

Neutral Citation Number: [2018] EWCA Crim 2579

No: 2018 03644 A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 6 November 2018

B e f o r e:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION

LADY JUSTICE HALLETT DBE

MR JUSTICE NICOL

MR JUSTICE SPENCER

R E G I N A

v

SCOTT NATHAN TIMMINS

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd 165 Fleet Street, London EC4A 2DY Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is

responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

MR BALBIR SINGH appeared on behalf of the **Appellant**

MR SIMON HEPTONSTALL appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

1. **MR JUSTICE NICOL:** This is an appeal against sentence with the permission of the single judge.

2. On 23rd July 2018, at the Crown Court in Birmingham, the appellant changed his plea to guilty to two offences: first, possessing a mobile phone in prison, contrary to section 40D(3A) of the Prison Act 1952, and also unauthorised transmission of an image or sound by electronic communication from within a prison, contrary to section 40D(1)(b) of the Prison Act 1952. On the same date, he was sentenced by His Honour Judge Wall QC to ten months' imprisonment for the first of those offences and sixteen months concurrent for the second.

3. A co-accused was Ciaran Robert Heaps. He changed his plea to guilty on a count of possessing a mobile phone and he was sentenced to eight months' imprisonment.

4. We are very grateful to Mr Simon Heptonstall, who, at very short notice, has provided a respondent's notice.

5. The facts of the case are as follows. On 7th September 2016 the appellant was arrested for driving whilst disqualified and dangerous driving. He was remanded in custody.

6. From 14th September 2016 he was in possession of a mobile phone. The phone had a video camera facility and could also connect to the internet. From 14th September 2016 he made a video of his cell. He made other similar photos and videos of his cells, and posted at least some of them on Facebook and Instagram. They were shared with others.

7. In due course he pleaded guilty to the offences of driving while disqualified and dangerous driving. On 14th February 2017 he was sentenced to a total of nineteen months' imprisonment for these offences.

8. The present offences came to light when the appellant's cell was searched by

prison officers on 15th February 2017. The cell was occupied by the appellant and his co-accused, a Mr Heaps. Just as the appellant was about to be searched himself, he produced the phone from his boxer shorts. The phone was examined, and it became apparent that the appellant had been taking photographs and films of his prison surroundings. In some of the images a second phone could also be seen. Some of the pictures were of Heaps in their cell. There was no evidence of the phone having been used for anything criminal, other than its use itself.

9. The halfway point in relation to those sentences (that is, the sentences for driving while disqualified and dangerous driving) would have occurred in about March 2017. He was interviewed for the present offences in May 2017. He was released in due course from that sentence, but, on 10th August 2017, he again drove while disqualified and again drove dangerously. He was arrested and pleaded guilty to those offences. On 8th September 2017 he was sentenced to a total of 22 months' imprisonment for those offences. As we have said, the appellant originally pleaded not guilty to the index offences. He changed his plea to guilty to both counts on the day of trial, 23rd July 2018.

10. The appellant was born on 25th May 1990 and so he was 38 at the time of sentence. He had fifty previous court appearances for 106 offences between 2002 and 2017. Mainly they were road traffic offences, Theft Act offences and criminal damage. They did, however, include, on 18th January 2013, a sentence of six months' imprisonment for conveying a B list item into or out of prison. The item in question, it seems, was another mobile phone.

11. In passing sentence the judge said that he had to impose a sentence to deter others. It was a serious offence because it undermined the attempts by those who work in prisons to keep control over them and the public confidence in the prison system. If inmates were known to have access to telephones, whether or not they used them for illicit purposes, they were there, and could be obtained by others and used in that way. The appellant had had the phone over a period of months. It was accepted the images that he took went on to his social media sites and they were intended for family, but nevertheless that use of the phone aggravated his position. The custody threshold had been passed and immediate custodial sentences had to be imposed. He was entitled to a 10% credit for his late guilty pleas on the day of trial. Given the type of phone it was and the period over which it had been used, the sentence was ten months' imprisonment, reduced from twelve months had there been a trial. As far as transmitting the images were concerned, which was much more serious, the sentence would have eighteen months after a trial, reduced to sixteen months to reflect his guilty plea. The sentences would run concurrently.

12. On the appellant's behalf Mr Balbir Singh argues that the sentence was manifestly excessive or wrong in principle. He notes that the maximum sentence for these offences is two years. The judge had eighteen months in mind after a

trial and this would have been close to the maximum. The offences did not involve the use of the phone for some further criminal activity and did not justify a sentence of that harshness.

13. In his grounds of appeal Mr Balbir Singh also submitted that there had been a further negative effect of the judge's sentence, namely the Appellant had not been eligible for release on home detention curfew from his prior sentence of nineteen months. In his oral submissions and in response to Mr Heptonstall's respondent's notice, Mr Balbir Singh did not pursue this ground of appeal. He acknowledged that the appellant was ineligible for home detention curfew in any event because he had in the past committed offences while on licence, and that precluded him being granted home detention curfew in the future.

14. Mr Balbir Singh also referred to the fact that the appellant would be separated from his child for a longer period, a child having been born quite recently on 13th April 2018.

15. However, in our view, none of Mr Balbir Singh's grounds persuade us that this sentence was manifestly excessive or wrong in principle. The maximum sentence of two years inevitably means that there is going to be an element of "bunching" - in other words, there is less scope to draw fine distinctions between one offence and another. There are no sentencing guidelines for this offence, and previous decisions are inevitably taken against different factual backgrounds. The judge sensibly passed concurrent sentences. It meant that the identification of the lead offence was insignificant. In fixing the total sentence, the judge had to take account of the total offending, which included possession of the phone and flaunting its possession by uploading the images on to the internet. The appellant's record was inevitably an aggravating factor. We have drawn attention to the fact that one of his previous convictions was for a similar offence in relation to taking a mobile phone into prison.

16. For the reasons which the judge gave, these are serious offences. If, as in the appellant's case, they are repeated, a stern penalty is to be expected. It is regrettable that in the appellant's case this meant his longer separation from his child, but this recent birth did not mean the sentence was outside the proper range open to the judge. Judge Wall emphasised that any period which the appellant had spent on remand for the present offences would be credited against the sentences which he imposed. For all of these reasons, this appeal is dismissed.