



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2017] HCJAC 81
HCA/2017-000513/XC

Lady Paton
Lord Turnbull

OPINION OF THE COURT

delivered by LORD TURNBULL

in

APPEAL AGAINST SENTENCE

by

GORDON LOUGHLIN

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: A Ogg, Sol Adv; Paterson Bell Solicitors for McClure Collins Glasgow
Respondent: Harper, Sol Adv, AD; Crown Agent

31 October 2017

Introduction

[1] At the hearing of this appeal against sentence on 31 October 2017 we sustained the appeal and quashed the supervised release order imposed by the sheriff. We indicated that we would give our reasons in writing later and we now do so.

[2] On 19 July 2017, at the Sheriff Court in Glasgow, the appellant pled guilty, utilising the procedure provided for by section 76 of the Criminal Procedure (Scotland) Act 1995, to six charges on the indictment which he faced. The charges arose out of two separate incidents. The first charge concerned the theft of a motor vehicle on the morning of 21 May 2016. CCTV footage showed the appellant in the process of stealing the vehicle but attempts made to trace him were unsuccessful. The vehicle was not recovered and had a value of £11,100.

[3] Charges 2, 3, 4, 5 and 6 concerned the appellant's reset of an Audi A5 motor vehicle on 17 April 2017, his failing to stop the motor vehicle in various roads in Rutherglen when required to do so by a police officer, driving the vehicle dangerously in various roads in Rutherglen in an effort to avoid apprehension by the police, driving whilst disqualified and driving without a valid policy of insurance. Each of these charges was committed whilst on two separate bail orders. The appellant has a lengthy record of previous convictions stretching back to 1997.

Sentence

[4] Having heard the Crown narration, and submissions on behalf of the appellant, the sheriff adjourned the diet and called for a Criminal Justice Social Work Report specifically to address the issue of whether a period of post custody supervision was justified.

[5] At that adjourned diet the sheriff admonished the appellant on charges 3 and 6 and imposed sentences of imprisonment in respect of the remaining charges totalling 2 years and 4 months, which he then reduced by a period of 2 months to take account of the time spent by the accused on remand to 2 years and 2 months. Had it not been for the early plea of guilty the sheriff would have imposed a sentence of 3 years and 6 months' imprisonment.

[6] In addition to the sentences of imprisonment, the sheriff disqualified the appellant from driving and made a supervised release order in terms of section 209 of the Criminal Procedure (Scotland) Act 1995 for a period of 12 months. He ordered that the sentence of imprisonment which he imposed was to commence upon expiry of all other periods of imprisonment which the appellant was already subject to.

The Appeal

[7] The appellant was granted leave to appeal on a ground which challenged the competence of imposing a supervised release order. As Ms Ogg identified, a Supervised Release Order is an order made in terms of section 209 of the 1995 Act, the effect of which is, that during the “relevant period”, the offender will be under the supervision of a relevant officer of the local authority and be subject to such requirements as may be imposed by the court, or as specified by that officer, for securing the good conduct of the offender or lessening the possibility of his committing a further offence.

[8] In advancing her argument, Ms Ogg drew attention to the fact that by the date of the sentencing hearing in the present case the appellant was serving a term of imprisonment of 35 months and 9 days, as an accumulation of other sentences passed on him and ordered to run consecutively.

[9] Section 27(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 provides:

“For the purpose of any reference, however expressed, in this Part of this Act to the term of imprisonment or other detention to which a person has been sentenced or which, or any part of which, he has served, consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term if –

- (a) the sentences were passed at the same time; or

- (b) where the sentences were passed at different times, the person has not been released under this Part of this Act at any time during the period beginning with the passing of the first sentence and ending with the passing of the last.”

[10] As a consequence of this subsection it was submitted that, after the imposition of the present sentence, the appellant fell to be treated as an individual who was serving a single term of 5 years, 1 month and 9 days. That single term exceeded a period of 4 years and the appellant fell to be considered a long-term prisoner within the meaning of Part 1 of the 1993 Act.

[11] Ms Ogg then drew attention to the provisions of section 209 (4)(c) and 209 (7) of the 1995 Act, which provide as follows:

“(4) A supervised release order –

- (c) shall have no effect during any period in which the person is subject to licence under Part I of the said Act of 1993.”

“(7) In this section –

‘relevant period’ means such period as may be specified in the supervised release order, being a period –

- (a) not exceeding 12 months after the date of the person's release; and
 (b) no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed;”

[12] As a long-term prisoner, the appellant would be eligible to apply to the Parole Board for Scotland for release on parole licence after serving one half of his sentence. If he was unsuccessful in doing so he would be entitled to be released on licence as soon as he had only 6 months of his sentence left to serve. If the appellant were to be released in either of these circumstances the relevant licence would last until the end of the whole period of the single term sentence. Section 209(4)(c) of the 1995 Act would prevent a supervised release order having effect during either period of licence, and section 209(7) would prevent a

supervised release order having any effect after the expiry of either licence period. In these circumstances Ms Ogg submitted that the sheriff had acted incompetently in imposing the supervised release order.

[13] In his report to this court the sentencing sheriff acknowledged that the provisions of section 27(5) of the 1993 Act had the effect that the appellant fell to be viewed as a prisoner serving a single term of imprisonment in excess of 4 years. He considered that there was no qualification in section 209 of the 1995 Act which prohibited the court from making a supervised release order if an offender about to be sentenced was already serving a sentence, and the effect of any sentence imposed would result in that offender serving a single term of imprisonment of 4 years or more. The sheriff considered that if the appellant was released subject to a licence period of 6 months, then the supervised release order which he imposed, being for a period of 12 months, would take effect on the expiry of that licence period. The sheriff did not mention the provisions of section 209(7)(b) in his report.

Crown Submissions

[14] Since the Crown had been put on notice as to the issue raised in this appeal we invited the advocate depute to inform us of the Crown's view on the competence of the sentence imposed. The advocate depute acknowledged that the appellant fell to be viewed as a long term prisoner in the circumstances identified. Initially, she appeared to support the sheriff's interpretation of section 209 of the 1995 Act. She submitted that the net effect would be that section 209 subsection 4(c) would apply on the appellant's release on licence as a long-term prisoner, but that the remaining 6 months of the supervised release order would be available on the expiry of this licence.

[15] As we understood her though, she came to concede that the submissions on behalf of the appellant were correct.

Discussion

[16] The Criminal Justice Social Work Report provided to the sheriff in the present case noted that the previous custodial sentences served by the appellant had done little to deter him from further offending. In light of the request to address the issue of post custody supervision, the author of the report identified the appellant as being a suitable candidate for a Supervised Release Order. Unfortunately, the sheriff seems to have overlooked the terms of section 209(7)(b) of the 1995 Act which provide that the relevant period for which a supervised release order may be imposed is defined as being a period:

“no part of which is later than the date by which the entire term of imprisonment specified in his sentence has elapsed.”

[17] Since the entire term of imprisonment imposed on the appellant would elapse at the end of any licence period to which he might be subject, it cannot be the case that a supervised release order could commence at that point.

[18] In our opinion, the submissions made by Ms Ogg were well founded and we therefore agreed that the imposition of a supervised release order was incompetent in the appellant's case.