



Neutral Citation Number: [2024] EWCA Crim 1632

CASE NO: 202404091/A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT MAIDSTONE

MISS RECORDER WILSON P No: 46XY1135323

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 20 December 2024

Before:

LORD JUSTICE LEWIS  
MR JUSTICE GARNHAM  
MR JUSTICE CONSTABLE

REX  
V  
HAYLEY DOUGLAS

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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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MR T GREGSON appeared on behalf of the Applicant

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

1. MR JUSTICE CONSTABLE: The applicant pleaded guilty to two counts of conveying a list A article, namely cocaine and Ketamine, into or out of prison and was sentenced to 12 months' immediate custody.
2. Her application for leave to appeal against sentence on a single ground that the sentencing judge erred in determining that the sentence should not have been suspended has been referred to the court by the Registrar. We grant leave.
3. The appellant was in a relationship with a Mr Durrant, a serving prisoner. The appellant was told by Mr Durrant that she was to receive a telephone call and to collect a package which she was to bring to him next time she visited him in custody.
4. On 25 January 2023 she collected two packages from a location near some woods in the Chiselhurst area of North Kent which the applicant suspected were drugs. The appellant went to visit Mr Durrant in prison the same day. A drugs detection dog was interested in her but not sufficiently so that a search was justified. The appellant went to meet Mr Durrant in the visitors hall. About 40 minutes into the visit, at a time when staff were distracted, the appellant handed over the packages to Mr Durrant which he then put down the front and the back of his trousers. This was captured on CCTV.
5. When Mr Durrant left the visiting area he was searched and found to be in possession of 0.59 grams of cocaine and 62.49 grams of Ketamine. The appellant was detained and arrested. Her guilty plea was accepted on the basis that she had been told that bad things would happen to her and her children if she did not do what she had been told to do.

6. The appellant was of good character. Her pre-sentence report indicated a low risk of re-conviction and that she posed no risk of physical harm to others. The report highlighted her caring responsibilities for two children aged 15 and nine. She is also expecting a third child due to be born at the end of May. Her present release date is 5 April.
  
7. A psychological report from Dr Sues indicated that the applicant was experiencing moderate to severe anxiety and depression which would likely worsen upon imprisonment. Although Dr Sues was unable to speak with the children for the purposes of her report, she considered that the likely impact on the appellant's children of her imprisonment would be detrimental. She drew attention to the fact that the appellant's eldest daughter is 15 and has a documented history of self-harm and emotional and relational disturbance from separation issues and it was considered likely that her mental health would be affected. She considered that the impact of the imposition of a custodial sentence risked the daughter's self-harm and likely that her education attendance in her GCSEs may suffer. This may have a negative impact on her of course for the remainder of her life.
  
8. Since the report was filed the court has been provided with updated information from the Probation Service. That information is that the daughters remain at the local school, their father has temporarily moved into her accommodation to look after them, the applicant has regular contact with her children whilst in custody and this has helped to maintain a positive relationship with them. The appellant's children also have the benefit of support from the appellant's mother and other family members who are caring for them in the

appellant's absence.

9. The sentencing judge had regard to the sentencing guidelines on the imposition of community and custodial sentences and correctly recognised that there was a realistic prospect of rehabilitation and that there was strong personal mitigation. She described the effect on others, most likely referring to the appellant's children, as massively detrimental. She rightly recognised on the basis of R v Reynolds [2016] EWCA Crim 2217 that whilst ordinarily the introduction into the prison estate of drugs would result in an immediate loss of liberty, there could be exceptional circumstances which mean that the court is able to suspend such a sentence. She distinguished on the basis of the gravity of the offending noting that in that case the relevant offending related to less serious items and that the sentence was one of just four months compared to 12 months in this case. She concluded "very reluctantly" that a sentence of immediate imprisonment was required.
  
10. Mr Gregson both in his helpful written submissions and ably in oral argument today, has drawn the court's attention to a number of authorities which have provided guidance on the sentencing of mothers and pregnant women. The starting point is that, as explained in R v Petherick [2012] EWCA Crim 2214, the sentencing of such defendants inevitably engages not only her own European Convention rights to family life, but also that of her family and that includes any dependent children. Ultimately, there must be a balancing exercise between such interference with those rights that imprisonment inevitably entails and the legitimate aim which custodial sentences engages. The question is: is the interference proportionate? As Lady Hale observed in HH (Appellant) v Deputy

Prosecutor of the Italian Republic, Genoa [2012] UKSC 25:

"... it will be especially where the case stands on the cusp of custody that the balance is likely to be a fine one."

11. In that kind of case, the interference with family life of one or more entirely innocent children can sometimes tip the scales and means that a custodial sentence otherwise proportionate may become disproportionate.
  
12. In R v Stubbs [2022] EWCA Crim 1907, the court made clear that pregnancy will not only provide strong personal mitigation but might also tend to improve the prospect of rehabilitation. It is plainly the case that pregnant offenders cannot however automatically expect to avoid imprisonment and some pregnant offenders will present a risk or a danger to the public and others will have committed offences so serious that there is no alternative to immediate custody. However, such offenders aside, proper application of the imposition guideline will often justify the suspension of a short sentence in the case of a pregnant offender.
  
13. A further very recent authority of relevance, which was not drawn to the attention of the sentencing judge, is R v Bassaragh [2024] EWCA Crim 20. This related to the appeal against a sentence of five years' imprisonment for possession of a prohibited firearm, which was the minimum applicable sentence, irrespective of a plea, unless the court was of the opinion that there were exceptional circumstances relating to the appellant or her offence which justified not doing so. At the time she was sentenced the appellant was not aware that she was in fact pregnant. This fact was only discovered when she underwent

routine testing upon her admission to prison. As pointed out by the court in Bassaragh, all prison pregnancies are categorised as, in general terms, high risk pregnancies by the NHS, by the Prison Ombudsman and by the Ministry of Justice and there is general recognition that the impact of custody on pregnant offenders can be harmful for both the offender and the child. Women in custody are likely to have complex health needs which may increase the risks associated with pregnancy for both the offender and the child. There may also be difficulties accessing medical assistance or specialist maternity services in custody. Notwithstanding the obvious seriousness of the case before court, the court considered that the appellant's pregnancy amounted to exceptional circumstances permitting the court to deviate from the minimum sentence otherwise required by law.

14. Nevertheless, it is plain to us that the sentencing judge had well in mind the guidelines and the difficult balancing exercise that they required. She was fully aware of the facts and the additional considerations concerning the impact of an immediate custodial sentence on the appellant and her children. These needed to be considered with particular care. The reluctant conclusion that the judge came to in light of the seriousness of the offending was plainly open to her, particularly in circumstances where the appellant is not going to give birth in prison and where there exists a family support network to continue caring for the appellant's children in her absence. It is not possible to conclude that the judge was wrong in determining the need in this case for an immediate custodial sentence.

15. This is sufficient to deal with this appeal. However, we observe that the issues raised by

this case are difficult and the decision a finely balanced one. We of course recognise the importance of scrutinising with particular care the effect a custodial sentence may have on children and the increased risks and burden it may place on a pregnant defendant. However, it is also the case that the introduction of drugs into prisons is an extremely serious offence and it will be far from uncommon that those susceptible to pressure to commit this crime when visiting their partner will be pregnant women or mothers with caring responsibilities. Whilst the court will always be mindful of the particular circumstances of a particular defendant, if the court is too ready to allow these circumstances to weigh inevitably against a custodial sentence, it may provide a perverse incentive to use pregnant partners or those with caring responsibilities as the route by which to try to bring drugs into prison. This would have the unwelcome effect of increasing the likelihood that pregnant partners or those with caring responsibilities will be placed under pressure to commit this particular offence which would not be in the interests of those upon whom such pressure would be placed or society more widely.

16. For the reasons given, we dismiss the appeal.

**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)