

Neutral Citation Number: [2019] EWCA Crim 1437

No: 201901061/A2

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 18 July 2019

**B e f o r e:**

**LORD JUSTICE HOLROYDE**

**MR JUSTICE PHILLIPS**

**HER HONOUR JUDGE MOLYNEUX**  
**(Sitting as a Judge of the CACD)**

**R E G I N A**

**v**

**MARK ANTHONY HILLMAN**

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**NON-COUNSEL APPLICATION**  
**J U D G M E N T**  
(As approved)

1. HER HONOUR JUDGE MOLYNEUX: On 21 January 2019, in the Crown Court at Swindon, Mr Hillman pleaded guilty to acting in breach of a restraining order contrary to section 5(5) of the Protection from Harassment Act (count 1) and to stalking involving fear of violence and serious alarm or distress, contrary to section 4A of the Protection from Harassment Act 1997 (count 2). He also admitted breach of a suspended sentence. He was sentenced on 14 February 2019.
2. After refusal by the single judge he renews his application for leave to appeal against sentence.
3. The applicant and complainant began a relationship in January 2018. The complainant found the applicant to be possessive and jealous and ended the relationship in May 2018. The applicant refused to accept that the relationship was over and began to harass the complainant. She contacted the police, who told the applicant that he should not contact her again. He ignored the police.
4. In June 2018 the applicant pleaded guilty to an offence contrary to the Malicious Communications Act 1988. He had sent a voicemail message to the complainant in which he threatened to break into her house using a hammer, beat up her son and cause damage to her son's car. On 3 July he was given a 12 month community order with a rehabilitation activity requirement. A restraining order was imposed which prohibited him from contacting the complainant directly or indirectly. On 4 July 2018, the next day, the applicant breached the restraining order. He approached the complainant, made an offensive gesture, spoke to her in abusive terms and said: "This isn't over". On 5 July he was given a further community order with additional requirements.
5. Between 5 and 8 August there were further breaches. Voicemail messages were left by the applicant for the complainant. On 9 August he was given a suspended sentence order of 12 weeks' imprisonment suspended for 12 months. The restraining order was to remain in effect.
6. On 16 August a series of voicemail messages were left on the complainant's phone. Messages continued over the next three days until 19 August, when the complainant reported matters to the police. On 20 August there were further messages and the complainant went to the police again and the applicant was arrested.
7. Count 1 on the indictment referred to the breach of a single day on August 16. Count 2 was indicted as spanning a period of 4 July to 20 August and covered the remaining communications.
8. The judge referred to the guidelines. He placed the breach of the restraining order in category 2A. The breach was persistent and the harm was in category 2. The complainant had suffered serious distress but the judge did not find it to be very serious and so not within category 1. The starting point was 1 year in custody with a range from a high level community order to 2 years' custody.

9. The applicant was 40 years old at the date of sentence. He had 27 convictions for 74 offences. Many involved breaches of community orders and for driving whilst disqualified. He was in breach of the suspended sentence passed on 9 August. He had persistently ignored court orders.
10. The judge said that having regard to the previous convictions, continued and flagrant disregard for every opportunity the court, police and Probation Service had given him he should move outside the guidelines and take a starting point of two-and-a-half years. To this he applied the discount of 25% giving credit for plea, resulting in a sentence of 22 months. For the stalking offence the maximum sentence is 6 months. The judge said that he would have taken a starting point of 5 months and he had regard to the principles of totality and reduced it to a term of 3 months and ordered that it be concurrent to the sentence on count 1. The judge activated the suspended sentence, reducing it to 2 months. This gave a total sentence of 24 months in custody.
11. The applicant seeks to appeal on two grounds. Firstly, the judge should not have sentenced without a pre-sentence report. The applicant pleaded guilty on 21 January and the court adjourned the case for a pre-sentence report. However, the Probation Service declined to prepare a report, citing the applicant's previous non-compliance as a reason why non-custodial options would not be considered.
12. The applicant says he has learning difficulties, a history of mental and physical problems as well as alcohol and drug dependency. The lack of a report meant that he was deprived of evidence in these matters and mitigation.
13. The Criminal Justice Act 2003 section 156(4) provides that a judge is not required to obtain a pre-sentence report if of the opinion that it is unnecessary to do so. The judge made his reasons for sentencing without a report clear. He said that if the applicant had indeed had a low mental age, that fact would have been raised by the Probation Service or his lawyers over the preceding 12 months. The judge was satisfied that the applicant clearly knew what he was doing and that he knew that what he was doing was wrong.
14. The Probation Service had taken the view that given the applicant's willful noncompliance with community orders and breach of a suspended sentence there was nothing they could offer. The applicant was represented by counsel who was capable of advancing mitigation on his behalf. A custodial sentence was inevitable.
15. In our judgment, and in the circumstances of this case, notwithstanding that at a previous hearing the court had directed the preparation of a pre-sentence report the judge was entitled to conclude that a report was not necessary. The judge was justified in proceeding without a report. We are also satisfied that a report is not necessary at this stage.
16. The second ground is that the judge erred in placing the offence in too high a category of the guidelines. The judge correctly placed the offence within category 2A, for persistent breaches, even on the day covered by count 1, led to culpability A. The harm was category 2. There was harm but not such as to amount to very serious harm or distress.

He also correctly identified aggravating features which justified an upwards departure from the guidelines. This was the third time the restraining order had been breached all within a very short time of the order having made. The applicant was now in breach of a suspended sentence order. He had multiple convictions for offences which were breach of court orders including breach of community orders and offending whilst on bail. The sentence for count 1 had to be considered against the background of those breaches and also against the background of count 2.

17. The judge made clear that he had listened to very careful mitigation which had been advanced on behalf of the applicant. He also made reference to the applicant's mental age. He applied the principles of totality and gave appropriate discount for plea. The sentence for count 2 was made concurrent. The suspended sentence was activated with a reduced term of 2 months. The total sentence of 24 months is not manifestly excessive.
18. The renewed application for leave to appeal is dismissed.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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