[2019] EWCA Crim 1638

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

Thursday 1st August 2019

B e f o r e:

THE VICE-PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION

(Lady Justice Hallett DBE)

MR JUSTICE GOSS

and

MRS JUSTICE MAY DBE

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R E G I N A

- v -

LEE POLLARD

SHARON PATTERSON

_____

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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)

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Mr C Rush appeared on behalf of the Appellant Lee Pollard

Ms J Carey appeared on behalf of the Appellant Sharon Patterson

Mr L Seelig appeared on behalf of the Crown

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J U D G M E N T

(For Approval)

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Thursday 1st August 2019

LADY JUSTICE HALLETT:

1. On 14th March 2019, following a trial at the Central Criminal Court, the appellant, Pollard, was convicted of two counts of misconduct in a public office, and the appellant, Patterson, of one count of misconduct in a public office. On 10th May 2019, the trial judge, His Honour Judge Nigel Licklely QC, sentenced Pollard to two years' imprisonment and Patterson to eighteen months' imprisonment.

2. They both appeal against sentence by leave of the single judge.

The Facts

3. An internal review commissioned by Essex Police discovered failings in investigations conducted by members of the Child Abuse Investigation Team North ("NCAIT") during the period 2011 to 2015. The NCAIT was one of three teams working on claims of child abuse. The review was extensive and led to misconduct action against 30 past and present officers from the team, which included the two appellants.

4. There were known problems with staffing levels in NCAIT and by September 2014 the situation was described by some as critical. Only two of the five detective sergeants worked regularly. At the same time, NCAIT had more live cases than the caseloads of the other two teams put together. There was low morale in the unit, with high sickness levels.

5. Sharon Patterson had joined Essex Police in January 2001 and moved to NCAIT as a detective constable in December 2010. Lee Pollard had joined Essex Police in 1994 and he moved to the same team in August 2011. They began an affair, split from their partners and eventually moved in together with their five children.

6. The appellants were charged with dishonestly manipulating investigations for which they were responsible, the consequence of which was the premature end to the investigation in that a senior officer concluded that no further action should be taken against a suspect.

7. NCAIT had two methods of recording investigative actions, one of which was the historical method known as CAIT 18. CAIT 18 was a Word document on the computer system which could be accessed by all staff in the unit. A document could be edited retrospectively, and entries deleted or amended, yet the system did not record who had made the alterations or deletions.

8. Count 2 related to Sharon Patterson. She was working on an investigation into historical sex abuse alleged by a complainant, "X", from the time she was 8 until she was 15. X claimed that her sister was also the victim of abuse by the same perpetrator. The allegations were first reported on 4th May 2011 by the complainant's mother. The CAIT 18 was created for the case by Patterson on 4th May. The following day, a Detective Sergeant Potter advised with a note on the file that the victim would need to make an MG11 witness statement, as would her mother. In June 2011, Patterson was appointed the officer responsible for the investigation. A statement was

taken from the victim and her sister, but no statement was taken from the mother.

9. Having made an MG11 statement, the victim rang many times and left messages for Patterson as the case officer to find out what was happening. She was eventually told that the suspect had been interviewed. When she chased again for an update, she was told that the case had been referred to the Crown Prosecution Service for a charging decision and that because it was the suspect's word against hers, no further action would be taken. In fact, the file had never been sent to the CPS. Patterson had created false paperwork suggesting that it had. She had edited the CAIT 18 document to create a false impression that the investigation had been conducted as DS Potter had required. She obtained a copy of a blank MG3 "No Further Action" Form from Pollard and created a false MG3 charging decision by a CPS lawyer.

10. A DS Hackett reviewed the case in April 2012, noted the "no further action" decision; and finally, a detective inspector made the decision that the investigation should end.

11. Count 4 related to Pollard. He had the task of investigating repeated sexual abuse said to have started in the mid-1980s against an alleged victim, "Y", and other young men who worked on the suspect's farm. Y said that he had been photographed naked and that at least one other youth had been abused. Despite giving a detailed account, Y did not wish to pursue a complaint. He said that he might reconsider if other victims were found to support his allegation. A Suffolk officer took a detailed account from him and found him to be credible, albeit there was evidence to indicate that the alleged victim's current partner had contacted the elderly suspect and asked for and been given large sums of money before Y reported the case. Not surprisingly, Y was concerned as to how that might make him appear.

12. During the search of the suspect's farm in September 2013, the police found four photographs of Y naked and undressed from the waist up. Yet Pollard never interviewed Y. Although he interviewed the suspect, he did so in an inappropriate fashion, with an inappropriate person present (a possible witness) and with a clear view to taking no further action against him. Indeed, it was said at his trial that he was more intent on questioning the suspect as a victim of possible blackmail and expressed disappointment when the suspect declined to present himself as such. Pollard then removed and destroyed the four photographs, and he failed to contact Y. He, too, created a false entry on the case file to suggest that he had made attempts to find Y but had failed. Later, when the case was re-investigated, Y was traced easily and quickly.

13. Count 6 also related to Pollard. He was given the task of investigating an allegation of sexual touching by a 15 year old boy on an 8 year old boy. There was clear evidence that the suspect had a troubled past, was sexually active and his behaviour was of concern to people, including his mother. Yet when a complaint was made in February 2014 against the suspect, Pollard failed to conduct relevant enquiries, as directed, and falsely claimed that they had been conducted but were negative. He failed to make final checks on the suspect to see if there were any concerns about his behaviour before the case was marked "no further action", and he made an entirely false entry on the crime file suggesting that he had had a conversation with the suspect's social worker and she had assured him that there were no concerns about the suspect. He, too, created a false MG3 charging decision by a CPS lawyer that no further action should be taken.

14. Although neither appellant had previous convictions, Pollard was dismissed from the Essex Police for accessing a colleague's computer to take a copy of that colleague's job application to give to a rival candidate, namely Patterson.

The Appeal of Pollard

15. Mr Rush, on behalf of Pollard, advanced a number of grounds of appeal.

1. The judge failed to give any or any sufficient weight to the failures of management in the day-to-day operation of the NCAIT and the impact on the daily working life of Pollard. Many witnesses testified to the failure of the unit and one, a DI Taylor (a former head of the unit), described the circumstances as "a perfect storm". Despite a vastly increased workload, following the Jimmy Saville scandal, the budget of the unit had been slashed and the unit was an amalgamation of two regions, covering a huge area. Experienced officers, who were lost to retirement or illness, were not replaced or were replaced by inexperienced officers. The caseload of officers was meant to be approximately eight to ten live investigations, but in 2014 Pollard was dealing with 40 live investigations. Graphic evidence was called at trial of officers breaking under the strain. It was said to be an almost daily occurrence.

2. Mr Rush accepted the judge's characterisation of the offences as bringing the investigations to a premature end, but he took issue with the suggestion that misconduct had impacted upon the decisions to take no further action. With regard to count 4, for example, there never was a formal complaint. When the matter was re-investigated by other officers properly, no complaint from Y was forthcoming. Similarly, on count 6, Mr Rush argued that there was no evidence that, whatever concerns had been expressed, the suspect did pose a threat to children and the actions of Pollard led to an incorrect decision being made.

3. Mr Rush took issue with the judge's assessment that the betrayal of public trust in police officers justified a finding that the level of harm was high on the basis that this is, in any event, an element of the offence of misconduct. He insisted that here the level of harm could not be described as high because there had been no actual impact on the course of justice.

4. Further he criticised the judge for failing to give any or any sufficient weight to the personal mitigation of the appellant. Pollard had already been dismissed from the police force by the time of his trial. The fact that he had been found guilty of gross misconduct by a tribunal chaired by an Assistant Chief Constable who had also been investigated as part of the review had left him with a sense of unfairness. His partner and cohabitee, Patterson, lost her job, they had lost their home, their family life and both of them had the investigation, the prosecution and the trial hanging over them for approximately six years.

5. Pollard's ex-wife has written to the court explaining the desperate impact upon her and their sons following his conviction and imprisonment. The press coverage has been extensive and it led to Pollard's youngest son being ridiculed by his peers and he tried to kill himself.

6. The consequence of imprisonment for both appellants has been severe and they will face real difficulties on their eventual release in gathering the family back together again and raising them as a unit.

7. During the course of his time in prison, Pollard has behaved impeccably and is described as a model prisoner. He has been the subject of serious physical attack.

16. For all those reasons, Mr Rush argued that at the time the sentence was imposed the circumstances were sufficiently exceptional to justify the imposition of a suspended sentence. Even if that moment has now passed, Mr Rush urged us to consider reducing the immediate term of imprisonment imposed.

The Appeal of Patterson

17. To the author of the pre-sentence report Patterson denied any wrongdoing. She accepted that some of the things she had done were wrong and that she had made mistakes, but she did not believe that they were sufficient to lose her job. She had felt that a lowering of standards in the unit was endemic. She also described being the victim of domestic abuse from her husband. She said that, as a result of what was going on in her life, she had reached the point of "burnout". It was not until late 2013/2014, however, that she started to take time off work to seek help. It was said that she had been emotionally vulnerable because she had made a suicide attempt in March 2019, and there were significant concerns for her children should she be sent to prison.

18. A psychiatrist observed that post-traumatic stress disorder had been building up for some time and that her mental health would be liable to deteriorate if she faced a custodial sentence. In any event, she would require psychological therapy. He, too, confirmed the attempt at suicide.

19. In grounds of appeal advanced by Ms Carey, it is said that, although the case passed the custodial threshold, it was so exceptional and the personal mitigation was such that the sentence of imprisonment could have been suspended. If that moment, as Miss Carey also accepted, has now passed, she urged us to reduce the sentence imposed to such a length that it would involve Patterson's release in 2019, rather than 2020. She conceded, as she must, that Patterson's offending was not linked to the crisis situation in the NCAIT, because her offending preceded the particularly difficult times. However, she urged us to find that the judge had paid insufficient attention to the excellent work in appalling working conditions that Patterson had done in late 2012 and 2013. She, too, referred to the huge workload that had taken a severe toll on the health of many officers, but in particular on Patterson's health. A combination of the workload, the conditions in the unit and a particularly distressing case where the complainant committed suicide had all led to her diagnosis of post-traumatic stress disorder, low mood

and anxiety. Nonetheless, despite the impact on her health, she had continued to work, often "acting up" as a detective sergeant. This was very much to her credit – a fact said to have been insufficiently acknowledged.

20. We were also invited to note, as Mr Rush had asked us to do, the delay in bringing this matter to court. This had added to the inevitable strain for the appellant. The appellants were in no way responsible for the delay. It was simply the sheer number of officers investigated.

21. Ms Carey took exception to the judge's conclusion that Patterson had failed to express any remorse. She invited us to note the findings of the author of the pre-sentence report that suggested otherwise. She, too, emphasised, as Mr Rush had done, that this was not a case where the officers who were guilty of misconduct had done so for financial reward or to encourage or assist criminals. Patterson was not an officer who disregarded the effect of abuse on victims. In many cases, she went above and beyond her duty because she was so aware of the impact. Ms Carey invited us to find that the offending in this case was better regarded as "corner cutting" against Patterson's workload and her personal circumstances.

22. We are also urged to bear very much in mind the fact that the appellant was the primary carer for her three children before she was sent to prison. The children have spent most of their life in her care. Two of the children have now been referred for therapeutic support. The devastating emotional effect of separation from their mother has been described by their father, who is now caring for the children with his new partner and their children. The consequences for the children has been significant. Ms Carey very much urged us to bear that consequence in mind when considering the length of the sentence. Effectively, she accepted that a sentence of twelve to eighteen months' imprisonment could not in itself be described as excessive, but urged us, as an act of mercy, particularly given the consequences to the children, to reduce it. If the sentence was designed to reform or rehabilitate the appellant Patterson, the conviction itself has already served that purpose. The consequences for her have been severe. She has lost her job, she has lost her home, she has no support to re-build her life when she is released, and, accordingly, it is said that this court should interfere.

Our Conclusions

23. We understand why the appeals were brought before us. The consequences of the appellants' misconduct for them and for their families have been devastating. The conditions in the NCAIT were appalling. We do not for one moment underestimate the impact of imprisonment upon families of offenders; nor do we underestimate the impact upon police officers charged with investigating allegations of child abuse in normal conditions, let alone in the conditions described to us. However, the judge was obliged to sentence two former police officers for misconduct in public office. Such an offence is always serious, whatever the motivation of the offender, and any sentence must not only punish the offender, but must act as a deterrent to any officer tempted to betray their office.

24. In this case the offending was characterised by counsel as effectively cutting corners in very difficult circumstances. Having heard the evidence, the judge found – and we agree with him – that it went far further than that. He noted, for example, email exchanges between the appellants in March 2012, in which Pollard told Patterson that he was "in the book" as attending court, but was in fact free and available to meet her for several days. On another occasions, in November 2011, when Patterson was meant to be preparing for an appointment with a local Social Services' Department, she cancelled the appointment and thereby avoided many hours of preparation. She told Pollard that she would have her nails done instead, and the two of them then had lunch. Furthermore, as has been pointed out, concerns about the volume of work in the NCAIT were expressed from about September 2012. The offending of which Patterson was convicted was between May 2011 and June 2012 – well before crisis point.

25. In addition, Pollard was prepared to access confidential material simply to assist his partner in furtherance of her career. This had nothing to do with his work in the NCAIT.

26. Both appellants not only failed to conduct the enquiries they should have conducted, they falsified records to show that they had conducted those enquiries and they made false entries to show that the CPS had made charging decisions, when they had not. Pollard destroyed evidence. All this combined somewhat undermines the suggestion that the offences were committed solely because the appellants were two police officers struggling to cope with their conditions and their workload. They may well have believed that the cases were not worth pursuing, but the decision was not theirs – and certainly not without conducting proper enquiries. Their actions

brought those cases to a premature end. The judge was right to find that we shall never truly know what may have happened had they behaved differently. Whatever their intentions, their actions cast blame on to others and caused those others concern. They may not have been corrupt in the sense that they offered their services for financial reward to criminals, but they fundamentally betrayed the trust placed in them by the public, their fellow officers, and by possible victims of sexual abuse.

27. The betrayal of trust was but one of the aggravating features, as identified by the judge. The others included: the fact that the offences were planned; they were committed over a period of time; and they involved multiple acts of dishonesty to achieve an objective.

28. In a carefully crafted and comprehensive sentencing note, His Honour Judge Lickley QC set out those features, but also set out all the very powerful mitigation advanced by the defence. He acknowledged the impact of the offending on the appellants and their families, and the difficulties they faced in the NCAIT. Balancing all the aggravating and mitigating factors, he explained why, in his judgment, the immediate terms of two years and eighteen months' imprisonment were inevitable.

29. Having considered his sentencing remarks with great care, in our judgment, his approach cannot be faulted.

30. For all those reasons, therefore, and despite the excellence and eloquence of the submissions of Mr Rush and Ms Carey, we are satisfied that the appeals must be 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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