



SHERIFF APPEAL COURT

**[2016] SAC (Crim) 11
SAC/2015/000154/AP**

Sheriff M M Stephen QC
Sheriff M O Grady QC

OPINION OF THE COURT

delivered by SHERIFF M O'GRADY QC

in

APPEAL AGAINST SENTENCE

by

CW

Appellant;

against

PROCURATOR FISCAL, GLASGOW

Respondent:

**Appellant: Mackintosh; John Pryde & Co
Respondent: Hughes AD; Crown Agent**

10 February 2016

[1] This is the appeal of CW. At a trial diet at Glasgow Sheriff Court on 10 November 2015 he pled guilty as libelled to the summary complaint which is now before us which, broadly put, involved an assault in public upon his three year old child. A background report was called for and made available and on 8 December 2015 the appellant was sentenced to 5 months imprisonment. It is against that sentence that the present appeal is

taken. We do not here rehearse the details of the offence but we have had the benefit of viewing the CCTV footage of the assault and its aftermath. This was, on any view, a disturbing and a shocking offence against a very young and defenceless child. It is not, in our view, difficult to see why the learned sheriff took a serious view of the incident and we share many of the sentiments expressed by him in his report.

[2] Sentencing obviously has to be a question of balance. Balanced against the appellant is the fact that this was a deeply unpleasant assault on a three year old child. It was an assault which breached his position of trust as a parent. It was disturbing to view his apparent indifference to the child's predicament in the aftermath and the background report tends to suggest that he has, to some degree, minimised his actions and that he is reluctant to accept responsibility. Nonetheless, balanced in his favour is the fact that he is 26 years of age, he has no previous convictions and he has no outstanding cases. We are told that he is married with two dependent children and we see from the sheriff's report that the child, mercifully, suffered no injury. We are told both in the report and by Mr Mackintosh today of continuing Social Work involvement and it is now apparent that a court, in a different context, will deal with the current situation. It is clear that there was available an alternative to custody and of course we are bound to take into account the fact that the appellant has now served the equivalent of a two month sentence, no doubt in the difficult conditions to which we have been referred to this morning. We are therefore, with some reluctance, persuaded that there is an alternative to the sentence imposed and that the sentence imposed should be quashed and that an alternative substituted. In our view there should be a Community Payback Order. That should be for a period of two years, it should be subject to supervision and it should also contain an element of unpaid work of 100 hours. That

unpaid element would of course have been greater but for the fact that we are bound to take account of the period served in custody.