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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202103325/A1

NCN: [2021] EWCA Crim 2005



Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 21 December 2021

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)

(SIR ADRIAN FULFORD)

LORD JUSTICE HOLROYDE

RECORDER OF LONDON

(HIS HONOUR JUDGE LUCRAFT QC)

(Sitting as a Judge of the CACD)

REGINA

V

REBECCA RESCORL

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MR R QUAIFFE appeared on behalf of the Appellant.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: Rebecca Rescorl, now aged 40 and of previous good character, pleaded guilty to an offence of fraud contrary to section 1 of the Fraud Act 2006. On 8 October 2021, in the Crown Court at Truro, she was sentenced by HHJ Carr to 15 months' imprisonment. She now appeals against that sentence by leave of the single judge. The principal issue in the appeal is whether the sentence should have been suspended.
2. The appellant had for many years been employed in the accounts department of a small family business. She was responsible for invoicing and had effective control of the accounts. Between May 2015 and August 2019 she abused the high degree of trust which was placed in her by creating false documentation, making payments from the company's account for her own benefit and causing payments in favour of the company to be diverted into her own bank account. The total sum which she obtained over that period was £50,000.
3. The appellant went to considerable lengths to ensure her offending was not detected. The founder of the company, who became terminally ill and sadly died during the relevant period, was very concerned about the state of the company's finances, but the appellant did all she could to ensure that no one was brought in from outside to examine the accounts. As a result of her offending the company became unable to pay her salary and she was made redundant, receiving a redundancy payment of £8,000. For a time she operated a rival business which took some of the company's staff and customers. It was only when financial consultants were engaged by the company that her offending came to light.
4. A victim personal statement by the daughter of the founder made clear that, as the judge put it:

"The psychological effect upon the family has been enormous, as has the financial consequences of desperately trying to keep the business functioning."

5. The offence was therefore a serious example of its kind. Under the Sentencing Council's relevant definitive guideline, the judge rightly assessed the case as falling within category A "high culpability" because of the appellant's abuse of her position of trust and responsibility. Harm A fell into category 3. The starting point, based on an actual or intended loss of £50,000, was therefore 2 years 6 months' custody with a range from 15 months to 3 years 6 months. The judge also had to consider, as harm B, the victim impact. Although he did not say so in terms, it appears he found that there had been medium impact, making it necessary to move upwards within the category range. He concluded that the nature and duration of the fraud was such as to place it at the higher end of the bracket.
6. The judge accepted that there were a number of matters of personal mitigation to be taken into account. The appellant, as we have said, was of previous good character. The judge was provided with a number of testimonials which spoke highly of the appellant and referred to personal difficulties which she had suffered during the relevant period. He had also been provided with a report by a counselling therapist who assessed the appellant as displaying significant levels of anxiety and depression, with symptoms which had a severe impact on her daily living. A pre-sentence report assessed her as

being genuinely remorseful, and the judge accepted that she now understood the devastation she had caused. She had obtained employment with an employer who was aware of her offending and was living with her children in privately rented accommodation. With the assistance of family and friends she had raised sufficient funds to enable her to meet, on the day of sentencing, a compensation order in the sum of £50,000. The judge rightly treated that as a significant feature. He accepted that "most tellingly" she was a single mother with two children, a boy aged 12, who was just starting at secondary school, and a girl aged 8.

7. The judge placed all those matters into the equation. He had careful regard to the Sentencing Council's Imposition guideline. He expressed his conclusion as follows:

"I accept you present a low risk of reoffending. I accept there is strong personal mitigation around the effect upon others of your imprisonment, particularly of course for your children, although their father is available to provide for their care. On the other side, I have everything I have said about the nature of this fraud, the effect it has had, and the carnage it has caused to all who have been touched by it. In those circumstances I have concluded that punishment can only be properly achieved by an immediate custodial sentence. The sentence I pass is significantly less than it would have been but for the mitigating features that I have already indicated."

8. The judge, allowing credit of one-quarter for the guilty plea, then imposed the sentence of 15 months' imprisonment.
9. Mr Quaife, representing the appellant in this court as he did below, submits that the sentence should have been suspended. He recognises, rightly, that this court is slow to interfere with a decision whether or not to suspend the prison sentence where it is clear that the sentencer has taken into account all relevant circumstances, including by reference to the Imposition guideline. But, he submits, the judge's decision was plainly wrong and/or resulted in a sentence which was manifestly excessive. He relies upon the mitigating factors mentioned by the judge, in particular the effect of the appellant's imprisonment on her children, in respect of which he refers to the familiar principles stated in R v Petherick [2012] EWCA Crim 2214. He submits that all of the factors listed in the Imposition guideline, as militating in favour of suspension, are present in this case and that appropriate punishment could be achieved without immediate imprisonment. He does not seek to criticise the length of the sentence or the extent to which it was reduced for the guilty plea.
10. The appellant has now been in custody for a little more than 10 weeks. Unfortunately, she is at present required to isolate for reasons no doubt connected with the Covid-19 pandemic. Mr Quaife has instructions for the appeal to proceed in her absence, but he has unfortunately not been able to speak to her today and was therefore unable to assist the court with any factual information as to how the children have fared during the period since sentence was passed.
11. We must make a general observation about sentencing those who have caring responsibilities. In the Fraud guideline, as in many other guidelines, the Sentencing

Council lists "Sole or primary carer for dependent relatives" as a mitigating factor. Further details are given in an expanded explanation of that factor which, in the digital version of the guidelines which should be used by all judges and practitioners, is linked by a drop-down menu. It includes the following:

"The court should ensure that it has all relevant information about dependent children before deciding on sentence.

When an immediate custodial sentence is necessary, the court must consider whether proper arrangements have been made for the care of any dependent children and if necessary consider adjourning sentence for this to be done.

When considering a community or custodial sentence for an offender who has, or may have, caring responsibilities the court should ask the National Probation Service to address these issues in a PSR."

12. We emphasise the importance of that expanded explanation and the need for advocates to provide, and for sentencers to be satisfied that they have, clear and sufficient information about the practicability of any care arrangements which it is said will be brought into effect in the event of an immediate custodial sentence. The effect of the offender's imprisonment on her or his dependants, in particular if they are children, cannot properly be gauged by the court if the available information is insufficient or over-optimistic. A carer cannot rely on his or her own failure to make proper care arrangements, with the result that children may have to be taken into the care of the local authority, as a reason for not imposing an immediate custodial sentence where such a sentence is necessary. But in deciding the fact-sensitive issue of whether the effects of the sentence on innocent dependants may render a custodial sentence disproportionate, the judge must have the information necessary to reach a fair conclusion.
13. The circumstances of the present case provide a striking illustration of the importance of our general observation. A statement or letter was available to the judge from the father of the children, who is the appellant's estranged husband. It appears that the couple remain amicable and that the children regularly stay with him. His letter described, however, the long and sometimes unsociable hours which his employment requires of him. Although the normal routine is that the children spend every other night at his home, he is usually unable to take the children either to or from school because of his work. Moreover, for one week in every four, he has to work a full day and then be on call for the whole of the 24-hour period. As his letter made clear, he is therefore unable to have the children to stay overnight during each such week. The PSR confirmed that the children spend most of their time with their mother because of their father's long working hours. But although detailed in other respects, the report said nothing about how the children would be cared for if the appellant were in prison, merely noting that separation from her was "likely to have a significant emotional impact on them."
14. We are troubled by the apparent absence of any clear information before the judge as to the practicalities of the children's care during their mother's imprisonment. In particular,

we are unclear as to the basis on which the judge said that the children's father was available to care for them. In answer to questions posed by the court this morning, Mr Quaife tells us that his instructions at the sentencing hearing were very limited on this vital issue. All he was able to say was that the appellant had not at that date concluded any settled arrangements as to precisely how the children's care would be divided between family, friends and their father. He was able to confirm that fortunately, arrangements were proposed which would enable each of them to remain at their respective schools whilst their mother is in prison.

15. That, we are bound to say, was an insufficient basis of information to enable a properly informed decision as to the interests of the children insofar as that was a factor which the judge was required to consider in sentencing. It may be that legitimate criticism can be made of the appellant for failing to have made concluded arrangements. We are however satisfied that it was incumbent on counsel and the court to ensure that this matter was more fully investigated before sentencing.
16. Returning to the appeal against sentence, this offence was serious. It plainly passed the custody threshold and a sentence of imprisonment was unavoidable. The judge clearly made a substantial reduction in the length of the sentence to reflect the mitigation. The key question therefore was whether the sentence could be suspended.
17. We agree with Mr Quaife's submission that all the factors listed in the guideline as indicating that suspension may be appropriate were present. Two of the three factors indicating that it would not be appropriate to suspend plainly did not apply. The judge concluded that the third such factor - "appropriate punishment can only be achieved by immediate custody" - did apply and was decisive. We hesitate to disagree with that assessment by the judge. We have however concluded that in reaching it, he gave insufficient weight to the mitigating factors. Caring responsibilities are not, of course, an automatic passport to a non-custodial sentence or to a suspended sentence. In the circumstances of this case, however, the impact of the appellant's imprisonment on her two children was a very important factor. The combined effect of the several features of personal mitigation to which we have referred, including the repayment of the entire amount stolen, was, in our view, powerful. We are persuaded that it was not necessary to impose immediate custody in order to achieve appropriate punishment.
18. For those reasons we allow this appeal. We quash the sentence of 15 months' immediate imprisonment and substitute for it a sentence of 15 months' imprisonment suspended for 2 years.
19. LORD JUSTICE HOLROYDE: Mr Quaife, one of the unfortunate consequences of the appellant being absent today is that of course the court cannot spell out to her the implications of that suspended sentence. If you are able to communicate with her, would you be good enough to do so?
20. MR QUAIFFE: Of course.

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