



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2018] HCJAC 33
HCA/2018/000174/XC

Lord Menzies
Lord Glennie

OPINION OF THE COURT

delivered by LORD MENZIES

in

APPEAL AGAINST SENTENCE

by

CAMERON JACKSON

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: A Ogg, (sol adv); Gilfedder & McInnes
Respondent: M Hughes AD; Crown Agent

29 May 2018

[1] The appellant Cameron Jackson was sentenced at Hamilton Sheriff Court on 27 March 2018 of a contravention of section 2 of the Sexual Offences (Scotland) Act 2009, an offence involving digital penetration of the vagina of a young woman whilst she was asleep. He was sentenced by the sheriff to imprisonment for 2 years, that being discounted from a

starting point of 30 months to reflect the fact that he had tendered a plea of guilty at the first diet.

[2] It was stated to us on behalf of the appellant today that the appellant was intoxicated whilst this offence was committed although it was of course acknowledged that that is no defence to the matter, nor any excuse. It was put to us that the offence was out of character and, as was clear from the papers, that the appellant had been friendly with the complainer before this unplanned incident. The appellant had not received any custodial disposal before and therefore was entitled to the protection provided by the 1995 Act.

[3] It was accepted that this offence represented a gross breach of trust but it was pointed out to us that immediately after the offence and since then the appellant has expressed remorse and has apologised for his actions.

[4] The appellant is aged 21 and we are told that he has had a good work record and the job that he formerly held is still being kept available for him by his employer. It was submitted that the criminal justice social work report was relatively positive, that the appellant drank alcohol rarely and accordingly was more affected by it than he had expected, and that in all the circumstances this was not a case in which there was no other appropriate sentence than a custodial sentence. Ms Ogg's primary submission was that the sheriff erred in imposing a custodial sentence, and her secondary position was that in any event the period of 2 years imprisonment which the sheriff selected was excessive.

[5] We have considered all of the mitigatory features relied on by Ms Ogg but we remain of the view that this was a gross breach of trust by the appellant and despite his position of remorse and apology and his apparent empathy with the victim, it cannot be categorised as an error on the part of the sheriff that only a custodial sentence was appropriate. However, we are persuaded that the starting point of 30 months selected by the sheriff having regard

to all of the factors to which we have referred was excessive and accordingly we shall quash the sentence of imprisonment imposed by the sheriff and substitute a sentence of 18 months imprisonment, that being discounted from a starting point of 24 months to reflect the early plea of guilty. The other aspects of the sheriff's sentence will remain so that there will continue to be the notification requirement under the Sexual Offences Act and the non harassment order which the sheriff imposed will also be maintained.