



The Court of Appeal for Bermuda

CRIMINAL APPEAL No 5 of 2013

Between:

THE QUEEN

Appellant

-v-

JENNIFER FRANKS

Respondent

Before: **Zacca, President**
 Evans, JA
 Baker, JA

Appearances: Ms. Maria Sofianos and Mr. Carrington Mahoney for the
 Appellant
 Mr. Saul Froomkin, QC, for the Respondent

Date of Hearing & Decision: **21 March 2014**

Date of Reasons: **21 March 2014**

REASONS FOR DECISION

Baker, JA:

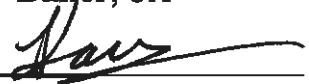
1. For endangering the lives of 3 children, one of whom died, the Respondent was sentenced to a total 2 years imprisonment suspended for 3 years and ??? to serve 400 hours community service as well as being placed on probation.
2. The DPP has appealed against this sentence on the grounds that it is manifestly inadequate.
3. We accept that submission and allow the appeal.
4. The maximum sentence for endangering the life of a child is 3 years imprisonment. We are surprised that it is so low but of course are bound by what the Code says.

5. The DPP submits that the judge imposed the correct length of imprisonment but was wrong to suspend it, we agree.
6. This was a very serious case and we identify the following aggravating features:
 - 1) The conduct was continuing rather than an isolated incident. Children were left along regularly.
 - 2) The respondent often exceeded the number of permitted children in her care.
 - 3) There was a serious breach of trust to the parents who believed their children were being carefully minded.
 - 4) The risks taken by the respondent resulted in the death of one of her charges.
7. These were the following mitigating circumstances:
 - 1) A plea of guilty
 - 2) Previous good character
8. We have been referred to a number of authorities but have been able to identify any circumstances would justify suspending the sentence.
9. The question for the court is what sentence the court should now impose bearing in mind the long delay of over a year since the trial judge passed sentence. We have to take the delay into account because of (1) the continuing uncertainty on the part of the respondent as to the sentence that would be imposed and (2) the fact that she has served all of the 400 hours community service while being on probation.
10. This is not a case where a suspended sentence is appropriate. On the other hand it is appropriate to reduce the length to the sentence that was imposed by the judge in the grounds of fairness.
11. The appellant's appeal is allowed. The existing sentence of 400 hours community service and probation is vacated and the sentences of 2 years imprisonment on count 2 and 1 year concurrent on counts 3 and 4 (also

suspended) are varied to a sentence of immediate imprisonment of 9 months on each of the 3 counts concurrently.



Baker, JA



Zacca, P



Evans, JA