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Neutral Citation Number: [2024] EWCA Crim 1094

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT WOOD  
GREEN

MR RECORDER PALMER KC 01SX1107824

CASE NO 202402637/A1

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 29 August 2024

Before:

LORD JUSTICE ANDREWS  
MR JUSTICE JOHNSON  
RECORDER OF SOUTHWARK  
(HER HONOUR JUDGE KARU)  
(Sitting as a Judge of the CACD)

REX  
V  
DWAYNE YEARWOOD

Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground, 46 Chancery Lane, London WC2A 1JE  
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MS E O'CONNOR appeared on behalf of the Applicant.

MS H SQUIRE appeared on behalf of the Crown.

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

MR JUSTICE JOHNSON:

1. The applicant seeks leave to appeal against sentence. For the reasons we will explain, the sentencing judge's powers were limited to those of the Magistrates' Court. The maximum sentence that could have been imposed in the Magistrates' Court, in the circumstances of this case, was 12 months' imprisonment. That was the sentence the judge imposed.
2. The applicant had pleaded guilty at the first opportunity. In the written grounds of appeal, it was contended for the applicant that, because the judge imposed the maximum sentence that could be imposed, the sentence that was imposed was not reduced to take account of the guilty plea or personal mitigation. As a result, it was contended that the sentence was manifestly excessive or wrong in principle. On that basis, the applicant sought leave to appeal and the application was referred to the Full Court by the Registrar. Given the nature of the issue, and given the approach that has been taken by Ms O'Connor, on behalf of the applicant this morning, it is not necessary to set out the details of the offence in more than summary detail.
3. The applicant had harassed and stalked a person with whom he had briefly worked in 2018. As a result, he was made the subject to a protection from harassment order in

2019. Then, in 2021, he was made subject to an unlimited protection from harassment order. Then, on 14 March 2022, he was made subject to a stalking protection order. The applicant breached that stalking protection order on two occasions. On 27 January 2024, he made a false online report to the police about the complainant. He did so using an alias. The report included a false and malicious allegation that the complainant was sexually abusing her son. That resulted in the police attending at the complainant's home. Then, on 2 February 2024, the applicant made a further and similar false online report, this time to the NSPCC, who then alerted the police. It was quickly established that this was another false report and that the applicant was responsible for both reports. The applicant initially denied making the reports but pleaded guilty at the first hearing in the Magistrates' Court. He was committed for trial for other related offences. He was committed for sentence in respect of the two offences of breach of the stalking protection order, pursuant to section 18 of the Sentencing Code. The related offences were then discontinued at the Crown Court.

4. The applicant was sentenced by Recorder Palmer KC in the Crown Court at Wood Green on 2 July 2024. Both counsel who then appeared in the case submitted that the facts of the case fell within category 1B of the applicable guideline of the Sentencing Council. The judge agreed. That leads to a starting point in relation to each count of 1 year's custody, with a range from a high-level community order to 2 years' custody. The judge said that there were factors which increased the seriousness of the offending and which justified a substantial uplift from the 1-year starting point. Those included the applicant's antecedents. He had committed multiple stalking offences against the same victim. Those offences included convictions for stalking causing serious alarm and distress and

multiple breaches of restraining orders, imposed both by the Crown Court and the Magistrates' Court. Those included past instances of precisely the same sort of conduct which he had committed on this occasion and which he had been prohibited from doing. The judge took account of the applicant's personal mitigation, including a diagnosis of Autistic Spectrum Disorder, which meant that the applicant was predisposed to engage in stalking behaviour but which was not directly causative of the offending. Taking all relevant factors into account, the judge considered the least possible sentence he could have imposed following trial would have been 18 months' imprisonment. After credit for plea, this was reduced to 12 months' imprisonment. The judge rejected the applicant's then counsel's submission that an overall sentence of 12 months would not reflect credit for a guilty plea. The judge said that, even in the Magistrates' Court (had the matter remained there), it would have been open to the Magistrates' Court to sentence the applicant to two consecutive terms of 6 months' imprisonment, after giving credit for plea. At the conclusion of the sentencing remarks, the applicant spoke to the judge in aggressive and abusive terms, demanding that he be given credit for his guilty plea. The judge was unmoved.

5. In the written application for leave to appeal, counsel then instructed on behalf of the applicant correctly pointed out that the Magistrates' Court did not make a statement under section 18(4) of the Sentencing Code, to the effect that it was of the opinion that it would have had the power to commit the applicant for sentence under section 14 of the Code on the ground that its sentencing powers were inadequate. That meant that the sentencing judge was limited strictly to the powers of the Magistrates' Court by reason of section 21(4) of the Code. It followed that the judge's sentencing powers were limited to

6 months' imprisonment on each charge. The submission that was advanced was that credit for a plea of guilty would then reduce the sentence to 4 months on each charge, making a total sentence of 8 months' imprisonment. Accordingly, it was said that the sentence of 12 months' imprisonment was wrong in principle.

6. Ms O'Connor, who appears for the applicant on this referred application, was newly instructed at very short notice. She conducted further research overnight. In the light of a decision of this Court in R v Nico Burke [2022] EWCA Crim 1537, and in the light of section 21(1)(b) of the Sentencing Code, and in the light of extracts from the Sentencing Council's Guideline on Reduction in Sentence for a Guilty Plea, Ms O'Connor concedes that the point that was advanced is not arguable.
7. We are very grateful to Ms O'Connor for her clear and helpful submissions, for the research she has conducted at short notice and for her analysis of the statutory framework and the applicable guideline of the Sentencing Council, and also for her analysis of the sentencing judge's approach by reference to that framework. For the reasons we will explain, we agree with her.

### ***The Legislative Framework***

8. Section 14 of the Sentencing Code states:

“Committal for sentence on summary trial of offence triable either way: adults and corporations

(1) This section applies where—

(a) on the summary trial of an offence triable either way a person

aged 18 or over is convicted of the offence, and  
(b)the court is of the opinion that—  
(i)the offence, or  
(ii)the combination of the offence and one or more offences associated with it, was so serious that the Crown Court should have the power to deal with the offender in any way it could deal with the offender if the offender had been convicted on indictment. This is subject to the provisions mentioned in subsection (4).

(2)The court may commit the offender in custody or on bail to the Crown Court for sentence in accordance with section 21(2)...”

Section 18 of the Code states:

“Committal for sentence on indication of guilty plea to offence triable either way: adult offenders

(1)Where a magistrates’ court—  
(a)has convicted an offender aged 18 or over of an offence triable either way following an indication of a guilty plea, and  
(b)has sent the offender to the Crown Court for trial for one or more related offences, it may commit the offender in custody or on bail to the Crown Court to be dealt with in respect of the offence in accordance with section 21(2)...

(4)Where the court—  
(a)commits the offender under subsection (1) to the Crown Court to be dealt with in respect of the offence, and  
(b)in its opinion also has power under section 14(2)...to commit the offender to the Crown Court to be dealt with in respect of the offence, the court may make a statement of that opinion.”

Section 21 of the Code states:

“Power of Crown Court on committal for sentence of offender under section 14... or 18

(1)This section applies where an offender is committed by a magistrates’ court for sentence under—

(a)section 14(2) (committal for sentence on summary trial of offence triable either way)

...

(c)section 18(1) (committal for sentence on indication of guilty plea to offence triable either way).

(2)The Crown Court—

(a)must inquire into the circumstances of the case, and

(b)may deal with the offender in any way in which it could deal with the offender if the offender had been convicted of the offence on indictment before the court. This is subject to subsections (4) and (5).

...

(4)Subsection (5) applies where a magistrates' court—

(a)commits an offender under section 18(1) to be dealt with in respect of an offence ('the offence'), but

(b)does not make a statement under section 18(4) (statement of power to commit under section 14(2))...

(5)Unless the offender is convicted before the Crown Court of at least one of the offences for which the magistrates' court has sent the offender for trial (see section 18(1)(b))—

(a)subsection (2)(b) does not apply, and

(b)the Crown Court may deal with the offender for the offence in any way in which the magistrates' court could have dealt with the offender for it..."

Section 224(1A) (b) of the Code states:

"224General limit on magistrates' court's power to impose imprisonment...

(1)A magistrates' court does not have power to impose—

(a)imprisonment... for a term exceeding the applicable limit in respect of any one offence.

(1A)The applicable limit is—

...

(b)[6 months] in the case of an offence triable either way.]

...

(3)Nothing in subsection (1) affects section 133 of the Magistrates' Courts Act 1980 (consecutive terms of imprisonment). ...”

Section 73 of the Code states:

“Reduction in sentence for guilty plea

(1)This section applies where a court is determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court.

(2)The court must take into account the following matters—

(a)the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty, and  
(b)the circumstances in which the indication was given...”

Section 59 of the Code states:

“Sentencing guidelines: general duty of court

(1)Every court—

(a)must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and  
(b)must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so...”

9. The Sentencing Council's Overarching Guideline for the Reduction of Sentence for a

Guilty Plea states:

“Where a guilty plea is indicated at the first stage of proceedings a reduction of one-third should be made...The first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court.”

10. Section 133 of the Magistrates' Court Act 1980 states:



“Consecutive terms of imprisonment.

...

(2) If two or more of the terms imposed by the court are imposed in respect of an offence triable either way which was tried summarily otherwise than in pursuance of section 22(2) above, the aggregate of the terms so imposed and any other terms imposed by the court may exceed...shall not, subject to the following provisions of this section, exceed 12 months.”

The remaining provisions of section 133 do not, in the circumstances of the present case, impact on the operation of section 133(2).

### ***Discussion and decision***

11. The judge correctly categorised the offending in this case and took account of all relevant aggravating features, including the applicant’s antecedents and including all relevant mitigation. Subject to the argument that was initially advanced about the impact of the statutory provisions that we have outlined, the indicative sentence of 18 months’ imprisonment, following trial, was entirely justified. The appropriate reduction was made for the plea, resulting in a sentence of 12 months’ imprisonment. Again, subject to the argument about the impact of the statutory provisions, that sentence was entirely justified and was not arguably manifestly excessive or wrong in principle. The only issue was whether the combination of sections 14, 18, 21, 59, 73 and 224 of the Sentencing Code (read with section 133 of the 1980 Act) together with the Sentencing Council’s Overarching Guideline on the Reduction in Sentence for a Guilty Plea rendered the sentence unlawful or wrong in principle on the grounds that it failed to take account of mitigation or plea.

12. The effect of sections 59 and 73 of the Sentencing Code, together with the Overarching Guideline, is the sentence that would otherwise have been imposed fell to be reduced by a third to take account of the plea. That is what the judge did. He would otherwise have imposed a sentence of 18 months' imprisonment. He reduced that by a third to 12 months' imprisonment because of the plea.
13. The effect of sections 14, 18 and 21 of the Code is that the judge could only impose a sentence that could have been imposed by the Magistrates' Court. The effect of section 224 of the Code is that the maximum sentence that could have been imposed by the Magistrates' Court on each count was 6 months' imprisonment. That was the sentence that the judge imposed. That sentence was therefore consistent with section 224 of the Code. The effect of section 133 of the 1980 Act is that the maximum aggregate sentence that could have been imposed by the Magistrates' Court was a sentence of 12 months' imprisonment. That was the sentence that the judge imposed. Again, the sentence was thus consistent with section 133 of the 1980 Act. There was therefore no breach of any of the statutory provisions and no departure from the Sentencing Council's Overarching Guideline.
14. The complaint that was advanced in the written grounds was that in order to arrive at the 12-month sentence, the judge decided that the appropriate sentence following trial would have been 18 months' imprisonment. Such a sentence could not have been imposed by the Magistrates' Court because of the effect of section 133 of the 1980 Act. That is however nothing to the point. The sentencing exercise that is conducted in accordance with the Code and with the Sentencing Council's Guidelines involves a highly structured step-by-step process to arrive at a just sentence that reflects all relevant factors and

complies with all relevant statutory provisions. Those steps will typically include an assessment of the seriousness of the offence by reference to the harm caused and the offender's culpability so as to identify an appropriate category. Having identified the appropriate category, the judge will ordinarily use the corresponding category starting point. Next, the judge will identify whether it is necessary to make an upward or downward adjustment from the starting point in the light of aggravating or mitigating elements. Next, the judge will take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Overarching Guideline. Next, if sentencing an offender for more than one offence, the judge will make any further adjustment that is necessary so as to ensure that the total sentence is just and proportionate to the overall offending behaviour in accordance with the Sentencing Council's Overarching Guideline on Totality.

15. That is exactly the approach that the judge took here. This structured approach involves the identification of a starting point, and then the making of a series of adjustments to that starting point to arrive at the sentence that is to be imposed. Where the sentence is imposed by the Magistrates' Court, or where (as here) it is imposed by a judge who is required to impose a sentence that could have been imposed by the Magistrates' Court, the sentence must not exceed the jurisdictional maximum that is prescribed by section 224 of the Code and section 133 of the 1980 Act. Those provisions do not however place any restriction on the starting point that a judge adopts or on any adjustment to the starting point that the judge makes, so long as the sentence that is in fact imposed is consistent with those provisions. It follows that section 224 of the Sentencing Code and section 133 of the 1980 Act, do not prevent a Magistrates' Court, or a judge who is

limited to the powers of a Magistrates' Court, from imposing the maximum sentence that is permitted by those provisions even where there is substantial mitigation and/or an early guilty plea.

16. This approach to the Legislative Framework is, as Ms O'Connor has correctly identified, reflected in the Sentencing Council's Overarching Guideline in Reduction of Sentence for a Guilty Plea. At section E3 that guideline states:

“Keeping an either way case in the magistrates' court to reflect a guilty plea

Reducing a custodial sentence to reflect a guilty plea may enable a magistrates' court to retain jurisdiction of an either way offence rather than committing the case for sentence to the Crown Court. In such cases a magistrates' court should apply the appropriate reduction to the sentence for the offence(s) arrived at in accordance with any offence specific sentencing guideline and if the resulting sentence is then within its jurisdiction it should go on to sentence.”

17. This approach to the legislative framework is also reflected in the decision of this Court in Burke (supra). In that case, as in this case, the maximum sentence that the judge could have imposed was 12 months' imprisonment. The applicant had pleaded guilty. The sentencing judge, in that case, unlawfully imposed a sentence of 2 years and 4 months' imprisonment. This court allowed the appeal and substituted a sentence of 12 months' imprisonment less time on a monitored curfew, notwithstanding the plea of guilty.

18. It follows that the sentence imposed by the judge in this case was entirely consistent with the statutory framework. It was not arguably manifestly excessive, nor wrong in principle. We therefore refuse the application for leave to appeal against sentence and

repeat our gratitude to Ms O'Connor for her valuable assistance.

19. LADY JUSTICE ANDREWS: Yes, thank you very much again, Ms O'Connor.

Absolutely spot on and you obviously put a lot of hard work into it at very short notice, so thank you for your very great assistance. Thank you also Ms Squire.

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

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