

Neutral Citation Number: [2012] EWCA Crim 1284

No. 2012/02448/A5

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Tuesday 22 May 2012

B e f o r e:

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES

(Lord Judge)

MR JUSTICE OPENSHAW

and

MR JUSTICE IRWIN

R E G I N A

- v -

ERIC CHARLES DALLINGER

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Mr D King appeared on behalf of the Crown

Judgment
As Approved by the Court

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Tuesday 22 May 2012

THE LORD CHIEF JUSTICE: I shall ask Mr Justice Irwin to give the judgment of the court.

MR JUSTICE IRWIN:

1. On 6 March 2012, having pleaded guilty before magistrates, the appellant was committed for sentence in respect of the single offence of causing a public nuisance, contrary to common law. On 10 April 2012, in the Preston Crown Court, he was sentenced by His Honour Judge Newell to six months' imprisonment. He now appeals against that sentence by leave of the single judge.

2. The facts can be summarised as follows. The appellant normally lives with his wife in a static caravan, but the lease of the caravan requires him to live away from it for some weeks each year. During those weeks he and his wife live in temporary accommodation. That accommodation is too cramped for the appellant's two dogs. As will emerge from the facts, he is passionately fond of the dogs he owns. During the period of weeks away from the caravan he boards the dogs with his daughter.

3. On Thursday 1 March 2012 the police arrested the appellant's daughter. Subsequently officers attended at her home because they learned that a young child had been left there alone. When they arrived at the premises they also found the appellant's two dogs. A specialist dog warden was called in order to calm the dogs down. On assessing the animals, the specialist concluded that they might be of a prohibited Pitbull Terrier breed. The animals were removed to be examined by a veterinary surgeon and were kept at the vet's premises.

4. The appellant became very disturbed at the seizure of his dogs. He subsequently told the probation officer that he lives for the dogs. He found the uncertainty of their removal and the possibility that they would not be returned to him upsetting and agitating, the more so because one of the dogs had been ill.

5. On Friday 2 March the appellant telephoned the police. He spoke to Police Constable Sumner and stated that he would "lean over the railings of a motorway bridge" if he could not find out what was happening with his dogs. He asked for the details of the person in charge of the investigation and said that he would e-mail that person in order to obtain updates about the progress of the case.

6. Three days later, on Monday 5 March, at about 7.42am, the police began to receive a host of reports from the public about a man on the wrong side of the barriers of a bridge above the M6 motorway. All patrols were sent out to that destination on a "Code 1", with lights flashing and sirens sounding. The police also implemented road closures, which meant that certain patrols were unavailable to attend any other emergency incident and that there was a serious build up of traffic in both directions along the motorway.

7. Both the northbound and the southbound carriageways were closed. Traffic remained stalled until about 9am.

8. The police attended the bridge at about 7.50am and asked the appellant why he was on the

wrong side of the barriers on the bridge. He said, "Because it's the only way I'm going to get my dogs back. Get them here now". Officers discussed the matter with him and over time persuaded him to move to the correct side of the barrier. That took about a quarter of an hour. At that stage he was arrested and taken into custody. He said that if his dogs were not returned to him he would mount another demonstration. In interview he said that had he been informed while he was on the bridge that his dogs would not be returned to him, then he would have jumped from the bridge.

9. One of the ironies of this case is that the appellant has a Heavy Goods Vehicle Licence. He must be fully aware of the impact on drivers of such an incident -- not merely the incident that he carried out in fact, but of the incident which he threatened to carry out.

10. The cost of the disruption arising from these events was estimated in evidence to the court at more than £1 million.

11. The appellant is aged 51. He has previous convictions. There was a period of offending between 1980 and 1984, but those offences were of a very different nature. He committed no offences between 1984 and 2007. In the latter year he committed offences of obtaining benefit by deception, for which he received a community penalty which required him to perform unpaid work. He completed that sentence satisfactorily. Other than those offences, he has not offended in recent years.

12. A pre-sentence report was prepared. It is clear from the report, as the judge observed, that the dogs have assumed almost a greater importance in the appellant's life than his family. He claimed that he had not realised the impact of what he did both on road users, on the emergency services and in terms of cost. He appeared to be genuinely regretful for what he had done, but he went on to say to the probation officer that if in the future the dogs were deemed to be a banned breed and were not returned to him, then he would attempt suicide. The report proposed a community penalty with a requirement of further unpaid work as a penal condition.

13. In sentencing the appellant the judge noted his background, observed that he was "to all intents and purposes a decent and honest man", and concluded that his reaction to these events was "totally extreme, excessive and it appears to me obsessive". He, too, expressed his surprise at this behaviour from someone who was himself a heavy goods vehicle driver and who could understand the consequences. The judge noted the impact and cost of the whole affair, accepted the appellant's genuine expression of remorse, gave credit for an early plea of guilty, and noted the recommendation for a community penalty; but he went on to say this:

".... I have to consider the public at large and I have to consider in this case I think it is appropriate, the message that any sort of community sentence in this case would send out to others who may have a legitimate or entirely farcical grievance with the police or the authorities; each and every one of those people may well think it is appropriate to bring attention to themselves and their problems, real or perceived, by doing what you did."

The judge concluded that the appropriate starting point before credit for the guilty plea would have been a sentence of nine months' imprisonment, and, giving full credit for the early plea that had been tendered, passed the sentence of six months' imprisonment which is now the subject of this appeal.

14. Mr King on behalf of the appellant, in both written and oral submissions, put forward a number of factors: the background circumstances, the genuine engagement and distress with the position of the appellant's dogs, the very early plea, the appellant's remorse, the recommendations in the pre-sentence report, and the steps taken following the offence to deal properly with his situation and that of his dogs. From those bases Mr King proceeded to argue that, even if a community sentence was not appropriate, any prison sentence should have been suspended.

15. We have carefully considered those arguments, but we reject them. This is a case where the impact on the public was notable and considerable. The judge was entirely right to emphasise the prospective impact of any sentence which did not consist of an immediate prison sentence. He was right to predict the potential effect as a signal of such an approach. He was entirely right, in our judgment, to conclude that this offending was so serious that it could only properly be met by an immediate custodial sentence.

16. For those reasons this appeal is dismissed.