



**SHERIFF APPEAL COURT**

**[2025] SAC (Crim) 2  
SAC/2025/59/AP**

Sheriff Principal Pyle  
Appeal Sheriff Sheehan  
Appeal Sheriff Mann

**OPINION OF THE COURT**

delivered by APPEAL SHERIFF MANN

in

**SUMMARY CROWN APPEAL AGAINST SENTENCE**

by

**PF AIRDRIE**

Appellant

against

**ANTONIO REA**

Respondent

**Appellant: Mohammed, K.C. AD; Crown Agent**  
**Respondent: Deans, John Pryde & Co (for Linden Law Practice, Coatbridge)**

4 March 2025

[1] This is a Crown appeal against sentence on the ground that the sheriff erred in applying the terms of section 210ZA of the Criminal Procedure (Scotland) Act 1995. On 4 March 2025, following submissions, we quashed the sentence imposed by the sheriff and imposed a sentence of new. This opinion sets out the reasons for that decision and explains the correct application of section 210ZA of the Act.

[2] Section 210ZA provides:

- “(1) This section applies where—
- (a) a court passes a sentence of imprisonment or detention on a person for an offence, and
  - (b) the person has spent a period of time ("the bail period") on qualifying bail awaiting trial or sentence.
- (2) When passing the sentence, the court must—
- (a) have regard to the bail period,
  - (b) specify, in accordance with subsection (3), a period of time ("the relevant period") which is to be treated as a period of time spent in custody by the person, and
  - (c) unless the relevant period is nil, direct (for the purpose of executing the sentence) that the person is to be treated as having served either—
    - (i) the sentence in full, where the relevant period is equal to or greater than the sentence passed, or
    - (ii) such part of the sentence as is equal to the relevant period, where the relevant period is less than the sentence passed.
- (3) The relevant period is to be the period equal to one-half of either of the following (rounded up, as necessary, to the nearest whole day)—
- (a) the bail period, or
  - (b) the bail period less such period (whether all or part of the bail period) as the court considers appropriate to disregard.
- (4) Where the court specifies the relevant period in accordance with subsection (3)(b), it must state its reasons for disregarding all or (as the case may be) part of the bail period.
- (5) Nothing in this section affects the application of section 210 to any period of time which the person may additionally have spent in custody or in hospital as described in that section.
- (6) For the purposes of this section—
- (a) "qualifying bail" means bail subject to a condition—
    - (i) which requires the person to remain at one or more specified places for a total period (whether or not continuous) of not less than 9 hours in any given day, and
    - (ii) in relation to which the person is required to submit to monitoring in accordance with Part 1 of the Management of Offenders (Scotland) Act 2019 (electronic monitoring etc.),
  - (b) references to the bail period are references to the period beginning on the day on which the person is granted qualifying bail and ending on the day before the day on which the person ceases to be on qualifying bail.”

[3] The appellant appeared before the sheriff at a trial diet on 22 January 2025. He pled guilty to a charge of assaulting his partner to her injury, aggravated by involving abuse of

the partner, and a further charge that on the same occasion he contravened section 38 of the Criminal Justice and Licensing (Scotland) Act 2010.

[4] The sheriff determined that a custodial sentence was the appropriate disposal. She chose a headline sentence of 365 days but discounted that to 335 days to reflect the timing of the plea. The sheriff noted that the appellant had been subject to qualifying bail for a period of 150 days since 26 August 2024. She considered it appropriate that 31 days of that period should be disregarded for the purposes of calculating the relevant period, giving reasons for doing so. The qualifying bail period for the purpose of calculating the relevant period was thus 119 days.

[5] The sheriff then doubled the resulting qualifying bail period to 238 days and deducted that from the discounted custodial period of 335 days and imposed a custodial sentence of 97 days to commence from the date of imposition. This is recorded in the court minute, somewhat confusingly, as follows:

“in terms of the custodial sentence imposed....under section 210ZA Criminal Procedure (Scotland) Act 1995 the court directs that the period of 238 days has to be treated as having already been served was discounted to 335 days and would otherwise have been 365 days, however due to time spend [*sic*] due to electronic monitoring has 97 days left to serve – *in cumulo*”

[6] The Crown appealed the sheriff's disposal, stating in the note of appeal that as the qualifying bail period was 119 days the relevant period for the purposes of section 210ZA(3) was 59 days, resulting in a period of 138 days imprisonment left to serve, this being calculated by subtracting 59 from 335 and then dividing by 2; and inviting this court to quash the sentence of imprisonment imposed by the sheriff and to re-impose a sentence of 138 days imprisonment from 22 January 2025 (we rather think that the crown may have meant to suggest that we impose a sentence of double that amount, or 276 days).

[7] In her report to this court the sheriff accepts that she erred in her calculation of the relevant period for the purposes of section 210ZA(3) and agrees with the Crown that the relevant period ought to have been 59 days.

[8] At the appeal hearing on 4 March 2025 the advocate depute adopted the terms of the note of appeal but acknowledged two errors. The first, as pointed out by counsel for the respondent, was to suggest that the relevant period ought to have been stated as 59 days when it ought, correctly, to have been stated as 60 days. The second was to suggest that section 210ZA of the Act should be given effect to by imposing a sentence of 138 days' imprisonment (as calculated by the Crown) from 22 January 2025. Beyond pointing out the error in the calculation of the relevant period counsel for the respondent did not challenge the appeal.

[9] Section 210ZA(3) of the Act is quite clear as to how the relevant period is to be calculated. It is to be calculated as being one half (rounded up as necessary, to the nearest whole day) of either of the bail period or the bail period less such period (whether all or part of the bail period) as the court considers appropriate to disregard. No issue is taken with the sheriff's decision to disregard a period of 31 days from the qualifying bail period leaving a period of 119 days for the purposes of calculating the relevant period. This, however, means that the relevant period is 60 days, being one half of 119 days, or 59.5 days, rounded up to the nearest whole day.

[10] Section 210ZA(2) of the Act directs that when passing sentence the court must specify the relevant period and unless the relevant period is nil must direct (for the purpose of executing the sentence) that the person is to be treated as having served (in a case such as this) such part of the sentence as is equal to the relevant period.

[11] The direction is made for the purpose of executing the sentence. It can only be an instruction to the Scottish Prison Service. It is they who have the task of calculating how much of the sentence requires to be served before the person is eligible for release in terms of the Prisoners and Criminal Proceedings (Scotland) Act 1993. This is confirmed by the explanatory note to section 5 of the Bail and Release from Custody (Scotland) Act 2023, which introduced section 210ZA to the 1995 Act. The explanatory note says this:

“New section 210ZA(2) requires the court, when passing a custodial sentence, to have regard to the bail period and to specify a period of time which is to be treated as “time served” towards the sentence. That period is referred to as ‘*the relevant period*’ and is to be calculated in accordance with new section 210ZA(3). Unless the relevant period is nil, the court must direct that the person is to be treated as having served the equivalent period as a portion of the sentence passed. *The Scottish Prison Service will take account of that direction when calculating the person’s release date* (our emphasis). Where the relevant period matches or exceeds the sentence passed, however, the court must direct that the person is to be treated as having served the sentence in full.”

[12] It is, therefore, not correct for the court to make any reduction in the sentence of imprisonment imposed by it to take account of the terms of section 210ZA of the Act. To do so results in the person’s release date being incorrectly calculated. Both the sheriff and the Crown are in error in this regard. In the specific example provided by this case, if this court were to impose a period of imprisonment of, let us say, 276 days the Scottish Prison Service would calculate the appellant’s release date on the basis that he would ordinarily have to serve 138 days, being one half of that period. Further, if the Scottish Prison Service then paid heed to the direction, as one would expect them to do, that the person is to be treated as having served 60 days of that sentence then they would go on to calculate that he would be eligible for release after having served 78 days from the date of imposition of the sentence. As will be seen, neither this nor the outcome arrived at by the sheriff is the correct outcome as required by section 210ZA of the Act.

[13] No doubt in proceeding as she did the sheriff had in mind the sort of calculation that, until recently, required to be done under section 210 of the Act when imposing, in some cases, a custodial sentence on an accused who has spent a period on remand. No doubt that is also what underpinned the Crown's invitation to this court. But section 210ZA requires a quite different exercise to be performed by the court for the purpose of executing the sentence. The correct way for the sheriff to have proceeded in this case was simply to have imposed a custodial sentence of 335 days and to have specified the relevant period and to have directed that the appellant was to be treated as having served that part of the sentence equal to the relevant period, namely 60 days. The passing of such a sentence with such a direction would result in the Scottish Prison Service calculating that the appellant should be released after having served a period of 108  $(335/2-60)$  days.

[14] We, therefore, quashed the sentence imposed by the sheriff and, of new, imposed a custodial sentence of 335 days. We specified the relevant period for the purposes of section 210ZA of the Act as being 60 days and directed that the appellant be treated as having served that part of the sentence amounting to 60 days.