his counsel, invited the judge to proceed to sentence. The judge declined to do so, and the hearing was relisted for 16 December.

5. On that day the offender was sentenced to a 24-month community order in relation to each count, with a rehabilitation requirement for up to 30 days, participation in the Building Better Relationships Programme and a condition of residence in approved premises. In addition, he was made the subject of an indefinite restraining order preventing contact with the victim or her sister or from attending the victim's home address.

6. The indictment reflected offending in the form of domestic abuse against his former partner 'F' from June to September 2019 comprising of a number of incidents of violence, obsessive and controlling contact by phone, controlling of the contact that the victim had with her sister, other family members and friends, monitoring of her phone and social media contacts, and taking and driving her car without permission. This conduct continued after his arrest in August. Having been arrested again in September and released on bail, he threatened F and her sister on a further occasion, taking her car (count 3) and attempting to break down her sister's door (count 4). The offender had a history of violent offending against partners.

7. F was aged 25 and was described by her sister as someone who was vulnerable, having found it difficult at times to live independently. She had met the offender through an online dating site in June 2019 and he soon moved into her flat.

8. On Sunday 18 July, F told the offender that her brother would be staying as he was visiting from abroad and that he (the offender) could not stay. He responded with a barrage of phone communications attempting to pressurise her into allowing him to stay

and accusing her of using cocaine and of being unfaithful. He continued to call her throughout the night, repeating the accusations.

9. The next day she took her brother to hospital with a chest complaint. The offender did not believe that she had gone to hospital. When he saw her later that day, he demanded that she hand over her phone so that he could check for messages from other men.
10. Subsequently, on a trip to Longleat, he told her what she should wear and accused her of looking at other men.
11. He also took to demanding that she hand over her phone on her return from work so that he could monitor her contact with other men and her family. He would take photographs or screenshots of her messages and call logs, and keep them. He monitored who she was in contact with via Facebook and would forbid her from taking her phone to work, or take her phone from her so as to prevent her from using it.
12. Around this time, she became aware that the offender had a cocaine habit and was spending all his money on that drug.
13. On an occasion when he had taken her phone from her, he 'blocked' her twin sister from contacting her, without her knowledge, and deleted her number from F's phone. He also contacted male friends and previous boyfriends of F and asked to know when they had last seen her, and whether they had been in contact with her since June 2019.

14. Between July and September, he was violent towards her and towards property. F described him throwing cups of tea and coffee at the wall or floor, trying to set fire to a light, breaking property including a fan when in a rage, and assaulting her. These assaults took the form of striking her knees and legs, and twisting her arms and wrists, causing substantial bruising to her legs and arms. On one occasion he stabbed her with a penknife. He punched her and, whilst doing so, accused her in graphic terms of having sexual relations with other men. He also pinched her breasts, causing bruising. Most of the violence towards F took place in September 2019, when the offender knew that she was pregnant. She has since lost the baby.

15. On 1 August 2019, F reported his behaviour to the police, and he was arrested on 4 August. He was released on bail with a condition not to contact her. On 26 August, she provided a statement in which she said that she did not support a prosecution of the offender and that, whilst she knew he was violent and controlling, she would be taking steps to protect herself from him. She said that she would not attend court if the Crown Prosecution Service pursued a "victimless prosecution". For this reason, on 26 August the investigation of the offender ceased and the condition of non-contact fell away. F would later tell the police that she was still seeing the offender throughout August and felt under pressure to withdraw her allegation.

16. In early September F was admitted to hospital with a kidney infection. When visiting her in hospital, the offender accused her of fabricating the infection, saying that it was "all for attention". He threatened to pull her drip out. The next day he returned, threw juice over her bed and threatened to pull a cannula out of her hand if she did not leave. Staff at the

hospital noted his behaviour and warned her against staying in a relationship with him.

17. Shortly after her release from hospital, the couple took a trip to Devon. The offender accused her of having been unfaithful with one of the nurses at the hospital and prevented her from having access to her phone. While in Devon, the offender began drinking and insisted on returning home to pick up more cocaine.
18. They returned to Devon the next day. He challenged her as to why she was talking to her sister. He obtained her telephone back-up files and went through her movements in July and August, and her deleted messages and photographs. When she told him that he was being ridiculous and that she had not been unfaithful, he snapped her phone in two. Throughout the journey home he continued to accuse her of looking at other cars or at men in other cars. When they reached home, the offender shouted and became aggressive.
19. After this trip to Devon, when he was not with her he would call her up to 60 or 70 times a day, demanding to know who she was with, whether she had spoken to family members or men, and insisting that she put the camera of her phone on to show him there were no other men with her.
20. On 11 September neighbours called the police after hearing the offender shouting at F and her response, "you've already hit me twice". F told the police that everything was all right but would later say she was scared of the offender even when four police officers were present in her home.

21. The offender lost his job because of his continual phone calls to F during work hours. He encouraged her to leave her job as he did not want her meeting people there.
22. On 14 September the couple took a second trip to Devon. By this time, the offender would ordinarily drive F's car even though he did not have a licence. She did not feel she could object as she "did not know what he was capable of". By now, she had taken to shutting her eyes when they were in the car together so that the offender could not accuse her of looking at other men.
23. During the second trip, the offender continued to accuse her of being unfaithful. After they arrived, he became very drunk, and angry when the landlord and F advised him against driving. She left him for five minutes. He followed her and furiously accused her, in explicit terms, of having sexual relations with other men. He pulled her hair and punched her bruising her arms. He then demanded, notwithstanding his drunken state, that she allow him to drive her car.
24. Having obtained the keys, he insisted that they leave together, threatening to leave her stranded. He then crashed the car, damaging the wing mirror and two tyres. During the ensuing argument, he grabbed her head, smashing it against the windscreen. He also threatened to kill her father and rape members of her family and friends. F started to drive the offender back to their hotel, where he again attacked her, punching her on the arm and face and causing a black eye, while continuing to accuse her of being unfaithful and telling her he knew people in prison who would destroy her life. He also struck the windscreen of her car, cracking it. Back at the hotel he called her a prostitute. The next

day, 15 September, neighbours noticed a green-coloured bruise around her left eye. She told them that she "need[ed] to get him out".

25. On 16 September she was due to go to work. The offender told her to tell her colleagues that she had been bruised in an accident with a surfboard. Her boss had arranged a meeting with her as she had been taking large amounts of unauthorised leave. During this meeting, he and other colleagues noticed the bruising to her eye. She told him that the offender had been assaulting her and had smashed her telephone, meaning that she could not phone into work about her absences. She showed her boss her upper forearms, which were both heavily bruised. He reported the matter to the police.

26. The offender continued the physical abuse of F in late September: punches to the arms, and a punch to the face which she described as making her "see stars". The offender's own mother noticed bruising to F and told him that he would have to stop. On a trip to a local beach the offender had formed the view that she was looking at some man whilst swimming in the sea. He ducked her head under the water and then shouted to others present, describing her in graphically sexual terms and shouting that she had a cocaine habit, even though she was pregnant.

27. On 18 September, the offender followed an ex-boyfriend in a car, accusing her of having been unfaithful. He then used a penknife which had been used in place of the indicator stick to stab her in the leg, causing a mark and bleeding. Having caught up with her ex-boyfriend, the offender swore at him and smashed his windscreen with a wheel brace. When driving away, he punched her again.

28. She was to describe numerous other examples of controlling and aggressive behaviour.

He had frequently broken property and had followed other cars containing men he accused her of having relationships with. He also asked her to obtain a contract for a mobile phone in her name, which he used. He continued to prevent or limit her access to friends and family, including preventing her seeing her grandmother at her birthday celebrations. She stopped talking to her mother and to her sister. The offender smashed the replacement telephone that she obtained after he had snapped her telephone in two in Devon.

29. As is not uncommon in cases of domestic abuse, the violence and controlling behaviour was punctuated by apologies.

30. A download from F's telephone showed messages between the offender and her between 25 June and 4 August 2019. They did not cover the period of August and September when the offender's behaviour was at its worst. The messages showed the offender regularly contacting her, accusing her of having affairs and of engaging in sexual activity with other men (including friends, colleagues and taxi drivers), demanding passwords to her phone and social media accounts, and controlling her in the manner described by her to the police. He also used the geolocation feature of her telephone to monitor her whereabouts.

31. On 20 September the offender was arrested. He was interviewed and provided an untruthful statement saying that the injuries to F were as a result of a surfing accident and the damage to her property was accidental. He denied any criminal activity.

32. He was released from police custody on 21 September subject to bail conditions not to contact F. He went straight to her address. At the time she was staying at her sister's house as she did not feel safe in her own home. He broke into her home, took her car keys and used them to take her car without her permission. He then drove around looking for her. This gave rise to the charge under count 3 on the indictment -- taking a conveyance without consent.

33. At 11.15 that night he went to F's sister's home. He banged on the front door violently with his fists, kicked the door, and shouted, "Where is my girlfriend? Get her out here now." F's sister's boyfriend, who was there, ran to the front door to hold it shut. During this time the offender was swearing, and threatened to "smash his head in". F, her sister and the boyfriend then fled, driving away in F's sister's car. The offender stood in the way of the car, looking "completely out of control" and throwing an object at it as they drove past. During this incident, F's sister was so scared that she was sick. The offender cracked the door when kicking it. This crime was reflected in count 4 on the indictment. Counts 3 and 4 were committed the day that the offender had been released on bail, in relation to offending against F, and in breach of a condition not to contact her.

34. He was arrested again on 25 September; and gave 'no comment' answers to questions in interview.

35. In September 2019 F provided two statements in which she expressed her fear of the offender after he had come to her sister's house. She said that she had to find somewhere else to stay as she did not feel safe either at her sister's house nor her own home. In her

police interview she described the offending as making her feel "little" and "like a piece of dirt". Her sister told police that she could not return to her flat until she knew that the offender was in custody.

36. The offender's mother provided a statement to the police in which she described the paranoid behaviour that she had witnessed on the part of the offender towards F and other girlfriends. When his mother challenged him, he said that he was his "father's son". The offender's mother had called the police about the offender's behaviour in the past and told the police that he scared her.

37. One of the most striking features of this Reference is that this offending was not out of character.

38. Although he was only 25, he had a very bad record for this type of violent and oppressive behaviour, often in the context of a domestic relationship. It is unfortunate that many of the details of this antecedent history were not before the sentencing judge.

39. In September 2009, he was made the subject of a referral order for battery. These facts were not before the judge. He had punched the victim several times to the head during an altercation in the streets.

40. In November 2010, he was sentenced to a youth rehabilitation order for possession of a bladed article, criminal damage and battery. The facts of this offence, which were not before the judge, were that he was involved in an altercation with a friend, which was

broken up by his sister. After this, he returned home and became verbally and physically confrontational towards his sister and his mother, causing his mother to fear for her daughter's safety. The offender damaged a kitchen chair and table, and the bathroom door, and left the property carrying a kitchen knife. He was arrested on the street in possession of the knife.

41. In June 2012, he was sentenced to a community order, with supervision and an unpaid work requirement, for two offences of battery and one of common assault. The facts of this offending, which were not before the judge, all concerned domestic violence against a domestic partner. The convictions reflected three occasions on which he slapped the victim to the face and stood on her hand, spat in her face and grabbed her hair, pushed her face into a bed, pinched her stomach and breasts, and kicked her legs. He also snapped her phone and placed it in water, threw a drink and an egg at her, and twisted her forearm.

42. In May 2013, he was sentenced to a community order, subsequently varied in January 2014 to 2 weeks' detention in a young offenders' institution, for offences of criminal damage, using threatening words and behaviour, and common assault. The facts of this offending, which were not before the judge, were that the offender had drunkenly shouted at passers-by, spat in the face of a man and run away from police into a nearby garden, where he damaged fencing.

43. In June 2013, he was sentenced to a community order, subsequently varied to 4 weeks' detention in a young offenders' institution, for two offences of battery. The facts of these

offences, which were not before the judge, were that he assaulted a domestic partner whom he believed was being unfaithful. He grabbed her, causing her mobile phone to drop and smash, and then grabbed her throat and pushed leaves into her mouth, smashed a picture frame and held it to her throat, saying that he wanted to kill her, elbowed her in the stomach, hit her in the eye causing a black eye, grabbed her arm causing bruising, and punched her torso repeatedly.

44. In September 2013, he was fined for two offences of failing to comply with a community order and sentenced to a further community order, also subsequently varied to 2 weeks' detention in a young offenders' institution, for criminal damage.

45. In January 2014, he was sentenced to 2 weeks' detention in a young offenders' institution for criminal damage and using disorderly or threatening or abusive words or behaviour. The three community orders he was subject to at the time were revoked and the offender was made subject to the further periods of detention we have already described. The facts of this offending, which were not before the judge, were that the offender went to his sister's house and swore, demanded his phone and a cigarette, and threw a plant pot at his neighbour's door causing damage.

46. In March 2014, he was sentenced to 4 months' imprisonment, suspended for 24 months, for offences of criminal damage and battery, was required to complete a programme and made the subject to a restraining order. The facts of this offence were that the offender attended the address of a domestic partner who was 30 weeks pregnant with his child at 2 am. He demanded to know where a man was that he wrongly believed to be there. He

entered the property through a window, grabbed his partner, causing bruising. Whilst at the property he smashed a mobile phone, a lamp and mirror, and broke a bedframe and electric socket.

47. In October 2014, he was sentenced to 12 months' detention in a young offenders' institution for an offence of assault occasioning actual bodily harm which had been committed while on bail. The facts of the offending were that on 7th March 2013 the offender, while he was in drink, punched a friend of his six times, headbutted him and kicked him to the face. The victim suffered a bloodied face, a swollen jaw and an observable footmark to the face.

48. In December 2014, he was sentenced to 3 months' detention in a young offenders' institution for offences of battery and criminal damage, also committed while on bail. In September 2014 the offender argued with a domestic partner and put her in a "sleeper hold", pinning her throat and body to the bed for 10 to 20 seconds. On 24 October 2014 he returned to her address. Despite being told not to come in, he entered through a window and looked around as if searching for another man. An argument ensued and the offender punched a hole in a wall.

49. In April 2016, he was sentenced to a community order with a rehabilitation activity requirement and a programme requirement for being drunk and disorderly and breaching a restraining order. The facts of the breach offence, which were not before the judge, were that the offender sent three text messages to a domestic partner in respect of whom there was a restraining order in place. He also tried to goad the victim's new boyfriend

into fighting him.

50. In October 2016, he was sentenced to a community order, with an unpaid work requirement, for breaching a non-molestation order imposed in the Family Court. The facts of this offending, which were not before the judge, were that a former partner of the offender, in respect of whom the non-molestation order was in place, said that the offender had hit her over the head with a domestic appliance, causing concussion. She was unwilling to support a prosecution and the offender was convicted of breach of the non-molestation order.

51. In April 2017, he was sentenced to 10 months' imprisonment and made the subject of a restraining order for an offence of assault occasioning actual bodily harm. The facts of that offence were that on 29 October 2016 the offender, who had been taking drugs and was in drink, became involved in an argument with a domestic partner. He removed his jumper and T-shirt and challenged passersby to a fight. During the argument the offender punched his victim to the face, knocking her to the floor and causing a fracture to the right eye socket, a fractured nose and a cut below her eye.

52. In July 2018 the offender was sentenced to 20 weeks' imprisonment for offences of criminal damage and sending a communication conveying a threatening message. The facts of this offending were that on 30th June 2018 he awoke his then domestic partner and accosted her about a male friend on social media. The next morning, when she had asked him what was wrong, he had punched the dashboard of her car and said he was still angry about her contacting a man on social media. He then left the car and entered her

flat through an open kitchen window. When she entered the flat, he shouted and swore at her and accused her of being unfaithful. He had been taking cocaine. She was pregnant, but he grabbed her by the waist and shoved her against the kitchen doorframe, causing a bruise to her forearm. He then smashed her television set, telling her, "You ain't watching shit now". After the police arrived, she developed stomach pains and was taken to hospital. He then sent text messages to her threatening to "smash [her father's] head in" and to damage her car.

53. There were two reports before the sentencing judge. The first was a pre-sentence report. The offender told the author of this report that he had stopped taking his anti-depressant medication shortly before the relationship with F began. He accepted checking her telephone on numerous occasions.

54. The offending was assessed as having a significant impact on F; and the report described his behaviour as "another incidence of domestic violence, triggered again by sexual jealousy and underlying trust issues". The offender had taken "some responsibility" for his actions but minimised his behaviour. He made excuses and failed to recognise the impact of his behaviour. He was assessed as being at high risk of reoffending. He posed a high risk of serious harm to intimate partners.

55. The author of the report noted that the offender "has an extensive list of violent offences" and had failed to engage in rehabilitative programmes to address his "problems". The report concluded that, although his previous attitude to rehabilitative sentences had been "problematic" and resulted in numerous breach proceedings, he needed to complete a

"Building Better Relationships Programme". This programme was not available after release on licence unless the licence period was 18 months or more. The report therefore recommended a 24-month community order.

56. The second was a psychiatric report from Dr Ahmed. The offender told the psychiatrist that he had been self-harming. He said he had been "taken advantage" of by F and coerced into obtaining payday loans of £4,000 which were partly used to fund F's ex-boyfriend's drug habit. He told the psychiatrist that it was F who had been controlling towards him, preventing him from going where he wanted, and insisting he stay with her. He accused her of having a termination without his consent. He denied any violence or any assault. He denied coercing or restricting her activities. He said that they were hardly ever together as she was working all the time. He accused her of being "disloyal" and of talking about men she had previously met on dating websites. He maintained his belief that she had been unfaithful. He described her version of events as "inaccurate" and stated he had been taken advantage of. In short, he denied the offences and blamed the victim. He said that he had only pleaded guilty because he had been advised to. The psychiatrist summarised his approach as:

He is not accepting the evidence put forward by F and, in fact, is blaming her for all the events that have occurred. Although pleading guilty, he is showing no remorse.

57. The psychiatrist concluded that the offender suffered from dissocial personality disorder, characterised by a life-long tendency to be rebellious, impulsive, to infringe rules and get in trouble with the law. It was not a "major mental illness". He was assessed as not

learning from his mistakes, becoming quickly angered and not taking responsibility for his behaviour.

58. The judge's sentencing remarks were short:

What I am going to do, giving you credit for your pleas of guilty, taking into account the Sentencing Guidelines is to see whether or not this cycle of abuse of women and of violence towards them can be broken, but you should be in no doubt that if you mess up, if you fail to comply with the various requirements or if you commit any further offences, you will be back in front of me. The sentence I have in mind for you is one of 4 years in prison. Do you understand that?

59. The offender replied:

Yes, judge.

60. The judge warned the offender that he could end up killing someone due to his loss of temper and lack of control:

You really are at a turning point in your life, Joshua Dalgarno. Either you take this opportunity with both hands, work with the Probation Service and keep out of trouble or you can see where your future is going to be.

61. He then imposed the 2-year community order with conditions.

62. The Solicitor General submits that, by reference to the Sentencing Council guidelines for offences contrary to section 76 of the Serious Crimes Act 2015, the crime charged as count 1 fell into category 1A. There were a number of greater harm and higher culpability factors. Category 1A has a starting point of 2-and-a-half years and a range of 1-4 years. In addition, he submits there were a number of aggravating factors. He had

four previous convictions for assaulting women with whom he had been in a relationship; two of these were assaults on pregnant women. In addition, he had failed to respond to previous community orders, and paid no regard to restraining and non-molestation orders. In these circumstances the sentencing process was flawed, and the passing of another community sentence was unduly lenient. The Solicitor General also notes that in departing from the guidelines the judge had given no reasons for doing so, and had not explained why it would have been contrary to the interests of justice (see section 125 of the Criminal Justice Act 2003).

63. For the offender, Mr Perry, in measured and realistic submissions, accepts that the offending could have justified a custodial sentence of significant length, particularly in the light of his previous convictions. But he repeated the submissions that he made before the judge that a reduction in the risk of future offending would be better achieved by rehabilitation and therapeutic intervention in the community rather than a custodial sentence. As he put it, "Prison simply had not worked". There was, he pointed out, support for this in the pre-sentence report. The reality was that in view of the time on remand, the release from custody would occur relatively soon in the context of the life of this young man. The judge had indicated the length of sentence that he would impose if he were breached and had exercised a reasoned sentencing approach that was open to him in the circumstances.

64. We have also seen a supplementary probation report prepared for this court dated 23 January 2020. This is not wholly favourable. He is residing at Weston Approved Premises, as envisaged by the judge's order, but he has tested positive for cocaine while

there.

65. We have considered the submissions made on behalf of the Solicitor General and the offender.

66. This was grave and protracted criminality which fell very clearly within the definition of *domestic abuse* set out in the guidelines, Part 5 "Overarching Principles: Domestic Abuse". It was a pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse directed at an intimate partner, encompassing psychological and physical abuse.

67. By reference to the Sentencing Guidelines for offences contrary to section 76 of the Serious Crimes Act 2015 it was category 1A offending.

68. There were a number of culpability factors present which took the offending into category A: the persistence of the offending from June to September; the multiple methods of controlling the victim, including monitoring her phone and social media use; obtaining her archived phone records, which also indicated a degree of sophistication in the offending; verbal threats, physical violence and isolating, preventing or limiting her access to her family and friends. The repeated and graphic sexual allegations, and conduct intended to humiliate and degrade her were also factors that took the offending into category A. This was, as the Solicitor General submitted, pernicious behaviour, calculated to demean.

69. So far as harm was concerned, not only was the victim in fear of violence - a category 1 factor - she was frequently assaulted and she had to leave her own home. It was very plainly within category 1A of the guidelines, with a starting point of 30 months and a range of 1-4 years, as the judge, with his reference to a term of 4 years, recognised.
70. There were, in addition, a number of aggravating features that were relevant to the sentence: the number and nature of previous convictions for incidents of domestic violence - certainly not less than 4, including violence against pregnant women; the fact that the victim was pregnant at the time she was subjected to violence; counts 3 and 4 were offences committed while on bail and on the day that he was released from custody; some of the offending was committed while the offender was under the influence of alcohol and drugs; and steps were taken to prevent the reporting of the offending. The only mitigation was the plea of guilty.
71. It is clear from the sentencing remarks that the judge considered the offences merited a substantial custodial sentence. He decided to pass the sentence that he did to see whether the cycle of abuse of women and of violence towards them could be broken. There was nothing wrong with passing a merciful and constructive sentence, but the judge was bound to consider the wider picture of an offender who had been given very many chances to change his conduct and who had failed to avail himself of these opportunities. The sentence that should have been passed was one that appropriately reflected his criminally oppressive conduct to women with whom he continued to form abusive domestic relations. That was the sentence indicated by the application of the guidelines and not *yet another chance*.

72. In our view the sentence that should have been passed before credit for the pleas was a term of 4 years' imprisonment. With 25% credit for the plea, there should have been an immediate term of imprisonment of 3 years. The sentence that was passed on count 1 was unduly lenient. We therefore substitute a term of 3 years on count 1 and sentences of 3 months concurrent on each of counts 3 and 4. The restraining order will remain in place. We will direct that time 81 days spent on remand will count towards the sentence of imprisonment.

73. Mr Perry, is your client available to surrender to custody?

74. MR PERRY: My Lord, yes. We discussed that between us today and I have spoken to my solicitors. He is at the approved premises in Weymouth. So, it will be Weymouth Police Station he will need to surrender to.

75. LORD JUSTICE SIMON: We will direct that he must surrender to Weymouth Police Station by 3 o'clock this afternoon.

76. MR PERRY: Thank you very much.