



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2018] HCJAC 34  
HCA/2018/000107/XC

Lord Menzies  
Lord Glennie

OPINION OF THE COURT

delivered by LORD MENZIES

in

APPEAL AGAINST SENTENCE

by

**DOUGLAS SINCLAIR**

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

**Appellant: A Ogg (sol adv); Capital Defence Lawyers**  
**Respondent: M Hughes, AD; Crown Agent**

29 May 2018

[1] The appellant was sentenced at Perth Sheriff Court on 14 February 2018 in relation to an offence of contravention of section 28 of the Sexual Offences (Scotland) Act 2009 involving a boy aged about 14 at that time. The sheriff imposed an extended sentence in total of 66 months. The custodial term of that sentence was 4 years which was discounted

from a starting point of 5 years to reflect the early plea of guilty, and the extension period was 18 months.

[2] Amongst other factors in selecting that sentence the sheriff had regard to the previous convictions of the appellant which included a conviction on indictment in 2003 for contravention of section 5(3) of the Criminal Law (Consolidation) (Scotland) Act 1995, that is sex with an underage girl.

[3] It was argued before us that the sheriff had misapprehended the early release provisions which are now in force and that this error was clear when one looked at paragraphs 49 and 53 of the sheriff's report and that the sheriff appeared to have selected the sentence which she did on the view that the Moving Forward Making Changes programme if started in relation to the appellant whilst he was in prison would not be likely to be finished before he was released on early release provisions, and accordingly it was necessary to impose the custodial term which she did impose and an extension period thereafter. We were provided with an email from a relevant officer of the local authority indicating that if the appellant started the MFMC programme in a prison setting and had not completed the course at the point of release he would be fast tracked onto the Tay project community based MFMC programme. It was further submitted that the requirements for an extended sentence in terms of section 210A of the 1995 Act were not made out in this case.

[4] We are persuaded that in all the circumstances of this case it appears that the sheriff may have misapprehended the current situation with regard to early release provisions and in light of that and in all the other circumstances of the case we consider that the custodial term which she selected, namely 4 years discounted from 5, is indeed excessive.

[5] We shall accordingly quash the sentence which she imposed and substitute a custodial term of 3 years imprisonment that being discounted from a starting point of 4 years to reflect

the early plea. We are, however, not persuaded that it is inappropriate to impose an extended sentence in this case particularly having regard to the effect that our decision on the custodial term will have. So we shall reduce the custodial term from 4 years to 3 years but we shall maintain the extension period of 18 months which was imposed by the sheriff. The consequence is that instead of 5 and a half years in total the sentence will be 4 and a half years in total and that will be backdated, as was the sheriff's sentence, to 16 January 2018.