



IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT PORTSMOUTH  
(HIS HONOUR JUDGE DAVEY) [50EL0030723]

Case No 2024/02781/A5

[2024] EWCA Crim 1029

Wednesday 14 August 2024

**B e f o r e :**

**LORD JUSTICE WARBY**

**MR JUSTICE CAVANAGH**

**MR JUSTICE WALL**

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**R E X**

**- v -**

**PAVELL RAUSSUL**

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**Mr C Cuddihee** appeared on behalf of the Appellant

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**J U D G M E N T**

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Wednesday 15 August 2024

**LORD JUSTICE WARBY:** I shall ask Mr Justice Wall to give the judgment of the court.

**MR JUSTICE WALL:**

1. On 14 February 2024, in the Crown Court at Plymouth, the appellant was sentenced to a 12 month community order for an offence of assault by beating. The requirements attached to the order were that he should perform 100 hours of unpaid work and attend on a rehabilitation activity requirement for up to six days.
2. On 12 June 2024 the appellant failed to attend an appointment arranged by the Probation Service. That appointment was re-arranged for the following day, when he also failed to attend. The appellant informed his probation officer that he was on holiday. He was warned that he faced breach proceedings if he did not attend for his appointments when told to do so. He told his probation officer that he would have to be breached because he did not intend to return from holiday until 22 June.
3. He failed to attend a further unpaid work appointment on 23 June. He gave at the time no explanation for the failure.
4. Breach proceedings were therefore instigated. Thereupon he explained to the probation officer that the latter breach occurred because he was becoming confused by the number of appointments being made for him.
5. The breach proceedings were heard on 30 July. He admitted the breach and was sentenced to a four week electronically monitored curfew to be added to the community order.

6. The appellant now appeals against that sentence with the leave of the single judge.

7. At the date of the breach hearing, the appellant had completed 88 out of 100 hours of unpaid work. He had also attended seven rehabilitation activity requirement sessions – one more than the number he was sentenced to attend. Despite that, the judge said that the Probation Service was stretched and that it had to be made clear that someone performing on an order could not be allowed to create extra work for the Service by picking and choosing when he performed that work. The judge made no reference to the applicable guidelines when he passed sentence.

8. The single ground of appeal is that it was manifestly excessive for the judge to have added such a lengthy electronically monitored curfew requirement to the order when the appellant's general approach to the order had been good.

9. The Sentencing Council Definitive Guideline for breach of a community order by failing to comply with requirements sets out the proper approach to be taken by courts in these circumstances:

"The court must take into account the extent to which the offender has complied with the requirements of the community order when imposing a penalty.

In assessing the level of compliance with the order the court should consider:

- i. the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii the impact of any completed or partially completed requirements on the offender's behaviour;

- iii. the proximity of breach to imposition of order; and
- iv. evidence of circumstances or offender characteristics, such as disability, mental health issues or learning difficulties which have impeded offender's compliance with the order."

10. In this case the appellant had completed nearly the whole of the order by the time at which the breach proceedings were heard, and a substantial part of it by the time at which these proceedings were initiated. Indeed, he had overperformed on the rehabilitation activity requirement. There was no evidence that he had re-offended and the breaches happened over a defined period of time for a particular reason, even if that reason did not provide him with a valid excuse for acting as he did.

11. We have concluded that this breach should have been treated as one where, save for the matters constituting the breach, there had been a high level of compliance with the order. The Sentencing Council definitive guideline suggests that the appropriate course in such circumstances, if a curfew requirement is to be added to mark the breach, is to add a curfew requirement of between six and ten days.

12. We see nothing in this case to suggest that this would be inadequate punishment, or that a more severe sanction was required for any particular reason. We sympathise with the frustration of the judge at the waste of public time and money caused by the appellant's actions, but find that the penalty imposed to mark that was manifestly excessive.

13. Therefore, we allow the appeal and substitute an order that the appellant has an electronically monitored curfew at his home address for ten days, between 7 pm and 7 am. We have been told that the appellant will have completed that sentence already. Accordingly, the requirement will be at an end.

14. To that extent this appeal against sentence is allowed.

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

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