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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 24 July 2019

B e f o r e:

LORD JUSTICE HOLROYDE
MR JUSTICE MORRIS
HIS HONOUR JUDGE MICHAEL CHAMBERS QC

R E G I N A
v
LEANDA SMITH
EDWARD LESLEY SMITH

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Mr P Du Feu appeared on behalf of the **Appellant Leanda Smith**
Mr A Grainger appeared on behalf of the **Appellant Edward Smith**
Mr M Bisgrove appeared on behalf of the **Crown**

J U D G M E N T
(As approved)

1. LORD JUSTICE HOLROYDE: Leanda Smith and her husband Edward Smith, now aged 42 and 44 respectively, appeal by leave of the single judge against sentences of three years' imprisonment imposed on 7 May 2019 following their late guilty pleas to an offence of kidnapping their daughter Laura.

2. Laura Smith was 19 at the time of the offence. She had formed a relationship with a man in his late 50s. Her parents, the appellants, were very unhappy about that relationship, in particular because they believed that the man concerned had a history of entering into relationships with teenage women, and believed that his past relationships had not ended well for the women concerned, one of whom the appellants understood to have undergone an abortion and another of whom the appellants understood to have attempted suicide. The appellants tried, unsuccessfully, to talk their daughter into ending the relationship. They sent threatening messages to the man concerned. By the time of the offence, Laura Smith was no longer living with her parents, as she had been doing for almost the entirety of her life up to that point, and was no longer communicating with them.

3. On 9 November 2018, Leanda Smith was told that Laura had returned to her work at a local hotel following a period of absence. Both appellants, together with another daughter Sophie, then aged 19, went to the hotel. Upon their arrival, Laura Smith was in an office. We have seen CCTV footage of what happened. It makes unpleasant viewing. The appellants, with Leanda Smith leading the way, strode purposefully into the office, and there was clearly an exchange of words with Laura Smith, although there is no soundtrack to the recording. Laura Smith plainly did not want to go with her parents. Edward Smith tried to drag her out of the office. Laura held on to the office furniture. Edward Smith, who is a large and strongly built man, lifted her off the ground with his arms around her waist, and at times her chest, and carried her out of the office and through the reception area. Laura Smith, still resisting, tried to hold on to the reception desk. At this point Sophie Smith joined in and forced Laura to release her grip. Edward Smith then half dragged and half carried Laura to a car and put her in.

4. All four Smiths then drove around for a time, stopping at one point to change cars in what Edward Smith ultimately admitted in interview was an attempt to avoid being stopped by the police. Eventually, they returned to the appellants' home, the incident as a whole having lasted about three hours. Upon return to the home, the appellants were arrested.

5. In interview, Leanda Smith said that her daughter had been reluctant to go into the car at the beginning, but had become more comfortable as they drove around. Edward Smith admitted that he had used force to remove his daughter from the hotel, but denied that he had either intended to hurt her or had in fact hurt her.

6. In a victim personal statement written about a month after this offence, Laura Smith said that physically she had suffered bruising. She had been very distressed by what had happened, and embarrassed that it had happened in front of her colleagues, and she suffered continuing anxiety. Her statement makes very clear the predictable conflict in her emotions between on the one hand, her love for her parents and on the other hand, her knowledge that they had treated her in a very wrong manner.

7. Both appellants and their daughter Sophie were charged with kidnap. Sophie was additionally charged with assault by beating, that charge relating to her conduct in releasing her sister's grip from the reception desk. All pleaded not guilty.

8. The trial began on 26 March 2019. As the judge was later to observe, it is difficult to see what defence in law the appellants could put forward, and we agree with the judge that an inference is to be drawn that they were expecting and hoping that Laura would not give evidence. She did, however, give evidence, and by all accounts did so in an impressive and effective manner. In mid-afternoon of the first day of the trial, the stage was reached in Laura Smith's examination-in-chief when counsel was about to invite her to view the CCTV footage to which we have referred. The judge at that point gave the jury a break. In their absence, he said to defence counsel:

> "Now if there is a plea at this stage, ordinarily there would be no credit, but we are now moving into the next phase of this and I think the time has come now for the defendants to listen to their counsel with care. I am going to give time for that to be done."

9. The judge declined to give a Goodyear indication. He did, however, at a later stage say this in answer to a request from counsel as to whether any assistance could be given:

> "I think I am prepared to say this: I could not rule out immediate custody for Mr Smith. Question mark what happens to the two female defendants. I cannot say more than that."

10. The trial did not progress further that afternoon. On the following morning, both appellants pleaded guilty to kidnap. Sophie Smith pleaded guilty to the alternative charge of assault by beating. She was conditionally discharged for two years.

11. Sentencing of the appellants was adjourned so that pre-sentence reports could be prepared. Those reports were available at the sentencing hearing on 7 May 2019. Leanda Smith, of previous good character, expressed her shame and remorse. The pre-sentence report recorded that she had suffered from depression over a number of years and that she was active in the daily care of her father-in-law, who lived a short distance from the appellants' home.

12. Edward Smith, whose only previous court appearance was for two offences of dishonesty for which he was fined in 2001, admitted what he had done but said that he had only acted as a concerned parent and had not realised that he was committing a crime. He, too, expressed remorse.

13. Both appellants were assessed by the reporting probation officers as suitable for a community order with requirements of unpaid work and a rehabilitation activity requirement.

14. Earlier in the proceedings, there had been a period of 21 weeks when the conditions of the appellants' bail prohibited them from any contact with Laura Smith. That prohibition had been lifted, and by the time of the sentencing hearing there was available to the court

a further statement from Laura Smith dated 17 April 2019, in which she expressed her genuine belief that her parents had learned their lesson and would never do anything similar again. She said that she knew how much it had hurt her parents not to be able to see her for about five months. She said that she had never wanted her parents to go to prison and had only wanted them to stop what they were doing and to prevent things from escalating. She expressed her love for her parents, said that she knew how much they loved her, and said that when growing up she could not have wished for better parents. She said that since they had been able to resume contact, relationships between her and her parents had gone very well, which was a cause of great happiness for her. She expressed the belief that sending them to prison would destroy a relationship which they had started to rebuild. She added:

> "The fact I am now seeing my parents again is a massive weight off my shoulders and I just want to move forward with our relationships."

15. In his sentencing remarks, the judge referred to the generous terms in which Laura Smith had spoken of her parents. He made a number of findings adverse to the appellants: first, that their attendance at the hotel had been planned and they had gone there determined to end their daughter's relationship with the man concerned; secondly, that in addition to what had happened at the hotel, Leanda Smith had slapped Laura in the back of the car, an allegation which had been expressly denied in the written basis of plea provided to the judge for the purposes of seeking a Goodyear indication; thirdly, the change of car had been arranged and was not, as had at one stage been submitted, merely a response to mechanical breakdown of the first car.

16. The judge said, rightly, that he had to act in the public interest, and that Laura Smith's wish that her parents should be spared from imprisonment did not override the public interest. It was, he said, an extremely serious offence. There was no reason to treat the appellants differently. They had forced their daughter to come to court to give evidence and were entitled to no credit for their late pleas. He had concluded that the sentences must be of immediate imprisonment. The judge said:

> "The level of the violence used, the length of time she was held, the way she was treated whilst she was held, and the fact that you are entitled to no credit, means that I am not in a position to suspend any sentence. It is of such a length that I could not suspend."

17. The judge then imposed the three-year sentences to which we have referred. He also made a restraining order prohibiting both appellants from contacting the man with whom Laura Smith was in a relationship.

18. On behalf of the appellants, Mr Du Feu for Leanda Smith and Mr Grainger for Edward Smith make common cause on a number of submissions. Their primary submission is that the three-year sentences were manifestly excessive and that shorter terms of imprisonment, suspended in their operation, would have been sufficient in the circumstances of this case. They submit that the observations which we have quoted from the judge in the course of the trial gave rise to at least some expectation that at least some credit for a guilty plea was still available, and further gave rise to an impression that the judge was at the very least

contemplating the possibility of sentences of a length which might be suspended. They argue that the judge gave too much weight to contentious issues which should have been the subject of a Newton hearing if they were to be decided adversely to the appellants, and they submit that insufficient weight was given to their respective personal mitigation.

19. The tentative submission was made in writing, but has wisely not been pursued in argument, that there was material disparity between the sentencing of Sophie Smith and the sentencing of the appellants.

20. Counsel argue that whilst of course the judge was not bound to follow Laura Smith's wishes, he should have tried to avoid increasing her suffering by the nature and length of the sentences imposed on her parents. In this regard, Mr Grainger in particular makes the point that this is not the sort of case (which certainly sometimes arises) in which it seems to the court that the wishes of a victim merely reflect that he or she continues to be in thrall to the offender. Finally, counsel submit that at least some reduction should have been allowed by way of credit for the guilty pleas.

21. We have been assisted by a written respondent's notice, and Mr Bisgrove for the respondent has made oral submissions to us this morning. He submits that the judge was entitled to make the factual findings which he did, and that in an area in which sentencing must necessarily be fact-specific, the judge was entitled to impose the sentences he did.

22. We have reflected on these submissions. There is at present no definitive sentencing guideline to assist judges sentencing in cases of kidnap. As this court has said before, cases of kidnap vary across a wide range of seriousness, ranging from carefully planned hostage taking at one extreme to family disputes at what may be the lower end of the scale. In such circumstances, sentencing must necessarily be fact-specific, and reference to other decided cases is likely to be of little or no assistance.

23. In our judgment, the primary considerations in the particular circumstances of this case are as follows. First, this was a serious offence of kidnapping, involving the use of significant force to drag Laura Smith away from her place of work. It was for her a painful and distressing incident. The footage shows what must for her have been a humiliating and embarrassing scene in front of her colleagues. It was also an upsetting scene for the colleagues who witnessed it.

24. Secondly, Laura Smith is an adult, entitled to make her own decisions about her relationships. The kidnap was an attack upon that entitlement and an attack upon her autonomy.

25. Thirdly, however, there is no reason to doubt that the appellants acted as they did out of parental concern for their daughter, a young adult, whose relationship they regarded as not merely one of which they disapproved, but one which could result in very great distress for their daughter if it followed the course which they understood other age-inappropriate relationships on the part of the man concerned had followed in the recent past. As the appellants now recognise, their concern did not begin to justify their criminal conduct, but

fortunately the conduct was of short duration. We accept the submission that Laura's views are her genuine views and do not represent her acting as some form of mouthpiece at the behest of her parents. It is, we think, significant that Laura Smith, who has shown herself to be mature beyond her years, has forgiven her parents and welcomes the resumption of contact with them.

26. We do not think it necessary to make any detailed analysis of the various contentious findings of fact made by the judge. His observations to the effect that the kidnap was at least to some extent planned were in our view justified, and he was entitled to find that the changing of vehicles was an attempt to avoid apprehension. In our view, the disputed issue as to whether or not Leanda Smith had slapped her daughter Laura in the car should have been the subject of a Newton hearing if the judge regarded it as a significant factor in sentencing; but since the two appellants were sentenced equally, it does not seem to us that anything turns on that.

27. The principal issue as we see it is that raised by the appellants' primary submission, namely that the sentences were substantially too long in all the circumstances and that shorter, suspended, sentences should have been imposed. We see force in those submissions. This was, as we have said, a serious offence involving wholly unacceptable conduct which caused great distress to the victim. It undoubtedly crossed the custody threshold, as counsel have realistically accepted throughout, but it was motivated by a genuine concern for the welfare of the appellants' daughter, and it was not, for example, a gratuitous punishment by parents of a daughter who had disobeyed their wishes. We see no reason to doubt that their remorse is entirely genuine and that family relationships are now much improved. With all respect to the judge, who was, we recognise, sentencing in a difficult area, sentences of three years' imprisonment went beyond what was just and proportionate punishment in all the circumstances.

28. We then have to consider whether, in the light of what was said by the judge in mid-afternoon on 26 March 2019, the appellants had a legitimate expectation that they would receive at least some credit if they pleaded guilty. On ordinary principles, a defendant who pleads guilty after his trial has commenced has no entitlement to any reduction in sentence at all and, if a reduction is given, it is often less than 10 per cent. We have considered Mr Bisgrove's submission that the words which we have quoted from the judge did not amount to any unequivocal indication that any reduction would be made, still less that it would be a reduction of a particular amount. We do nonetheless take the view that the intervention of the judge in the terms which he chose to use, at a critical moment when the CCTV footage was about to be played, was reasonably understood by the appellants as an indication that guilty pleas at that stage would attract at least some limited credit.

29. Drawing these threads together, we come to our conclusions. Like the judge, we see no reason to distinguish between the appellants. We conclude that in each case, the appropriate sentence was one of 18 months' imprisonment. The Sentencing Council's definitive guideline on imposition, which regrettably was not referred to by anyone in the course of the sentencing hearing, lists factors to be considered when the court is deciding

whether it is possible to suspend a sentence of imprisonment. Considering those factors, it is clear that neither appellant presents any risk to the public, and neither have any history of failing to comply with court orders. Further, and emphasising again that our decision is specific to the facts of this case, we do not think it can be said that appropriate punishment could only be achieved by immediate imprisonment. On the other hand, the recent witness statement from Laura Smith showed a very clear prospect that her parents would be rehabilitated and, whilst of course not determinative of the appropriate sentence, does show that the continuing imprisonment of the appellants is likely to have a harmful impact upon her.

30. We conclude that the sentences could properly, and in the particular circumstances should, have been suspended. For the reasons we have given, we conclude that some small reduction must be made from the prison term which would otherwise be appropriate because of our finding that the appellants had a legitimate expectation that some reduction would be made.

31. For those reasons, we allow these appeals. We quash the sentences below. In each case, we substitute a sentence of 17 months' imprisonment suspended for two years. Those sentences will be subject to requirements, but taking into account the period of time which has been spent in custody to date, we limit the requirements to a rehabilitation activity requirement for 20 days in each case.

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

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

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk