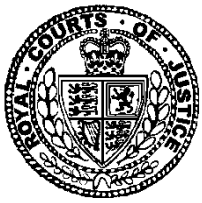

Neutral Citation Number: [2022] EWCA Crim 808

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT GLOUCESTER
HIS HONOUR JUDGE CULLUM
HIS HONOUR JUDGE LAWRIE

Case Nos: 202200392/A3, 202200416/A3 & 202200444/A3

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday 8 June 2022

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE JEREMY BAKER
HIS HONOUR JUDGE ANDREW LEES
(Sitting as a Judge of the CACD)

REGINA
V
DANIEL GOWER
SEAN WATKINS
LAURA PAUL

———————

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MR L JENKINS appeared on behalf of the Appellant Gower
MS S JENKINS appeared on behalf of the Appellant Watkins
MS C PATTISON appeared on behalf of the Appellant Paul

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J U D G M E N T

LORD JUSTICE STUART-SMITH:

1. On 19 January 2022 before the Recorder of Gloucester, each of the three appellants was sentenced to 18 months' imprisonment for one offence of ill-treatment or wilful neglect by a care worker, contrary to section 20(1) of the Criminal Justice and Courts Act 2015. In addition a statutory surcharge order in the sum of £156 was imposed upon each appellant. It is now common ground that the correct sum for that statutory surcharge would have been £140. To that extent at least the order of the court below must be set aside and the correct order substituted.

2. The appellants had pleaded guilty to the charge on different dates but were all afforded a 25 per cent reduction for their plea. In addition, each was treated as a person of previous good character and as having equal responsibility for what happened. Each now appeals against sentence with the leave of the single judge. It is common ground that the custody threshold was met. The two questions for this court are whether the sentence of 18 months was too long and whether whatever sentence of imprisonment was imposed should be suspended.

3. Mr Michael Meheut was a resident at Brook Lodge in Longhope, Gloucestershire. This was a home providing accommodation and support to people living with challenging behaviour and learning difficulties. The establishment was managed by a care provider called Voyage Care. The appellants were all employed by Voyage Care.

4. Mr Gower started employment as a support worker at Brook Lodge in May 2018, Ms Paul in November 2017 and Mr Watkins in March 2018. In September/October 2018 Mr Gower was aged 20, Mr Watkins was aged 19 and Ms Paul was aged 26.

5. They all received appropriate staff training, including the managing of actual or potential aggression. Their job description specified that they were to provide support to people in a way that was respectful to individuals.

6. Mr Meheut was aged 54 at the time. He was profoundly deaf and suffered from epilepsy, anxiety and moderate learning difficulties. He required 24-hour care and was prescribed various medications to combat the adverse effects of increased tension and stress.

7. Each year a service user such as Mr Meheut would be taken on holiday for a change of scene and environment. Between 28 September and 1 October 2018 Mr Meheut was taken by the three appellants to a countryside barn conversion in Buckland Brewer in Devon.

8. On his return from Devon a night support worker at Brook Lodge, Amy McGregor, noticed a change in the behaviour of Mr Meheut, describing him as angry and upset. These concerns were raised with Mr Gower and he reported that whilst they had been on holiday with Mr Meheut they had all got drunk and had been mean to him. He said that they had all barricaded Mr Meheut in his room, put pegs on his hooded top to annoy him and made him wear a bucket on his head. He sent Ms McGregor a video of Mr Meheut in distress on the beach. Ms McGregor then reported the matter to her manager, Tammy

Griffiths.

9. Mr Watkins also told Ms McGregor that they had been horrible to Mr Meheut by locking him in his room. He showed her a photograph of Mr Meheut on a sofa with a bucket on his head with clothes pegs attached.

10. There was an ensuing internal inquiry. Both Mr Watkins and Mr Gower admitted that they had been drinking alcohol and putting pegs on Mr Meheut's back as a joke. Ms Paul declined to attend any meeting and resigned on 12 November 2018. Mr Gower and Mr Watkins were dismissed in November 2018.

11. An image recovered from Mr Watkins' mobile phone showed Mr Meheut standing on the beach seemingly incontinent with urine and there was a video on Ms Paul's phone of an incident involving a limpet. The video showed a limpet being placed on Mr Meheut's back on the beach causing him to cry out in discomfort and distress. The recording device was pushed directly towards Mr Meheut's face and showed him in fear. The limpet was then taken off Mr Meheut's skin by Ms Paul who pushed it towards his face.

12. Another video depicted Mr Meheut eating an ice cream in a public place with members of the public present. His trousers had fallen down around his knees. The appellants could be heard laughing during the filming. Mr Meheut was also filmed with a piece from a board game stuck in his ear and in a separate clip whilst one of the appellants held an egg behind his head. He was also filmed standing on a rock pool leaning forward with his hand on a rock with his trousers around his ankles, so that he was filmed in his underwear. None of the appellants offered him any help and they could be heard laughing during the video. Mr Meheut could also be seen huddled up and backing away into a rock as one of the appellants had a crab or other sea creature in their hand. He was clearly frightened by this. The person making the video concentrated on the hand with the sea creature and then focused on Mr Meheut backing away from them.

13. Mr Gower was interviewed in November 2019. He said that Ms Paul was in charge during the holiday. He said he was aware that Mr Meheut did not want the object on him on the beach and he could tell he was distressed but thought it was funny at the time. He accepted they should not have done some of the things in the video clips and said it was him who put the egg behind Mr Meheut at the request of Mr Watkins to compare the shape of the egg to the shape of Mr Meheut's head. He said he was present during the ice cream incident and that it was him holding the crab. He said that throughout the weekend they had been putting clothes pegs on Mr Meheut and said that, although he did not think that they were permitted to drink alcohol, Ms Paul had brought a bottle of wine and Mr Watkins had brought a bottle of liqueur.

14. In interview Ms Paul said that the incidents in the footage were examples of them "having a laugh". She said the others had put the pegs on Mr Meheut's clothes and that Mr Meheut having a bin on his head had also been a joke. She accepted that he did not enjoy the limpet incident, but she maintained that she had not been involved in any abuse or ill-treatment of Mr Meheut. She said that there were a couple of incidents on the holiday where the other two appellants were causing distress to Mr Meheut and that she

had to intervene as she knew he was becoming upset. She accepted she might have taken the incontinent picture of Mr Meheut and falsely claimed that she had informed her manager about the behaviour of the other two on the holiday on her return. She also blamed some of the behaviour on the trip on Mr Meheut himself.

15. In his interview Mr Watkins said that Ms Paul had suggested they get some alcohol. He said the incident on the beach was "a bit of fun" and that he had put the pegs on the back of Mr Meheut's clothing at some point. He accepted they had put a bucket on his head for a bit of fun but conceded that things got out of proportion. He said they had arranged the furniture in Mr Meheut's room also for fun, but denied barricading him in. In a second interview, after being shown the video clips, he maintained his position that it was a bit of a laugh. He said he had filmed the clips but did not accept their humiliating or degrading content.

16. The sentencing judge viewed the various clips. In addition to what he could see and determine for himself, he had direct evidence from Mr Meheut's social worker that the reactions and sounds shown on the clips indicated that Mr Meheut was distinctly unhappy. There is no challenge to that evidence. We have seen the clips. They make distressing viewing as even without additional evidence they show the humiliation and distress of a person who is unable to fend for himself and who is being humiliated by the very people who are meant to be protecting him.

17. The case came to the Crown Court because Ms Paul initially indicated that she would plead not guilty. The particulars alleged by the indictment were that the appellants had ill-treated or neglected Mr Meheut by attaching clothes pegs to him, barricading him in his bedroom, scaring him with sea creatures, photographing and recording him when he was distressed after being scared with sea creatures and in humiliating situations when his trousers had fallen down and there were signs that he had been incontinent. The evidence amply justified each of these particulars.

18. Through no fault of the appellants a period of well over three years had elapsed from September 2018 until they came to be sentenced in January 2022. There was no suggestion that there had been any further offending on the part of the appellants during that period. Having lost his job at the care home, Mr Gower had not found alternative employment. By the time he came to be sentenced he had been diagnosed as suffering from depression, for which he was being treated with Sertraline. He had been signed off as unfit for work, whether remunerative or unpaid work in the community. Mr Watkins had secured full-time employment in the motor trade. Ms Paul had had a bumpy ride with mental health issues which had been exacerbated by waiting for the case to be resolved, but she had found and retained employment and had the benefit of a strong character reference from her employer of 18 months who spoke highly of her development which had led to significant promotions within the business. He also spoke of Ms Paul's deep regrets about her involvement in the ill-treatment of Mr Meheut. She had the benefit of other character references, including from her mother who spoke of her as a person of compassion upon whom she was and is dependent in various ways.

19. The sentencing judge had the benefit of pre-sentence reports for each appellant. The

pre-sentence report for Mr Gower assessed the likelihood of further conviction being low within the two years following sentence. The writer assessed that Mr Gower would struggle in a custodial environment. He did not think that Mr Gower required intervention from the Probation Service by way of a programme requirement or a rehabilitation requirement. He proposed that Mr Gower be sentenced to a community order with a curfew requirement between the hours of 7 pm to 7 am as a punitive element.

20. The pre-sentence report for Mr Watkins pointed to the passage of time and questioned the necessity or benefit of interventions by the Probation Service. The risk of re-offending was assessed as being low. While not proposing a suspended sentence, the writer suggested that such a sentence would act as a significant deterrent to Mr Watkins.

21. The writer of Ms Paul's PSR assessed the risk of re-offending as low and noted that she had now obtained employment away from the care sector. He expressed concerns for Ms Paul's mental health were an immediate sentence to be imposed, a view which is supported by information contained in the references that were served on her behalf. The writer proposed punitive elements of a community sentence in the form of unpaid work, a curfew or financial penalties and, if a custodial sentence were to be necessary, the writer suggested that the court might consider it appropriate to suspend the sentence.

22. In the absence of guidelines for this offence, the prosecution suggested reference by analogy to the guideline for offences of cruelty to a child, contrary to section 1(1) of the Children and Young Persons Act 1933. The first and most obvious point of distinction is that the maximum sentence for an offence against section 1(1) of the 1933 Act is 10 years. The maximum sentence for the offence with which we are concerned is five years. Any analogy must therefore be applied with care and caution.

23. The prosecution identified that had the cruelty to children guideline applied there would have been multiple features indicating high culpability: (a) multiple incidents, (b) gratuitous degradation of the victim and/or sadistic behaviour, (c) deliberate disregard for the welfare of the victim, (d) failure to take any steps to protect the victim from offences in which factors (a) to (c) are present, and (e) the appellants had professional responsibility for the victim linked to the commission of the offence.

24. In terms of harm, it was submitted that the case fell between serious psychological and/or developmental harm and little or no psychological harm. The analogous category under the cruelty to children guideline would be Category A2, which would indicate a starting point of three years with a range of two to six years. The prosecution submitted that there were aggravating factors, including that (a) the events took place in public, (b) the events were recorded and (c) the events took place away from the security of the care home. In Ms Paul's case the prosecution identified as additional aggravating features that (d) she wrongly blamed others and (e) she was in charge of the team who were meant to be looking after him. Before us it has been clarified that she was not there in a managerial capacity; rather the leadership element fell to her because she was older than the other two.

25. The judge's sentencing remarks gave full expression to the court's justified indignation at Mr Meheut's treatment even if it is possible to cavil with his assertion that the appellants' departure from the expected standards of humanity, kindness, help and support "could not be greater".

26. This was undoubtedly a serious case involving a series of episodes each of which involved a fundamental breach of the duties of trust and care owed by each appellant to Mr Meheut. Each of the appellants was suitably trained and knew Mr Meheut well enough to understand how he should be treated.

27. The judge regarded his sentencing exercise as difficult because of the absence of guidelines. We agree. He took 18-months as his starting point. He did not say that he did so because it was half of the starting point for a Category A2 offence of cruelty to children, though it seems likely that affected his thinking even if it was not determinative. He adopted the prosecution's factors indicating high culpability under the cruelty to children guideline that we have set out above and while accepting that the extent of harm suffered by Mr Meheut was uncertain, concluded that "harm there certainly was" and that he took that into account. He then continued:

> "So the aggravating features have all been identified in terms of where they fall. I then have to counter those aspects with mitigating features. The mitigating features are effectively, you are all of good character and there was an element of remorse, although sometimes I slightly query it, but the point is, I do accept there was remorse, and the significant time gap that has taken place between the incidents and your appearance here.
>
> As I said, there is no guidelines for the case as such. I do take the 18 months. What I then have to do is, what are the factors that can merit it being greater than 18 months? I do this, I reflect on those factors that pinpoint the question of culpability which are significant. Therefore, what I do is I increase the sentence to reflect those culpability features, which are in reality the aggravating features, and 18 months then goes to 2½ years. But then what I have got to do is reduce it to reflect your mitigation. I do, I take into account your good character and the time lapse and your remorse, and therefore brings the sentence down to 2 years."

28. This passage is not entirely clear, but we understand it to mean that the fact that there was not just one feature but multiple features indicative of high culpability had two effects. First, the features led to the conclusion that the case was analogous to a cruelty to children offence falling within Category A. Ssecond, because there were multiple features of high culpability they also exerted upward pressure on the starting point that he had identified. That at any rate seems to us to be what he did because he said that "I increase the sentence to reflect those culpability features, which are in reality the aggravating features, and 18 months then goes to 2½ years."

29. Such an approach is not wrong in principle in the normal case of direct application of a guideline, though precise calibration may be impossible to achieve. The judge then

turned to the question of suspending the sentences and rejected the appellants' submissions, saying:

> "I have looked at all the various documents that have been submitted on behalf of all of you and the features that means that custody can have an impact upon you in terms of who you care for and indeed your futures. I have looked at the guidelines and I have looked at the features that determine where it is then considered appropriate to suspend a sentence, rehabilitation being one of them. I have read the reports prepared for all you. Rehabilitation is theoretically available but, in the context of your lives and your future lives, as you are never going to work in care again, I cannot quite see the point of that.
>
> Your good characters are already reflected in the fact that you are going to get that 6 months' discount. Care of others applies for one of you but not to any significant degree that can apply in the context of this case. But, in any event, that is countered by the fact that, on the other side of the column within the guidelines, that appropriate punishment can only be achieved by imprisonment. I say that with a degree of reluctance because I note the significance that imprisonment will have upon you. But you need to appreciate you have a solemn duty when you are looking after people who are vulnerable and who depend on you for care and the system depends on you committing your actions of care with diligence and you failed to do that. The three of you seemed to find it funny that he was being humiliated you seemed to find it funny that he was in discomfort, and you seemed to find it was funny that he was distressed on the beach, and that is thoroughly heartless. So that is why, when you have people who are vulnerable and in the care of the care system, that appropriate markers are sent out to show that any departure or failure in the provision of that care will not be tolerated and will be met with appropriate punishment."

In the result therefore he applied the 25 per cent reduction for plea to sentences of two years imprisonment to arrive at the sentences that he passed.

30. Each of the appellants submits that the sentencing judge fell into error and imposed sentences that are manifestly excessive. There is inevitably some considerable overlap between them. We highlight what we consider to be the main submissions as follows:

a. Each appellant submits that the judge gave insufficient weight to the period between the offending and their coming to be sentenced and the steps that they have taken during that period, there being no suggestion against any of them of further offending.

b. Greater weight should have been given to their previous good character. Each submits that what happened was out of character and that they had shown genuine remorse. In Ms Paul's case she relies upon the letter she wrote to the court

expressing her remorse and the character references which also attested that her remorse was genuine.

c. In the case of Mr Gower and Mr Watkins greater weight should have been placed upon their youth at the time of offending.

d. Mr Gower submits that the judge should have distinguished between his case and in particular that of Ms Paul because of the disparity in their ages (he being 20 and she being 26 at the time of offending) and responsibilities (she being in charge of the group). He also submits that the judge gave insufficient weight to his initial disclosure, co-operation and his candid admissions when interviewed together with his own difficulties with mental health issues from the age of 11 and a current diagnosis of depression being treated with Sertraline.

e. Mr Watkins submits that the process by which the judge went from 18 months to two-and-a-half years as his starting point involved double-counting.

f. Greater consideration should have been given to the possibility of suspending whatever sentence was to be imposed. It is suggested that the judge failed genuinely to weigh up the various features that were in play, instead treating "appropriate punishment can only be achieved by immediate custody" as a trump card that defeats all others. He should have had proper regard to the adverse impact that the appellants had already suffered by reason of the period before they came back to be sentenced. A proper assessment would also have weighed in the balance the fact that none of the appellants was assessed to present a serious risk or danger to the public and that there was no history of poor compliance with court orders as each was effectively of previous good character. On the other side of the balance, it is submitted that the judge underplayed the importance of rehabilitation on the basis that the appellants were no longer employed in the care system. It is submitted that the fact of their removal from the care system shows a degree of awareness, at least in the case of Ms Paul, which may represent an element of rehabilitation. Each appellant asserts that they have strong personal mitigation and Ms Paul submits that immediate custody will have a significant effect upon her mother.

31. We agree that the custody threshold was passed in this case and by some margin. As we have said, this was a serious case involving a series of episodes, each of which involved a fundamental breach of the duties of trust and care owed by each appellant to Mr Meheut. At the same time, we agree with the judge that the degree of harm either in the short term or longer is difficult to assess because of Mr Meheut's inability to express himself in detail. The judge was right in our judgment to conclude simply that there was some harm to Mr Meheut.

32. Our second observation would be that the judge may have been overly generous to Ms Paul in treating her as on a par with the other two. Both her age and her responsibility as a leader of the group would have justified him taking a more serious view of her offending than of Mr Gower and Mr Watkins. Having decided on parity, it was

important that it did not result in a more severe punishment for Mr Gower and Mr Watkins than would have been appropriate to their cases seen in isolation and without the linkage of parity.

33. In our judgment, the most persuasive of the appellants' submissions are those that concentrate on their age (for Mr Gower and Mr Watkins), their previous good character, their remorse, their personal mitigation and the period which passed between the offending and the sentencing hearing in the Crown Court.

34. We also consider that applying the cruelty to children guideline by analogy is capable of being as much a hindrance as a help. It does not follow from the fact that the maximum sentence for an offence under section 1(1) of the 1933 Act is twice that for an offence under section 20(1) of the 2015 Act, that the guideline can be divided by two, or that multiple features going to culpability that could exert an uplift from the starting point on direct application of the guideline to a case of child cruelty should necessarily or even probably have the same effect, or the same effect divided by two, when considering a case under section 20(1) of the 2015 Act. So although we do not accept that what the judge attempted to do involved double-counting, that does not mean that his exercise either necessarily or probably provided the right result by analogy.

35. In our judgment, if this case had come to be sentenced within a reasonably short time of offending, a sentence of 18 months' imprisonment before reduction for age, personal mitigation and guilty pleas would have been sufficient to mark the severity of Mr Gower's and Mr Watkins' offending and the rightful indignation of the court in the face of such conduct. Given their youth, previous good character and other personal mitigation that could properly have been reduced to about 12 months or so. Applying the 25 per cent reduction for plea would therefore result in sentences in the order of nine months. If Ms Paul was to be treated as on a par with her much younger co-defendants the same result would follow.

36. Had the case come to sentence within a reasonably short time, the balancing of factors indicating that it would or would not be appropriate to suspend that custodial sentence would in our judgment have been finely balanced. We are of the view that a decision not to suspend at that time would have been justified and not susceptible to appeal. But as the single judge noted when giving permission, the balance has shifted because of the time between offending and sentence which has enabled each appellant to clothe their expressions of remorse and good intentions with action while all the time being under the shadow of these proceedings.

37. In our judgment, the intervening history which we have summarised above could reasonably be said to tilt the fine balance in favour of suspending sentence. This is most clearly so in the case of Ms Paul who had managed to obtain and hold down good employment, despite the significant difficulties she had faced. However, as we now understand that the appellants have each spent five months in custody, it seems to us there is an advantage in drawing a line under this case which is better achieved by not suspending the reduced sentence upon which we have settled.

38. In the result therefore we have come to the view that the appropriate sentence in each case is one of nine months' imprisonment for the reasons we have explained. We therefore quash the sentence imposed in the court below on each appellant and substitute a sentence of nine months' imprisonment.

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