

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Neutral Citation Number: [2019] EWCA Crim 1678

Royal Courts of Justice

The Strand

London

WC2A 2LL

Wednesday 18th September 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE LAVENDER

and

MR JUSTICE NICKLIN

---

R E G I N A

- v -

LIAN HARRIS

---

Computer Aided Transcript of Epiq Europe Ltd,

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

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 D D'Souza appeared on behalf of the Appellant

J U D G M E N T

(As Approved)

---

Wednesday 18th September 2019

LADY JUSTICE NICOLA DAVIES: I shall ask Mr Justice Lavender to give the judgment of the court.

MR JUSTICE LAVENDER:

1. This is an appeal against sentence brought with the leave of the single judge.
2. On 17th December 2018, on the day of her trial in the Crown Court at Wolverhampton, the appellant pleaded guilty to one count of breach of a non-molestation order, contrary to section 42A of the Family Law Act 1996. On 17th April 2019 she was sentenced to 27 months' imprisonment.
3. The appellant entered into a surrogacy arrangement with a husband and wife. She became pregnant, but during the pregnancy she decided that she no longer wished to hand over the baby once it was born. As a result, there was a significant amount of hostility between the parties during the pregnancy. Shortly after the appellant gave birth to a girl, the husband and wife commenced proceedings in the Family Court. These proved to be protracted and acrimonious. In August 2015, custody of the child was granted to the husband and wife. The appellant was initially granted direct access, but she started to cause problems for the husband and wife. She contacted Social Services and made up allegations that the child was being abused at home. As a result, her access was restricted to supervised, and then to indirect access.
4. The appellant was twice convicted of stalking: first in June 2016 and then in May 2017. She stalked first the judge hearing the case, and then a CAFCASS guardian. She was sentenced to a suspended sixteen week term of imprisonment for stalking the judge; but then to an immediate sixteen week term of imprisonment for stalking the guardian, when the suspended sentence was activated, but varied to six weeks' imprisonment. That made a total sentence of 22 weeks' imprisonment. She was released from custody on 27th July 2017.
5. Following her release, the appellant posted on Facebook a statement that the wife had mental problems, namely, schizophrenia and Munchausen-by-proxy. She also posted the wife's home address. This led to the non-molestation order being made on 3rd November 2017. The appellant was prohibited, inter alia, from making any postings to social network sites which contained any abusive or derogatory comment about the husband or the wife.
6. Although she was later to deny it in interview, the appellant was aware of the terms of the non-molestation order. The appellant repeatedly breached that order between 19th November 2017 and 1st January 2018. In particular, the appellant created a profile on Facebook in the name of the child, with a photograph of the child and of the wife, and a caption telling people that if they saw the husband and wife with the child, they should tell the child that she had a real mummy and a family who loved her. In her Facebook postings, the appellant described the wife as having psychopathic disorder, schizophrenia and Munchausen syndrome, and as being delusional. She alleged that the wife's mental health problems meant that the child was suffering emotional abuse. It is not suggested that there was any basis in fact for any of these allegations.
7. Against the background to which we have referred, this understandably caused considerable distress to the wife, who said that she was frightened to go out, exhausted, stressed and feeling "broken". The stress caused physical consequences, since it aggravated her irritable bowel syndrome, and she felt compelled to check Facebook almost daily because she feared that there would be new pictures uploaded.
8. This was a persistent breach which caused very serious distress. The judge was right to place it in category 1A in the guidelines, with a starting point of two years' imprisonment and a range of up to four years. The judge referred to the appellant's previous convictions as aggravating factors. These were significant matters since they arose out of the same proceedings and involved persistent harassment. Another aggravating factor was that the appellant breached the non-molestation order within three weeks of its being made.

9. The judge decided that the appropriate sentence before the discount for the appellant's guilty plea was 30 months' custody. The judge gave a discount of ten per cent. No issue is taken with the level of discount.

10. There were originally three grounds of appeal. The first was that the judge placed the offence into the wrong category. As we have already explained, we consider that the judge placed the offence in the right category. Mr D'Souza, on the appellant's behalf, rightly did not pursue that ground before us.

11. The second ground of appeal is that the judge ought to have made allowance for the appellant's mental health difficulties and that the judge should have treated her as suffering from a mental disorder for the purposes of the sentencing guideline and reduced the sentence accordingly, before applying the credit for the guilty plea.

12. The appellant told the psychiatrist who prepared a report that her childhood was marked by emotional abuse from her mother and sexual abuse from her stepfather. Against that background, a difficult pregnancy and then the proceedings which followed the birth of the child had been traumatic for the appellant. The appellant was diagnosed in 2017 with recurrent depressive disorder. There was a psychiatric report prepared for the sentencing hearing in which the opinion was expressed that the appellant did not appear to have a personality disorder, but did have some emotionally unstable and paranoid traits which were highly consistent with her childhood experiences. In her sentencing remarks, the judge did not go into these matters as fully as might have been desirable. However, in all the circumstances, and balancing the aggravating and mitigating factors, we do not consider that the appellant's mental health required the judge to impose a lower sentence on the appellant than the sentence which was in fact imposed.

13. The third ground of appeal was that the sentence should have been suspended because the break in offending of almost eighteen months was sufficient for the court to step back from imposing a term of immediate imprisonment.

14. The question of suspension did not and does not arise, given that the sentence was one of 27 months' imprisonment. Moreover, the fact that eighteen months elapsed between the appellant stalking the guardian and her breach of the non-molestation order is of limited, if any, significance for three reasons: first, the appellant spent some of those eighteen months in prison; secondly, towards the end of those eighteen months, and only shortly after her release from prison, she did the acts which led to the imposition of the non-molestation order; and thirdly, as we have already stated, the breaches followed very shortly after the imposition of the non-molestation order.

15. For all of those reasons, this appeal against sentence is dismissed.

16. LADY JUSTICE NICOLA DAVIES: Before you conclude this matter, we do not make any order under section 45 of the Youth Justice and Criminal Evidence Act 1999 in respect of the child. Restrictions can only be imposed in respect of a child if he or she is concerned in the proceedings. By section 45(7) a person concerned in the proceedings is defined as a person (a) against or in respect of whom the proceedings are taken, or (b) who is a witness in the proceedings. The child in this case does not fall into either category. There is, therefore, no jurisdiction for this court to make a reporting restriction under section 45.

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

Lower Ground, 18-22 Funnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk