

NCN: [2019] EWCA (Crim) 1533
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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 28 August 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE JEREMY BAKER

and

MR JUSTICE FREEDMAN

REGINA

- v -

ASHWAN KUMAR BANGAR

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Non-Counsel Appeal

JUDGMENT

LORD JUSTICE SIMON:

1. On 5 June 2019 this court, differently constituted, allowed the appellant's appeal against sentence. In doing so, it purported to quash a conviction for causing criminal damage (less than £5,000), contrary to sections 1(1) and 4 of the Criminal Damage Act 1971. The appellant had pleaded guilty to this offence in the magistrates' court and had been committed for sentence to the Crown Court, pursuant to section 6 of the Powers of Criminal Courts (Sentencing) Act 2000, under committal reference S20180284.

2. On 14 August 2018, the appellant pleaded guilty in the Crown Court at Maidstone to four counts on an indictment which charged a number of offences which it is unnecessary for present purposes to describe. On 27 September 2018, he was sentenced to an overall term of 28 months' imprisonment, which included a concurrent term of three weeks' imprisonment for the committal offence of criminal damage.

3. On the appeal, this court reduced the overall sentence from 28 to 21 months' imprisonment. An issue arose in relation to the power of the magistrates' court to commit for the summary offence of criminal damage under section 6 of the 2000 Act in circumstances where none of the operative provisions of section 6(4) of the Act applied. It was not an offence triable either summarily or on indictment; it did not relate to a conviction by a person who had been conditionally discharged or was subject to a suspended sentence; and it was not a committal under the Vagrancy Act 1824. The court concluded, as the prosecution and defence both agreed, that the committal for sentence was defective. It also concluded that the most convenient way of dealing with the defect was to quash the conviction for criminal damage.

4. The prosecution has submitted that, convenient or otherwise, this was not the correct way of dealing with the matter. Mr Tom Dunn has produced a very helpful note in which he points out

that there were two consequences of the defective committal: first, the offence was not lawfully before the Crown Court and therefore there was no power to sentence for it; and second, the Court of Appeal had no power to order the quashing of the underlying conviction. The reason why this court had no power to quash the conviction is that its jurisdiction derives from statute: the Criminal Appeals Act 1968, section 1 of which makes clear that the powers of the court are confined to "an offence on indictment".

5. In the present case, although the criminal damage offence had appeared in an earlier version of the indictment, it came before the Crown Court on a committal for sentence and was therefore never "an offence on indictment" within the meaning of section 1 of the 1968 Act. It follows that this court had no power to quash the conviction.

6. In our judgment, the solution to what was in sentencing terms a largely inconsequential irregularity is as follows:

1. We withdraw the previous *ultra vires* decision quashing the conviction on the summary charge and alter it so as to correct what was a nullity due to lack of jurisdiction: see, for example, *R v Yasain* [2015] EWCA Crim 1577, [2015] 2 Cr App R 28.

2. We reconstitute the Court as a Divisional Court of the Queen's Bench Division and, having granted permission to proceed with a claim for Judicial Review of the decision of the Maidstone Magistrates' Court on 9 August 2018 to commit for sentence and, having dispensed with service of the claim, abridged all times as necessary and having heard the claim for Judicial Review forthwith, quash the unlawful committal to the Crown Court for sentence of the offence of

causing criminal damage, since the Crown Court also lacked jurisdiction.

3. The presiding member of the court will constitute himself as a district judge under section 66(1) of the Courts Act 2003. By amendment, section 66(1AA) extends that power to "an ordinary member of the Court of Appeal."

4. In the highly unusual circumstances, and bearing in mind the sentences passed on the indicted charges, an absolute discharge will be imposed under section 12 of the 2000 Act in respect of the summary offence.