

Regina v Mary Power

No: 201205667 A8

Court of Appeal Criminal Division

12 October 2012

[2012] EWCA Crim 2374

2012 WL 4888726

Before: Lord Justice Aikens Mr Justice Singh His Honour Judge Rook QC (Sitting as a judge of the Court of Appeal Criminal Division)

Friday, 12th October 2012

Representation

Mr T Dyke appeared on behalf of the Applicant.

Judgment

Judge Rook:

1 This is an application for leave to appeal against sentence following a referral to the full court by the Registrar.

2 The applicant is now aged 52. On 31st August 2012, at the Kingston-upon-Thames Crown Court, the applicant, upon re-arraignment, pleaded guilty to two counts of dishonestly failing to give prompt notification of a change of circumstances affecting entitlement to benefit contrary to section 111A(1A) of the Social Security Administration Act 1992 . She was sentenced by Mr Recorder Blair-Gould to two months' imprisonment upon each count, those sentences to run concurrently.

3 On 26th January 2006 the applicant lodged a legitimate claim for incapacity benefit. On 22nd January 2007 she was informed that she would be awarded Housing Benefit at £38.61 a week and Council Tax Benefit at £18.01 a week, backdated to run from 16th October 2006. The award was recalculated following the provision of a number of documents relating to her daughter and the benefits increased incrementally each year.

4 The applicant was sent benefit decision notices each year. The notice stated: "you must tell us immediately if your circumstances change". It listed types of change in circumstances on the back. The list included "changes in income". She reported no such changes to either the London Borough of Richmond-upon-Thames or the Department for Work and Pensions.

5 On 23rd March 2009 she began work as a receptionist in the Accident and Emergency Department of Kingston Hospital NHS Trust. Her salary was paid directly into her bank account. It varied due to overtime but averaged some £1,440 per months.

6 As a result of her failure to declare her change in circumstances she was overpaid some £27,436 in total made up of approximately £11,700 in Housing Benefit, £5,500 in Council Tax Benefit and some £10,000 in Incapacity Benefit.

7 The local authority benefits team investigated the matter. They sent the applicant various letters in the first half of 2011 inviting her to attend for an interview. She did not attend any interview, nor did she contact the investigating officer. She was informed by letter of the overpayment of benefits and her right to appeal the decision in each case. She did not exercise that right of appeal. She was subsequently charged with failing to notify a change of circumstances affecting her entitlement to benefits.

8 The applicant was of previous good character as far as this matter is concerned.

9 There was a pre-sentence report before the Recorder. The applicant expressed considerable remorse. She had by that time given up her job to look after her five-year-old grandson, who has cancer. She has been on medication for a bi-polar disorder. She has suffered thyroid problems, and indeed previously had two heart attacks. In the opinion of the author of the pre-sentence report, her level of remorse and lack of offending indicate a low risk of re-offending. She was visibly upset at the likely impact of custody upon her family and the court proceedings had had a salutary effect upon her. The author of the report invited the court to consider the recommendation of a suspended sentence with a proposal of unpaid work, that is to say light duties for the benefit of the community.

10 There were a number of references before the court, including a letter from the Senior Practitioner at Great Ormond Street Hospital concerning the support she had given to her family while her grandson was being treated for a type of childhood cancer.

11 In his sentencing remarks the Recorder observed that benefit fraud caused serious concern. It outraged working people who paid their taxes. It was necessary for the courts to show that they took it seriously. These are sentiments with which we agree. The Recorder pointed out that the loss was as much as £27,000. He referred to the appropriate guidelines making due allowance for the amount of the loss. The Recorder referred to the mitigating factors, in particular that the applicant suffered from bi-polar disorder and she provided considerable support to her family and the community. He completed his sentencing remarks by observing that the vast majority of people were like her and there were no sufficient reasons not to follow the guidelines.

12 In grounds of appeal on behalf of the applicant, Mr Dyke has submitted that although the judge was correct in placing this case within the appropriate category in the sentencing guidelines, the judge failed to take sufficient account of the substantial personal mitigation in this case, in particular, the applicant's previous good character, the illness that she has suffered and the high dependency of her family upon her. He submits that in all the circumstances it was not appropriate for the judge to pass a custodial sentence and that this matter could have been dealt with by way of a community sentence.

13 In our view, the Recorder not only placed this case in the correct category, but also it cannot be said that a sentence of imprisonment was wrong in principle. However, we recognise that there was substantial mitigation in this case, not least the applicant's good character, her health problems and her important role in a family which was highly dependent upon her during difficult times. We have come to the conclusion that the Recorder should have followed the recommendation in the pre-sentence report and suspended the sentence of imprisonment in the light of these factors.

14 We recognise that the appellant has now served 14 days' imprisonment and we will reflect that in the length of the suspended sentence which we propose to substitute for the sentence of imprisonment.

15 In the circumstances we quash the sentence of two months' imprisonment and we substitute a sentence of 28 days' imprisonment, which will be suspended for two years. We impose a condition in line with the recommendation in the pre-sentence report, and that condition is that the applicant must undertake 40 hours unpaid work — that is, we are told, to be light work, probably to be undertaken in a charity shop.

16 It follows that this application is granted and we give leave to appeal. We allow the appeal to that extent.

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