IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202103079/A2

NCN [2022] EWCA Crim 54

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 19 January 2022

LORD JUSTICE HOLROYDE

MR JUSTICE LAVENDER

SIR NIGEL DAVIS

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REGINA

v

BEN JOHN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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MR A CHALK QC (SOLICITOR GENERAL), MR T LITTLE QC and MR B LLOYD appeared on behalf of the Attorney General.

MR R WORMALD QC & MR H BENTLEY appeared on behalf of the Offender

J U D G M E N T

1.
LORD JUSTICE HOLROYDE: Ben John (to whom we shall refer as "the offender") was convicted of an offence contrary to section 58 of the Terrorism Act 2000. He was sentenced to 2 years' imprisonment suspended for 2 years, with an additional 1 year's licence. Her Majesty's Solicitor General believes that sentence to be unduly lenient. Application is accordingly made, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.

2.
The application requires the court to address the issue of whether it is lawful to suspend the operation of a special custodial sentence when such a sentence is required by section 278 of the Sentencing Code introduced by the Sentencing Act 2020 (hereafter referred to as "the Code").

3.
The relevant facts can be summarised briefly. The offender's home was searched on 7 January 2020, a few days before his 20th birthday. External hard drives were seized. Examination revealed that amongst documents stored on them was a large quantity of extremist far-right material, including white supremacist and anti-semitic material. Also found was a copy of The Anarchist Cookbook, a manual which contains, amongst other things, instructions on how to build explosive devices.

4.
The offender was charged with seven offences of collecting material likely to be useful to a person committing or preparing an act of terrorism, contrary to section 58(1)(b) of the Terrorism Act 2000. All of the digital material referred to in those charges had been created on the hard drive on 18 April 2019. The offender's case at trial was that all the material, together with thousands of other digital files, had been transferred on that date from another hard drive on which they had previously been stored. The prosecution evidence showed that the items charged had not been accessed by the offender since the date of transfer. The offender gave evidence that he had downloaded The Anarchist Cookbook as part of a bulk download of many items when he was aged about 12 to 14 and had not looked at it for many years. It does not appear there was any evidence to the contrary.

5.
After a trial in the Crown Court at Leicester before HHJ Spencer QC and a jury, the offender was convicted only on the count relating to The Anarchist Cookbook. He was acquitted of all other offences.

6.
Following that conviction on 11 August 2021 the offender - who had previously been on bail, subject for several months to a qualifying curfew - was remanded in custody. A pre-sentence report was prepared.

7.
The offender was sentenced on 31 August 2021. He was then aged 21, a university student with no previous convictions. In January 2018 he had come to the attention of the Prevent scheme as a result of concerns regarding his extreme right-wing Nazi ideas. After an assessment it was decided that no

further action was necessary. Then in May 2018 he had again come to the attention of Prevent after using a computer at his school to draft, though not to send, a letter revealing extremist views. Intervention under the Channel process aimed at de-radicalising him followed. The offender appeared to cooperate in that, and his case was closed in October 2018.

8.
The judge was provided with a number of references. In addition, the offender had prepared a letter to the court, in which he indicated that his time in custody on remand had had a significant effect. He apologised for what he had done, expressed his desire to settle down with his girlfriend and said that he had abandoned the right wing, even as an intellectual pursuit.

9.
Counsel had prepared helpful sentencing notes. It was common ground that the offence attracted a special custodial sentence pursuant to section 278 of the Code. Submissions were made to the judge about the application of the Sentencing Council's relevant definitive guideline. The judge was aware that the guideline had not yet been revised to take account of a recent increase in the statutory maximum sentence for the section 58 offence from 10 years to 15 years. In the course of the hearing prosecution counsel drew the judge's attention to the case of R v Fruen [2016] EWCA Crim 561; [2016] 1 WLR 4432, to which we will return shortly.

10.
The judge in his sentencing remarks pointed out that the Prevent intervention had, on two occasions, given the offender clear warnings, and he had been offered every support to abandon his right-wing ideology but had not done so. Instead of deleting all the material stored on his digital devices, he had transferred it in April 2019 and thereafter retained it for months until it was found by the police. The judge expressly rejected the offender's evidence at trial that he had collected the material out of academic interest. He viewed the offender as a lonely individual who was highly susceptible to recruitment by others with extremist views, some of whom might be more prone to action than the offender was. If that had occurred, the offender's hard drive would have assisted those others to produce weapons of destruction. The judge said that having assessed the offender during the trial, he did not think that harm was very likely to be caused. He accordingly placed the offence into category 2B, for which the guideline indicated a starting point of 4 years' custody and a range from 3 to 5 years. The offence was aggravated by the significant volume of other material on the hard drive, even though it had not been accessed by the offender, and by his failure to heed warnings. The mitigating factors were that the offender was 19 when arrested, somewhat immature for his age, had no previous convictions and was of positive good character.

11.
The judge concluded that the offender had committed an isolated offence and may initially have accessed The Anarchist Cookbook "as an act of early teenage folly". He had then kept it, although he had not accessed it for some years. The judge noted the effect of the period in custody and the longer period subject to a curfew. He concluded that the starting point in the guideline should be reduced to the bottom of the category range, namely 3 years and could then be further reduced to 2 years to reflect the mitigation. He said that the offender was not a lost cause, and sending him back into prison risked the offender becoming more susceptible to troubling ideologies.

12.
The judge imposed a term of 2 years' imprisonment suspended for 2 years, together with the additional 1 year's licence. He imposed a community requirement of participation in an intervention

programme for up to 30 days. He also made a serious crime prevention order, with a number of significantly restrictive requirements, for a period of 5 years. He required 4-monthly reviews, the first of which took place on 6 January 2022 when the judge received what he regarded as "a largely positive and encouraging report".

13.
We are grateful for the written submissions and for the oral submissions we have heard today from the Solicitor General and Mr Little QC, and from Mr Wormald QC. We have considered all those submissions. We shall first summarise briefly those dealing with the general merits of the case, and come later to the submissions as to the nature of the sentence imposed.

14.
The Solicitor General submits that the sentence was unduly lenient for a number of reasons. It is submitted that although the judge was entitled to place the offence in category 2B, the starting point for a single offence in that category is 4 years. That starting point had to be increased to reflect the facts that the offender had committed the offence over a significant period of time, and despite the warnings he had received through his involvement with the Prevent programme. Further, it is submitted that the judge did not take account of the increase in the statutory maximum penalty for the offence. The offender's age and lack of previous convictions were mitigating factors, but the judge should not have found additional mitigation in the periods in custody or subject to a qualifying curfew because those would be taken into account against time serving a custodial sentence. For all those reasons, it is submitted that a sentence far in excess of 2 years' imprisonment was required. Moreover, even if the length of the sentence could have permitted a suspended sentence, suspension was inappropriate and failed to impose due punishment.

15.
The Solicitor General goes on to submit that if the sentence is quashed as unduly lenient this court, when considering what sentence is appropriate, should have regard to information which emerged when the judge saw the offender at the review hearing in January 2022. This showed, it is submitted, that the offender had not kept the promises he made to the judge during the sentencing hearing, because within a very short time he had been "liking" extreme right-wing posts on social media.

16.
For the offender, Mr Wormald QC emphasises that the offender was a child of at most 13 years of age when he downloaded The Anarchist Cookbook, that the offence was committed by retaining it and that there was evidence showing he had not accessed it since the transfer onto the hard disk in April 2019. In the circumstances of this case, it is submitted, the fact that he had retained the material for several years without having accessed it is a mitigating factor, and not, as the Solicitor General suggests, an aggravating factor. The judge had rightly treated it as an isolated offence and had not found the offender to be dangerous for sentencing purposes. It is submitted that the judge, who had been able to assess the offender during the trial and in particular during his three or four days of evidence, had carefully weighed all relevant factors and correctly applied both the offence-specific and the Imposition guidelines. The judge concluded, as he was entitled to do, that there was a realistic prospect of rehabilitation. It is submitted that this was an exceptional case and the suspended sentence was appropriate.

17.

As to the review hearing, it is submitted that neither the supervising police officer nor the judge had regarded the limited activity on social media as being sufficiently significant to affect the generally positive tenor of the officer's report.

18.
Turning to the nature of the sentence imposed and the relevant statutory provisions, we refer first to section 278 of the Code which states:

" **278 Required special custodial sentence for certain offenders of particular concern**

(1)This section applies where the court imposes a sentence of imprisonment for an offence where—

(a)the offence is listed in Schedule 13

(b)the person—

(i) was aged 18 or over when the offence was committed, and

(ii)is aged 21 or over when convicted of the offence, and

(c)the court does not impose any of the following for the offence (or for an offence associated with it) —

(i)an extended sentence under section 279

(ia)a serious terrorism sentence under section 282A, or

(ii)a sentence of imprisonment for life.

(1A)But this section does not apply if—

(a)the offender was aged under 18 when the offence was committed, and

(b)the offence—

(i)was committed before the day on which section 22 of the Counter-Terrorism and Sentencing Act 2021 came into force, or

(ii)is listed in Part 2 of Schedule 13 (sexual offences).

(2)The term of the sentence must be equal to the aggregate of—

(a)the appropriate custodial term, and

(b)a further period of 1 year for which the offender is to be subject to a licence,

and must not exceed the maximum term of imprisonment with which the offence is punishable.

(3)For the purposes of subsection (2), the 'appropriate custodial term' is the term that, in the opinion of the court, ensures that the sentence is appropriate.

(4)Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1A) to have been committed on the last of those days."

19.

Section 265 of the Code makes similar provision, in terms which are identical in all material respects, in relation to an offender who was aged 18 or over when the offence was committed, but under 21 when convicted.

20.
Schedule 13 to the Code lists certain terrorism offences, including those contrary to section 58 of the 2000 Act, and certain sexual offences, together with corresponding inchoate and abolished offences.

21.
The release provisions applicable to a prisoner serving a sentence imposed under section 278 or section 265 of the Code are contained in second 244A of the Criminal Justice Act 2003. In summary, and when read in conjunction with section 247A, which relates to terrorist prisoners, they require the Secretary of State to refer a case to the Parole Board when the offender has served "the requisite custodial period" - in this case, two-thirds of the appropriate custodial term. Following such a referral, the Parole Board must consider whether it is satisfied that it is not necessary for the protection of the public that the offender should be confined. The Secretary of State is under a duty to release the offender on licence as soon as the offender has served the requisite custodial period and the Parole Board has directed his release. If no such direction is given, the offender must be released on licence when he has served the whole of the appropriate custodial term.

22.
The statutory precursor of sections 265 and 278 of the Code was section 236A of the Criminal Justice Act 2003, which was in identical terms so far as is material for present purposes. Section 236A was considered in detail by this court in Fruen . Treacy LJ, giving the judgment of the court, explained at paragraphs 8 and 9 that section 244A of the 2003 Act raised the possibility that some offenders sentenced under section 236A may not be released until the expiry of the custodial term, and that the aim of section 236A was to ensure that such persons were nonetheless subject to licence for a period.

23.
At paragraphs 23 and 28, the court made clear that the special custodial sentence comprises the aggregate of the appropriate custodial term and a further 1-year period of licence: it is indivisible, and sentence is accordingly to be pronounced as a single term comprising the custodial element and the further period of licence.

24.
One consequence of the indivisible nature of the sentence is that if a sentencing judge fails to impose the special custodial sentence in circumstances where he is required to do so, as had happened in both the cases under appeal in Fruen , this court is precluded by section 11(3) of the Criminal Appeal Act 1968 from "adding in the previously unexpressed licence period", for to do so would be to impose a punishment greater than that imposed below.

25.
Turning to suspended sentences, section 277 of the Code provides:

" **277 Suspended sentence order for person aged 21 or over: availability**

(1)This section applies where, in dealing with an offender for an offence, a court passes a sentence of imprisonment.

(2)A suspended sentence order (see section 286) is available in relation to that sentence if the term of the sentence of imprisonment is—

(a)at least 14 days, but

(b)not more than 2 years.

(3)But a suspended sentence order is not available in relation to that sentence if—

(a)the sentence of imprisonment is one of two or more sentences imposed on the same occasion which are to be served consecutively, and

(b)the terms of those sentences are in aggregate more than 2 years.

(4)For provision about suspended sentences, see Chapter 5."

26.
We note in passing that the terms of section 264, dealing with suspended sentences for offenders aged under 21, are identical in all material respects.

27.
Chapter 5 of Part 10 of the Code contains two sections which are particularly relevant for present purposes. By section 286:

" **286 Suspended sentence order**

(1)
A suspended sentence order is an order providing that a sentence of imprisonment or detention in a young offender institution in respect of an offence is not to take effect unless—

(a)
an activation event occurs, and

(b)
a court having power to do so subsequently orders under paragraph 13 of Schedule 16 that the sentence is to take effect.

(2)
A suspended sentence order may also specify one or more available community requirements with which the offender must comply during the supervision period.

(3)
An activation event occurs if the offender—

(a)
commits another offence in the United Kingdom during the operational period (whether or not punishable with imprisonment), or

(b)
during the supervision period, contravenes any community requirement imposed by the order.

(4) The community requirements are listed in column 1 of the community requirements table (see section 287).

(5)Provision about each requirement is made by the provisions of Schedule 9 mentioned in the corresponding entry in column 2 of that table.

(6) In this Code—

'suspended sentence order' has the meaning given by subsection (1);

'suspended sentence' means a sentence to which a suspended sentence order relates.

(7)In this Code, references to a community requirement of, or imposed by, a suspended sentence order are to a requirement specified in the order under subsection (2)."

28.
By section 289:

" **289 Suspended sentence to be treated generally as sentence of imprisonment etc**

(1)A suspended sentence which has not taken effect under paragraph 13 of Schedule 16 is to be treated as—

(a)a sentence of imprisonment, or

(b)as the case may be, a sentence of detention in a young offender institution,

for the purposes of all enactments and instruments made under enactments.

(2)Subsection (1) is subject to any provision to the contrary contained in—

(a)the Criminal Justice Act 1967

(b)any enactment passed or instrument made under any enactment after 31 December 1967."

29.
For convenience we shall for the most part refer to these various statutory provisions by their section numbers alone.

30.
In Fruen the court was considering appeals against sentence in two cases. In view of the length of the sentences imposed, there was no question of the sentence being suspended in either case. The court did however make the following observations at paragraphs 12 and 13:

"12. Before we turn to certain matters relating to the imposition of section 236A sentences, we wish to comment on two situations which might arise where a schedule 18A offence has been committed. Firstly, section 236A does not confine the court to imposing a custodial sentence (life/extended sentence/section 236A sentence) whenever a schedule 18A offence is committed. In particular, it does not prevent the court from passing a non-custodial sentence such as a community order. Whilst most cases involving or tantamount to an offence contrary to section 5 or 6 of SOA 2003 will require a significant custodial sentence, there may be exceptional cases where, for example, a lengthy community order with a requirement of participation in a sex offender treatment programme may be the most appropriate form of sentence. Where such exceptional cases arise, section 236A does not preclude such a course being taken.

13. A second issue relates to suspended sentences. Since a suspended sentence is treated as a sentence of imprisonment by section 189(1) of the CJA 2003, in theory there appears to be no barrier to a section 236A sentence being suspended. In practical terms, however, such a result is counter-intuitive given the terms of section 236A. Moreover, a variety of practical complications would arise from implementation (and also possible later breach), and render making such an order wholly undesirable. Courts should not suspend a sentence under section 236A. Ordinarily the court will be

considering an immediate custodial sentence: in the unusual event that the court might have considered suspending the sentence, it should consider making a community order instead."

31.
Those observations have been referred to in the subsequent decisions of this court in R v Benmoukhemis [2021] EWCA Crim 1281 and in R v Bel [2021] EWCA Crim 1461. However, neither Fruen nor those later cases required the court to address directly the specific issue which we must decide.

32.
In relation to this aspect of the case, it was submitted by Mr Little on behalf of the Solicitor General that a court ought not to suspend a sentence imposed under section 278. Whilst it would not be unlawful to do so, provided the aggregate period of the custodial term and the additional year's licence did not exceed 2 years, it would always be contrary to the clear purpose of the legislation. It will be rare for a case to which that section applies not to pass the custody threshold. The purpose of the licence period was to protect the public, prevent reoffending and secure successful reintegration into the community. The licence conditions which are appropriate in a particular case must be considered and approved by the Parole Board. But, it is submitted, there is no apparent procedure by which that could be done as an offender subject to a suspended sentence approached the end of the operational period. Moreover, it would be curious if an offender who had completed the operational period of a suspended sentence without the custodial term being activated was then required to comply with the more onerous conditions of a licence. If for any reason the custodial term was activated, the period of time to be spent in custody might be very short, making it extremely difficult for the Parole Board to make its assessment and decision before release.

33.
It is submitted that the court in Fruen was therefore correct to indicate that a suspended sentence should not be imposed. It is further submitted that suspension of the sentence would run contrary to the statutory purpose in a category of case in which the risk posed by the offender is best addressed by custody, followed by a period on licence as directed by the Parole Board.

34.
For the offender, Mr Wormald submits that section 277(1) permits suspension of the special custodial sentence. He submits that the legislative provisions give rise to a conundrum to which there is no entirely satisfactory solution. He acknowledges that there is a potential conflict between sections 277 and 278 in a case where the aggregate of the custodial term and the further licence period would exceed 2 years. He submits that the licence period is contingent upon the suspended sentence being aggravated, an approach which, he argues, answers all or most of the suggested practical problems, and is the least worst of the possible solutions to the conundrum. The approach for which the Solicitor General contends would produce the unsatisfactory result that the court could impose a community order or immediate imprisonment but could not make use of a suspended sentence order. It is submitted that the court in Fruen , though pointing out why a suspended sentence would be undesirable, did not say that it would be impermissible.

35.
It is apparent from those submissions, which include legitimate and cogent points on both sides of the debate, that the insertion of section 236A into the existing legislation gives rise to significant difficulties of interpretation. It may well be that Parliament did not consider how, if at all, the new form of sentence was to operate in conjunction with the existing law in relation to suspended

sentences. On the one hand, as Mr Wormald argues, section 278 contains nothing which explicitly excludes the suspending of a special custodial sentence; the Court in Fruen did not say it would be unlawful to suspend such a sentence; and, since section 278 contemplates that a court sentencing for an offence listed in Schedule 13 may impose a non-custodial sentence, as indeed does the sentencing guideline applicable to section 58 offences, it may be thought unlikely that Parliament intended to exclude the power to impose a custodial sentence of appropriate nature but to suspend its operation.

36.
On the other hand, as is argued on behalf of the Solicitor General, suspending a sentence of this type may be thought to run contrary to the aims of Parliament in legislating for the sentencing of serious offences committed by offenders of particular concern. On any view, it gives rise to formidable practical difficulties and uncertainties of operation.

37.
We respectfully agree with Treacy LJ's observations at paragraph 13 of Fruen as to the variety of practical complications which make a suspended order wholly undesirable when section 278 applies. The important first question, however, is not whether a suspended sentence order is undesirable but whether it is unlawful.

38.
The answer to that question, in our view, is that a sentence pursuant to section 278 is a sentence of imprisonment for the purposes of section 277 of the Code, and may in law be suspended if the term of the sentence of imprisonment is not more than 2 years. What, however, is "the term of the sentence of imprisonment" for this purpose? In our view, the reference in section 278(2) to "the term of the sentence" must be a reference to "the sentence of imprisonment" mentioned in section 278(1). That follows from the indivisible nature of the special custodial sentence.

39.
For the purposes of section 277(2), therefore, the limit of 2 years must apply to the aggregate of the appropriate custodial term and the further period of 1 year's licence. That interpretation is, in our view, consistent with section 277(3) in relation to the aggregation of consecutive sentences when deciding whether the 2-year limit has been exceeded.

40.
Thus a suspended sentence pursuant to section 278 will only be lawful if the appropriate custodial term does not exceed 12 months. That fact, coupled with the practical problems to which the court in Fruen referred, means that it will only be in exceptional circumstances that a suspended sentence order will be appropriate in a case in which section 278 requires a special custodial sentence.

41.
In that regard, we particularly draw attention to the consequences of suspension, so far as the further period of licence is concerned. We have already referred to section 244A of the 2003 Act. That section refers to "a prisoner who is serving a sentence". It is contained in Part 12, Chapter 6 of the 2003 Act, which is concerned with "release, licences, supervision and recall", all of which are incidents of a sentence actually served in custody. As one would expect, other provisions in that chapter plainly contemplate that licence conditions will attach to a prisoner when released from custody: see for example section 239(2), section 243A and section 244. Nothing in that chapter encourages a view that licence conditions can be imposed on an offender otherwise than on his release from serving a period in custody.

42.
Without finally deciding the point, which is not necessary to our decision in this case, we are inclined to the view that licence conditions can only be imposed in circumstances where an offender has served a period of time in custody. If that is so, then the additional year's licence which Parliament requires would be rendered nugatory if a suspended sentence order is made in respect of a special custodial sentence but no "activation event" occurs as mentioned in section 286 of the Code. Even if our provisional view were wrong, then at the very least the acute problems mentioned by the Solicitor General will arise in such a case. These considerations strengthen our conclusion that suspension of a special custodial sentence will only be appropriate in exceptional circumstances, even when it would not be contrary to law.

43.
It follows from what we have said that the judge had no power to impose a suspended sentence as he did, for the aggregate of the 2-year custodial term and the further 1 year's licence was a sentence of imprisonment of more than 2 years and so could not be suspended. In reaching that conclusion, we recognise the difficulty faced by the judge as a result of the terms of the relevant legislation.

44.
By section 36(1)(b) of the Criminal Justice Act 1988, this court has the power to quash the sentence imposed below and in place of it pass such sentence as we think appropriate for the case, being a sentence which the judge had power to pass.

45.
In considering how to exercise our power, we attach considerable weight to the findings of the judge, who was in the best possible position to assess the offender and who did not hesitate to make findings against the offender where appropriate. The judge clearly had well in mind the seriousness of this type of offence, the risk of the material coming into the hands of others and the aggravating factors. He was however dealing with a single offence, with the important features that the item had been downloaded by an adolescent and had not been accessed for at least a period of many months. Notwithstanding the findings which he made against the offender in other respects, the judge accepted that the period of time spent in custody awaiting sentence had had a significant effect, that the offender was genuinely turning away from his extremist views and that there was a realistic prospect of rehabilitation.

46.
We see the force of the Solicitor General's submission that the judge was guilty of an element of double counting in the way he reached the sentence of 2 years. That was certainly a very lenient sentence. We are not however persuaded that in the unusual circumstances of this case the length of that term of imprisonment was in itself unduly lenient. It is because the term was unlawful that we conclude it was unduly lenient. Moreover, in considering what sentence is appropriate at this stage, we take into account that the offender has for several months now been subject to the suspended sentence and its community requirement.

47.
For the reasons we have explained however, we are driven to the conclusion that the sentence imposed by the judge was unlawful. We further conclude that a community order would be insufficient, as the judge said. Given that the term of 2 years was in itself very lenient, a suspended sentenced order of permissible length would also be insufficient, and we are unable to accept Mr Wormald's submission in that regard. That is so quite apart from the attendant problems which, as we

have said, would make a short suspended sentence wholly undesirable. In those circumstances, and notwithstanding the judge's understandable aim of avoiding such an outcome, we are satisfied that there must be a sentence of immediate imprisonment.

48.
We accordingly grant leave to refer. We quash the suspended sentenced imposed below as being unduly lenient. We impose instead a special custodial sentence, pursuant to section 278 of the Code, of 3 years, comprising a custodial term of 2 years and a further period of 1 year's licence. That sentence will run from the date when the offender surrenders to custody, which he must do by 4.00 pm tomorrow at a police station which we shall identify shortly. The days which he spent on remand in custody will of course count towards his sentence. In addition, we direct that he will receive full credit for half the time which he spent under curfew, if the curfew qualified under the provisions of section 235 of the Code. On the information before the court the total period of qualifying curfew is 254 days and the offender should therefore have credit for 127 days. But if this period is mistaken the court will order an amendment of the record for the correct period to be recorded.

49.
Mr Wormald, can you assist us please with the appropriate police station?

MR WORMALD: I will take instructions my Lord. Lincoln City Centre Police Station.

LORD JUSTICE HOLROYDE: Is that a 24-hour police station as far as we know?

MR WORMALD: It should be open at 4 o'clock in any event.

LORD JUSTICE HOLROYDE: Mr John, just before the call is terminated. I hope you can hear me, can you?

THE OFFENDER: Yes.

LORD JUSTICE HOLROYDE: Thank you. Let me just explain to you the practical effect of the decision. I am afraid you will have to go into custody, so you will have to surrender yourself to the relevant police station by 4.00 pm tomorrow. The effect of our sentence is that you will have to serve at least two-thirds of the 2-year period. You will be released some time between that point and the end of the 2 years depending on the decision of the Parole Board. You will get credit as appropriate for the time in custody and for half the number of days on qualifying curfew which will count towards the period of time you have to spend in custody. I hope all that is clear to you is it, although I appreciate it will be very disappointing for you.

THE OFFENDER: Yes.