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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT MAIDSTONE

MR RECORDER VINCE T20200559

CASE NO 202402673/A3

NCN: [2024] EWCA Crim 1254

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 6 September 2024

Before:

LORD JUSTICE MALES  
MRS JUSTICE MAY DBE  
MR JUSTICE BRYAN

REX  
V  
DAVID SPRY

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Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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MISS S WILSON appeared on behalf of the Applicant

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

MRS JUSTICE MAY:

Introduction

1. On 25 May 2023 in the Crown Court at Maidstone following a trial, the appellant was convicted of one offence of acting in breach of a restraining order, contrary to section 5(5) of the Protection from Harassment Act 1997. On 12 July 2024 an offence of failing to surrender, contrary to section 6 of the Bail Act 1976 was put and admitted. On the same occasion the appellant was sentenced to 60 weeks' imprisonment for the section 5 breach offence, with five weeks' consecutive for the Bail Act offence, giving a total sentence of 65 weeks' imprisonment. There is an appeal as of right against a sentence imposed for a Bail Act offence (under section 13 of the Administration of Justice Act 1960). Accordingly, the Registrar has referred the application for leave to appeal the total sentence to the full court.

The facts

2. The appellant was made subject to a restraining order imposed by Maidstone Crown Court on 5 August 2019 following his conviction for an offence of harassment against the complainant, Sarah Spearman. The order, which was to apply until further order, contained the following conditions:

"The defendant David Spry is prohibited from:

- a. Contacting directly or indirectly Sarah Spearman or members of her family.
- b. Going to any address where he believes she resides.
3. Going to any place of work where he believes she is working."

3. Between 6 November and 10 November 2019 the appellant breached that order. On 6 November 2019 the complainant noticed that the appellant's Instagram profile picture was changing multiple times a day. She could see the profile picture had changed because the appellant's account was on her blocked list and the image attaching to that account, being the only image she could see, was his profile picture which up to then had been a photograph of him. The complainant noticed that the image changed multiple times daily and at one point up to 10 times. The complainant checked the appellant's profile as he had communicated with her in the past in this way, in an abusive and threatening manner. The content of the images uploaded were menacing and targeted towards the complainant. She screen shot some of the images that were posted which were handwritten notes that were photographed and uploaded onto the appellant's Instagram account. The handwritten images that were posted included:

"No one can f\*\*k like me!! As you know!! I am about to f\*\*k you in ways you can't begin to imagine, it's my time now!!"

"Working hard in the background to expose you and them and f\*\*k up your life forever! Silence doesn't mean it's over haha it equals danger for you!!!"

"Just because it hasn't happened yet, doesn't mean that it never will."

"I will see you face to face I f\*\*king promise you that!! You know how I play yet you attack me when I did the right thing and you helped them make me out to be a monster and put me in hell, you will experience how that feels!!"

"You and them are both good at twisting the truth! You are the vile mouthed violent psycho! Let's see how you worm out of this one I warned you!!"

"Did I listen to them before? Keep checking your profile haha...I saw!! Your spiteful little tantrum and crazy lies have just cost your

'boy'."

An image from a film was uploaded with a quote from the film:

"Knock knock, who's there, it's the police ma'am, your son's been stabbed 20 times and he's dead."

An image that was not handwritten was also uploaded which stated:

"Kick in the door waving the four-four."

4. An image was also uploaded to the Instagram profile picture of a conversation between the complainant and the appellant showing his replies to her messages. Changing his Instagram profile picture with the images the appellant chose was a targeted action to contact and threaten the complainant in spite of the restraining order not to do so.
5. The appellant was arrested and interviewed. He stated that the handwriting on the photographs was similar to his and could be his. Nevertheless he pleaded not guilty and the matter went to trial where he was convicted.
6. Following his conviction the appellant was due to attend court on 18 September 2023 for sentencing. He did not attend and a warrant was issued for his arrest. He was finally arrested on 19 June 2024 and remanded in custody pending sentence.

#### Sentence

7. The appellant was aged 42 at sentence. He had five convictions for 10 offences in the period 2001 to 2019. In 2001 he received a community punishment for arson. In 2017 he received a suspended sentence for offences of harassment and stalking against a previous partner. In 2019 he received a short custodial sentence for offences of using violence to enter premises, harassment, failing to surrender, persistent communication to

cause annoyance and breach of a suspended sentence order. Later in 2019 he was sentenced to 16 months' imprisonment for one offence of harassment and was made subject to a restraining order until further order. The 2019 offences were all against the complainant.

8. Addressing culpability and harm under the Sentencing Council Breach Guideline the judge described the breach of the restraining order as serious "because it was deliberate and continued over a number of days involving a significant number of messages". He noted the domestic context but declined to regard the offence as a persistent breach, placing it in Category B. As to harm, the Recorder determined that harm fell at the upper end of Category 2, noting that the starting point for a Category B2 offence is 12 weeks' custody with a range up to one year and that the starting point for an offence falling into the higher category B1 is 12 months. He observed that before adjusting for aggravating features the appropriate sentence level would be eight months.
9. Turning to aggravating factors, the judge noted the numerous previous relevant convictions and the fact that the breach had occurred shortly after the restraining order had been made. He found no mitigating features. He arrived at a sentence of 16 months which he adjusted downwards to 60 weeks to take account of delay between the commission of the offence and trial.

#### Grounds of appeal

10. Miss Wilson, who appears for the applicant today, as she did at sentence, makes the following points. She says first that the judge went too far in uplifting the sentence for aggravating features. Further, that he took no account of the impact of delay on the applicant and the fact that he had been recalled to prison and had served the full 16 months of the sentence which had been imposed in 2019 whilst on remand for this

offence. Further, that he had committed no further offences in the five years since the breach offence was committed having turned his life around, moved away from the area and settled with a new partner. Finally she argues that the judge should have suspended the sentence which he passed.

### Decision

11. In our view the sentence for the breach offence, whilst severe, cannot be regarded as excessive. The Recorder was amply justified in placing the offence between B1 and B2 in the guideline given the number and nature of the messages and their impact upon the complainant at that time. Where the degree of harm is being assessed the nature and context of the previous offending giving rise to the restraining order will often be relevant. In this case the behaviour giving rise to the restraining order included stalking the complainant and forcing his way into her home, as well as sending the same kind of abusive, threatening messages seen here. Any breach must inevitably reawaken the fear and anxiety that the offending giving rise to the order first engendered. As the judge pointed out, whilst the messages giving rise to the breach offence could not be described as persistent, having occurred over just four days, nevertheless they were numerous. Moreover the content was aggressive and menacing, as is evident from the messages we have set out above. The previous offending against the same complainant as well as a previous ex-partner were a very significant aggravating factor, as was the fact that the applicant began sending the messages so soon after the restraining order had been imposed. The judge specifically made allowance for delay in the case coming to trial. We see no reason why he should have made a further reduction to take account of the fact that the applicant had committed no further offences in this time.

12. As to suspending the sentence, this court will only interfere with the decision of the sentencing court where the judge can be shown to have ignored some relevant matter or where the decision on suspension was otherwise unreasonable. Neither is the case here. The judge referred in terms to the Sentencing Council Imposition Guideline and gave reasons for his decision not to suspend. We cannot find that his decision was unreasonable, not least as the defendant had recently breached a court order, namely the conditions of bail requiring him to attend the sentencing hearing.
13. For these reasons we refuse the application for leave in relation to the appeal against sentence on the breach offence and the appeal against the total sentence must be dismissed.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)