**Neutral Citation Number: [2024] EWCA Crim 238**

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202400240/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 21 February 2024

Before:

LORD JUSTICE SINGH

MR JUSTICE GOOSE

MRS JUSTICE FOSTER

REX

V

NIKKI BAKER

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MR A BAKER appeared on behalf of the Appellant.

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**J U D G M E N T**
(Approved)

LORD JUSTICE SINGH:

***Introduction***

1. This is an appeal against sentence brought with the leave of the single judge. On 26 October 2023, in the Crown Court at Stafford, the appellant changed her plea to one of guilty to an offence of conspiracy to pervert the course of justice. On 21 December 2023, she was sentenced by the Recorder (now HHJ Brown) to a sentence of 10 months' imprisonment. An appropriate statutory victim surcharge was imposed.

***The Facts***

2. The co-defendant, Samantha Halden-Evans, was a long-standing friend of this appellant. Ms Halden-Evans worked as an operative with the Staffordshire Safer Roads Partnership. Her job involved accessing images of speeding offences and processing those images so that Notices of Intended Prosecution were sent out to the relevant vehicle owners. As part of that role, the computer system she used had the ability for offences to be marked as "Void" or for "No further action to be taken" to cover situations where it appeared to be inappropriate to initiate a prosecution.
3. On 3 March 2019, the appellant sent Ms Halden-Evans a message saying that she thought she had been caught speeding. She said:

> "Hi Sam, it's Nikki. Rach gave me your number. I don't suppose you can help me? I got flashed near the Cellarhead crossroads. Not sure how fast I was going but I think it was 50 in a 30. I Googled it and it says I could get a ban as I've already got points. Is this something you can help me with, please? I'd be screwed without my car. I was coming from Wetley Rocks. It was the last camera before the crossroads."

4. Ms Halden-Evans replied:

> "Hiya mate, it sounds like you've been flashed by the yellow Gatso camera at Cellarhead. There's only four in operation, so you've done well to speed through one of the only ones that works. Fortunately for you, I deal with Gatso offences now. They don't get processed until Thursday, so send me your reg, date and time and I'll get rid if you've been caught."

5. The appellant replied:

> "It's my luck at the minute, mate. You're an absolute legend. I've been panicking, thinking I'm going to lose my licence. I owe you massively. Thanks, mate. I really appreciate it."

6. The appellant then provided her details and Ms Halden-Evans responded:

> "Don't panic, mate. I'll sort it for you. I'll give you a text Thursday and if you've been caught I'll just delete that offence. LOL. No bother at all. Hope you all had a good night last night and we'll have to go out again soon."

7. On 7 March 2019 the appellant asked Ms Halden-Evans whether she had been caught.

   Ms Halden-Evans replied:

> "Hiya mate. Just come across your offence. It was 22.22 at night, 1 March. You were doing 39 in a 30. I've done the film manually, so I've just skipped over your offence so no trail of me getting rid. LOL. So you're in the clear. X X"

8. Later she added:

> "Yeah, you did get caught but I've not processed your offence. Just deleted it instead. LOL. So don't worry. You won't be getting a letter or anything."

9. When anti-corruption officers interrogated Ms Halden-Evans's system they found clear images of the appellant's vehicle speeding at 39 miles per hour in a 30 miles per hour zone on 1 March 2019. Ms Halden-Evans had wrongly marked the matter as "No further action. Already processed in another batch". The offence had not been processed in

another batch and Ms Halden-Evans had simply deleted the offence, preventing its prosecution. The appellant made inquiries of Ms Halden-Evans in August and September 2017 and in November 2020, about potential speeding offences but was reassured by Ms Halden-Evans there was no camera footage.

10. The appellant was arrested on 14 March 2021, and answered "No comment" to all questions.

***The Sentencing Process***

11. The appellant was aged 35 and had no previous convictions. The sentencing court had the advantage of a pre-sentence report, a note on sentencing, on behalf of the prosecution and a mitigation bundle. In the pre-sentence report, the author assessed the appellant to pose a low risk of reoffending and low risk of serious harm and advised that she could be managed within the community. Should the court consider anything other than an immediate custodial sentence to be appropriate, the appellant was assessed as being suitable for an unpaid work requirement. It was not thought that it was necessary for there to be other intervention, for example, a rehabilitation activity requirement. There was no need for other interventions such as a curfew requirement or the like.

12. In the sentencing exercise, the judge had four defendants whom she needed to sentence including Ms Halden-Evans. For understandable reasons, much of the judge's sentencing remarks focused on the position of Ms Halden-Evans as the lead offender, in particular because of the breach of trust of which she had been guilty. Because of the seriousness of both the harm and the culpability of Ms Halden-Evans's offending, the judge concluded that the offending in her case would have a starting point of 4 years' imprisonment, with a range of 2 to 7 years' imprisonment. In the result, she imposed a

total sentence of 4 years and 2 months' imprisonment on Ms Halden-Evans. She then turned to the other defendants. In relation to this appellant, the judge said at page 7H to page 8D:

> "You, Nikki Baker had been a friend of Samantha Halden-Evans for a number of years and you prior to the offence that you pleaded guilty to, had requested that Samantha Halden-Evans provide information for your benefit. In 2017 you contacted her regarding your then partner who was driving your car. He was not insured and you were asking Samantha Halden-Evans if the driver could be identified. You asked whether they could say who it was, and you asked whether you could say it was you driving? Samantha Halden-Evans accessed the system and advised you to take the blame saying, 'Lol, no worries [mate]. I just have missed it, if you don't want Rich to get banned. They've no images so they don't know who was driving, and you'll just have to pay a fine or possibly get three points.'"

13. The judge continued that in March 2019:

> "In March 2019 you contacted Samantha Halden-Evans asking for [her] help. You told her in a text that you had thought you had been caught speeding doing 50 in a 30 and that you were worried about getting a ban because you already had points. Samantha Halden-Evans responded telling you to send your details and she would get rid of it for you."

14. She did just that. The judge continued:

> "After you had committed this offence, you contacted her again in November 2020 saying that you had thought you had been caught speeding again and asked to check whether the cameras were working. Samantha Halden-Evans responded saying that not all of the cameras were working but she would check and sort it for you if they were. The clear inference that can be drawn from that is that you were asking for help because you thought you had been caught speeding."

15. After passing sentence on the other defendants, the judge then turned to this appellant in particular, at pages 13D to 14B. The judge said that this appellant fell at the lower end of

the offending, however she had conspired with Samantha Halden-Evans to have one speeding offence removed. She had made previous inquiries with Samantha Halden-Evans and had made subsequent contact when she thought she had been caught again. The judge said that the appellant knew her role and knew her willingness to assist the appellant "but that you knew that she had abused her trust which resulted in that speeding offence being removed". The judge said the reward for the appellant was not getting points and avoiding a disqualification or a ban: "It was not insignificant".

16. The judge was satisfied that the appellant's part in the conspiracy meant that it fell within category 1B in the relevant guideline to which we will turn later. She said that would ordinarily give a starting point of 2 years' custody with a range of 1 to 4 years, but the judge was satisfied that the appellant fell at the lower end of that offending. The appropriate starting point was somewhat lower from the others at 18 months' custody. The judge had regard to the appellant's personal circumstances, and her mitigation. She had read the pre-sentence report and the references and noted her previous good character and the impact upon her and her family, particularly her child, should she go to custody. She acknowledged the appellant's acceptance of her offending and her remorse and reduced the sentence by 6 months to reflect that. Before credit therefore, the sentence would have been one of 12 months in custody. With credit of 10 per cent, this was reduced to 10 months in custody. That was an appropriate discount to reflect the very late stage at which the plea was entered. No complaint has been made before this Court about the discount given.

17. The judge continued that she had considered the appellant's offending and her personal circumstances and in particular the Imposition Guidelines, and considered whether there was any alternative to custody, and whether that would meet the seriousness of the

offending but she was not so satisfied. She acknowledged that there was a low risk of offending and there was some prospect of rehabilitation because of that but concluded that this offence was so serious that she was satisfied that only an immediate custodial sentence would meet the seriousness of the offending. Accordingly, as we have said, the judge imposed a sentence of 10 months' imprisonment to be served immediately.

***Grounds of Appeal***

18. On behalf of the appellant, Mr Andrew Baker emphasised in writing, and has repeated before us, the numerous and significant mitigating factors that were available in the appellant's case. He advances essentially two submissions. First, he submits that the Recorder incorrectly classified the appellant's offending, both in terms of the level of culpability and the level of harm. Secondly, he submits that the Recorder failed to consider alternatives to immediate custody.

19. So far as culpability is concerned, he submits that it should have been determined as level C, lower culpability, since the underlying offence was not serious - it was speeding at 39 miles per hour in a 30 mile per hour zone. So far as harm is concerned, this should have been placed within either category 2 or category 3. There was some impact on the administration of justice or a limited impact on the administration of justice but not a serious one.

20. Mr Baker has also referred to what is said in the Definitive Guideline, in relation to the possible suspension of a custodial sentence. He submits that the factors in favour of suspension were present here, in particular (i) there was a realistic prospect of rehabilitation; (ii) there was strong mitigation and (iii) immediate custody would have a significant impact upon the appellant's son, who was at a critical age for his schooling.

21. Since the sentence was passed, this Court, further to the direction of the single judge in granting leave to appeal, has received a witness statement from the appellant, albeit that the version we have seen was then unsigned. In that statement she says that her son has lived with her approximately 80 per cent of the time since the age of 2, although he is currently living with his father, with whom he has a good relationship, this is still very much out of the ordinary for him as she and he have never spent longer than a week apart from each other. Her son also occasionally stays with his grandparents. The appellant states that her incarceration has been extremely emotionally difficult for her son, especially over the Christmas period. She is concerned that he has exams coming up and if he is unsettled by her incarceration this may have an impact on his studies.
22. We also have a witness statement from the appellant's mother, in which she states that the appellant's incarceration has been extremely emotionally difficult for her son. He often asks his grandmother when mum is coming home and expresses that he misses her. Whilst they have made every effort to avoid disruption to his education, the appellant's being away has been very difficult and they have found it hard to establish a consistent routine.

***Our Assessment***

23. We do not accept the first submission made by Mr Baker on behalf of the appellant. The Sentencing Council has issued a Definitive Guideline on perverting the course of justice with effect from 1 October 2023. Since the offence is one at common law, the maximum punishment available is life imprisonment. The guideline refers to categories of harm and categories of culpability. So far as harm is concerned, category 1 is where there is serious impact on the administration of justice for present purposes. Category 2 harm is

where there is some impact on the administration of justice for present purposes. Category 3 harm is where there is limited impact on the administration of justice for present purposes.

24. Turning to culpability, category A (high culpability) is where there is conduct over a sustained period of time, sophisticated and/or planned nature of conduct, underlying offence is very serious or there is a breach of trust or abuse of position or office. Category B culpability (medium) is for other cases that fall between categories A and C because there are factors present which balance each other and/or the offender's culpability falls between the factors described in A and C. Category C (lower culpability) is where the offending is unplanned and/or limited in scope and duration, there is unsophisticated nature of conduct, the underlying offence was not serious, the appellant is involved through coercion, intimidation, or exploitation, or as a result of domestic abuse. Or the offender's responsibility is substantially reduced by mental disorder or learning disabilities.

25. The recommendation in the guideline, for present purposes, is as follows. For a category 1B offence, the starting point is 2 years' custody with a range of 1 to 4 years' custody; for a category 1C offence, the starting point is 1 year's custody with a range of 9 months to 2 years' custody. For a category 2B offence, the starting point is 1 year custody with a range of 9 months to 2 years' custody and for a category 2C offence, the starting point is 9 months' custody with a range of 6 months to 1 year's custody. It should also be noted that this appellant pleaded guilty on the third day that was listed for the trial, although before the jury was sworn in. Accordingly, she was entitled to very little credit for her guilty plea.

26. In our judgment, whichever precise category of harm and/or culpability this case fell into,

in particular whether it was category 1B or category 2B, the sentence imposed of 10 months' custody fell well within the range which was reasonably open to the sentencing judge in all the circumstances of this case. We do not consider that the sentence of 10 months' custody was in itself wrong in principle or manifestly excessive. Before leaving this ground, we would emphasise that although it has been suggested to the Court that speeding at 39 miles per hour in a 30 mile per hour zone is not a serious underlying offence, we respectfully disagree. Such rules are imposed in our society clearly for the safety of the public including children.

27. We turn to Mr Baker's second submission, that the judge did not address the possibility of suspending the sentence in this case. The Sentencing Council's Overarching Guideline on Imposition of Community and Custodial Sentences advises that a custodial sentence must not be imposed unless the offence is so serious that neither a fine alone nor a community sentence can be justified for the offence. If the custodial threshold is passed consideration for a sentence of this length should be given to whether it can properly be suspended. The Definitive Guideline advises that the following factors should be weighted in considering whether it is possible to suspend the sentence. The factors indicating that it would not be appropriate to suspend the custodial sentence are: (i) the offender presents a risk or danger to the public; (ii) appropriate punishment can only be achieved by immediate custody and (iii) there is a history of poor compliance with court orders. Factors indicating that it may be appropriate to suspend a custodial sentence are (i) a realistic prospect of rehabilitation; (ii) strong personal mitigation and (iii) immediate custody will result in significant harmful impact upon others.

28. We do not accept this submission by Mr Baker either. It is clear to us from page 14A to B of the sentencing remarks that the judge did address this possibility and clearly had in

mind the factors which are set out both in favour of and against suspending the sentence. Although she did not expressly refer to the factors in terms, she clearly had them in mind. In our judgment, the judge cannot be faulted for her approach to the question of suspension, nor was the outcome one which was not reasonably open to her. We also note that, although the appellant was sentenced for one offence, she made similar inquiries of Ms Haldon-Evans to help her on two other occasions.

***Conclusion***

29. For the reasons we have given, this appeal against sentence is dismissed.

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

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