

Neutral Citation Number: [2015] EWCA Crim 328

No: 201404817 A7

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 11 February 2015

B e f o r e:

LADY JUSTICE SHARP DBE
MR JUSTICE GOSS
HIS HONOUR JUDGE KRAMER QC
(Sitting as a Judge of the CACD)

R E G I N A

v

AMANDA JANE FINLAY

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Mr R Boag (Solicitor Advocate) appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

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1. LADY JUSTICE SHARP: On 19 August 2014 at the Crown Court at Chester, the appellant, Amanda Jane Finlay, pleaded guilty and on 22 September 2014 she was sentenced to 8 months' imprisonment, suspended for 2 years, for benefit fraud with an electronically monitored curfew requirement of 12 months between 8pm and 6am. The appellant had pleaded guilty to the offences at the Plea and Case Management Hearing. She had started claiming Income Support benefit, Housing Benefit and Council Tax Benefit in May 2006 when she was legitimately entitled to do so, but from the end of June/July 2007 she began living with her partner whom she later married. Though he was able to contribute to household expenses, the appellant carried on claiming those benefits, to which she was not entitled, and did not notify the authorities of her change in circumstances.
2. This dishonest conduct, though not fraudulent from the outset, continued for a period of nearly 6 years during which the appellant dishonestly received about £60,000. Her fraudulent conduct only stopped when her fraud was discovered.
3. The appellant was first interviewed under caution about these matters in February 2013 and frankly admitted her offending. She said she had been an idiot and had carried on claiming because of the financial difficulties she had been left to deal with after her first husband (the father of her two children) left her in 2004.
4. The appellant is now 43 years old and has no other convictions recorded against her. She is a mother, as we have said, of two children, one of whom is an adult and one who is 13 years old. She suffers from a painful condition to her joints known as Ehlers-Danos Syndrome. The judge thought the appropriate starting point for this fraudulent conduct, given its duration and the amount obtained, was 12 months, which he reduced to take account of the appellant's guilty plea giving full credit. So far as the appellant's domestic circumstances were concerned, the judge suspended the sentence to take account of those matters, including the fact that she was a carer for a child, that she was remorseful and in the light of references he had read which he said spoke of the appellant in a different light.
5. Two points are taken on this appeal. First, it is accepted that this offending crossed the custody threshold, but it is said that the period of 8 months imprisonment was too long because it failed to take account of various mitigating features, including the lapse of time since the appellant's apprehension. However, the main thrust of the argument, as it has been presented to us today, relates to the curfew requirement. It is said that the curfew requirements were overly onerous given the appellant's personal circumstances and the fact that applying the same principles to those provided to someone on bail where a curfew lasts more than nine hours, they will receive credit for half that period against any period of immediate custody. By the time the appellant completes a curfew she will have served the equivalent of a 6-month sentence of imprisonment, whereas if she breaches a suspended sentence order she will only face a maximum of 4 months' imprisonment.
6. The relevant guideline in force at the time of sentence was the Sentencing for Fraud-Statutory Offences Definitive Guideline. Under that guideline the starting point for an offence of benefit fraud, not fraudulent from the outset but continued over a

significant period where the sum fraudulently obtained was £60,000, was 36 weeks in custody with a custody range of 12 weeks to 18 months.

7. It is axiomatic that a prison sentence that is suspended should be for the same term that would have been imposed if a sentence were to take effect immediately. However, given the duration of the offending in this case, nearly 6 years, albeit the term of 8 months' imprisonment might be regarded as severe, it was one we think the judge was entitled to pass. That the appellant was of previous good character and remorseful were features which bore some, but not a great deal of, weight having regard to the length of the appellant's offending. The judge decided to take account of the appellant's personal circumstances by suspending the sentence. We think that was a legitimate approach for the judge to take.
8. However, we do think that in the circumstances of this case, the curfew requirement was too long. The reduction which must be applied, subject to certain exceptions, to a custodial sentence for time spent on remand on bail for days where, for nine or more hours, a defendant is subject to curfew and where there is an electronic monitoring condition of nine hours or more, arises under statute, specifically section 240A(1) of the Criminal Justice Act 2003. Where, however, a curfew requirement and an electronic monitoring condition is imposed as a requirement of a suspended sentence order or a community order, pursuant to section 204 of the Criminal Justice Act 2003, there is no requirement that the time spent on curfew must be set off against any custodial term. But such a requirement is obviously an element in the overall sentence that is passed.
9. The curfew requirement must be suitable for the offender and in our view its length and duration must be related to culpability and/or need. Either way it must not lead to a sentence that is more severe than is merited on the facts. Twelve months is the longest period that can be specified for such an order (see section 71 of Legal Aid, Sentencing and Punishment of Offenders Act 2012). In our judgment, there was nothing on the facts of this case which merited a curfew requirement of the maximum length. The fact that the appellant was unable to perform unpaid work as a requirement of her suspended sentence because of her medical condition, a matter to which the judge referred, did not justify penalising her to this extent. We would accordingly reduce the period, during which the appellant should be subject to the curfew, from 12 months to 4 months. To that limited extent, this appeal against sentence is allowed.