

Neutral Citation Number: [2015] EWCA Crim 1800

No: 201502684 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 8 October 2015

B e f o r e:

LORD JUSTICE BEATSON

MR JUSTICE GOSS

THE RECORDER OF LIVERPOOL - HIS HONOUR JUDGE GOLDSTONE QC
(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

R E G I N A

v

ROSSANN KIMP

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(Official Shorthand Writers to the Court)

Mr G Burrell (Solicitor Advocate) appeared on behalf of the Appellant

The Crown did not attend and was unrepresented

J U D G M E N T
(Approved)

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1. MR JUSTICE GOSS: On 13 May 2015 in the Crown Court at Chelmsford, when the case was listed for trial, the appellant entered pleas of guilty to four offences of dishonestly making a false representation and two offences of dishonestly failing to notify a change in circumstances, all those offences being contrary to section 111A of the Social Security Administration Act 1992. She was sentenced to 4 months' imprisonment on each offence, suspended for a period of 2 years, with an electronically monitored curfew order between 2000 and 2359 hours for a period of 12 months. She was also ordered to pay £1,000 towards the prosecution costs. She appeals against sentence by leave of the single judge.
2. For the purpose of this appeal, the facts of the offences may be summarised very shortly. On various dates between 6 April 2012 and 22 August 2013, the appellant dishonestly made false representations to the local authority for the purpose of obtaining council tax support and housing benefit and dishonestly failed to disclose changes in her circumstances affecting her entitlement to those benefits. The falseness lay in her representations that she was living in the two properties that she occupied during the 17-month period in question as a single person, when she was in fact living with her husband at all times. As a result of her dishonesty, she was overpaid £14,772.67 by way of housing benefit to which she was not entitled, and £1,876 by way of council tax benefit. The claim was fraudulent from the outset. When interviewed by the District Council officers, she disputed that at the material times she was residing with her husband and that she was still in a relationship with him.
3. Quite rightly, the learned judge identified this as a category 4B offence under the relevant Definitive Guideline, with a starting point of 36 weeks' custody after a trial. No issue is taken with the sentence of 4 months' imprisonment that was imposed for each of these

offences, there being a late plea of guilty. The learned judge suspended the operation of the sentence because of the appellant's children and caring responsibilities, but imposed the curfew to prevent her from going away from her home on holiday for a year and from enjoying freedom of movement in the evenings as an additional form of punishment.

4. This appeal is directed solely to the period of curfew. There is an unanswerable basis of appeal in respect of four of the offences.
5. In respect of counts 1, 2, 5 and 6, being offences committed prior to 3 December 2012, the maximum length of the curfew period that could be imposed under section 204(3) of the Criminal Justice Act 2003 was 6 months. That maximum period was extended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to 12 months. Article 3(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No 4 and Saving Provisions) Order 2012/2906 specifies that the amendment to section 204(3) of the Criminal Justice Act 2003 extending the length of the curfew period to 12 months effected by that Act shall not have effect in relation to offences committed before 3 December 2012. Accordingly, the sentences on those counts were unlawful.
6. In relation to the two counts in respect of which a 12-month curfew order was lawful (counts 3 and 4), it is submitted that the curfew period of 12 months is manifestly excessive because it prevents the appellant, who is 31 years of age and has the responsibility for seven children, five of them being her own, from leaving her home for socially acceptable times. Having regard to her culpability in relation to this deliberate fraud, and taking account of her circumstances, we do not consider such an order to be excessive; rather, it is an appropriate form of punishment.
7. Accordingly, we allow the appeal by quashing the 12-month curfew orders imposed on counts 1, 2, 5 and 6 and substituting curfew orders of 6 months which will run

concurrently with the original lawful curfew orders of 12 months on counts 3 and 4. The effect of this is that she will remain subject to curfew orders of 12 months as part of the suspended sentence order of 4 months' imprisonment in respect of counts 3 and 4. To that extent, this appeal is allowed.