

ENGLAND AND WALES / JUDGMENT

R v Reece Calver-Smith

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- v – REECE CALVER-SMITH

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Mr E Campbell appeared on behalf of the Appellant Mr A Wallace appeared on behalf of the Crown

J U D G M E N T

Tuesday 21 April 2026 LORD JUSTICE DOVE: I shall ask Mrs Justice Brunner to give the judgment of the court. MRS JUSTICE BRUNNER:

1. This is an appeal against sentence which raises a single point concerning the power of the Crown Court under Paragraph 25 of Part 5 of Schedule 10 to the Sentencing Act 2020 to revoke a community order imposed by a magistrates' court, when activating a suspended sentence.
2. On 19 September 2025, in the Crown Court at Warwick, the appellant admitted two breaches of a suspended sentence order. The Recorder activated the sentence in part. The Recorder also revoked a community order which had been imposed at Coventry and Warwickshire Magistrates' Court on 18 August 2023 ("the Community Order") and re-sentenced the appellant to four weeks' imprisonment, consecutive to the activated suspended sentence term.
3. The appellant appeals against that sentence of four weeks' imprisonment with the leave of the single judge. Leave is restricted to a narrow ground identified by the single judge: that the Crown Court arguably did not have power to revoke the Community Order and to re-sentence.
4. The appellant submits to this court that the Recorder did not have the power to revoke the Community Order and re-sentence for the underlying offences. The appellant first made that submission on the basis that the Community Order had expired by the time of the hearing in September 2025. It is common ground now that the Community Order had not, in fact, expired. The appellant's submission is now made on the basis that the Crown Court did not have the power to revoke a Community Order imposed by the magistrates' court in these circumstances. The respondent submits that the Recorder did have the power to revoke and to re-sentence.
5. Further information has been provided since leave was given, and the relevant chronology appears to be as follows, although we note that there remains a remarkable lack of clarity and consistency in the paperwork with which we have been provided: 18 August 2023: A 12 month Community Order was imposed at Coventry and Warwickshire Magistrates' Court ("the magistrates' court") for two public order offences with an unpaid work requirement to be completed within 12 months. 27 July 2024: The appellant committed two offences of racially aggravated harassment. Following guilty pleas at the magistrates' court, he was committed to the Crown Court for sentence. 13 September 2024: A suspended sentence order was imposed at the Crown Court at Warwick of 42 weeks, suspended for 12 months ("the Suspended Sentence Order"). 23 July 2025: The period for completion of the unpaid work requirement of the Community Order was extended to 22 July 2026 by the magistrates' court. 26 August 2025: A hearing took place at the magistrates' court relating to breach of the Community Order by failing to carry out unpaid work. The appellant denied the breach and a date was set for a breach hearing at the magistrates' court. 26 August 2025: A summons was

issued requiring the appellant to attend the Crown Court on 16 September 2025 for failing to comply with the requirements of the Suspended Sentence Order. 16 September 2025: At the Crown Court at Warwick the appellant denied breaching the Suspended Sentence Order. He was remanded in custody until 19 September 2025 for breach proceedings. 19 September 2025: At the Crown Court at Warwick the appellant admitted breach of the Suspended Sentence Order by way of unacceptable behaviour towards staff of the Probation Service. The Recorder activated the Suspended Sentence Order in part, ordering that 38 weeks must be served. The Recorder also revoked the Community Order and re-sentenced the appellant to four weeks' imprisonment in relation to one public order offence, which he ordered to be served consecutively to the activated suspended sentence term. He imposed no separate penalty in relation to the other public order offence. It is that four week sentence which is the subject matter of this appeal. A total sentence of 42 weeks' imprisonment was imposed. 25 November 2025: The appellant was released from custody. 5 February 2026: Breach proceedings took place at the magistrates' court relating to the Community Order and the breach was found proved. The magistrates' court was apparently unaware that the Community Order had been revoked by the Crown Court on 19 September 2025. The magistrates' court purported to revoke the Community Order and the appellant was fined £25 for the breach.

6. Although some documents which were in front of the single judge recorded that the Community Order had expired on 18 August 2024, it is now accepted that those documents were wrong. It is now clear that at the time of the hearing which led to this appeal, on 19 September 2025, the Community Order was still in force. That was the result of the extension, on 25 July 2025, of the period in which the unpaid work requirement had to be completed.
7. At the hearing on 19 September 2025 the Recorder correctly proceeded on the basis that the Community Order was in force. He made a specific enquiry of counsel and the Probation Service as to whether he had the power to revoke that order and to re-sentence for the underlying offences, and was assured that he had such a power, although no statutory basis was identified. Although there is reference to breach of the Community Order in paperwork generated by the court and the Probation Service following that hearing, it is plain from the Recorder's sentencing remarks that he did not make any finding that the Community Order had been breached. The Recorder revoked the Community Order on the basis that it was unworkable, because he was imposing a term of immediate imprisonment.
8. Revocation of Community Orders is governed by section 218 of the Sentencing Act 2020 ("the 2020 Act"), which provides as follows: Breach, revocation or amendment of community "218

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Schedule 10 makes provision about –

- (a) Failures to comply with the requirements of community orders;

- (b) Revocation of community orders;
 - (c) Amendment of community orders."
9. Schedule 10 to the 2020 Act sets out various provisions. A "Crown Court community order" is defined in Schedule 10 Part 1 paragraph 1(3) as an order which was made by the Crown Court and does not include a direction that it should be subject to magistrates' court supervision. A "community order subject to magistrates' court supervision" is defined as a community order which was made by the magistrates' court or which was made by the Crown Court with a direction that it should be subject to magistrates' court supervision.
 10. It is common ground in this case, and we agree, that the Community Order was a community order subject to magistrates' court supervision.
 11. Part 2 of Schedule 10 is headed "Breach of Requirement of Order" and sets out provisions applicable in circumstances where it appears that an offender has breached a requirement of a community order which is still in force. The broad position is that a summons or warrant must be issued in relation to a breach requiring the offender's attendance at the Crown Court for a Crown Court community order, and at a magistrates' court for a community order subject to magistrates' court supervision. If the breach is proved to the satisfaction of the court, then the court has the power to deal with the offender, including by revoking the order and re-sentencing (paragraphs 10 and 11).
 12. By the time of the hearing of 19 September 2025, the Part 2 procedure had been initiated in relation to the Community Order; the appellant had been required to attend the magistrates' court, and a date had been set for a contested breach hearing. The breach proceedings were, properly, being dealt with in the magistrates' court, and not in the Crown Court, as the Community Order was one subject to magistrates' court supervision. It is common ground, and we agree, that the Recorder could not have lawfully revoked the Community Order under Part 2. Indeed, the Recorder did not purport to revoke the Community Order on the basis of any findings of breach.
 13. Part 3 of Schedule 10 is headed "Revocation of Order with or without Re-Sentencing" and sets out provisions relating to revocation of a community order which is still in force. There are provisions for an offender or a probation officer to apply to the Crown Court for revocation of a Crown Court community order (paragraph 15), or to a magistrates' court for revocation of a community order subject to magistrates' court supervision (paragraph 14).
 14. Again, it is common ground, and we agree, that Part 3 did not give the Recorder power to revoke the Community Order. Quite apart from the difficulty that no application appears to have been made under this Part by either the offender or the probation officer, it does not empower the Crown Court to revoke a community order subject to magistrates' court supervision.

15. The remaining potential source of the Recorder's power, and the focus of this appeal, was Part 5 of Schedule 10. That Part is headed "Conviction of Further Offences". It sets out provisions relating to revocation of a community order which is still in force, where there has been a subsequent conviction. Paragraph 25 provides, so far as relevant, as follows: "Powers of Crown Court following subsequent conviction 25(1) This paragraph applies where a community order is in force in respect of an offender, and the offender — (a) is convicted of an offence by the Crown Court, or
- (b) is brought or appears before the Crown Court—
- (i) by virtue of paragraph 24, or (ii) having been committed by a magistrates' court to the Crown Court for sentence.
- (2) If it appears to the Crown Court that it would be in the interests of justice to do so, having regard to circumstances which have arisen since the community order was made, the Crown Court may— (a) revoke the order, or
- (b) both— (i) revoke the order, and (ii) re-sentence the offender for the offence in respect of which the order was made. ..."
16. Paragraph 25 thus gives the Crown Court power to revoke and re-sentence extant community orders, if it is in the interests of justice, if one of three gateways is opened. Each of those gateways requires a nexus between the community order and the Crown Court.
- (i) The nexus in the first gateway, under paragraph 25(1)(a), is that the offender is convicted by the Crown Court during the currency of a community order (whether that order is a Crown Court community order or an order subject to magistrates' court supervision). Both parties submit, and we agree, that gateway is not open here. Breach of a Suspended Sentence Order does not amount to conviction of an offence by the Crown Court such as to engage paragraph 25. (ii) The nexus in the second gateway, under paragraph 25(1)(b)(i), is that the offender is convicted of a further offence by the magistrates' court when there is an extant Crown Court community order. The power applies where the offender is brought or attends the Crown Court by virtue of paragraph 24. That paragraph relates only to Crown Court community orders, and gives the Crown Court the power to revoke and re-sentence following a subsequent conviction by the magistrates' court. Both parties submit, and we agree, that this gateway cannot provide a lawful basis for the Recorder's order, given that the Community Order was not a Crown Court community order. (iii) The nexus in the third gateway, under paragraph 25(1)(b)(ii), is that the offender is convicted of an offence in the magistrates' court during the currency of a community order (whether that order is a Crown Court community order or an order subject to magistrates' court supervision) and is committed to the Crown Court for sentence in respect of the new offence. The appellant submits that that does not apply here, as the appellant was before the Crown Court to be dealt with for breach of the Suspended Sentence Order, rather than for a committal for sentence. The respondent submits that this gateway gave the Recorder power to revoke and to re-sentence.

17. We observe that the clear purpose of the first and third gateways is to empower the Crown Court to deal with a community order which exists at the point of sentence for a new offence, wherever that order was made. The rationale is plain. If the Crown Court imposes an immediate custodial term, a community order is likely to be unworkable, and impossible for the offender to comply with. The principle of totality is likely to be best served if the Crown Court deals with both the old and the new offence at the same time. The Sentencing Council Guideline on Totality requires that, where an offender is convicted of an offence while serving a community order, "when sentencing both the original offence and the new offence the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence." Efficiency is also best served by the Crown Court being empowered to deal with any extant community order, rather than requiring the Probation Service to make an application to the magistrates' court to discharge an order subject to magistrates' court supervision.
18. The question for this court is whether the third gateway under paragraph 25(1)(b)(ii) applied: whether at the time that the suspended sentence was activated on 19 September 2025 the appellant was brought or appeared "before the Crown Court having been committed by a magistrates' court to the Crown Court for sentence". If so, then the Recorder had power to revoke the Community Order and re-sentence. If not, then he had no such power. That raises the issue of whether the phrase 'having been committed..for sentence' requires an immediate causal link between the committal for sentence and the Crown Court hearing. We have not been taken to any authorities on this point and it may be a matter which has not previously troubled this court.
19. If paragraph 25(1)(b)(ii) requires an immediate causal link between the committal for sentence and the appearance in the Crown Court, then in this case the test was not met on 19 September 2025. The immediate cause of the appellant's appearance before the Crown Court on that date was the summons which had been issued for breaching the Suspended Sentence Order, requiring his attendance on 16 September 2025, whereupon he was remanded in custody pending the hearing on 19 September 2025 to determine whether he had breached the order.
20. We are not, however, satisfied that such an immediate causal link is required.
21. Paragraph 25(1)(b)(ii) requires simply that the offender has been committed for sentence following conviction in the magistrates' court. Paragraph 25(1)(b)(ii) is not, on its face, confined to the first Crown Court hearing following the committal for sentence, and does not have any time-bar. In order for the provision to have any meaningful effect, it must empower the Crown Court to revoke a community order at the point of sentence for the subsequent conviction. That must be the case whether the sentencing hearing takes place immediately after the committal for sentence, or on a later day. It must remain the case if the sentencing hearing is adjourned, or if sentence is deferred.

22. There is thus little difficulty in saying that the paragraph 25(1)(b)(ii) gateway does not close immediately after the committal for sentence, but remains open until the sentencing process is complete. It is a small step to say, as we do, that the gateway is still open at a hearing when a suspended sentence order, imposed upon committal for sentence, is activated. That hearing remains part of the process whereby the Crown Court is determining the appropriate disposal following committal for sentence. It is a continuation of the sentencing exercise which began when the offender was convicted in the magistrates' court and committed for sentence. The nexus between the community order and the Crown Court remains intact: the offender has been convicted of an offence in the magistrates' court during the currency of a community order and has been committed to the Crown Court for sentence in respect of the new offence. In the words of paragraph 25(1)(b)(ii), the offender whose suspended sentence is subsequently activated "appears" before the Crown Court, "having been committed by a magistrates' court to the Crown Court for sentence". It would also be accurate to say that the offender appears having been summonsed for breach of the suspended sentence order, but the latter does not negate the former.
23. When the appellant appeared at the Crown Court on 19 September 2025, his appearance was consequent to the imposition of the Suspended Sentence Order on 13 September 2024, and that was consequent to the committal for sentence. He appeared having been committed for sentence. Paragraph 25(1)(b)(ii) therefore applies on the facts of this case to the hearing on 19 September 2025.
24. This approach is entirely in line with the purpose of paragraph 25 which we have discussed. It also reflects the realities of sentencing exercises. We observe that at the time of imposing a suspended sentence order, a judge may well determine that it is not in the interests of justice to revoke an existing community order. The offender will retain their liberty, and there may be elements of the community order which should, in the judge's view, be completed. In contrast, at the time of activating a suspended sentence order, when an offender is imprisoned, it may well become in the interests of justice to revoke a community order.
25. It is not necessary or helpful for this court to set out the boundaries of the power in paragraph 25(1)(b)(ii). It is clearly not an open-ended power. It is plain that the conviction must arise after the relevant community order is imposed, not least because of the reference to "subsequent conviction" in the paragraph title. The provision can only take effect in relation to community orders which still exist at the time of the relevant hearing, and it can only be used when it is in the interests of justice to do so. It can only be used where there is a sufficient nexus between the committal for sentence and the relevant hearing such that the offender "appears", "having been committed by a magistrates' court to the Crown Court for sentence".

26. As we have found, the power in paragraph 25(1)(b)(ii) extends to the situation facing the Recorder on 19 September 2025. It follows that the Recorder had a lawful basis for revoking the Community Order and re-sentencing as he did.
27. Accordingly, this appeal against sentence is dismissed.
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