

Case Summary: *R v Christopher Manning* [2020] EWCA Crim 592 – Suspended sentences in the time of COVID-19

The case of *Manning* recognised the conditions in which courts might consider the current Covid-19 health crisis as a factor which might impact on sentence. In a nutshell, the court found that the current prison conditions “*represent a factor which can properly be taken into account in deciding whether to suspend a sentence.*”

### The Facts

Manning, aged 49, pleaded guilty to four counts of sexual activity with a child contrary to section 9(1) of the Sexual offences Act 2003 (counts 1-4), and one count of inciting a child to engage in sexual activity contrary to section 10(1) of the 2003 Act (count 5).

Manning met the victim in this case when she was 14 and he was 47 and struck up a relationship with her when she was 15 years old. During the relationship they kissed several times, Manning placed his hand on her breast through clothing, placed her hand on his penis over clothing and the two exchanged texts regarding penetrative sex.

His Honour Judge Lambert took a starting point of 15 months, and after deducting credit for guilty plea passed a sentence of 12 months imprisonment, suspended for 24 months. Attached to this sentence were 30 Rehabilitation Activity Requirement days, including the MAP for Change Treatment Programme and a curfew between the hours of 9pm and 6am for a period of 9 months.

There were ancillary orders including a 5 year Restraining Order, a strict Sexual Harm Prevention Order, compensation in the amount of £7,500 and costs in the amount of £1,200.

### The Reference

The Attorney General referenced this case as unduly lenient on two grounds. The first, that the case has been improperly categorised, was abandoned after the court referred to Appellant to the cases of *Attorney General's Reference No 94 of 2014 (R v Baker)* [2014] EWCA Crim 2752; [2016] 4 WLR 121 and *R v Cook* [2018] EWCA Crim 530; [2018] 2 Cr app R(S) 16. The second, that the sentence was unduly lenient in any event, was upheld.

The appeal was allowed to the extent that the custodial term of 12 months was substituted for one of 24 months, but the sentence remained suspended. When considering whether the sentence should properly have been suspended the court focussed on three key factors:

1. Events since the offender was sentenced; two supplementary reports provided by the Probation Service indicated that Manning has been complying well and was motivated to address his offending behaviour.
2. The ancillary orders attached to the sentence and in particular the curfew, which provided “*a substantive restriction on the offender's liberty*”.
3. The current health crisis.

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### Covid-19 as a factor

The court recognised at paragraph 41 that Covid-19 has had a widespread and well-known impact on prisons. The Lord Chief Justice observed how a sentence of immediate custody is likely to have a much heavier impact on offenders and their families during this time due to three factors:

1. Those in custody are currently confined to their cells for 23 hours a day, much longer than they otherwise would be;
2. Those in custody are unable to receive visitors as they otherwise would be; and

3. Those in custody and their families are “*likely to be anxious*” about the risk of contracting the virus.

At paragraph 42 of the judgment, the court acknowledged that the decision as to whether a custodial sentence should be imposed should be determined by applying ordinary sentencing principles. Having applied these principles, where the court is satisfied that a custodial sentence must be imposed, the likely impact of that sentence continues to be relevant to the further considerations as to its length and whether or not it can be suspended.

The court went on to reiterate the established principle that sentencers are not only to take into account the impact of an immediate custodial sentence on the Defendant, but also the impact on others.

Finally, the Lord Chief Justice drew attention to the Reduction in Sentence Guideline where there has been a guilty plea. It is a well-established principle that credit is often given not by way of mathematical calculation but by choosing to impose a different type of sentence in borderline cases.

#### A call for leniency or common sense?

It must be remembered that Manning was a man of good character, with helpful personal mitigation who was a candidate for a suspended sentence without the consideration of Covid-19.

Taking this into account, the effect of the above is unlikely to be dramatic. It is implausible to think that there will be sudden waves of judicial leniency among the Magistrates and Circuit Bench. However, in those all-important tipping point cases such as *Manning*, it is probable that we may see a shift in favour of granting those final chances to Defendants.

The court does seem to be issuing gentle reminders of the situations in which sentencers can and should step back from immediate custody, making specific reference to credit for a guilty plea, the impact on the offender and the impact on “others”.

The two short paragraphs which refer to Covid-19 in this case cannot do more than endorse a common-sense approach. It would seem the Lord Chief Justice does not seek to impose a new Covid-19 factor for sentencers to take into consideration, but rather remind them that amidst the current health crisis, there is added weight to the factors already set out in the Definitive Guideline on the Imposition of Community and Custodial Sentences.

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