

Regina
V
Rachel Smith

Court of Appeal Criminal Division

[2019] EWCA Crim 1077

Before: Lady Justice Rafferty DBE Mrs Justice McGowan DBE Recorder of Nottingham (His Honour Judge Dickinson QC) (Sitting as a Judge of the CACD)

Wednesday, 22 May 2019

Reference by the Attorney General Under S.36 of the Criminal Justice Act 1988

Representation

Mr J Smith appeared on behalf of the Attorney General.
Mr P Binder appeared on behalf of the Offender.

Judgment

Lady Justice Rafferty:

1. This is an application by Her Majesty's Solicitor General in reliance upon the terms of s36 Criminal Justice Act 1988 in which he seeks leave to challenge as unduly lenient the sentence imposed on Rachael Smith, now 44, born on 29 October 1974. We give leave.

2. On 18 March 2019 in the Crown Court sitting at Bristol she was sentenced to 4 months' imprisonment, the term suspended for 18 months plus a rehabilitation requirement of 20 days. She admitted breach of a suspended sentence order and was sentenced to a further 10 days of rehabilitation activity in that regard. There were consequential orders.

3. She answered an indictment charging her with conveying into a prison on 8 June 2018 a list A article, contrary to section 40B of the Prison Act 1952 .

4. At her plea and trial preparation hearing in February 2019 she pleaded guilty. By virtue of that plea she was in breach of a suspended sentence imposed on 19 February 2018.

5. On 13 August 2017 her then partner, Josh Farnham, stabbed Tashan Corpe, who subsequently died. She drove Farnham from the scene to various addresses including three public houses. Farnham and she were arrested, Farnham charged with murder, she with assisting an offender. Both were convicted after trial.

6. Simler J point out that when the fight finished she had stayed in the flat until she heard screaming, realised something serious had happened, went out, saw the dead man's body and ran to call an ambulance. She was half pushed and half pulled up the road by Farnham so that she could drive him away with little choice but to comply and an element of chaos and panic. She helped him evade arrest until some hours later.

7. The judge had a stand down report which had assessed her risk of re-offending as directly linked to her relationship with Farnham, but thought, wrongly as it turns out, it unlikely she would come before the court again. Twelve months' imprisonment was suspended for 2 years with a curfew requirement and a rehabilitation requirement.

8. On 8 June 2018, at about 2.00 pm at HMP Bristol she visited Farnham. Drugs were detected on her. She was strip searched, became aggressive and began to take her clothes off herself. From her bra dropped two wraps of 7 Subutex tablets and tobacco. She said: "For God's sake, it's just a bit of tobacco and Subutex". The tablets contained Buprenorphine, sold as Subutex, an opioid used to treat opioid addiction. It can be misused by the tablet being crushed and the user snorting it. It is classified as Class C.

9. In interview she elected to make no comment.

10. She relied on her GP's confirmation that she endured schizophrenia, for which she is medicated, and anxiety. The GP thought her mental health best supported in the community. She had kept to her license conditions and made arrangements to pay off debts in preparation for being housed. Her key worker confirmed her regular attendance at alcohol abuse sessions but pointed out that her drinking had not decreased. Her older daughter wrote to the court stressing her mother's change of circumstance since the index offence, working, as she then was, with Social Services, to obtain unsupervised contact with the younger daughter, P. P has a medical condition which we are told requires surgery. There is no fixed date but the girl has reached almost the top of the waiting list and there has certainly been a preoperative consultation. We proceed on the basis that surgery is not far off

11. The older daughter wrote that Farnham had sent her threatening letters. Between April and August 2018 the offender had struggled with problems attaching to her mental health. The 12-year-old P, at present is in foster care, wrote to the court explaining that postoperatively she would need the support of her mother. She also claimed Farnham was a controlling influence on her mother. Another daughter, C, wrote describing their mother as vulnerable and on the day of the offending apparently delusional, making senseless comments. Her mental health, thought C, had improved over the past year and particularly since her medication was changed. The offender's mother was candid: at the time of the offending the offender was drinking too much and struggling to come to terms with the outcome of the trial before Simler J.

12. The offender has an offer of or may even be in social housing. It is not entirely clear whether, were she to lose her liberty, that housing would be lost to her.

13. She had previous convictions on three occasions comprising seven offences, some of little relevance and safely ignored. On 4 May 2005 she was made subject to a curfew for five instances of obtaining property by deception. With the suspended sentence we have already dealt.

14. A pre-sentence report rehearsed her drinking heavily since imposition of the first suspended sentence and her visiting Farnham fortnightly in prison. On one occasion he asked her to bring in Subutex and she agreed absent coercion or pressure. In hindsight she realised that was a terrible decision, she had ended her relationship with Farnham. Her poor choice of relationships and lack of assertiveness initiated her behaviours. Her mental health was stable. She posed a low risk of re-offending, save that a relationship with someone criminally active would increase it. She was wholly responsible for her behaviour but had worked hard since the index offence to address her problems.

15. She nears completion of the rehabilitation activity requirement attaching to the first suspended sentence, has turned up at sessions with the Drug and Alcohol Agency and with an organisation for victims of domestic violence or abuse, her approach has been proactive and she arranged to go to alcohol support groups with the help of her general practitioner. The author supported a community based sentence. She had an established support network of professionals, was complying with medical advice and engaging with the probation service.

16. The judge identified four points which prompted him to the course he took. First, her mental health was at a precarious state at the time of the offence. Second, the ongoing devastation to her life and the losses with which she was having to deal were in play. Third, P's impending operation had an effect. Fourth, the offender had been engaging since the offence with ongoing offers of treatment. He felt able, just, to suspend the sentence.

17. Aggravating features are that the offending was but 4 months after Simler J had imposed a suspended term of imprisonment. Mitigating it are her poor mental health, her progress since the offending, and the impact of a custodial sentence on her family.

18. All that said, the Solicitor General argues that this sentence was unduly lenient, failing to take proper account of the nature of the offence and the aggravating features. In particular, for conveying list A articles into the prison estate the default position is loss of liberty: *R v Reynolds* [2017] 1 Cr App R(S) 42 ; the work of the Sentencing Guideline on Drugs coupled with *R v Gallagher* [2016] EWCA Crim 925 ; *R v C* [2012] EWCA Crim 2884 , suggest that the length of the sentence was not of itself unduly lenient, that at the time of the offending the offender was 4 months into the initial suspended sentence for assisting the same offender on whose behalf she conveyed drugs into the prison estate and that the combination of all this should have precluded imposition of a further suspended sentence.

19. As to the breach of the earlier suspended sentence, the Solicitor General submits that the index offending justified immediate loss of liberty and the judge should have activated the suspended sentence at least in part.

20. For the offender Mr Binder, who appeared below, argues that the judge took what a combination of reading the guidelines, authority and deploying experience suggest was a legitimate path to a sentencing disposition. He makes the sensible concession that the sentence, at its lowest, was lenient, but argues that it was not unduly so. His lay client he submits was extremely vulnerable and by the time of sentence had stabilised dramatically.

21. The submissions of the Solicitor General are unanswerable. This sentence was unduly lenient. Introduction into the prison estate of drugs should usually lead to immediate loss of liberty. The deterrent effect is not to be

underestimated.

22. This offender was additionally already in breach of a suspended sentence. The appropriate sentence would have been a sentence of 4 months immediate loss of liberty and the activation, in part, of the suspended sentence. She could not have complained of 4 months for the index offence and the activation of 4 months for the breach, consecutively, a total of 8 months. The judge could have taken a merciful approach by making the terms concurrent.

23. However, the reality of the life of an individual like this is that her raft of difficulties makes it unlikely she will turn sharply onto the path of amended behaviour. Experience teaches us that more likely is a long extended bend. That, in our view, is what is happening here, the proof being in the progress she has made.

24. The sentence was unduly lenient, a merciful one would have been 4 months' imprisonment for the index offence and 4 months of the suspended sentence activated concurrently, a total of 4 months. We decline however, for all the reasons we have given and particularly because of the major efforts this offender has made over 9 months to right herself, to interfere.

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