

No: 201901519/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2019] EWCA CRIM 1612

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 19 September 2019

B e f o r e:

LORD JUSTICE FLAUX

MRS JUSTICE WHIPPLE DBE

MR JUSTICE SOOLE

R E G I N A

v

DAVID ANTHONY LEWIS

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd, Lower Ground, 18-22
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NON-COUNSEL APPLICATION
J U D G M E N T
(Approved)

1. LORD JUSTICE FLAUX: Having pleaded guilty in the Magistrates' Court to a variety of offences (mainly Public Order Act offences) involving abusive or threatening behaviour, this appellant was sentenced to 22 March 2019, in the Crown Court at Caernarfon by His Honour Judge Petts, to a total of 2 years and 4 months' imprisonment. One of the offences, for which the sentence was 2 years' imprisonment, was breach of a criminal behaviour order, contrary to section 30 of the Anti-Social Behaviour, Crime and Policing Act 2014; that order had been made by the Caernarfon Magistrates' Court on 13 October 2017 with the duration of 3 years.
2. At the sentence hearing the prosecution made an application to the judge to extend that order; the judge acceded to that application and purported to extend that order for a further period of 3 years until 2023.
3. The applicant's application for leave to appeal against sentence was refused by the single judge, save in one respect which had been identified by the Registrar, that the variation made by the judge to the criminal behaviour order was arguably unlawful as, under section 27(1) of the Anti-Social, Crime and Policing Act 2014, such an order may only be varied by the court which made it (here Caernarfon Magistrates' Court). The single judge gave limited leave in relation to this point which we will now deal with.
4. Because the appeal is limited to this point it is not necessary to set out the facts in more detail - they are summarised in the Criminal Appeal Office summary. Section 27(1) of the Anti-Social Behaviour, Crime and Policing Act 2014, provides as follows:

- i. **"Variation or discharge of orders.**

- (2) A criminal behaviour order may be varied or discharged by the court which made it on the application of—

- (a) the offender, or

- (b) the prosecution."

5. It is quite clear from the terms of that subsection that only the Caernarfon Magistrates' Court which made the criminal behaviour order has the power to vary it. The judge had no power or jurisdiction to do so and the prosecution made its application to the wrong court. Accordingly, that part of the judge's order on sentencing which purported to extend the criminal behaviour order must be quashed and the appeal is allowed to that extent only.

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

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