Neutral Citation Number: [2024] EWCA Crim 20

Case No: 202304426 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT WOOLWICH
Ms Recorder Davies
T20237063

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/01/2024

Before :

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MR JUSTICE GARNHAM
and
MR JUSTICE ANDREW BAKER

- -

Between :

MAYA TIGER LEELEE BASSARAGH	**Appellant**
- and -	
THE KING	**Respondent**

- -
- -

Pippa Woodrow (instructed by **Bhatt Murphy Solicitors**) for the **Appellant**
Jessica Ward (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing date: 18 January 2024

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Approved Judgment

This judgment was handed down remotely at 9.45 am on 25 January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Andrew Baker :

Introduction

1. This is the judgment of the court, to which we have all contributed. It sets out our reasons for decisions pronounced by Holroyde LJ at the conclusion of a hearing on 18 January 2024. That was the hearing of applications for an extension of time and for leave to appeal which had been referred to the full court by the Registrar. For the reasons set out below, we granted those applications and treated the hearing as the hearing of the substantive appeal.

2. The appellant thus appealed against a sentence of 5 years' imprisonment for possession of a prohibited firearm. It was accepted on her behalf at all stages, correctly, that the minimum sentence provisions of section 311 and Schedule 20 of the Sentencing Code applied to her offence. The court had to impose a sentence of at least 5 years' imprisonment, irrespective of plea, unless it was of the opinion that there were exceptional circumstances relating to the appellant or her offence which justified not doing so.

3. The appellant sought, and we granted, permission to rely on evidence that was not available to her when she was sentenced on 15 June 2023 by Ms Recorder Davies sitting in the Crown Court at Woolwich. We considered all of the new material *de bene esse* and, in the event, admitted it on the appeal. Unknown to anyone at that sentencing hearing, including the appellant herself, she was then pregnant. The fresh evidence showed that the appellant learned of her pregnancy only when she underwent routine testing upon her admission to HMP Bronzefield after she had been sentenced. Her pregnancy was therefore a fact existing at the time of the sentencing hearing, and one which would undoubtedly have been an important factor in the recorder's decision if it had then been known. In those circumstances, this court can properly take it into account. The fresh evidence also provided detailed information about the particular impact and risks of this pregnancy, upon and for this appellant and her unborn baby.

4. Without knowledge of those matters, the Recorder found that there were no exceptional circumstances and she sentenced at the statutory minimum which therefore applied. Ms Woodrow for the appellant advanced some criticisms of the offence analysis in the recorder's sentencing remarks, after her finding that there were no exceptional circumstances; but that analysis, and those criticisms, were not relevant to the appeal. The appeal asked the court, having now the benefit of the additional evidence, to make a finding of exceptional circumstances that the recorder could not make on the material before her. If we made that finding, it would fall to us to re-sentence on that different basis.

5. In the event, with that benefit, upon a careful review of all the circumstances of the appellant and the offence she committed, it was our opinion that this quite singular case did present exceptional circumstances that:

    i) justified not imposing the statutory minimum sentence;

    ii) meant that a custodial term commensurate with the seriousness of the appellant's offence could be set at 3 years after consideration of the personal

mitigation, reduced to 2 years after making the appropriate reduction for the appellant's guilty plea.; and

iii) enabled us to take the very exceptional course, for this type of offence, of suspending that custodial term.

6. We therefore allowed the appeal, quashing the sentence of 5 years' imprisonment and substituting a sentence of 2 years' imprisonment, suspended for 2 years. The appellant was also sentenced to 4 months' imprisonment, concurrent, for possession of ammunition that was with the firearm when it was in her keeping. We also quashed that shorter sentence (which was not the subject of any separate argument) and substituted for it a sentence of 4 months' imprisonment suspended for 2 years.

Basic Facts and Initial Analysis

7. In February 2023, a few days after her 22nd birthday, the appellant was found to be in possession of a converted Zoraki 917 self-loading 9mm pistol, loaded with a magazine containing compatible live ammunition (three bullets). This was a semi-automatic handgun that, to quote from the applicable Sentencing Guideline, was "*designed or adapted to be capable of killing two or more people at the same time or in rapid succession*".

8. Under that Guideline, therefore, the gun in the appellant's possession was a Type 1 weapon. Although the appellant had not used it and had no intention of ever using it, she was holding it as custodian (for her then boyfriend), loaded with compatible live ammunition, so there was Medium culpability under the Guideline. Under Step 1 in the Guideline, the culpability category, therefore, was Category B. That in turn meant that at Step 2, applying Table 1 in the absence of exceptional circumstances, the guideline range was 5 to 7 years, with a starting point of either 6 years or 5½ years, depending on whether harm was Category 2 or Category 3.

9. The appellant made significant admissions, and accepted fault, when the police were executing the search warrant that led to the recovery of the gun. She identified its owner immediately in a way that will have been sufficient to confirm the police's existing (accurate) intelligence. She was cooperative when interviewed by the police under caution and provided a full account that accepted guilt. Her immediate frankness and cooperation were matters of personal mitigation to be taken into account in her favour quite separately from the reduction in sentence for her guilty plea. She indicated her guilt when she appeared before a magistrates' court and pleaded guilty on her first appearance before the Crown Court on 23 March 2023.

10. The further circumstances disclosed by the appellant's basis of plea were consistent with the account she had given to the police and were as follows:

"*a. The firearm and ammunition were not mine;*

b. Two weeks prior to my arrest, I was at a friend's house and I was contacted by my then boyfriend, who goes by the name of Reefy … to look after something. I agreed to do this without thinking.

c. A taxi subsequently arrived later that day and delivered a bag containing clothing and an item wrapped in a blanket. At the time I did not know that the item wrapped in [the] blanket was a safe.

d. 2 days later, Reefy came to my house in a car and asked for the bag. I took it to him and he inspected it. When he did so, I did not see what was in it and in fact at the time I was distracted because he had brought a dog with him … . He then gave me the bag and I returned it to my house. We then went out to eat and as we were travelling, he handed me a key and said it related to something in the bag. I did not know what it was and nor did I ask him.

e. After I returned from dinner, I became curious as to what else was in the bag and so I looked and discovered that it contained a safe. I looked inside the safe and discovered that it contained a firearm. I did not know that the firearm contained a magazine containing ammunition.

f. Prior to this point, I did not know that the safe contained a firearm. I also did not know if the firearm was in the safe when it arrived in the taxi or if it was subsequently placed in the safe when Reefy attended two days later.

g. When I found out that the safe contained a firearm, I immediately contacted Reefy and asked him to take it away. However he did not do so and although I kept on at him to take it away, he kept saying that he could not and was worried about being stopped by police. I kept on at him to take it away and he had agreed to take it away however on the day that he was due to attend, the police executed their warrant.

h. I therefore pleaded guilty on the basis that I was a custodian of the firearm."

11. Turning to the categorisation of harm, we accept the submission that this case fell short of Category 1. Although one Category 3 factor could be said to be present, in that the appellant's custodianship of the weapon in itself caused no more than minimal alarm or distress, she was holding a weapon whose only function, if used, was to cause lethal or grave injury. She held it with a view to returning it to "Reefy", and there was a real risk that it would come into the hands of someone who would so use it. In those circumstances, we considered that the harm factors fell between those in Categories 1 and 3, and that harm should therefore be assessed as Category 2.

12. The use by criminals of intimate friends or family members of good character to hold illegal weapons, in the hope that it will avoid the weapons being found by the police, especially the abuse in that fashion of naïve, easily led or overly trusting custodians, is a repugnant but frequent feature in firearm possession cases. It is not, without more, an exceptional circumstance.

13. The principles by which a sentencing court is to judge whether there are exceptional circumstances are now set out in the Guideline. Reference to case law pre-dating the Guideline to identify those principles (for example, *R v Nancarrow* [2019] EWCA Crim 470, [2019] 2 Cr App R (S) 4) is therefore misplaced. We discourage it. The principles are stated at paragraphs 6 and 9 to 12 under Step 3 in the Guideline, in the following terms:

"*6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:*

- *the particular circumstances of the offence* ***and***
- *the particular circumstances of the offender*

either of which may give rise to exceptional circumstances

…

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

10. The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.

11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

12. The mere presence of one or more of the following should not in itself be regarded as exceptional:

- *One or more lower culpability factors*
- *The type of weapon or ammunition falling under type 2 or 3*
- *One or more mitigating factors*
- *A plea of guilty*"

14. In relation to those principles, firstly, Ms Woodrow made it clear that she did not advance a submission that any case of a pregnant offender would be a case of exceptional circumstances. Secondly, by way of emphasis for this case and not by way of addition to the Guideline, Ms Woodrow submitted (and Ms Ward agreed, as do we) that:

i) all the circumstances of the individual offence and offender must be considered together (paragraphs 6 and 11);

ii) the court must ask whether the circumstances are truly exceptional to ensure that the deterrent purpose of minimum sentences is not too readily undermined (paragraph 10);

iii) the existence, or a totting up, of multiple mitigating factors is not enough (paragraph 12); and

iv) there is a single ultimate test, as stated in paragraph 9, *viz.* whether the imposition of the statutory minimum sentence would, in all the circumstances of the individual case, result in an arbitrary and disproportionate sentence.

15. Thirdly, she submitted that medical unfitness to serve a custodial sentence (or a custodial sentence of at least the minimum statutory length), or significant physical and/or mental health risks particular to the individual offender that would be caused by imposing the statutory minimum sentence, would be an aspect of the circumstances of the offender that fell to be taken into account (assuming, we would add, the matters relied on are properly evidenced). Again, Ms Ward accepted Ms Woodrow's proposition as correct; and again we agree with it.

16. If exceptional circumstances are found, then logically, and as the Guideline goes on to state at paragraph 13 under Step 3, "*the court* ***must impose either a shorter custodial sentence than the statutory minimum … or an alternative sentence****. Note: a guilty plea reduction applies in the normal way if the minimum term is not imposed …*" (original emphasis). As paragraph 14 then states, the sentence imposed absent the constraint of the statutory minimum should be "*a sentence that is appropriate to the individual case*", for which purpose the court "*may find it useful to refer to the range of sentences under culpability A of Table 2 (Offences not subject to the statutory minimum sentence) in step 2 above*".

17. Where, as in this case, a claim of exceptional circumstances relates in whole or in part to the impact for the particular offender of being in custody, or of being in custody for as long as the statutory minimum would require, determining the claim will usually require the court to identify the sentence that would be imposed if the statutory minimum did not apply. That will be a key factor in assessing whether the imposition of the statutory minimum would be arbitrary and disproportionate. Identifying the non-minimum sentence that the court would judge to be appropriate to the individual case will involve, among other things, considering what impact the putative exceptional circumstances would have on sentence if treated as matters of personal mitigation in a case where the court was free to sentence below the statutory minimum.

18. We complete this initial analysis, then, by noting that under Table 2, Culpability A, to which regard may be had if exceptional circumstances are found, the guideline range is 1 to 3 years' custody (starting point 2 years) for Category 2 Harm.

The New Information

19. The appellant was 35 weeks pregnant at the hearing of the appeal (to be precise, 34 weeks + 6 days). Her estimated due date from antenatal scans, for a full-term delivery at 40 weeks, is 23 February 2024. On that basis, the appellant must have become pregnant between her guilty plea and conviction on 23 March 2023 and the sentencing hearing on 15 June 2023. The father is unconnected to the appellant's offences.

20. The latest information made available to us within the evidence we received was that due to some of the particular features of this pregnancy, the appellant was being advised not to carry beyond 37 weeks, meaning she was going to be advised to go through an induced delivery or c-section two weeks or so after the appeal hearing. By then, having been taken into custody on 15 June 2023, the appellant would have served 7½ months in prison, the equivalent of a 15-month sentence.

21. As we noted at the outset, the new evidence confirmed the pregnancy, and when and how it was discovered. By the date of the appeal hearing, the appellant was resident in

the prison's Mother and Baby Unit, her place on which would have been hers until her baby was 18 months old. Continued residence on the Unit beyond that was possible in principle but would require a fresh application nearer the time.

22. We note in that regard that if her baby is born at 37 weeks, the appellant's normal date for release on licence under her 5-year sentence would have come when the baby was 22½ months old. Although there is the possibility of extending her stay on the MBU, and only a short extension would be required to avoid the 5-year sentence resulting in an enforced separation, we agree with a submission by Ms Woodrow that uncertainty about that in the meantime could exacerbate the anxiety for the appellant of the early months of her new baby's life in the prison setting; and we accept that a separation of a baby from her mother and primary carer of several months, at 18 months, is significant. However, we did not consider that this factor in itself justified the claim of exceptional circumstances.

23. That risk of enforced separation was not the mainstay of the argument on the appellant's behalf, however. Ms Woodrow submitted that the proposed fresh evidence disclosed particular risks for this appellant and her unborn baby, of pregnancy and birth as a serving prisoner, such that, when viewed in the context of the case as a whole, a 5-year custodial sentence was rendered arbitrary and disproportionate. Ms Ward confirmed (as had been stated in a Respondent's Notice) that the Crown adopted a neutral stance on the question of exceptional circumstances as it arose before us in this case, with knowledge of the appellant's pregnancy and its consequences, and did not advance any submissions in relation to the application or the appeal.

24. The particular complications or possible complications for the appellant and her unborn baby upon which Ms Woodrow relied were evidenced by an expert report of Dr Laura Abbott dated 14 December 2023 and an addendum to that report dated 17 January 2024. That expert evidence was the new evidence we admitted, together with two statements of Michela Carini, the appellant's solicitor, which provided factual details and related the efforts undertaken on the appellant's behalf to consider and in due course put forward her application. That evidence justified the extension of time we granted.

25. Dr Abbott qualified as a Registered General Nurse in 1993 and as a Registered Midwife in 2000. She is now an Associate Professor (Research) and Senior Lecturer in Midwifery, and a Fellow of the Royal College of Midwives, with particular expertise in the experience and added risks of pregnancy in prison. Meaning no disrespect to the thoroughness and detail of that evidence, we summarise its pertinent effect in the following paragraphs.

26. As background, all prison pregnancies are categorised as, in general terms, "*high risk*" pregnancies, by the NHS, the Prison Ombudsman, and 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. That general background is illustrated by, for example:

i) a rate of stillbirths in prison that has been rising in recent years and is now much higher than that seen in the community at large,

ii) increased rates in prison, in comparison to community rates, of premature birth, low birth weight, and perinatal mental health difficulties, and

iii) statistics that one in ten prison pregnancies result in a birth in the prison or *en route* to hospital because of limitations in the availability of urgent transport and that between 2020 and 2022 one in four babies born out of prison pregnancies required admission to a neonatal unit (the national average being one in seven).

27. The appellant's ethnicity (she is a Black woman) elevates the general background risks. The rates of many adverse pregnancy outcomes are higher for Black women, including rates of maternal death, premature birth, pre-eclampsia, postpartum haemorrhaging and blood-clots, still birth and serious post-natal complications. There is also a higher rate for Black women of precipitous labour in prison, i.e. prior to any transfer to hospital.

28. That is all relevant context, but it is indeed context only, that is to say the general medical context concerning pregnancy and birth in the prison estate in which evidence of the individual circumstances of the appellant in particular falls to be evaluated when judging the question of exceptional circumstances in her specific case.

29. The individual circumstances of this pregnancy, as evidenced by Ms Carini's witness statements and Dr Abbott's reports, included:

i) A family history of premature labour suggesting familial predisposition and therefore enhanced risk for the appellant, and repeated episodes of antepartum bleeding of unknown origin ('ABUO') during this pregnancy. ABUO episodes are clinically significant indicators of heightened likelihoods of serious complications including miscarriage, premature birth, low birth weight, placental abruption, foetal distress and hyperbilirubinemia.

ii) Incarceration therefore created for the appellant a real and present danger to safe delivery and proper neonatal development for her baby.

iii) A personal history of a very traumatic previous pregnancy loss, the detail of which it is unnecessary to set out here, and other previous trauma including domestic abuse, as well as a history of anxiety and depression intensifying the appellant's vulnerability to mental health deterioration under the stress of pregnancy, labour and neonatal care in a prison setting.

iv) Incarceration whilst pregnant for this appellant, therefore, has been and would be frightening, disorientating and traumatic in a way that was far beyond any unavoidable norm.

v) The recent development of pre-eclampsia, a condition which was diagnosed in the days before the hearing and which requires a level of monitoring and a reliable means of rapid specialist intervention that present particular challenges

in the prison setting, which has added to the appellant's fears for her own health and for her unborn child..

30. *R v Charlton* [2021] EWCA Crim 2006, [2022] 2 Cr App R (S) 18 also concerned an offender subject to a set of minimum sentence provisions who was pregnant, but did not know it, when she was sentenced at the statutory minimum. In that case, the sentence was for a 'third strike' domestic burglary engaging section 314 of the Sentencing Code. The statutory minimum sentence was 3 years, unless there were particular circumstances relating to the applicant or the offence being sentenced that made it unjust to impose such a sentence. The court's assessment and conclusions in that case appear from the judgment at [12]-[15]:

"*12. This was, on any view, a serious offence which caused significant harm to the elderly victims. The applicant's previous convictions were a serious aggravating feature. So too was the fact that she was on licence from a prison sentence for burglary when she committed this offence. There is, in our view, no basis on which the recorder could be criticised for concluding that the circumstances took the case at least to the top of the category 2 range before considering personal mitigation.*

13. The mitigation however was substantial. It is clear, as the recorder said, that the applicant's life has been held back by her abuse of controlled drugs, and that she needs to break away from drugs if she is to avoid further offending in the future. In that regard, the information contained in the pre-sentence report was important. It showed that the applicant had succeeded in being abstinent from drugs for about 5 years after the birth of her daughter, but had then relapsed. She was now making efforts to maintain her relationship with her daughter and, with the assistance of prescribed methadone, had not used illicit drugs in the weeks between her release on licence and the sentencing hearing. She had also been complying with the conditions of her licence, which we regard as an encouraging sign, given her past history.

14. The recorder was therefore faced with a difficult sentencing decision. He was, in our view, entitled to reach the conclusion he did on the basis of the information which was known to him. There was however a very important additional existing fact which was not known at that time but which has subsequently been established. Had the recorder been aware of that fact, we have no doubt he would rightly have taken it into account and given considerable weight to it, for three reasons. First, because imprisonment would now be a far heavier punishment for this applicant than for most other prisoners; secondly, because the pregnancy and births can be expected to increase her motivation to remain drug free; and thirdly, because it is necessary to have regard to the rights of the children who, as things stand, will be born in prison.

15. We are satisfied that when the pregnancy is added to the other personal mitigation in the applicant's case, there are particular circumstances relating to the offender which would make it unjust to impose the minimum prison sentence which would otherwise be required. We are satisfied that in all the circumstances the applicant should be sentenced differently, in a way which will allow her to be at liberty when her twins are born and to have the support of the Probation Service in breaking away from her abuse of drugs, but which will also leave her in no doubt as to the likely outcome if she re-offends. We therefore grant the necessary extension of time. We grant leave to appeal against sentence. We quash the sentence of 3 years' imprisonment and substitute a sentence of 2 years' imprisonment suspended for 2

years, with a drug rehabilitation requirement for 9 months and a rehabilitation activity requirement for 15 days. …"

31. In *R v Stubbs* [2022] EWCA Crim 1907, no minimum sentencing provisions were engaged, but the case did involve the imprisonment of an offender who was pregnant. Her offences were conspiring to supply and to import Class B drugs. She was the longstanding girlfriend of a wholesale drug dealer whose business was the supply of various strains of cannabis, and other controlled drugs, to other dealers. Her pregnancy was confirmed shortly before her sentencing hearing, so it was known to the sentencing court. She received a sentence of immediate imprisonment, but with a short custodial term one impact of which was that the applicant could expect to be released before her baby was born. Her application for leave to appeal was dismissed, although the court indicated that for its own part it might have preferred to treat the pregnancy as reason to suspend sentence rather than to reduce the custodial term as the sentencing court had (from 21 months to 9 months).

32. At [29], after referring to the Sentencing Guideline on the Imposition of Community and Custodial Sentences, *R v Petherick* [2012] EWCA Crim 2214, and *R v Cheeseman* [2020] EWCA Crim 794, the court summarised the proper range of responses of a sentencing court to an offender's pregnancy in these terms:

"*Like any other compelling personal mitigation, the judge might properly reflect an offender's pregnancy by reducing the sentence that would otherwise have been passed, suspending a sentence that would otherwise have been … a sentence of immediate imprisonment, or by both reducing and suspending as for example this court did in Charlton … . Pregnancy will not only provide strong personal mitigation but might also tend to improve the prospect of rehabilitation. Further, immediate imprisonment may often result in a significant harmful impact on the unborn child. Pregnant offenders cannot, however, automatically expect to avoid imprisonment. In particular, some pregnant offenders will present a risk or danger to the public and others will have committed offences so serious that there is no alternative to immediate custody. Such offenders aside, in our judgment proper application of the imposition guideline will often justify the suspension of a short sentence in the case of a pregnant offender.*"

33. *Charlton*, *supra*, is not authority for the proposition that being pregnant will always be an exceptional circumstance. The personal mitigation apart from the pregnancy in that case was considered to be strong; and, we note, it was directly relevant, in the individual circumstances of that case, both to the weight of the societal need to see repetitive domestic burglary properly punished and deterred by the courts, and also to the prospects of rehabilitation. The applicant's pregnancy added the three further elements identified in the judgment, but they created exceptional circumstances only when added to that other, strong mitigation.

Other Personal Mitigation

34. There was strong personal mitigation in this case apart from the various ways, not limited to its particular, much heightened health risks, why this pregnancy made imprisonment an unusually onerous punishment for this appellant.

35. Firstly, the appellant was previously of positive good character, and had been in good, regular employment.

36. Secondly, she had not only pleaded guilty at the first opportunity, but had been entirely cooperative throughout (paragraph 9 above).

37. Thirdly, she was not only still a young adult (the offending possession spanning her 22nd birthday), she was assessed by the writer of her pre-sentence report and by a psychologist, for the original sentencing hearing, as being unusually naïve, presenting as an immature individual who would be extremely vulnerable in custody and for whom therefore the experience of custody would be particularly hard.

38. Fourthly, she presented a low risk of repeat offending and a very strong prospect of rehabilitation. By the time of the appeal hearing, this had been borne out by exemplary behaviour at HMP Bronzefield, with proactive engagement, productive use of her time, and the achievement of trusted roles.

39. Fifthly, the appellant's already very strong prospect of rehabilitation was only further enhanced by her impending motherhood. She has severed all ties with potentially adverse influences, and has every prospect of maturing, rapidly, into a very different person in the interests of giving her newborn the best start in life that she can provide. Whilst for logical reasons, in the context of this judgment, we have focused on what might be described as the dangers and negative consequences of her pregnancy, given that she has been in prison, the appellant has also experienced real joy at being pregnant and has developed a strong, good, healthy bond with her unborn child.

40. Sixthly, although perhaps more of an overarching comment than a particular mitigating factor, we agree with a submission by Ms Woodrow that a conclusion, if reached, that this particular offence did not need to lead to this particular offender facing a lengthy sentence of immediate custody could not sensibly be thought any signal by the courts that the possession of prohibited firearms is not taken as seriously as it should be, or an undermining of the policy of deterrence underlying the minimum sentencing provisions.

Assessment and Conclusions

41. As we have indicated, the Culpability A category ranges in Table 2 of the Guideline may assist in identifying an appropriate sentence where exceptional circumstances are found and the statutory minimum sentence therefore does not apply. However, it is important also to bear in mind that, on its own terms, Table 2 is designed to apply to possession cases that are less serious by nature than those to which Parliament has attached the minimum sentence regime. The guidance in paragraph 14 under Step 3 is only that the sentencing court may find the Table 2 (Culpability A) sentence ranges useful, not that Table 2 becomes applicable. The necessarily bespoke nature of the individual features of a case where exceptional circumstances have been found tends to make such cases unsuited to the now common process of categorisation so as to sentence within a normal sentencing range tabulated in a Guideline.

42. As we noted, above, for an offence in Category 2 for harm, Table 2 with Culpability A gives a sentencing range of 1 to 3 years with a starting point of 2 years; for

Category 1 harm, it gives a sentencing range of 2 to 5 years with a starting point of 3 years.

43. This was a lethal weapon, with no legitimate use outside the armed forces or properly authorised sections of the law enforcement agencies. It was loaded with viable ammunition and so capable of killing (quickly) as many persons as it had live rounds in the magazine. It was held by the appellant for about a fortnight, for most of which period she was aware that it was an illegal firearm and that its unlawfulness was the very reason Reefy wanted it in her possession rather than in his. She held it despite her understanding of the devastating seriousness of gun crime, not least because one of Reefy's friends had been murdered, having been stabbed and shot. There is some force in a submission by Ms Woodrow that the appellant's fault was mostly a failure to extricate herself from a situation, even if her failure to ask what she was being given for safekeeping before taking it cannot be wholly excused by her naïve personality. Nonetheless, the appellant's culpability cannot be said to be minimal.

44. In the absence of a statutory minimum, and prior to considering personal mitigation and any reduction for plea, a commensurate custodial term in this case would have been one of 4 years.

45. There was significant personal mitigation other than the pregnancy; and the pregnancy brought with it the same three considerations the court identified in *Charlton*, plus, in this case, substantial and heightened individual health risks because of the appellant's particular circumstances. That personal mitigation, taken as a whole, would justify in our view a reduction in the custodial term to 3 years, prior to giving credit for plea.

46. It follows that, if not constrained by the statutory minimum, so that the appellant would be entitled to full credit for her plea, an appropriate sentence for this individual case would have been a custodial sentence with a custodial term of 2 years.

47. Similarly to the court's conclusion in *Charlton*, we are satisfied that when the appellant's pregnancy and its specific attendant consequences and risks, for the appellant and her unborn baby, are added to the other personal mitigation available to the appellant, there are exceptional circumstances relating to the appellant and her particular offence that, taken together, render it unjust to impose a custodial term of at least 5 years. The experience of custody was going to be, and has proved, traumatic and dangerous for this appellant beyond any kind of norm. By the date of the appeal hearing, she had in fact served the equivalent of a 14-month sentence, but the weight of punishment that has constituted for her will have been qualitatively equivalent to a much stiffer sentence. There are impeccable prospects of rehabilitation, and the interests of the appellant's unborn child are a weighty factor if, as we have concluded, a sufficient custodial term, unconstrained by the statutory minimum, would be 2 years or shorter.

48. In all those circumstances, and on balance, we concluded that it was in the interests of justice to take the very exceptional course, for an offence of possessing the weapon involved in this case, of suspending the appellant's sentence.

49. Therefore, having granted the necessary extension of time and leave to appeal, and having admitted the evidence of Dr Abbott and the appellant's solicitor for the appeal,

we quashed this sentence of 5 years' imprisonment and we substituted a sentence of 2 years' imprisonment, suspended for 2 years. The statutory surcharge will still apply, in the relevant amount. Having considered the pre-sentence report which was before the Crown Court, we imposed a rehabilitation activity requirement for up to 20 days. We noted earlier in this judgment how we dealt with the concurrent sentence the appellant was given in the court below for possession of the ammunition that was with the weapon.