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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1433



No. 20202106 A1

Royal Courts of Justice

Friday, 8 October 2020

Before:

MR JUSTICE SPENCER  
HIS HONOUR JUDGE EDMUNDS QC

REGINA  
V  
JOHN BEIRNE

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MR C. MACGREGOR appeared on behalf of the Appellant.

**J U D G M E N T**

MR JUSTICE SPENCER:

- 1 This is an appeal against sentence brought by limited leave of the single judge. The issue is the extent to which the Crown Court judge should have activated a suspended sentence which the appellant had breached by committing further offences.
- 2 The appellant is now 59 years old. The suspended sentence was imposed at Liverpool Crown Court on 3 July 2017; 16 months' imprisonment suspended for two years. The appellant had pleaded guilty to a series of eight sexual offences committed against young boys aged 8 to 11 between 1975 and 1980, when the appellant was himself between 15 and 19 years of age. The offences were indecent assault on a boy and gross indecency with a child.
- 3 The mitigation which enabled the court to suspend the inevitable term of imprisonment was, we infer, the fact that the offences had been committed some 40 years earlier, when the appellant was himself only a youth and the fact that he had, thereafter, lived a law-abiding life with a strong element of public service and charitable work. He had served as a local councillor and had been Mayor of St Helens.
- 4 The suspended sentence order required the appellant to perform 240 hours of unpaid work and to participate in a rehabilitation activity requirement for up to 30 days. The appellant can have been in no doubt that if he committed any further offence during the operational period of the suspended sentence, he was at risk of having to serve that term of imprisonment.
- 5 As a consequence of his conviction, he was subject to the sex offender notification requirements for a period of ten years. Those obligations required him to notify the police within three days of any change of his name or usual home address. The appellant demonstrated an acute awareness of those requirements by registering his new address in Wigan in October 2017, by registering travel details in February, May and September 2018, and by complying with his annual notification requirement and registering his personal details in October 2018.
- 6 The appellant duly completed the 240 hours' unpaid work requirement and the rehabilitation activity requirement. However, in March 2019, some four months before the end of the operational period of the suspended sentence, he breached the order by committing a serious offence of making a false statement in a candidate nomination document, contrary to s.65A(1A) and 168(1) of the Representation of the People Act 1983, and an offence of failing to comply with his sex offender register notification requirements, contrary to s.91 of the Sexual Offences Act 2003.
- 7 Those offences came about in this way. On 4 March 2019 the appellant changed his surname by deed poll from John Beirne to John Blondel. By now he was living in Wigan. He wished to return to local politics and to stand for election as a local councillor as an independent. He applied successfully to change his name on the electoral register. That change of name was not reported to the police, as it should have been, despite the fact that the appellant thereafter registered for foreign travel again on two further occasions, thus demonstrating again that he was acutely aware of his obligations.
- 8 Following the name change, the appellant was nominated under his changed surname as a candidate in the local elections to be held on 2 May 2019. He sought to be elected as a councillor for the Douglas Ward of Wigan Metropolitan Borough Council. His candidacy was proposed and seconded and was supported by a further eight electors.

- 9 The appellant signed the necessary form confirming that he was not disqualified from being elected for any reason under the Local Government Act 1972. Section 8 of the Act disqualifies any person who has within the last five years been convicted of any offence for which he received a sentence of imprisonment, whether suspended or not. The appellant signed and dated the form on 20 March and delivered it in person to the electoral services officer on 27 March. By virtue of his conviction and sentence in 2017 he was disqualified from standing for office, as he must have well known. The relevant provisions of the legislation were set out within the form that he signed.
- 10 On 18 April 2019 the appellant contacted the electoral services officer to ask whether it was too late to withdraw his name as a candidate. She informed him that the deadline had passed on 3 April. The appellant's name, therefore, appeared on the ballot paper and he received 384 votes in the election. We observe that this meant those 384 votes were wasted and those voters were deprived of the opportunity of voting for a candidate who was eligible to stand.
- 11 On 27 April the appellant was informed that he was being investigated by the police for failure to comply with his sex offender notification requirements and he was invited to attend for interview. He duly attended, but he gave a no comment interview.
- 12 On 27 January 2020 the appellant pleaded guilty at the Magistrates' Court to the two offences and was committed for sentence to the Crown Court. He was not sentenced in the Crown Court until 30 July 2020. This was in part owing to the pandemic, but also because the appellant had sought to withdraw his guilty pleas. A question had arisen as to whether the appellant had been fit to plead. The case was listed in the Crown Court on 4 May for his application to vacate his plea to the electoral fraud offence.
- 13 A psychiatric report was obtained in April 2020 which did not conclude with any firmness that he had been unfit to plead, but did at least confirm that he was suffering from an adjustment disorder with a prolonged depressive reaction. Following his conviction in 2017 for the historic sexual offences, he had suffered the onset of mental ill health owing to media publicity and public harassment. That had been compounded, subsequently, by the protracted ill-health and eventual death of his long-term partner in December 2019.
- 14 In the event, the appellant abandoned his application to vacate his plea and so it was that on 30 July he came before His Honour Judge Stead at Bolton Crown Court for sentence. There was a pre-sentence report which confirmed that the appellant had engaged well with the requirements of the suspended sentence order. However, he had not been honest with his offender manager about his intention to stand in a local election. The author of the pre-sentence report expressed the opinion that the appellant might struggle to cope emotionally with the impact of an immediate custodial sentence. Alternative non-custodial options were put forward for the court's consideration.
- 15 In his sentencing remarks, the judge said that the breach offences struck at the integrity of the democratic process and elections to public office. For that reason, a custodial sentence was inevitable. The maximum penalty was 12 months' imprisonment and this was a relatively serious case of its kind. That offence was compounded by the failure to notify his change of name. Although that breach of the sex offender notification requirements did not create any appreciable risk to anyone from the commission of further sexual offences, it was, nevertheless, a deliberate failure to comply with the notification requirements for a purpose that was dishonest and unlawful.
- 16 The judge applied the relevant Sentencing Guidelines for the notification offence. He concluded that after trial the sentence for the election offence would be nine months and for

the notification offence three months. With full credit of one-third for the guilty pleas, the sentences were six months and two months consecutive, making a total of eight months' imprisonment.

- 17 The judge next considered whether it was just and proper to suspend that sentence. He bore in mind the positive features of mitigation spoken of in a number of impressive testimonials. He bore in mind the appellant's long service to the public as a local councillor, his charitable works and his period of service in particular as Mayor. He had looked at the prospect of rehabilitation, but he was also required to consider the public interest in dealing with such cases. The judge concluded that, bearing in mind the way in which the appellant had conducted himself by committing these offences in breach of a suspended sentence, it was not possible for him to suspend the eight-month sentence of imprisonment.
- 18 The judge then turned to the question of activating the suspended sentence. He said that he bore in mind the positive things said on behalf of the appellant and the fact that the appellant had performed the other requirements of the suspended sentence order. For those reasons, and having regard to the principle of totality, the judge reduced the term of the suspended sentence from 16 months to eight months and ordered that it run consecutively to the eight months for the breach offences, making a total sentence of 16 months.
- 19 The grounds of appeal settled by Mr MacGregor sought to challenge the length of the sentence for the electoral offence and the imposition of a consecutive sentence for breach of the sex offender notification requirements. The single judge refused leave on those two grounds and there is no application to renew them. Plainly, these were serious offences for which a total sentence of eight months' imprisonment was entirely appropriate.
- 20 The third and principal ground of appeal is that the judge was wrong to activate the suspended sentence to the extent that he did, and wrong to order it to be activated consecutively. The fourth ground of appeal is totality. It is contended that the whole sentence could and should have been suspended. These are the two grounds which the single judge considered arguable and on which leave was granted.
- 21 Developing these grounds in his advice on appeal and orally this morning, Mr MacGregor points out that by the time the breach offences were committed the appellant had successfully completed all the other requirements of the suspended sentence order and the operational period had only four months still to run. Those factors, he submits, together with the strong personal mitigation of the appellant's mental health issues, should have resulted in a greater reduction of the term of the suspended sentence, if it was to be activated at all. Mr MacGregor submits that there was and is a realistic prospect of rehabilitation. Immediate custody would have the effect of requiring the appellant to lay off two members of staff employed at his hairdressing salon, one of them a single parent, and would result effectively in the closure of the business. Mr MacGregor acknowledged in his written submissions that those were factors taken into account when the suspended sentence was imposed, but the new and exceptional factors not previously available were the appellant's slide into depression and his proven attempts at self-rehabilitation by engaging with the mental health services. There was no suggestion that the appellant presented a risk to the public.
- 22 We have considered all these submissions carefully. Pursuant to paragraph 8 of Schedule 12 to the Criminal Justice Act 2003, the judge was required by law to activate the suspended sentence, in full or in part, unless he was of the opinion that it would be unjust to do so in view of all the circumstances, including the extent to which the appellant had complied with the community requirements of the order, and the facts of the subsequent offences.

- 23 In deciding what course to take, the judge was obliged to follow the Sentencing Council Guideline for breach offences. The Guideline states that the predominant factor in determining whether activation is unjust relates to the level of compliance with the suspended sentence order and the facts and nature of any new offence. In the circumstances of this case, the Guideline indicated that the suspended sentence should be activated, but that an appropriate reduction of the original custodial term should be applied, taking into consideration any unpaid work completed. The Guideline emphasises that it is for the court dealing with the breach to identify the appropriate proposed reduction, depending on the extent of any compliance with the requirements of the suspended sentence order. The Guideline also states that in determining whether there are other factors which would cause activation to be unjust, the court may consider all factors, including any strong personal mitigation, whether there is a realistic prospect of rehabilitation, and whether immediate custody will result in significant impact on others. Only new and exceptional factors and circumstances not present at the time of the suspended order was imposed should be taken into account.
- 24 Mr MacGregor has confirmed that the judge's attention was directed specifically to the terms of the guideline and the judge plainly had the principles well in mind, although he did not refer specifically to the Guideline in his sentencing remarks. He reduced the term of the suspended sentence by 50 per cent, partly on account of the degree of compliance with the order and partly having regard to the principle of totality.
- 25 We are satisfied that the judge was quite correct to activate part of the term of the suspended sentence consecutively. The breach offences were serious and although they differed in character from the offences for which the suspended sentence was imposed, they were related to the consequences of the suspended sentence. Those consequences included the obligation to comply with the sex offender register requirements and a prohibition on standing for election. The appellant deliberately set out to avoid those consequences. We are quite satisfied that the judge was correct to conclude that only a sentence of immediate custody could be justified by the activation of part at least of the suspended sentence.
- 26 However, we are persuaded that the judge should have given greater weight to the appellant's full compliance with the unpaid work requirement and rehabilitation activity requirement in the order, to his strong personal mitigation and to the fact that the order had only four months still to run when the offences were committed. It was also a situation in which the observations of the Lord Chief Justice in the case of *Manning* [2020] EWCA Crim 592 were relevant, having regard to the additional impact of serving a first sentence of immediate custody at the age of 59 in the difficult conditions created by the COVID-19 pandemic. In the result, we consider that the overall sentence of 16 months' imprisonment was manifestly excessive.
- 27 In our judgment, the term of the suspended sentence should have been reduced to four months rather than eight months, resulting in the reduction of the appellant's total sentence to 12 months.
- 28 Accordingly, we quash the order activating eight months of a suspended sentence and instead order that only four months of the suspended sentence shall be activated, but still consecutively to the total sentence of eight months for the breach offences. The total sentence is therefore reduced to 12 months' imprisonment.
- 29 Finally, there is a technical issue in relation to the victim surcharge order for £140 which the court imposed. We are grateful to the Registrar for drawing the error to our attention. It arises because no surcharge order may be made in respect of any offence committed before 1 April 2007. The offences for which the suspended sentence was imposed fall into that

category. As this court held in the recent case of *R v Abbott* [2020] EWCA Crim 516 at [76] to [85], in the circumstances of the present case the Crown Court was "dealing with" the suspended sentences offences, which precluded the making of a surcharge order even in respect of the breach offences dealt with on the same occasion. We therefore quash the surcharge order.

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**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.