



SHERIFF APPEAL COURT

**[2017] SAC (Crim) 13
SAC/2017/000383/AP**

Sheriff Principal MM Stephen QC
Sheriff AM Cubie

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL M M STEPHEN QC

in

APPEAL AGAINST SENTENCE

by

NATHAN TARBET

Appellant:

against

PROCURATOR FISCAL, LIVINGSTON

Respondent:

**Appellant: Stephenson (sol adv); Paterson Bell
Respondent: Hughes, AD; Crown Agent**

16 August 2017

[1] On 2 June 2017 the appellant was sentenced to a period in detention of 9 months and 15 days following his plea of guilty to charges of assault and theft of alcohol committed whilst on bail. The offences committed on 13 April 2017 took place at the Co-operative at Craigshill Mall in Livingston.

[2] It is clear from the sheriff's report that charge 1 was a nasty unprovoked assault on a security guard who was on duty at the shop whilst the appellant and his co-accused were stealing alcohol from the premises.

[3] In her report the sheriff sets out clearly the circumstances of the offences, the appellant's poor record for a young man and her sentencing options which were limited due to the appellant serving a period of detention for offences on indictment at Edinburgh Sheriff Court for analogous offending. The appellant was on deferred sentence in respect of these indictment matters at the time these offences were committed. The sheriff selected 12 months as the headline sentence with 6 months of that period attributable to the bail aggravation. The sheriff applied some discount for the plea on the date of trial to reflect some utilitarian value even at that stage. The sheriff then deducted 28 days in respect of the appellant's remand between 15 April 2017 and 12 May 2017 when the appellant was sentenced on the indictment matter.

[4] In this and another appeal on today's roll leave has been granted solely on the question of whether the sheriff has taken proper account of the period on remand. The sheriff is required to do so in terms of section 210 of the Criminal Procedure (Scotland) Act 1995.

[5] The appellant argues that as the sheriff could not backdate the period of detention she required to take account of the period on remand by reference to the length of a custodial sentence which would have resulted from the period which he actually spent in custody on remand having regard to the provision for early release in the Prisoners and Criminal Proceedings (Scotland) Act 1993. In other words, the sheriff ought to have made an allowance of double the period on remand. Instead the sheriff took account of the period of remand and reduced the discounted sentence by 28 days only.

[6] Section 210(1) of the 1995 Act requires the court to have regard to any period of time spent in custody on remand. In *Robertson v Procurator Fiscal Stirling* [2015] SAC (Crim) 1 this court considered section 210 concluding that the provision lays down no rigid rule and the sentence should be considered as a whole. Nevertheless, when backdating is not possible, sheriffs must have regard to any period spent on remand and this means taking account of the release provisions of section 1(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (which provides for automatic remission of one half of any short term sentence served) and to the opinion of the High Court of Justiciary in *Martin v HMA* 2007 JC 70.

Lord Kingarth, giving the opinion of the court, said the following:

“[8] Although... a period on remand is different from a period spent in custody following sentence, the important point is that in both cases the prisoner is deprived of his or her liberty. And deprivation of liberty on remand is, in the ordinary case, for the same period as it would be if the prisoner had been sentenced to twice that period (given the provisions of sec 1(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (cap 9)). In these circumstances, while we would not wish to be taken as suggesting any absolute rule (and certainly none is suggested by sec 210(1)(a) of the 1995 Act), or that too fine a mathematical approach would be appropriate, we consider that normally a period spent on remand in circumstances like the present should, absent any specific reason or reasons for not doing so, be recognised by deduction, from the sentence which otherwise would be imposed, not just of the period itself but of the length of sentence which would result in that period being served in custody.”

[7] There is no specific reason or reasons for departing from the normal approach desiderated by Lord Kingarth in this case, whereby the appellant is entitled to credit for a period twice as long as the time spent on remand. Indeed the sheriff recognises that she may have erred by giving insufficient credit for the period on remand. In all the circumstances we propose to quash the sentence of 9 months and 15 days detention and in place impose a sentence of eight months and seventeen days detention having regard to the requirements of section 210.