

Neutral Citation Number: [2019] EWCA Crim 275

2018/04521/A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Wednesday 23rd January 2019

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE ROBIN KNOWLES

and

SIR WYN WILLIAMS

R E G I N A

- v -

F W

the Court)

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Mr P Eguae appeared on behalf of the Appellant

J U D G M E N T

(Approved)

Wednesday 23rd January 2019

LORD JUSTICE DAVIS: I shall ask Mr Justice Knowles to give the judgment of the court.

MR JUSTICE ROBIN KNOWLES:

1. The court, as did the court below, has made an order in relation to anonymity in this case. The appellant will be referred to by initials only.

2. In 2016 the appellant was 24 years old. She has two daughters, one of whom was

2 years old at the time.

3. On 21st September 2018, in the Crown Court at Truro, the appellant was convicted on a single count of the offence of cruelty to a person under 16 years, contrary to section 1(1) of the Children and Young Persons Act 1933 (count 2). The victim of that offence was the 2 year old daughter.

4. The appellant was acquitted on count 1, which also charged cruelty to a person under 16 years of age.

5. On 18th October 2018 she was sentenced to twelve months' imprisonment. She appeals against that sentence by leave of the single judge.

6. It is material to record the particulars of the two counts. Count 2, on which the appellant was convicted, read as follows:

"PARTICULARS OF OFFENCE

[FW], between the 14th day of October 2016 and 17th day of October 2016, being a person who had attained the age of 16 and having the responsibility for [the young child], a child under that age, wilfully neglected the [young child] in a manner likely to cause her unnecessary suffering or injury to health by failing to provide adequate medical aid for her."

Count 1, on which the appellant was acquitted, contained particulars of offence similarly worded but specified the activity at the heart of the alleged offending as being "by exposing [the young child] to the effects of cocaine and benzodiazepines".

7. The facts for present purposes may be taken shortly. On a Saturday morning during the period alleged in the indictment, the appellant returned from a period of absence. She returned with the benefit of a lift home from a Mr G. Later that evening, Mr G was still present at the appellant's house. He was present there with the appellant and her young daughter. It was apparent that there was use by Mr G of crack cocaine in the house. A Miss H (a friend of the family) called and became worried. She decided to check back in the morning.

8. In the course of her sentencing remarks the judge described the following morning as a morning where, to the knowledge of the appellant, the young child was not in her normal condition. The judge found that the appellant was immediately alerted to things not being right. The young child had trouble waking up. She was unable to support her own weight, even that of her head.

9. At around 11.30am, whilst the young child was on the sofa downstairs, Miss H called round again. There was no reply to Miss H's knock at the house. Miss H looked through the window and saw the young child lying on a sofa, dressed in a nappy. She called out several times to the child, but the child appeared unable to sit up.

10. Eventually, the appellant opened the door. Miss H went in and it was apparent to her that the child was unwell; she was not moving or reacting normally. Miss H insisted on taking the child with her as she left.

11. On returning to her own address, Miss H found that the child was unable to sit up. She rang the appellant and said that she (Miss H) proposed to call an ambulance. The appellant told Miss H that she did not want that to happen and that she would take the young child to hospital herself. At some point afterwards the child was violently sick and Miss H phoned for an ambulance. It was at the point of the phone call to the emergency services that the appellant arrived at Miss H's address. That was, as is recorded in the judge's sentencing remarks, some two hours after the suggestion was made by Miss H that medical help be summoned.

12. We shall conclude the reference to the facts of the case at that point, although the learned judge's sentencing remarks continued past the point of that phone call and included exchanges between the appellant and the emergency services, amongst a range of other factors.

13. The learned judge clearly took those subsequent events into account in arriving at her sentencing decision. It is in that regard that the first error in the present proceedings arises. In relation to the count on which the jury convicted the appellant, the learned judge had made it clear to the jury that the relevant facts were those up to, and not beyond, the making of the emergency call that morning.

14. The sentencing remarks of the learned judge further include reference to guidelines that at the material period for the purposes of this offence had not yet come into force. That forms a second element of challenge to the decision reached

by the learned judge.

15. The court had the benefit of a pre-sentence report. Amongst other things, it contained two features of note. The first was an examination of the very difficult background that the appellant herself had experienced throughout her childhood and indeed throughout her life. The second aspect was to draw attention to the circumstances in which both the young child to which reference has been made and her sibling were currently looked after. The position is, so far as the court understands, that there is now a guardianship order and through that mechanism the appellant has contact with her children. That aspect was properly referenced by the learned sentencing judge in her sentencing remarks.

16. The learned judge's conclusion, having regard, as we have said, to matters which post-dated the emergency call and having regard also to guidelines not in force at the relevant time, was that the appropriate sentence was one of twelve months' imprisonment.

17. Accepting, as we do, that there is force in the two areas of challenge that we have identified, we have reached the view that the sentence imposed was manifestly excessive. We fully understand the decision of the single judge to grant leave to appeal against sentence in these circumstances.

18. Whilst in the present case the matter could well have resulted in a suspended sentence order, the sentence that we will impose in place of the sentence of twelve months' imprisonment that was imposed by the learned sentencing judge is a sentence of six months' imprisonment. That will have the practical effect, given the time spent in custody pending the hearing of this appeal today, that the appellant will be released immediately. In all the circumstances of the case, we see both that reduced sentence and the outcome of immediate release today as doing full justice to the particular facts of this case and to the particular circumstances of the appellant.

19. In those circumstances we allow the appeal against sentence. We quash the sentence of twelve months' imprisonment and we substitute a sentence of six months' imprisonment.

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