



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 67  
HCA/2019/417/XC

Lord Justice General  
Lord Drummond Young  
Lord Turnbull

OPINION OF THE COURT

delivered by LORD CARLOWAY, the LORD JUSTICE GENERAL

in

APPEAL FROM THE SHERIFF APPEAL COURT IN TERMS OF SECTION 194ZB OF THE  
CRIMINAL PROCEDURE (SCOTLAND) ACT 1995 ON A POINT OF LAW

by

ROSS POLLOCK-SMITH

Appellant

against

PROCURATOR FISCAL, STIRLING

Respondent

**Appellant: Collins (sol adv); Collins & Co**

**Respondent: Farquharson QC AD; the Crown Agent**

11 October 2019

[1] On 19 September 2018, at the Sheriff Court in Stirling, the appellant, who is aged 45, appeared from custody on a complaint which libelled a contravention of section 18(1) of the Criminal Justice and Licensing (Scotland) Act 2010. The libel was one of shouting, swearing and uttering offensive remarks and threats of violence towards the police. The offence, which had started when the appellant had called for police assistance whilst intoxicated,

was said to have been racially aggravated and committed when the appellant was on four bail orders from Stirling and Alloa Sheriff Courts. He was remanded in custody. On 1 October, he pled guilty. Sentence was deferred on several occasions from October to December, partly because the appellant had a number of outstanding complaints, including one a domestic fire-raising involving LM and her mother. He was sentenced to 10 months imprisonment for this.

[2] On 9 January 2019, sentence was deferred again, initially for six months until July, when the appellant was ordained to appear. The reason for the deferral was, according to the minute, ostensibly to obtain a supplementary CJSWR, but it seems that the date was selected to coincide with the appellant's prospective date of release from custody.

Consideration could then have been given to imposing some form of supervision in the community. The case called on 11 July 2019 and was deferred again until 30 October 2019, for the appellant to be of good behaviour. Although the offence did not involve Ms M, the CJSWR had reported that the appellant "continued to be vitriolic about Ms M and her mother" and that, given his "attitude, history of chaos and ongoing chronic alcohol issues", he was in "imminent risk of re-offending". For this reason, it was made a condition of bail that the appellant should not contact or communicate with Ms M or attempt to do so. The sheriff reasoned that this was necessary to secure compliance with the standard condition not to commit further offences.

[3] The appellant appealed against the bail condition. The Sheriff Appeal Court refused the appeal. The SAC sheriff had regard to section 24(4)(b) of the Criminal Procedure (Scotland) Act 1995, which provides that the test for the imposition of a condition was that it was "necessary to secure – (i) that the standard conditions are observed". This is what the sheriff had considered when, as a matter for his discretion, he had imposed the condition.

[4] The appellant has appealed that decision with leave of this court. It was pointed out that, when sentencing the appellant for the offence involving Ms M, the sheriff had not imposed a Non-Harassment Order or any period of post release supervision. One of the standard bail conditions was not to re-offend. There was therefore already a sanction for further offending, including any involving Ms M. The bail order had only been imposed in order to allow the special condition to be imposed. It could not therefore be said that the condition was necessary to ensure compliance with the standard conditions. The appellant was no longer in a relationship with Ms M and had no desire to resume such a relationship. He had previously been contacted by Ms M for assistance. She had mental health and addiction problems.

[5] The sheriff has attempted to address the appellant's problems, which, for a man of his age, are of relatively recent origin and are alcohol related. The sheriff has done this by trying to ensure that, post release, the appellant keeps out of trouble by making sure that he is aware that he is subject to bail conditions pending the final disposal of the case. The special condition selected is fully merited given the information in the CJSWR. There is a rational connection between the condition and the need to prevent further offending. The condition is not disproportionate. It is necessary to prevent the appellant from committing further offences, particularly those involving Ms M. As such it is, in terms of section 24 of the 1995 Act, both lawful and, as a matter for the sheriff's discretion, appropriate.

[6] The appeal is refused.