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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 671



No. 202100821 A4

Royal Courts of Justice

Thursday, 15 April 2021

Before:

LORD JUSTIS EDIS
MRS JUSTICE FARBEY
HIS HONOUR JUDGE FLEWITT QC

REGINA
V
JULIE PAUL-SLACK

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MR P. HAMPTON appeared on behalf of the Appellant.
The Crown were not represented.

J U D G M E N T

MRS JUSTICE FARBEY:

- 1 On 22 December 2020 in the Crown Court at Sheffield before HHJ Slater and a jury, the appellant was convicted of one offence of the wilful neglect of a person lacking, or believed to be lacking, capacity. She was acquitted on a further count of ill-treatment. Both neglect and ill-treatment of those who lack or are believed to lack capacity are offences by virtue of s.44 of the Mental Capacity Act 2005. On 19 March 2021 before the same judge, she was sentenced to four months' imprisonment.
- 2 The appellant's co-accused was Barbara Sykes. She was convicted on two counts of ill-treatment under s.44 of the 2005 Act, and three counts of ill-treatment of an individual by a care worker contrary to s.20(1) and (2) of the Criminal Justice and Courts Act 2015. Ms Sykes was sentenced at the same time as the appellant to a total of six months' imprisonment.
- 3 The appellant appeals against sentence with the leave of the single judge.

Facts

- 4 From 2010 until 2017 Ms Sykes was the manager of a day care service operated by Rotherham Metropolitan Borough Council based at the Elliott Centre in Rotherham. The appellant was the assistant manager there from 2010 until 2016. The Elliott Centre provided therapeutic activities and day care for adults with a range of learning difficulties, autism and other challenging behavioural issues.
- 5 The offence of which the appellant was convicted concerned a vulnerable service user. She suffered from a severe learning disability and cerebral palsy with severe paralysis on her right side. She was epileptic and therefore prone to having seizures. She had limited vocabulary. She disliked noise, preferring to stay away from larger groups. She would become upset, shouting or displaying threatening behaviours, when in situations she disliked, and needed constant reassurance and guidance from members of staff. Her care plan contained a specific note to the effect that she should not sit in the dining room. Despite that note, Ms Sykes insisted that she sit in the dining room at mealtimes.
- 6 On one day, the service user was upset as a result of the environment she was in and began banging on tables. Ms Sykes dealt with this by approaching her from behind and pulling her by the back of her cardigan. This had the effect of pulling her backwards off her chair onto the floor. She continued to shout, and Ms Sykes then took hold of her leg and dragged her, still shouting, out of the dining room and along a corridor running the length of the building, before putting her outside in the garden area and saying she could stay there until she had calmed down. Two other members of staff had to run to lift up the service user's head so that it did not strike the raised metal footplate at the base of the door to the garden area.
- 7 This incident upset a number of members of staff who witnessed it, including the appellant, who was described as having been in tears afterwards. However, as she was Ms Sykes' friend, she did nothing about it. She did not report it to officials within Rotherham Metropolitan Borough Council, which was her professional duty as assistant manager. The prosecution case was that in failing to act by bringing her manager's behaviour to the attention of appropriate personnel, she had neglected the service user. The indictment put the incident as occurring between 6 June 2011 and 1 January 2013.

Judge's sentencing remarks

- 8 In sentencing the appellant and Ms Sykes, the judge made a number of general observations. He gave a detailed description of a climate of fear which had inhibited Centre staff from reporting ill-treatment of service users. He said that the behaviour both of Ms Sykes and of the appellant was a gross abuse of trust for which the only appropriate punishment was a term of immediate imprisonment for each of them. That was for three reasons. Firstly, to abuse vulnerable individuals, having been entrusted with their care, was "both abhorrent and despicable". Secondly, the families and carers of vulnerable individuals needed to be confident that, if entrusted to the care of others, their loved ones would remain safe and be treated with kindness and respect. Thirdly, the judge emphasised that "it must be clearly stated that those who abuse the vulnerable in their care would be severely dealt with regardless of good character." For these reasons, a suspended sentence was, in the judge's view, not appropriate.
- 9 In reaching a sentence of four months in the appellant's case, the judge emphasised the importance of an effective safeguarding system which required integrity from those in managerial positions. In mitigation the judge gave some weight to the length of time the proceedings had taken to conclude. This would be the appellant's first custodial term which would be served in the difficult circumstances of the present COVID-19 pandemic. She would in all likelihood lose her career.

Grounds of appeal

- 10 In his helpful oral and written submissions, Mr Peter Hampton on behalf of the appellant properly recognised the seriousness of the offence, but submitted that the four-month sentence was manifestly excessive. The appellant's co-defendant Ms Sykes received a six-month sentence for offences relating to five different service users, and she had carried out the ill-treatment which the appellant had failed to report. The two months' difference between the appellant and Ms Sykes's sentences failed to recognise their differing roles; nor did it reflect that the appellant had been convicted on only a single count. In addition, the judge had given inadequate weight to the eight-year delay between the offence and the conviction.

Conclusions

- 11 The question for this court is whether the sentence imposed by the judge was manifestly excessive or wrong in principle. There are no sentencing guidelines in relation to the offence. The appellant's failure to report Ms Sykes' conduct was a serious dereliction of duty and a serious breach of trust. We agree with the judge that the users of day care services and their families must have confidence that safeguarding procedures will be followed.
- 12 That said, we are persuaded that a four-month sentence did not properly reflect the different roles of the appellant and Ms Sykes in events at the Centre. The sentencing remarks appear to us to suggest that both were equally culpable for the climate of fear which operated there. In our judgment, that was plainly not the case. The appellant stood to be sentenced for one incident of failing to report misconduct by her superior.
- 13 The appellant is 57 years old and of good character. We share the judge's prediction that she will not now be able to work in this sector again, which will doubtless be a considerable

hardship. A suspended sentence order would, in our judgment, have been sufficient in this case. We do not impose such a sentence because the appellant has served the equivalent of a 54-day sentence. For these reasons we quash the sentence of four months and substitute a sentence of 54 days. To this extent, this appeal is allowed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.