

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT MARTIAL APPEAL COURT

ON APPEAL FROM THE MILITARY COURT CENTRE AT
CATTERICK
JUDGE SMITH, ASSISTANT JUDGE ADVOCATE GENERAL
2023CM06393



CASE NO 2024 00708 B1
[2024] EWCA Crim 1346

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 4 July 2024

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE

MR JUSTICE JAY

MRS JUSTICE ELLENBOGEN

REX

v

JOSHUA ROBERT LONG
(30259284 ABLE SEAMAN NAVY)

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)

MR MATTHEW I. BOLT appeared on behalf of the Appellant
COMMANDER HANNAH appeared on behalf of the Crown

J U D G M E N T
(Approved)

THE VICE-PRESIDENT:

1. The appellant, a seaman serving in the Royal Navy, pleaded guilty to a charge of being absent without leave. He was sentenced by a court martial to 7 days' service detention suspended for 12 months. With the leave of the single judge he appeals against that sentence, on grounds relating solely to the length of the operational period of the suspended sentence.
2. The appellant enlisted in the Navy in 2016 when he was aged 16. Reports of his service show that he has many good qualities and clear potential, but unfortunately, he has on occasions let himself and his superiors down, often as a result of excessive drinking. He had been disciplined on a number of occasions.
3. In January 2023 the appellant's ship was on operational service and was tied alongside in Bahrain. He was subject to certain restrictions of his privileges, imposed by his commanding officer because of past misconduct. He was allowed to go onshore but not to stay overnight in a hotel. Nor was he permitted to drink alcohol either onboard or ashore. It appears that the appellant was aggrieved by those restrictions, and he wanted when he went ashore to meet a woman with whom he had been in correspondence. He made a deliberate decision to absent himself without leave, and did not return to his ship at 10 pm as he should have done. He returned in the morning, but his boarding was then delayed for 2 or 3 hours because he had forgotten his identification card. In the event, he was absent without leave from 10 pm on 27 January until 11.40 am on the following day.
4. The appellant apologised and pleaded guilty at the earliest opportunity.
5. At the sentencing hearing on 30 January 2024 (about a year after the offence was committed) it was agreed that in the circumstances of this case the maximum period of service detention which the court martial could impose was 28 days.
6. The court found a number of aggravating features:
 - the appellant's ship was operationally deployed in a particularly sensitive location;
 - his absence had been premeditated;
 - he had had previous warnings with regard to his general behaviour.

The mitigating factors were that:

- the period of absence was short; and
- the appellant had returned voluntarily.

The court martial concluded that a short period of service detention was necessary. The appropriate period was 10 days, reduced to 7 days because of the early guilty plea.

7. The court martial then considered whether the sentence should be suspended. The court accepted that the appellant wanted to make something of his naval career but feared that if the sentence took immediate effect there was a risk that "the same problems will occur". A suspended sentence would have a deterrent effect and would combine punishment with rehabilitation in the hope that the appellant would stay out of trouble in the future.
8. In those circumstances the court martial suspended the sentence, initially for an operational period of 2 years, which was wrongly thought to be the maximum available period.
9. There followed two slip rule hearings. The court martial reduced the length of the operational period to 12 months, which was agreed to be the maximum period available in the circumstances of this case. The court did not, however, accept a submission on behalf of the appellant that greater weight should have been given to the fact that he had been out of trouble for about 12 months before he was sentenced. In that regard the court said that, whilst that fact was acknowledged, "looking again at his history of offending, we take the view that the suspension for the 12-month period, the maximum allowable to us, is a just and appropriate sentence".
10. Mr Bolt, representing the appellant in this court as he did below, does not challenge either the imposition of a custodial sentence or the length of it. He submits, however, that the operational period of the suspended sentence was too long, for two principal reasons:
 - first, because it was of disproportionate length in the context of the sentence of 7 days' service detention; and
 - secondly, because the court martial failed to give any or any sufficient weight to the fact that the appellant had already conducted himself well for 12 months prior to being sentenced.

In support of those grounds Mr Bolt argues that the court martial failed to have regard, as it was required by s.259 Armed Forces Act 2006 to do, to the Sentencing Council's Imposition Guideline, which states that "the time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months".

11. Paragraph 50 of the Manual Service Law states:

"Determining the length of the operational period.

The operational period must be a specified period of between 3 and 12 months. The determination of the operational period is a matter of discretion for the C[ommanding] O[fficer]. He should bear in mind the factors at paragraph 47a – g above. He should also consider what might be a reasonable length of time for the offender to prove that he will not re-offend, can perform his duties to the standard expected and can be rehabilitated through the imposition and impact of the punishment awarded and the supervision he will be subject to. "

The factors listed in paragraph 47 include the likelihood of reform, genuine remorse, previous disciplinary record, personal circumstances, and the gravity and type of offence.

12. Mr Bolt submits in this regard that there had been an unusually long delay before sentencing, during which the appellant had avoided any further offending. Mr Bolt argues that since the aim of this form of sentence is in part to improve service efficiency, the appellant had already to a significant extent demonstrated that. Mr Bolt also explains to us that the conditions in which the appellant had been serving at the time of the offence and in which he continued to serve following the court martial were for various reasons particularly austere. For that reason, Mr Bolt submits, the pressure upon this appellant of a sentence being suspended for a lengthy period was even greater than would normally be the case.

13. For the respondent, Commander Hannah places emphasis on the service context of this offence: a matter which, he points out, is not specifically addressed in the Definitive Guidelines issued by the Sentencing Council. He reminds us, correctly, that the court martial is a specialist tribunal and submits that it is best placed to take into account the service context. This offence, he submits, has to do with service discipline, which is all the

more important when the service is being carried out in austere conditions because of the nature of a deployment. Commander Hannah accepts that behaviour during the period between the offence and the sentencing is a relevant consideration, but argues that the court martial was nonetheless justified in taking the course it did.

14. We are grateful to both advocates for their focused and very helpful submissions.
15. As to the first ground of appeal, as Mr Bolt rightly acknowledges, the sentencing guideline does not lay down an inflexible rule, and the need to maintain a proportion between the length of the custodial term and the length of the operational period does not imply a necessarily arithmetical approach. Deterrence is a legitimate consideration in sentencing, and the combination of a short period of detention and a much longer operational period of suspension, up to and including the maximum available, may be appropriate in the circumstances of a particular case. In our view it cannot be said that it was wrong in principle or manifestly excessive for the court martial to adopt such an approach here.
16. Mr Bolt's second ground of appeal is, however, one which has caused us to reflect carefully. This court is slow to interfere with a sentencing decision of the court martial. As was said in **R v Ashworth**, [2019] EWCA Crim 1737:

"... the court martial is a specialist tribunal and particular respect must be given to its judgments as to the significance of the military context of an offence and as to the implications for the service, as well as for the individual offender, of imposing particular sentences."

We keep that important principle very much in mind. However, an important part of the reasons for imposing the suspended sentence in this case was to deter the appellant from further misconduct or indiscipline; but he had in fact already been deterred to the extent that, against the unpromising background of his previous record, he had kept out of trouble for a year. Furthermore, it strikes us that the approach taken by the court martial would have the effect that the operational period of the suspended sentence would be exactly the same whether it chanced that by the time of sentencing the appellant could point to good conduct over a period of a week, a year, or even longer.

17. Having reflected on these competing considerations, we accept Mr Bolt's submission that greater weight should have been given to the unusually lengthy passage of time between the offence and the sentencing, and the appellant's conduct during that period. He had already demonstrated clear signs of reform and rehabilitation, and of a determination to avoid further offending and to continue his service in difficult conditions. With all respect to the court martial, we are persuaded that allowance should have been made for that period of good progress by making a reduction in the length of the operational period which would otherwise have been appropriate.
18. For those reasons we allow this appeal. We quash the sentence of 7 days' service detention suspended for 12 months and we substitute for it a sentence of 7 days' service detention suspended for 8 months.

Mr Bolt, Commander Hannah, thank you very much for your assistance.

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