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No: 201900879/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 5 June 2019

B e f o r e:

LORD JUSTICE FULFORD

MRS JUSTICE ANDREWS DBE

MR JUSTICE SWIFT

R E G I N A

v

"EG"

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Mr G Logan appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. LORD JUSTICE FULFORD: The two victims (to whom we shall refer as "AS" and "BY") are granted lifelong anonymity as regards these proceedings and this judgment will be appropriately anonymised.
2. On 2 January 2019, in the Crown Court at Wolverhampton the appellant, who is referred to as "EG" and who is aged 28, changed her plea on two offences of child cruelty to a person under the age of 16, contrary to section 1(1) of the Children and Young Persons Act 1933. On 12 February 2019 she was sentenced by His Honour Judge Berlin to two concurrent terms of immediate imprisonment of 3 years and 6 months.
3. Her partner, who will be referred to as "AS", pleaded guilty to the same counts and was sentenced to concurrent terms of 3 years and 4 months' imprisonment. He was dealt with for other offences, on a separate indictment, and his total sentence was 8 years and 6 months' imprisonment.
4. EG appeals against her sentence by leave of the single judge.
5. The appellant and AS are parents of twin children (AZ and BY) born in March 2016. There are three older siblings who were aged 5, 4, and 18 months at the time of the twins' admission to hospital in January 2017. The babies had been born 7 weeks prematurely but they started to thrive and gain weight and they hit their developmental targets, as recorded by the social workers involved in their care, during the first 8 months of their lives.
6. Health workers last saw the twins around 1 November 2016 as the appellant and AS stopped engaging with the relevant professionals shortly thereafter. A visit from a health visitor on 7 September 2016 had recorded the twins' weights and described them as being "healthy". BY was able to hold her body upright, had good control and was able to bring a spoon to her mouth. A similar recording was made for AZ. It was noted that the appellant had introduced solid foods into their diets about 4 weeks prior to that visit. Both twins appeared happy with AZ weighing 6.9 kilograms and BY 6.6 kilograms.
7. The appellant and AS then missed several paediatric appointments as well as appointments for vaccinations and contact of this kind ended entirely on 1 December 2016. Professionals made efforts to contact the appellant and AS towards the end of December 2016 and requested that the twins have their height and weight reviewed before a "Child in need" plan could be drafted for the babies.
8. A health visitor visited the twins' home on 10 January 2017 following two failed home visits on the 5 and 6 January. It was noticed that BY could no longer sit up. She was unable to roll over or bear weight. Her weight was recorded at 5.02 kilograms. AZ was recorded as having failed in all areas of development. He could no longer sit up or roll over and his weight was 5.35 kilograms. Both babies were dressed in clean coats but were wearing dirty and stained baby grow suits and child AZ had scratches on his arm and head. The health worker made an urgent appointment for the twins to be assessed by a paediatric consultant, Dr Lane, at Walsall Manor Hospital. The assessment took place the following day. The twins were described as extremely malnourished. Their ideal weight should have been 7.2 kilograms for BY and 8 kilograms for AZ. Their skin and nails were dirty and they were dressed in dirty clothing. Their hands and feet were cold and they were dressed inappropriately for the cold weather.
9. The doctor said both babies lay in prams with a "frozen watchfulness". When they were picked up they made no noise and they did not interact with the doctor. Both babies were admitted immediately to a paediatric ward for monitoring and further assessment. They

were admitted for "failure to thrive", defined as when a child is not meeting or maintaining his or her predicted measurements based on weight, height and well-being. The twins were diagnosed with severe and acute malnutrition.

10. A paediatric dietician, Ms Tong, described BY as being severely underweight for her age and severely wasted. She was severely underweight for her length and had protruding ribs and sternum, lethargy, downturned mouth, irritability and there was a refusal to play. All the clinical signs of malnutrition were present. Both babies regularly covered their heads with their blankets whilst in their coats. AZ was described in closely similar terms. There were no medical reasons for the malnutrition. Following their hospital admission both babies' weights increased to 5.8 kilogram over a 2-week period.
11. Staff members at the hospital commented on the appellant's and AS's conduct in hospital. The twins initially struggled to eat food with lumps and it was noted that the parents brought into hospital bottles that were very discoloured. During their admission the twins were visited by the appellant and AS but they rarely spent a night on the ward. At times the parents were seen not to interact with the babies and had to be prompted to change or feed them. Staff on the ward had to wash the babies' clothing as the parents failed to provide clean clothes and it was noted that items brought into the hospital smelt of cigarette smoke. Staff noticed that the babies did not like to be handled or cuddled and were continued to hide under their blankets instead of engaging with the nursing staff. Neither baby responded to prompting at meal times, suggesting that they were not used to being fed.
12. The twins' condition improved during the hospital admission from severely malnourished to moderately malnourished. They were discharged on 13 January 2017 with BY weighing 5.85 kilograms (having gained 800 grams) and AZ weighing 6.25 kilograms (having gained 550 grams). By the 21 March, BY weighed 8.72 kilograms and AZ weighed 8.8. The twins had been placed with foster parents and a nurse who saw them in July 2017 described them as being completely transformed: they had fat faces, appeared happier and healthier and were interactive and smiling. All five of the appellant's children had been taken into foster care following an Injury and Care Order in January 2017. A foster carer described the three older girls as having smelt of smoke and urine, with dirty clothing and appearances when they came into her care in January.
13. The appellant and AS were arrested on 2 February 2017. They both asserted that they had not intentionally neglected the children who they insisted appeared normal until 11 January. They said the twins had been treated the same as the older children and had been fed in the same way. They had noted a drop in the twins' weight but neither felt the twins required hospital admission.
14. It was acknowledged that AS had a Class A drug addiction at the time of this neglect. The appellant said that she had done the best she could in the circumstances. She had five children under the age of 5 and a partner who was addicted to drugs and her mother who had been diagnosed with cancer. AS denied that his addiction had affected his care of the children.
15. When interviewed by the author of the pre-sentence report the appellant expressed remorse and regret and made no attempts to minimise her responsibility for what had happened. However, she displayed only limited awareness as to the impact of her offending on these two very young children. She was assessed as posing a low risk of re-conviction, a medium risk of harm to children and a low risk of harm in all other areas.

It was accepted that a custodial sentence was inevitable.

16. In passing sentence the learned judge observed that the appellant had pleaded guilty on the day of her trial to the two counts of cruelty. She was, as we have already observed, 28 years old and had no previous convictions. The judge noted that Dr Lane, who examined the children in hospital when they were aged 10 months and who was an experienced paediatrician, had described the malnutrition as the worst she had ever seen and this was echoed by a dietician who saw children when working in Africa. A staff nurse emphasised their obvious protruding bones and swollen stomachs. The judge concluded that it was no exaggeration to observe that the children had been at risk of dying.
17. The judge addressed the Sentencing Council's Definitive Guidelines entitled "Cruelty to a Child" that was effective from 1 January 2019. He observed that the twins had lost weight because they were starved by both the appellant and AS. The judge expressed the view that their uncaring attitude (as he described it) was beyond belief. He determined that the level of neglect constituted serious developmental harm, which meant that the offences fell within category 1. He was prepared to accept, at least to an extent, the submission that the case fell at the upper end of medium culpability on the basis that it was a case of high neglect rather than deliberate disregard which would have placed the case in the high culpability bracket but he said that it was a fine line on these facts between the two.
18. The starting point for category 1 harm, with culpability B, is 3 years' imprisonment, with a range from 2 to 6 years. The judge highlighted the failure to respond to interventions or warnings from December 2016, when they both stopped engaging with professionals and when they watched their children deteriorate to the point of near starvation. The period of acute starvation extended over a period of weeks. The starting point was in those circumstances increased to take into account what the judge described as the aggravating features in the case, that increase being to 4 years and 8 months.
19. The judge accepted the mitigation that there had been an earlier period of reasonable normality. He accepted that the appellant and AS's life-style was chaotic and he recognised that there had been a number of bereavements in the appellant's life over the relatively recent period. Her mother had passed away in 2017 having been diagnosed in 2016 with throat cancer. The judge took into account that the appellant had no previous convictions and had shown remorse.
20. As we have said, the judge moved upwards from the starting point of 3 years to 4 years and 8 months and, after 10% credit was afforded for the appellant's plea, the appellant was sentenced to 3 years and 6 months' imprisonment.
21. In admirably succinct submissions Mr Logan contends that the increase in the starting point from 36 months to 56 months, before any reduction for mitigation and for credit for plea, resulted in simply too high a sentence. It is that central submission that we need to determine on this appeal.
22. This is a difficult and troubling case. These two young children were badly starved, leading to serious developmental harm. On any view, this was a truly terrible thing for parents or anyone else to have done and any long-term consequence for these two children will only be revealed at some uncertain stage in the future.
23. Certainly one of the particular matters referred to by the judge in departing from the 3-year starting point, namely that the appellant watched her children approach starvation over a period of weeks, raises a question as to whether this worrying feature was truly an aggravating factor or whether it was an essential part of these offences in that it might be

viewed as a necessary element in order for this kind of category 1 offence to be committed, which involved serious impairment to the development of these two children. If the parents had provided the children with nourishment it is perhaps difficult to see how offences of this level of seriousness would have been committed. There is an issue, therefore, as to whether the judge may have viewed as an aggravating factor something that was an essential consideration when he was determining the offence category. This raises a possibility that a factor was taken into account at stage 1 of the sentencing process which was also viewed as increasing seriousness, resulting in double counting.

24. However, having raised that potential issue it is unnecessary to resolve it because the judge was sentencing for two offences, involving two children and, in our judgment, the critical question is whether an overall sentence of 3 years and 6 months' imprisonment was too long, the judge having determined that a sentence of 4 years' imprisonment was appropriate, once the mitigating and aggravating features had been taken into account, from which 10% for the late plea was deducted.
25. We remind ourselves that the Crown put the case on the basis that the acute period of starvation was the result of the parents' chaotic life- style, leading them to disregard the twins' welfare.
26. In our view the prosecution credibly suggested in those circumstances that this was case of high/medium culpability. Given there were two victims, both of whom will have suffered equally, we are unable to conclude that this sentence was manifestly excessive. This was a global sentence, in a very bad case of child starvation, involving two very young children over a period of about 2 months, which is a long period of time in this context.
27. Notwithstanding Mr Logan's helpful submissions, this appeal is dismissed.

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