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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 102

CASE NO 202203573/A2



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 31 January 2023

Before:

LORD JUSTICE COULSON
MRS JUSTICE CUTTS DBE
HER HONOUR JUDGE MUNRO KC
(Sitting as a Judge of the CACD)

REX
V
LUKE BEGG

Computer Aided Transcript 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)

NON-COUNSEL APPEAL

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

1. LORD JUSTICE COULSON: This appeal comes before this court on one issue of clarification and correction, and one agreed alteration to the sentence passed on the appellant.
2. The appellant is now 29. On 27 May 2022 he was convicted after a summary trial before the magistrates of assault by beating of an emergency worker. That offence was committed during the operational period of a Crown Court suspended sentence. The appellant was therefore committed for sentence to the Crown Court.
3. On 28 September 2022, at the Crown Court at Canterbury, the appellant was sentenced to five months' imprisonment for the assault. As we have said, that assault had been carried out during the operational period of a suspended sentence of 24 months' imprisonment imposed on 8 April 2021 for an offence of assault occasioning actual bodily harm. The suspended sentence was activated with a reduced term of 16 months to be served consecutively. Thus the appellant was sentenced to a total period of 21 months' imprisonment. No point now arises as to the length of that sentence.
4. The issue that requires clarification and correction arises in this way. The Sending Sheet from the Magistrates' Court stated that the appellant was: "Committed to Canterbury Crown Court on commission of a further offence during the operational period of a Crown Court suspended sentence (Paragraph 11(2), Schedule 16 Sentencing Act 2020)."
5. In fact, committals to the Crown Court under that provision only effect the appearance of the appellant at the Crown Court so that it might deal with the offence for which the suspended sentence was imposed. The provision in paragraph 11(2) does not enable any offence to be committed for sentence and cannot therefore confer on the Crown Court the power to deal with the new offence, in this case the assault on the emergency worker. It would seem that it was the Magistrates' Court's intention to commit the new offence for

sentence under section 14 of the Sentencing Act 2020.

6. In addition, the Magistrates plainly intended to commit the appellant to the Crown Court at Canterbury for being in breach of that court's suspended sentence order. However, the breach of the suspended sentence order was omitted from the Court Register. It should have been included, so that the offender could have been committed for breach pursuant to paragraph 11(2) of schedule 16.
7. However, we are in no doubt that these matters were simply errors of recording and do not invalidate the committals themselves: see by analogy *R v Ayhan* [2011] EWCA Crim 3184. A committal is not invalid if there was a power available to the Magistrates which, had it been exercised, would have given lawful effect to their intention to commit. Here there plainly was that power.
8. Accordingly, we state in open court that, in respect of the assault on the emergency worker, the Magistrates must have meant to commit the appellant for sentence under either section 14 or section 20 of the Sentencing Act 2020 and they additionally intended to commit the appellant to the Crown Court for breach of the suspended sentence under paragraph 11(2) of schedule 16 of the Sentencing Act 2020, and for that to be recorded on the Court Register.
9. We confirm that the committals should be treated as if that was how they had been dealt with and recorded in the Register and that, accordingly, they were valid.
10. The alteration to the sentence is this. At the date of sentence, namely 28 September 2022, the appellant had spent 302 days on qualifying curfew. It does not appear that counsel informed the judge of this at the sentencing hearing and therefore, unsurprisingly, no reference was made to it in the sentencing exercise.
11. However, the prosecution have subsequently confirmed that the appellant had indeed

spent 302 days on qualifying curfew. Pursuant to section 325 of the Sentencing Act 2020, the court must direct that the credit period that arises from that curfew must count as time served as part of the sentence. The credit period is one-half of the number of days spent on qualifying curfew.

12. Accordingly, under section 325 of the Sentencing Act 2020, the appellant was entitled to credit of 151 days to reflect the amount of time he had spent on qualifying curfew. We therefore state that credit in open court so that the necessary adjustment of 151 days can be made to the appellant's sentence.

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk