APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 44
HCA/2025/000124/XC

Lord Doherty
Lord Armstrong
Lord Clark

OPINION OF THE COURT

delivered by LORD DOHERTY

in

Appeal in terms of section 19 of the Prisoners and Criminal Proceedings (Scotland) Act 1993

by

RYAN SHIELDS

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: W Culross; Faculty Services Ltd (McAfee's Solicitors, Coatbridge)
Respondent: Harper KC, sol adv AD; the Crown Agent

14 August 2025

Introduction

[1] The appellant appeals against findings of breach of the conditions of a supervised release order and the sentence of 9 months' imprisonment which was imposed for the breach. At the conclusion of the appeal hearing on 14 August 2025 we quashed the findings

of breach and the sentence passed for it. We indicated that we would provide written reasons. We now do so.

Imposition of the supervised release order and its terms

[2] The appellant was indicted to a first diet at Hamilton Sheriff Court on 18 October 2024. On that date, he pled guilty to a charge of behaving in a threatening and abusive manner contrary to section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and to a further charge of assault to injury. The complainer in both charges was the appellant's partner, X, and both charges were aggravated in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. On 15 November 2024 the appellant was sentenced to 22 months' imprisonment to be followed by a supervised release order of 9 months' duration. The sentence was backdated to 5 February 2024 when he was first remanded in custody.

[3] Condition 1 of the supervised release order obliged the appellant to report to his supervising officer at intervals and in the manner specified by him or her. Condition 9 obliged the appellant to comply with any written instructions from his supervising officer.

[4] On 30 December 2024, 4 days before his release from prison, the appellant's supervising officer met with him and advised him of three written instructions made in terms of Condition 9, *viz*:

9 (i) He was to have no contact with the complainer X and 3 other persons;

9 (ii) He was not to enter Motherwell without prior approval from his supervising officer;

9 (iii) He was to reside only at accommodation approved by his supervising officer; a property having been identified for him in Kilsyth.

At that meeting the appellant made it clear that he considered conditions 9(ii) and 9(iii) to be unreasonable and that he did not propose to comply with them. He explained that his family lived in Motherwell and that he had the tenancy of a house there. He would be isolated were he forced to live where he had no family or friends. In April 2020 he had been acquitted of a charge of murder, having advanced a defence of self-defence. Extended family of the deceased lived in Kilsyth and he believed that it would be unsafe for him to live there. He was instructed at the same meeting that on the day of his release he would be collected from prison at 11am by his supervising officer. He was told either at that meeting or on 3 January 2025 that if he failed to comply with the conditions he would be in immediate breach of them on his release and that a breach report would be submitted.

[5] On 3 January 2025 the appellant was collected from prison by family members. He did not wait to be collected by his supervising officer. However, he attended a meeting with his supervising officer later that day. He reiterated his views about conditions 9(ii) and 9(iii) and indicated that he intended to reside at the house where he had a tenancy. He was asked to attend at the Housing Department later that day with a view to being provided with accommodation in Kilsyth. He did not attend at the Housing Department.

The breach reports

[6] A breach report was prepared on 3 January 2025. It indicated that the appellant was assessed as being in breach of Condition 1 and of the requirement "that he should only reside in accommodation approved by his supervising officer". There was no specific reference to breach of Conditions 9(ii) or 9(iii).

[7] On 15 January 2025 the appellant attended a meeting with his supervising officer. He handed over his phone for inspection. Examination of it suggested to his supervising

officer that on 13 January 2025 the appellant had made 15 attempts to contact X, in violation of Condition 9(i). The appellant denied attempting to make such calls. An addendum breach report narrated that alleged breach.

Proceedings in the sheriff court

[8] A hearing in relation to the alleged breaches was appointed to take place on 4 March 2025. When the case first called the appellant was represented by a solicitor, who indicated that the alleged breaches were denied. The case was put to the end of the roll. When the case called again, the appellant was unrepresented, his solicitor having withdrawn from acting.

[9] The sheriff who presided over the hearing on 4 March has prepared a report and a supplementary report. He informed the appellant that the hearing would be proceeding that day. He asked the appellant whether he wished to obtain the services of another solicitor or whether he was content to represent himself. He reports that the appellant was content to represent himself. The appellant indicated to the sheriff that he denied the breaches. However, the sheriff proceeded to have what he describes as "a discussion" with the appellant, going through the reports in detail with him:

> "I took the appellant through the terms of the breach report. The appellant did not challenge any factual assertion in the breach report. Following that discussion the appellant admitted that on 30 December 2024 he breached the SRO, specifically that he had refused to accept the written directions under condition 9; namely written directions [9 (ii)] and [9 (iii)]…
>
> The appellant accepted that he had refused to accept the written directions and conceded that he was in breach of the SRO from that point onwards …"

The sheriff was advised by the appellant of the reasons for his apprehension about living in Kilsyth. The sheriff reported that the appellant continued to deny attempting to contact X, but the sheriff "rejected" that denial:

> "I concluded that the appellant had made attempts to contact [X] and that he was in breach of the SRO as submitted in the addendum. I considered and accepted the terms of the addendum report and rejected the denial of the appellant. The factual averments in the breach report were cogent and consistent. Some were accepted by the appellant. His denial of others was inconsistent and incredible. He changed his position and provided flippant and speculative answers to credible and consistent averments."

The sheriff found that the appellant was in breach of the conditions of the SRO. He remanded the appellant in custody and continued the application to be dealt with by the sheriff who had imposed the SRO. On 7 March 2025 that sheriff sentenced the appellant to 9 months' imprisonment in respect of the breach, and ordered that the sentence would commence on that date.

The appeal

[10] The appellant appeals the findings of breach and the sentence. When the appeal was lodged the appellant was serving the sentence. Shortly before the appeal hearing he was released from prison after having served half of the sentence. In terms of section 18(4) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, his release was unconditional.

[11] On the appellant's behalf counsel submitted that the procedure adopted at the hearing was unprecedented, irregular, and fundamentally unfair. The purpose of the hearing was to establish whether the alleged breaches were admitted and, if they were not, for a proof to be held to ascertain whether the breaches were established (Prisoners and Criminal Proceedings (Scotland) Act 1993, section 18). The appellant indicated clearly that he did not admit the alleged breaches. He had also made it tolerably clear that his position

was that Conditions 9(ii) and 9(iii) were unreasonable. Instead of duly recording those matters and having a proof with evidence being adduced on the disputed issues, the sheriff had quizzed the appellant on the contents of the breach reports and proceeded to find that the breaches were established. In the whole circumstances the findings of breach and the sentence of 9 months' imprisonment should be quashed.

[12] The advocate depute accepted that the findings of breach and the sentence should be quashed. The procedure which the sheriff had followed had been irregular and fundamentally unfair. He ought to have heard evidence in relation to the disputed matters. Moreover, there were cogent arguments that Conditions 9(ii) and 9(iii) had indeed been unreasonable in the circumstances.

Decision and reasons

[13] Section 18 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 provides:

> "**18 Breach of supervised release order.**
>
> (1) Where the court which imposed a supervised release order on a person is informed, by statement on oath by an appropriate officer, that the person has failed to comply with a requirement specified in or by virtue of that order, the court may—
>
> (a) issue a warrant for the arrest of the person; or
>
> (b) issue a citation requiring the person to appear before the court at such time as may be specified in the citation.
>
> …
>
> (2) If it is proved to the satisfaction of the court before which a person is brought, or appears, in pursuance of a warrant or citation issued under subsection (1) above that there has been such failure as is mentioned in that subsection, the court may—
>
> (c) order him to be returned to prison for the whole or any part of the period which—
>
> (i) begins with the date of the order for his return; and
>
> (ii) is equal in length to the period between the date of the first proven failure referred to in the statement mentioned in subsection (1)

above and the date on which supervision under the supervised release order would have ceased; or

(b) do anything in respect of the supervised release order that might have been done under section 15(4) of this Act on an application under that subsection in relation to that order.

(3) For the purposes of subsection (2) above, evidence of one witness shall be sufficient evidence.

(4) As soon as the period for which a person is ordered under subsection (2) above to be returned to prison expires, the Secretary of State shall release him unconditionally.

…"

It is clear from the terms of section 18 that if an accused denies a breach the proper procedure is for there to be a proof on the disputed matters, with evidence led by the Crown and the defence (if they so elect).

[14] The Justice Social Work Report relating to the appellant discloses that as a child he had additional educational and behavioural needs and that he attended schools for children with such needs. He left school at the age of 15 with no qualifications. Nevertheless, from the age of about 19 he has had a steady work history. He informed the report's author that he has dyslexia and attention deficit hyperactivity disorder. In fairness to the sheriff who presided on 4 March 2025, he is unlikely to have been aware of the appellant's educational background and difficulties.

[15] In some cases, where an unrepresented accused's position as to an alleged breach is unclear, it may be appropriate to give him the opportunity to clarify matters. However, in such circumstances great care is required that the accused understands the purpose and significance of any questions he is asked; and that, once he has indicated denial of the breach, he is not required to answer further questions in relation to that unless, in the course of a proof, he elects to give evidence.

[16] The sheriff may have been motivated by a desire to deal with the case efficiently. Unfortunately, while progress was swift, there was procedural impropriety and unfairness. The sheriff's questioning of the appellant went far beyond the proper bounds of careful enquiry to clarify whether the alleged breaches were denied. Our clear impression is that the nature of the "discussion" was too intrusive, insistent, and interrogatory. Moreover, the sheriff went so far as to purport to reject the appellant's clearly stated denial of attempting to contact X in breach of Condition 9(i). That was wholly inappropriate. Like the other disputed matters, it was a matter which could only be determined by hearing evidence.

[17] For these reasons we allowed the appeal and quashed the findings of breach and the sentence of 9 months' imprisonment. Since the appellant has in fact served that sentence, there should be no further proceedings in relation to the breaches alleged in the breach reports.