

**In the Court of Appeal of St Helena**

**Citation: SHCA 2/2023**

**Criminal**

**In the matter of an appeal against sentence**

**Appellant**

**ZP**

**Judgment on appeal against sentence**

**Heard on 14<sup>th</sup> August 2023**

**Before: Sir John Saunders, President and HHJ L Drummond, Member**

1. This is an appeal against a sentence imposed on 24<sup>th</sup> March 2023 in the Supreme Court of St Helena.
2. The Appellant, ZP, was sentenced to 14 months imprisonment for an offence of neglect of her daughter. The period covered by the indictment was 20<sup>th</sup> January 2020 to 31<sup>st</sup> May 2022. In addition the Appellant was in breach of a suspended sentence of 2 years for 4 offences of handling stolen goods. The suspended sentence was brought into effect consecutively so that the whole sentence was 3 years 2 months. The suspended sentence was imposed on 21<sup>st</sup> January 2022.
3. The appeal is limited to the activation of the whole of the suspended sentence consecutively to the 14 months for the offence of neglect. While there is no appeal against the sentence for neglect, the facts of the offence are significant to our decision.
4. There is no doubt that the offence of neglect was extremely serious. The Appellant knew that her daughter who was under the age of 13 was being sexually abused by a number of men of her acquaintance. One of the abusers was the Appellant's partner who the Appellant had been told by her daughter had raped her. The men who were responsible for the abuse are now serving long sentences for serious offences against the daughter.
5. The Appellant took no steps to prevent this happening and nothing to support her daughter through this ordeal. She did not report the matter

to the authorities which she clearly should have done and she took no steps to prevent it happening. In effect she did nothing that you would expect a mother to do to prevent her child suffering from this very serious abuse. When the police did become involved she denied that anything was happening. She was more intent on maintaining her relationship than she was with helping her child.

6. As the Judge said this child will undoubtedly have suffered psychologically by what happened to her and she has had to leave not only her home but the island where she grew up.
7. In contrast to the long sentences imposed on the men involved, in the Appellant's case the maximum sentence that the judge could impose for this serious offence was 2 years. The Judge considered that the maximum sentence for this offence was too short compared with what was the maximum currently in England and Wales and did not adequately reflect the severity of the Appellant's conduct. He was fully entitled to take that view. The Appellant pleaded guilty at the first opportunity and was, as is normal, given a one third discount on the length of sentence she would receive. The Judge took a starting point of 21 months and reduced it to 14. The Judge considered the offence merited a longer sentence than he was able to give. In those circumstances he could have taken, in our view, the maximum sentence as a starting point even though the convention is that the sentencer will always allow some headroom to allow for an even more serious offence being committed. Here, where the maximum sentence was short compared with other offences of abuse of children, that convention in our view need not have been followed.
8. What makes the facts of this offence unusual and gives rise to the grounds of appeal are the facts and timing of the offences which constituted breaches of the suspended sentence.
9. During the course of conduct covered by the dates on the indictment for the offence of child neglect, the Appellant was sentenced on 21<sup>st</sup> January 2022 to 2 years' imprisonment for 4 offences of handling stolen goods. They were serious offences in that the handling was closely connected to the burglary. Ironically the reason why the Judge decided to suspend the sentence in the Appellant's case was the child care responsibilities that she had. The recommendation in the pre-sentence

report was for a suspended sentence in part because that would allow the family to stay together.

10. Despite the imposition of the suspended sentence for the burglaries the Appellant continued to neglect her child who was subject to further abuse after January 2022 when the suspended sentence was imposed. The Appellant found her daughter with one man and her daughter reported to her abuse by another. The Appellant took no action to prevent it happening and did nothing to support her daughter as a result of it. Even after her arrest she took no steps to report the matter despite being given opportunities to do so.
11. It is not disputed that the Appellant was in breach of the suspended sentence. The issue is whether the Judge should have activated it at all or in full. The Judge was bound to bring the suspended sentences into effect consecutively unless it would be unjust to do so.
12. There are 3 reasons why the Appellant says that it was unjust to activate the suspended sentence consecutively either at all or in full.
  - i. The nature of the offence which amounted to the breach was very different from the offence for which she was given the suspended sentence.
  - ii. She was only in breach of the sentence for a small part of the suspended sentence's duration.
  - iii. She was unfairly treated as compared with her co-defendants who were convicted of burglary of the goods which she was convicting of handling and offences of child abuse. This is because they are serving those sentences concurrently although it is correct to say that the sentences they are serving are individually longer.
13. It seems to us that the only one of these arguments which has any significant merit is that the nature of the offence for which the suspended sentence was imposed was entirely different to the offence which constituted the breach.
14. Handling stolen goods is an offence of dishonesty whereas child neglect comes into an entirely different category of offending. Additionally, we do think it is relevant that unusually the offending which constituted the breach was on going at the time the suspended sentence was imposed. The steps which the Appellant should have taken was to report the abuse to the police to ensure that it would stop. That would inevitably

have brought to light the offending which preceded the imposition of the suspended sentence.

15. As we have said we do think this ground of appeal has some merit.

16. In relation to the period of the suspended sentence which has elapsed without any offending taking place, this normally relates to the period after the imposition of a suspended sentence before the further offending takes place. As we have already indicated the Appellant's offending continued shortly after the imposition of the sentence. We do not think that the imposition of the suspended sentence in full would be rendered unjust because of the period of suspension during which there was no offending. The Appellant continued to offend from the very start of the suspended sentence until some considerable time thereafter and after her child reported it to police.

17. We have considered the further argument that to activate the suspended sentence in full consecutively would be unfair because the Appellant would not be treated in the same way as her co-defendants who, because of the way their sentences were structured, will serve part of the sentences for offences against the child concurrently with the sentences they are already serving for burglary. While we agree that that is the effect, we do not think it is unfair on the Appellant as both are being treated in a manner consistent with principle. The sentences imposed on the co-defendants for the offences against the child were very long ones in comparison to the sentence for neglect imposed on the Appellant. The nature of a suspended sentence is that it can be activated if the Appellant commits a further offence during the period of suspension. Her co-defendants did not receive suspended sentences.

18. Having considered all the matters put forward by the Appellant we have concluded that it is appropriate to make some reduction in the length of the suspended sentence to be served consecutively to the sentence for child neglect. While we accept that the sentence for child neglect had to be shorter than might be considered a proper sentence because of the statutory limitation that is not a factor which we can or should take into account in deciding whether it is fair to reduce the length of the suspended sentence.

19. We do consider that some reduction should be made to reflect the fact that the nature of the offence which constituted the breach was of an entirely different nature to the offence for which the suspended

sentence was imposed. We have also taken into account the fact that the offence which constituted the breach was a continuing offence which was going on when the suspended sentence was imposed.

20. Accordingly we allow this appeal to the extent that we reduce the length of the suspended sentence to 12 months which should be served consecutively to the sentence of 14 months imprisonment imposed for the offence of child neglect.