



SHERIFF APPEAL COURT

**[2016] SAC (Crim) 22
SAC/2016/000191/AP
& SAC/2016/000271/AP**

Sheriff Principal C A L Scott QC
Sheriff K MacIver

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL C A L SCOTT QC

in

APPEALS AGAINST SENTENCE

by

SCOTT LAING

Appellant

against

PROCURATOR FISCAL, KIRKCALDY

and

PROCURATOR FISCAL, DUNDEE

Respondents

**Appellant: Ogg, sol adv; Paterson Bell Solicitors
Respondent: Niven Smith, AD; Crown Agent**

13 July 2016

[1] Dealing firstly with the Kirkcaldy appeal, the thrust of that appeal as we see it concerns a criticism of the sheriff for, in effect, proceeding directly to consideration and imposition of the maximum sentence having regard to the offences before him. Indeed, it is fair to say, that from a reading of the sheriff's report, he provides no explanation as to why it

was that he adopted that approach, not least, as was submitted by Ms Ogg, in the context of an offender who was facing his first custodial sentence.

[2] Whilst it has to be accepted that the offences in the Kirkcaldy case were far from being trivial, even allowing for the appellant's pre-existing criminal record, for our part, we struggle to identify justification for the sheriff's use of his maximum sentencing powers. Accordingly, in the Kirkcaldy case, we are of the opinion that the appropriate starting point when it came to sentencing involved a sentence of 12 months on charges 3 and 5, (that is to say with 2 months attributable to the bail aggravation) and 9 months on charge 2 (with one month for the bail aggravation).

[3] We consider that those disposals would be and, indeed, are commensurate with the nature and degree of the appellant's offending when viewed in light of his previous convictions. Therefore, in effect, that involves the imposition of a sentence of 12 months in total. That would be subject to a one month discount resulting in a sentence of 11 months. Accordingly, we shall quash the sheriff at Kirkcaldy's disposal and replace that disposal with a sentence of 11 months imprisonment.

[4] Now, as far as the Dundee matter is concerned, we observe aside from all else that it is unfortunate that there appears to have been some amendment or alteration to the court's minute from 15 April of this year, but, be that as it may, we have a degree of sympathy with the sheriff at Dundee as regards the manner in which he dealt with the appellant on 15 April. Reflecting upon the circumstances, it might be said that in practical terms the approach and disposal he adopted on that occasion was arguably correct in the particular circumstances as he saw them.

[5] However, the benefit of hindsight indicates that the sheriff's treatment of the community payback order by way of a breach rather than a review appears to have been

flawed. The offences giving rise to the Kirkcaldy appeal were committed in August 2015.

The community payback order which was before the sheriff in Dundee was imposed on 20 January 2016.

[6] Accordingly, we are persuaded that for the sheriff at Dundee to have proceeded on the basis that the appellant had breached the community payback order cannot be justified in the whole circumstances. Therefore, as far as the Dundee appeal is concerned, we shall allow that appeal. We shall quash the sheriff's disposal from 15 April of this year and, for the rest, we shall simply allow the order to continue to enable the appellant to complete, aside from all else, the remaining quarter or thereby of the unpaid work element associated with the completion of the order.