

Neutral Citation Number: [2016] EWCA Crim 414
No. 2015/04463/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 10th February 2016

Before

LORD JUSTICE SIMON

MRS JUSTICE MCGOWAN

and

HER HONOUR JUDGE MUNRO QC

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

PAULETTE SMITH

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(Official Shorthand Writers to the Court)

Mr S Kumar appeared on behalf of the Appellant

JUDGMENT

(Approved)

Wednesday 10th February 2016

LORD JUSTICE SIMON: I shall ask Her Honour Judge Munro QC to give the judgment of the court.

HER HONOUR JUDGE MUNRO QC:

1. On 15th December 2014, in the Crown Court at Woolwich before His Honour Judge Shorrocks, the appellant pleaded guilty to an offence of dishonestly failing to give prompt notification of a change in circumstances, namely her employment as a carer, pursuant to section 111A of the Social Security Administration Act 1992. The benefit dishonestly obtained was £3,489.59.

2. On 22nd January 2015 the appellant was sentenced by His Honour Judge Downing to a 12 month Community Order with an unpaid work requirement of 80 hours. She was also required to pay compensation of £2,500, and a victim surcharge order was imposed.

3. Following the imposition of the sentence, and having completed only eight hours of the unpaid work, the appellant suffered a stroke and had been signed off as medically unfit to work. Breach proceedings were brought against her due to her failure to attend two unpaid work sessions.

4. On 8th September she appeared before Mr Recorder Kovats. The breach proceedings were withdrawn and the court was asked to revoke the order, on the grounds that it was unworkable, and to re-sentence. The Learned Recorder revoked the order and imposed a new 12 month

community order, with a six month curfew requirement from 7pm to 8am. The mandatory victim surcharge order, as it was understood to be, was not applied and no such order was made.

5. The appellant appeals against sentence by leave of the single judge.

6. The Learned Recorder observed that, when the appellant was originally sentenced for this benefit fraud, the sentencing judge had found that the offending fell within category 5B of the guidelines, with a sentencing range of a low level community order to 26 weeks' custody. The appellant had failed on two occasions to complete unpaid work as required. Medical evidence showed that she was unfit to undertake such work. It was appropriate, therefore, to revoke the order because it was not workable as constituted. However, despite counsel's submission to the contrary, the Learned Recorder said that it was necessary to impose a fresh order to mark the appropriate level of punishment for the offending. Realistically, the only requirement that could be imposed was a curfew.

7. The appellant is now aged 58. She had appeared before the courts on five previous occasions for six offences between 1974 and 1997. These included theft and forgery and, most recently, importing cannabis in 1997, for which she received a suspended sentence.

8. The breach report stated that the appellant's persistent and long-term health problems had been a barrier to her attendance at and completion of her unpaid work since the start of the order. The proposal was that a curfew or fine would be the most appropriate alternative. A fine was clearly unrealistic, since all the appellant's available money was going towards the compensation order.

9. The ground of appeal is that the sentence was wrong in principle or manifestly excessive. Mr Kumar, who appears for the appellant today, submits that the sentence was manifestly excessive since it represented the equivalent of a three month immediate custodial sentence.

10. We do not agree that the imposition of a curfew requirement was wrong in principle. Indeed, it was the only sentence realistically available to the court. However, we are of the view that the imposition of a new 12 month community order, with a much more onerous requirement than that originally imposed, was not appropriate on the facts of this case. The appellant's failure to complete the unpaid work requirement, originally imposed, was solely due to her severe ill-health following a stroke, rather than due to a deliberate or flagrant disregard of a court order.

11. In those circumstances, whilst a curfew requirement was the only realistic option, it ought to have reflected a restriction on the appellant's liberty commensurate with the original order.

12. The outstanding 72 hours of unpaid work would have involved approximately nine to twelve days of work (assuming between six and eight hours per day), which would have taken up to nine to twelve weeks to complete. Doing the best we can to equate the fresh requirement with a similar infringement of liberty, we quash the 12 month community order with a six month curfew requirement and replace it with a three month community order with a three month curfew requirement which would operate seven days per week between 9pm and 7am.

13. To that extent this appeal is allowed.