

No: 2019 03780 A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2020] EWCA CRIM 128

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 5 February 2020

B e f o r e:

LADY JUSTICE SIMLER DBE

MR JUSTICE LAVENDER

SIR PETER OPENSHAW

R E G I N A

v

TYSON BUTLER

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22
Furnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

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Non-counsel application

J U D G M E N T
(Draft for approval)

LADY JUSTICE SIMLER: This is an application to which the provisions of the Sexual Offences (Amendment) Act 1992 apply so that no matter may be published in any form relating to a person against whom a sexual offence has been committed if it is likely to lead members of the public to identify that person as the victim of the offence. That prohibition continues unless waived or lifted.

On 22nd December 2015 in the Crown Court at Bristol the applicant was convicted of three offences of rape, contrary to section 1(1) of the Sexual Offences Act 2003 and sentenced to concurrent terms of 11 years' imprisonment in relation to each of those offences. He was also convicted of sexual assault, contrary to section 3 of the Sexual Offences Act 2003, and a term of 2 years' imprisonment concurrent was imposed in that regard. His application for a lengthy extension of time (namely 1,365 days) and for leave to appeal against sentence has been referred directly to the full court by the Registrar. The only issue raised by the application concerns the pronouncement made in relation to credit for time served under section 240A Criminal Justice Act 2003, or rather the lack of any such pronouncement.

There is now no dispute that the number of days spent by the applicant on qualifying curfew was 489, which, when halved, gives a credit period of 245 days which ought to have been credited but was not.

In R v Thorsby and others [2015] EWCA Crim 1 this court dealt with the question of when it is appropriate to grant significant extensions of time in circumstances where the sentencing court failed to give appropriate credit under the Act for one-half of the time spent by an offender on qualifying curfew before sentence.

In this case it appears clear that the question of credit was not raised at the sentencing hearing on

the applicant's behalf so that the judge made no appropriate order. There is no suggestion that the applicant bears any responsibility for that failure. Further, it appears that he acted promptly in drawing it to the attention of his solicitors as soon as he discovered the problem. In these circumstances it appears to us to be in the interests of justice to extend time, and we do so. We will give leave to appeal. The appeal will be allowed, and we order that 245 days will count towards the appellant's sentence under section 240A of the Criminal Justice Act 2003.

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

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