



SHERIFF APPEAL COURT

**[2018] SAC (Crim) 4
SAC/2017/000340/AP**

Sheriff Principal C D Turnbull
Sheriff N A Ross

OPINION OF THE COURT

delivered by

SHERIFF PRINCIPAL C D TURNBULL

in

APPEAL AGAINST SENTENCE

by

LAURA ADAMSON

Appellant

against

PROCURATOR FISCAL, KILMARNOCK

Respondent

**Appellant: Ogg, solicitor advocate; Paterson Bell for McCluskey Browne, Kilmarnock
Respondent: D Small AD; Crown Agent**

16 March 2018

[1] This appeal concerns a Staffordshire bull terrier dog, named Floyd. On 28 February 2017 the appellant pled guilty at a diet of trial to a contravention of s.3(1) of the Dangerous Dogs Act 1991, as amended (“the 1991 Act”).

[2] Having heard the concerning circumstances that gave rise to the offence, the sheriff indicated that she was considering making a destruction order in terms of s.4 of the 1991 Act and ordered the preparation of a criminal justice social work report. After an adjournment due to the non-availability of said report, the case ultimately called before the sheriff on 5 May 2017 when the report was available. Having carefully considered the totality of the circumstances, the sheriff decided to order the destruction of Floyd, one of the two dogs that the appellant admitted had been dangerously out of control.

[3] The appellant's note of appeal contends that the order for destruction was excessive having regard to the appellant's character and the temperament of Floyd prior to and after the date of the offence.

[4] The offence to which the appellant pled guilty is an aggravated one in terms of s.3(1) of the 1991 Act. The applicable principles in relation to cases of this type have today been set out by this court in *Feldwick v PF Edinburgh*. In such cases, by virtue of the terms of s. 4(1)(a) of the 1991 Act, unless the terms of s. 4(1A) are satisfied, or the making of a contingent destruction order in terms of s. 4A(4) is appropriate, the court is obliged to order the immediate destruction of the dog in question.

[5] To engage s. 4(1A) the court requires to be satisfied that the dog would not constitute a danger to public safety. By virtue of the terms of s. 4(1B) of the 1991 Act, when deciding whether a dog would constitute a danger to public safety, the court must consider the temperament of the dog and its past behaviour, and whether the owner of the dog, or the person for the time being in charge of it, is a fit and proper person to be in charge of the dog. The court may also consider any other relevant circumstances.

[6] The sheriff had regard to all the information before her, including a criminal justice social work report. She also considered whether or not a contingent destruction order in

terms of s. 4A(4) of the 1991 Act might suffice. She concluded that that was not an appropriate disposal. As she states in her report, the sheriff formed the view that she could not be certain that the dog in question did not constitute a danger to public safety.

[7] As is explained in *Feldwick v PF Edinburgh*, the court must consider, before ordering immediate destruction, whether to exercise the power under s. 4A(4) of the 1991 Act to make a contingent destruction order that is, unless the owner of the dog keeps it under proper control, the dog shall be destroyed (see also *R v Davies* [2010] EWCA Crim 1923 at para 14). The making of a contingent destruction order does not require the court to be satisfied that the dog would not constitute a danger to public safety. To that extent, the sheriff erred.

[8] Looking at the whole circumstances of this case, the prior good behaviour of both the appellant and Floyd and the steps taken by the appellant subsequent to the incident which gave rise to the prosecution, we are satisfied that the appropriate disposal in this case is the imposition of a contingent destruction order.

[9] We shall allow the appeal, quash the order for destruction and impose a contingent destruction order in terms of s. 4A(4) of the 1991 Act. That order will provide that, unless the appellant keeps Floyd under proper control, Floyd will be destroyed. The order will be subject to the following conditions: (1) Floyd shall be muzzled at all times when in public places; and (2) Floyd must be kept on a lead at all times when in public.