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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 28/4/2017

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

—
THE QUEEN

-v-

SILVANNA ALEXANDER

—
Before: Morgan LCJ, Deeny J and Maguire J

—
MORGAN LCJ (giving the judgment of the court)

[1] This is an appeal against a determinate custodial sentence of 2 years comprising 12 months in custody and 12 month on licence for a total of 11 counts of breaching an Anti-social Behaviour Order ("ASBO") by making nuisance telephone calls to the emergency services. Mr Coiley appeared for the appellant and Ms Auret for the PPS. We are grateful to both counsel for their helpful submissions.

Background

[2] The appellant has 53 previous convictions many of them alcohol-related, including 6 convictions for assault on police. In October 2011 she was sentenced for three counts of improper use of the electronic communications network causing anxiety, one count of improper use of the public electronic communications network and one count of wasting police time by making a false report concerning a person's safety. On each count she was sentenced to 3 months imprisonment suspended for 18 months. This was the beginning of a pattern in which the appellant made emergency calls to police and ambulance services while intoxicated when there was no emergency. These offences were committed on various dates in 2010.

[3] In July 2012 the applicant was given a suspended sentence of 5 months imprisonment suspended for 2 years for the offences of threats to damage property and to endanger life and improper use of a public communications network in February 2012. In September 2015 the applicant was sentenced to 5 months imprisonment suspended for 2 years on each of five counts of improper use of a

public communications network, one count of persistent improper use of electronic communications to cause anxiety and one count of resisting police, all committed in December 2013.

[4] In light of this offending on 28 July 2014 Lisburn Magistrates' Court ordered the applicant be subject to an ASBO pursuant to Article 6 of the Anti-Social Behaviour (NI) Order 2004. By virtue of this ASBO the applicant was:

- "1. Prohibited from causing harassment, alarm or distress, or behaving in any way that is likely to cause harassment, alarm or distress to any person or acting in any anti-social manner. In particular prohibited from using words, behaviour or gestures that are rude, offensive, indecent or obscene to any person and prohibited from causing harm in a manner that would be construed as threatening or intimidating.
2. Prohibited from contacting any police officer or police station unless in the case of an emergency or for a genuine reason.
3. Prohibited from contacting the Northern Ireland Ambulance Service unless in the case of an emergency or for a genuine reason.
4. Prohibited from being under the influence of alcohol at any time in any public place."

The ASBO was granted for 2 years and was due to expire on 28 July 2016.

[5] In September 2015 the applicant was sentenced to 2 years' probation for breaching an ASBO in October 2014. The probation order was subsequently revoked in July 2016 following the applicant's breach of the order and replaced with a sentence of 9 months imprisonment. In August 2016 the applicant was sentenced to 5 months imprisonment on each of four counts of breaching of her ASBO, assault on police, resisting police and disorderly behaviour in December 2015 and a further breach of the ASBO in June 2016 after the offences in Bills 1 and 2 below. The suspended sentences imposed in September 2015 were activated although all of the sentences were concurrent and were served concurrently with the sentence for breach of the probation order.

[6] On 11 August 2016 the applicant was returned for trial in the Crown Court ('Bill 1') on 11 counts that on specified dates between 14 October 2015 and 18 January 2016 she had made phone calls to police when there was no emergency or genuine reason to do so thereby breaching her ASBO. A further twelfth count charged her

with using words, behaviour or gestures that were rude, offensive, indecent or obscene to two police officers also in contravention of her ASBO.

[7] The applicant was arraigned on 20 September 2016 and pleaded guilty to 8 of the telephone calls, not guilty to 3 of the telephone calls and did not enter a plea in relation to the abusive behaviour. She was re-arraigned on 30 September 2016 on which date she pleaded guilty to two of the telephone calls; the counts relating to the remaining telephone call and the abusive behaviour were ordered to be left on the books not to be proceeded with without the leave of the Court.

[8] On 15 September 2016 the applicant was again returned for trial in the Crown Court ('Bill 2') for a further count of breaching her ASBO by making a similar telephone call on 19 December 2015 (during the period of the offending in Bill 1). The applicant was arraigned on this count on 20 October 2016 and pleaded guilty.

[9] On 13 December 2016 HHJ McColgan QC sentenced the applicant on Bill 1:

- (a) to a determinate custodial sentence of 12 months (comprising 6 months custodial period and 6 months licence period) on counts 1 to 6, to run concurrent with each other. These offences referred to specific dates between 15 October 2015 and 12 November 2015 inclusive;
- (b) a further determinate custodial sentence of 12 months (comprising 6 months custodial period and 6 months licence period) on counts 6 to 10, to run concurrent with each other but consecutive to counts 1-6. These offences occurred on specific dates between 21 November 2015 and 18 January 2016; and
- (c) a further 3 months imprisonment in relation to the count for which the applicant was returned for trial on Bill 2 on 15 September 2016, to run consecutively to counts 1-6. As stated this offence occurred on the 19 December 2015, during the period covered by Bill 1. It would appear, however, that on 15 December 2016 the Court rescinded this consecutive sentence and replaced it with a sentence of 3 months imprisonment to run concurrently given the applicant's plea of guilty.

Pre-sentence and medical reports

[10] The appellant had a traumatic upbringing, being subject to neglect and abuse, and lived in various care homes. She engaged in substance abuse in order to cope with her underlying feelings of isolation, sadness, anxiety, anger and hopelessness. She was described as being a vulnerable person with her traumatic upbringing and alcoholism having a detrimental impact on her mental health and emotional wellbeing. She had previously been diagnosed with a personality disorder and

claimed she had previously attempted suicide. She walks with the aid of a frame due to osteoporosis.

[11] Her offending behaviour has mainly been in the context of alcohol misuse; she was linked to community addiction services as part of a probation order in 2006 but this was ineffective due to poor attendance. She had further dealings with the probation and community addiction, both on a voluntary basis, in 2011 and 2014 but, again, this proved ineffective due to poor attendance. The appellant, however, does not currently accept that she has an alcohol problem.

[12] She denied making the calls in her interview with probation claiming that she was being harassed by police who were calling to her house without her calling them. The author concluded that the appellant's actions appeared motivated by impulsive behaviour triggered by alcohol misuse, poor stress management skills, mental ill health, lack of self-control, lack of consequential thinking and an element of attention seeking. She posed a high likelihood of reoffending but not a significant risk of serious harm.

[13] A report dated 19 October 2016 prepared by Dr Carol Weir, Consultant Clinical Psychologist, noted that the appellant had suffered from alcohol dependency syndrome for 12-14 years. She had also been suffering from an Antisocial Sociopathic Personality disorder which was characterised by overdose behaviour, dependence on alcohol, attention seeking behaviour and self-harm in the form of attempted hanging and threats of killing herself. Dr Weir noted that the appellant had no intention or desire to stop drinking, but she recommended that she continue to attend at voluntary help groups and also try to find activities whereby she could use her hands or creative skills.

[14] Dr Stephen Best, Consultant Psychiatrist, prepared a report dated 12 December 2016 in which he diagnosed the appellant as suffering from emotionally unstable borderline personality disorder and alcohol dependency syndrome. He stated that the personality disorder included chronic feelings of emptiness, intense and unstable relationships, efforts to avoid abandonment, recurrent threats or acts of self-harm, and that she could be impulsive or liable to anger outbursts. In relation to alcohol dependency, Dr Best painted the following morbid picture:

“This lady has a serious alcohol problem. I believe it will lead to her premature death. She is likely to develop cirrhosis of the liver. She is likely to choke on inhaled vomitus while drunk, or fall and sustain a fatal head injury, or commit suicide while miserable and drunk. Probably as bad as the above, she will develop alcohol related brain damage and soon will show signs of early dementia.”

[15] This is a case with a depressingly familiar background. The appellant was clearly seriously damaged by events in her childhood leading to alcohol and substance abuse and dependency. None of the medical evidence holds out any hope for repair. In truth this is a health and welfare issue that has been foisted upon the criminal justice system. The circumstances of this case explain why there is a need to address those with addiction problems of this type at an early stage where rehabilitation treatments can be administered with some hope of success. This should reinforce the need to vigorously address substance abuse and related mental health issues if we are to prevent a continuation of this circle of despair and misery.

Consideration

[16] This case also indicates the wide variety of circumstances in which an ASBO may be appropriate and breach proceedings arise. A breach may often involve the commission of a criminal offence but the purpose of the ASBO is not just to target the criminal offence but also to prevent any interference with the day-to-day life of members of the community and those who provide services within it. That explains why the appropriate sentence is not to be determined by the nature of any offence that may be committed by the breach but there should be a relationship of proportionality between that sentence and the nature of the breach. The correct position was set out by Leveson J in R v Lamb [2005] EWCA Crim 3000:

“We are conscious that in Morrison [2005] EWCA Crim 2237; [2006] 1 Cr.App.R.(S.) 85 (p.488), this Court held that if the breach of an ASBO is no more than the commission of an offence for which the maximum penalty is prescribed by statute, it is normally wrong in principle to pass a sentence for a breach calculated by reference to the maximum for breach of an ASBO. With respect, that appears to ignore the impact of antisocial behaviour on the wider public which was the purpose of the legislation in the first place; it also means that antisocial behaviour short of a criminal offence could be more heavily punished than antisocial behaviour that coincidentally was also a criminal offence. We thus prefer the contrary approach of this Court in Tripp [2005] EWCA Crim 2253 which itself reflects Braxton.”

[17] There are at least four factors which are material to the imposition of a significant sentence in this case. The first is the persistence of the conduct. That relates to the conduct preceding the grant of the ASBO as well as the subsequent breaches. The second is that the effect of these breaches was to disrupt an important emergency service. These services are designed to provide necessary assistance to

those who may be facing some sort of crisis. There is a significant public interest in preventing the abuse of these services. Thirdly, the breaches in this case involved abuse of public servants. Such conduct is always likely to represent a material aggravating factor. Fourthly, there is unhappily every likelihood of a continuation of this conduct as a result of which there is really no option for a merciful sentence representing the appellant's reduced circumstances.

[18] The learned trial judge was faced with a sentencing dilemma. There is a natural and proper tendency to sympathise with the state of dependency which now affects every aspect of this lady's life. Sadly, however, despite the input of many professional services addressing her alcohol and mental health problems there has rarely been any positive outcome. Accordingly we accept that the judge was left with no option but to impose a significant custodial sentence for the protection of others from distraction and abuse.

[19] We accept that the starting point of 3 years on a contest was at the higher end of the range for this multiplicity of breaches but we cannot say that it was outside the appropriate range in this difficult case. The learned trial judge gave full discount for the plea which we consider generous given that the appellant could have had little answer to the charges. There was some indication that the appellant enjoyed her creative work in the prison and this should be encouraged when she is released under licence as it will also address the loneliness which this lady also appears to feel.

Conclusion

[20] For the reasons given the appeal is dismissed.