

No: 201800935/A2

Neutral Citation Number: [2019] EWCA Crim 801

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday 17 April 2019

**B e f o r e:**

**LORD JUSTICE GROSS**  
**MR JUSTICE GOOSE**

**HER HONOUR JUDGE TAYTON QC**

(Sitting as a Judge of the Court of Appeal Criminal Division)

**R E G I N A**

v

**B**

Computer Aided Transcript of the Stenograph Notes 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)

*This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.*

*WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.*

**Miss D Ellis QC** appeared on behalf of the **Appellant**

**J U D G M E N T**

(Approved)

1. MR JUSTICE GOOSE: On 1 December 2017 in the Crown Court at Kingston Upon Hull before His Honour Judge Richardson QC, the appellant, “B”, pleaded guilty to wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861, and having an article with a blade, contrary to section 139(a) of the Criminal Justice Act 1988. On 2 February 2018 the judge sentenced the appellant to an Extended Sentence of 12 years, pursuant to section 226B of the Criminal Justice Act 2003, comprising a custodial term of seven years with an extension period of five years. The appellant appeals her sentence with leave of the single judge.
2. The provisions of section 45 of the Youth Justice and Criminal Evidence Act 1999 are engaged in this case because the appellant is under the age of 18. An order was made under section 45 in the lower court prohibiting the appellant's identity from being revealed. However, on 2 February 2018 the judge lifted that order but gave directions as to the extent of any reporting which would be permitted. We extend the terms of the order of 2 February 2018 so as to apply to this appeal. A separate order under section 45 was made in relation to the young witnesses in the proceedings in the lower court; that order remains in force.
3. This appeal was first listed before this court on 10 July 2018 when, on an application of the appellant, the hearing of the appeal was adjourned for an assessment to be carried out and fresh psychiatric reporting to be prepared. Dr O'Brien, a consultant in child and adolescent psychiatry, has provided a report dated 21 January 2019, together with letters dated 15 March and 20 March 2019, in which he has provided an update on the treatment received by the appellant and her response thereto.

#### The facts

4. The appellant is now aged 17. On 25 September 2017, when she committed these offences, she had just turned 16. Her date of birth is 23 September 2001. What occurred on 25 September was not foreseen by anyone who knew the appellant. She lived with her parents and older brother and attended Winterton Community Academy in North Lincolnshire, where her academic record was described as excellent. She appeared to be a model student with a stable home life. Her form teacher described the appellant as enjoying her own company and having a limited circle of friends and was not concerned about her ability to interact with others. The complainant worked at the appellant's school as an Inclusion Support Officer, who looked after the welfare of children by working with them, together with their families, to ensure that they were happy and supported in their school life. The complainant had worked at the school for over 25 years. She was familiar with the appellant, both as a pupil and because she lived near to the appellant's home.
5. Despite the outward appearance of the appellant, she had a history of significant emotional difficulties which were unknown to her family. She was later to describe to mental health professionals that she had been having suicidal thoughts for approximately two years before the offences were committed and had repeatedly self-harmed comprising of cutting herself on her arms and abdomen. She also described significant and persistent depression in her mood swings.

6. When she was in year 9 at school some of the appellant's friends spoke to the complainant and expressed concern about the appellant's wellbeing. The appellant did not approach the complainant herself and had never sought her to help directly. The complainant, not wishing to blur her professional role, and bearing in mind that she lived near to the appellant's family, asked others to assist. It is this perceived failure to intervene by the complainant that was the trigger to this offending.
7. At 8.45 in the morning on 25 September 2017 the appellant took a kitchen knife to school within her bag and, after confirming that the complainant was alone in her office, walked into the room, closing the door and attacked the complainant as she sat at her desk. Unaware that the appellant had a knife, the complainant thought she was to be hugged and then felt a blow to her chest. In a sustained attack upon the complainant, involving three separate stab wounds, the complainant was stabbed in chest below the right collarbone, the left side of the chest under the arm and a third wound was to her left cheek. As the complainant tried to escape from the room, the appellant repeatedly closed the door and continued the attack. It was only after her cries for help brought assistance from others that stopped the appellant. It is a reasonable and unavoidable inference that had the appellant not been stopped the injuries suffered by the complainant would have been even worse than they were. The kitchen knife used by the appellant in the attack was recovered and had a blade of 7.62 centimetres long. Later examination of the appellant's mobile phone established that she had taken steps to delete text message and social media to prevent the inevitable police investigation from accessing them. The messages could not be recovered.
8. The police and paramedics attended and the appellant was arrested. The complainant was treated at the scene before being taken to hospital. Her wounds required intensive medical treatment. There was extensive internal damage which was immediately life-threatening. On the left side of the complainant's chest there was a simple pneumothorax, with a partial collapsed lung caused by the blade penetrating the lung itself. On the right side, there was both a pneumothorax and a haemothorax which posed an immediate threat to life, given the extent of the bleeding into the chest and the capacity for further blood loss. A chest drain was inserted and by volume, 29 per cent of the complainant's blood had been lost as a result of the injury. She required a blood transfusion.
9. After treatment the complainant was discharged from hospital. However, the consequences of her injuries had been life-threatening. In her victim personal statement dated 11 December 2017, the complainant described that in addition to the physical injuries, including the obvious cosmetic damage caused by the facial wounds, the psychological effect upon her had been profound. The unprovoked and violent attack left her anxious about returning to work and also going about her daily life at home. She described herself as having lost her previous life.
10. Before passing sentence, His Honour Judge Richardson QC took time to carefully consider the psychiatric reports that had been obtained by both the prosecution and the defence. In his comprehensive and carefully crafted sentencing remarks, the judge identified the need to follow the Definitive Guideline for Sentencing Children and Young People and for Assault. He recognised that close attention by the court was

necessary to the mental health and vulnerabilities that the appellant had had for over two years leading up to these offences. The judge expressly referred to reports from Dr Kent, a consultant psychiatrist, dated 8 November 2017; Dr Markantonakis, a consultant child psychiatrist, dated 4 November 2017; Dr Rai, a consultant child and adolescent psychiatrist dated 28 November 2017; and the pre-sentence report from the North Lincolnshire Youth Offending Service dated 26 January 2018. It is necessary for the purposes of this appeal to understand the views of the psychiatrists as they were expressed to the court.

11. Dr Markantonakis found that the appellant was an intelligent young woman who was suffering from a moderately severe depressive illness. She had suffered from the disorder for at least two years, intensifying over the year leading up to the offending. It caused her to have symptoms of self-harm and suicidal thinking. Her depression was accompanied by feelings of agitation and anger which most often she turned in on herself and which, occasionally, she directed at others, such as the complainant. The appellant was not diagnosed as psychotic, but she needed treatment for her depression, including medication and Cognitive Behavioural Therapy. Dr Markantonakis' opinion was that the appellant's ability to reason and make appropriate decisions had been affected by her moderately severe depression. He expressed the view that she may well be on the autistic spectrum.
12. In Dr Kent's report he agreed with the history of significant emotional difficulties with suicidal thoughts and recurrent acts of self-harm. The appellant reported to Dr Kent that she had become upset because she felt that the complainant knew that the appellant needed help but had not provided any. This had caused her to become angry and wanting to hurt her. Dr Kent expressed the view that the appellant suffered from a significant mental disorder, developing over a period of two to three years prior to the offence, but the precise nature of the disorder was not clear.
13. In report of Dr Rai, the self-harming was described as a coping strategy to manage the appellant's negative emotions. There had been some positive changes in the appellant's mood whilst in custody awaiting sentence, but the appellant was described as changing her mood or personality to fit the environment in which she was. Dr Rai said that the appellant was a vulnerable young person who had intermittent periods of low mood and anxiety related to her situation.
14. In another report from the secure children's home where the appellant was on remand, it was stated that the appellant was a very complex and vulnerable young woman about whom little was known in depth. She was considered at high risk in terms of self-harm and suicide, and whilst she had settled in well she required intensive observation.
15. The judge in passing sentence, concluded that the section 18 wounding offence fell within category 1 of the Guideline. He identified that the greater harm factors were that this was a serious injury in the context of the offence, and it was a sustained assault on the same victim. The factors indicating high culpability were the use of a weapon and the significant degree of premeditation based upon planning the attack and preparing herself to carry it out. As a category 1 offence the starting point after trial was 12 years' custody with a sentence range of 9 to 16 years as an adult. The aggravating factors

which increased the seriousness of the offence included the location of the crime, being in a school and in the presence of other children, and the fact that the complainant was a public sector worker, providing a valuable role within the school. Although the judge also identified that the attempts to conceal evidence on her mobile phone was an aggravating factor, this appears to fall more easily within the evidence of premeditation as a step 1 factor in the Guideline. The judge then determined that the sentence for an adult would have been 15 years' custody which he discounted to eleven years to reflect the appellant's age. A further discount for early guilty plea was applied to the sentence, reducing it to seven-and-a-half years. This was further reduced by six months to take account of other mitigating factors. Accordingly, the judge determined that the custodial term for the appellant was seven years.

16. The judge considered carefully whether the appellant should be found to be dangerous for the purposes of section 226B of the Criminal Justice Act 2003. The judge found that she was, based on the circumstances of these offences, in which very serious violence was used in an unprovoked and unpredictable attack. There was no confidence that the appellant had any real insight into her problems which had led her to plan and carry out the offences. The judge concluded that the very serious circumstances of this case, taken as a whole, meant that the appellant remained a present and continuing danger to others. The unpredictability of such violent behaviour meant that she remained a significant risk of inflicting serious harm upon others. Accordingly, the judge imposed an extended licence period of five years in the Extended Sentence under section 226B of the 2003 Act.

#### Grounds of appeal

17. On behalf of the appellant it is argued by Miss Ellis QC that the judge failed to give sufficient weight to the fact that the appellant had only just turned 16 years of age when the offences were committed. Further, the judge, whilst recognising that the appellant was suffering from significant depression leading up to these offences, had not taken sufficient account of this as a mitigating factor. It is also argued that this was an isolated occurrence and totally out of character. The over-arching submission is that the judge adopted too high a starting point for sentence, thereby creating a manifestly excessive sentence.

#### Further psychiatric reporting

18. After the adjournment of this appeal by the court, reports have been obtained from Dr Taylor, a visiting consultant child and adolescent psychiatrist at the secure children's home where the appellant was remanded, dated 30 November 2018. There is also the report from Dr O'Brien dated 21 January 2019.
19. In Dr Turner's report she described the treatment of the appellant whilst in the children's home, together with the appellant's response. Dr Taylor was unable to provide an assessment of the appellant's dangerousness. She described no real improvement in the appellant's depression or mood, with significant active suicidal ideation, requiring very high levels of observation and support. Dr Taylor recommended the transfer of the appellant to Ardenleigh Medium Secure Unit for further assessment. This took place in

October 2018 and led to the report of Dr O'Brien. He expressed the opinion that the appellant suffered severe depressive illness and is on the autistic spectrum. He concluded that the nature of her mental illness and mental health difficulties meant that the appellant required ongoing assessment and treatment in hospital. There were some signs of good progress, in that the appellant had settled into the ward and was accepting her treatment. It appeared that she was not continuing to self-harm and the relaxation and intensive observation appeared to have improved the appellant's mood. However, Dr O'Brien was also unable to provide an opinion on dangerousness. In a letter dated 15 March 2019, Dr O'Brien confirmed that any assessment of risk by him was confined to therapeutic outcomes.

### Discussion and conclusion

20. These offences by the appellant were both unpredictable and very serious. The principal ground of appeal is that the judge imposed too long a custodial term as part of the sentence. This is based on the submission that the offence for an adult, before any discount for a plea, should not have been 15 years' custody. In passing sentence, the judge identified the section 18 wounding offence within category 1 of the Guideline. The submission on behalf of the appellant that the case fell within category 2 was rejected by the judge. With that view we agree. We agree also with the judge that the offence involved greater harm, due to the exceptionally serious injuries suffered by the complainant and that it was a sustained attack. Equally, there were factors of higher culpability, in the significant degree of premeditation and the use of a weapon. Taking into account the aggravating factors in step 2 of the Guideline, the judge raised the sentence from a starting point of 12 years to one of 15 years before discounting it to 11 years to reflect the young age of the appellant. A further discount for early plea led to the custodial term of 7 years after adjustment for other mitigating factors.
21. Whilst we are satisfied that this offence properly falls within Category 1 of the Guideline, the judge, in what is in all other respects an impeccable sentencing note in a difficult sentencing exercise, did not give sufficient effect to the mental disorder of the appellant at step 1 of the Guideline. One of the factors indicating lower culpability is "*mental order or learning disability where linked to the commission of the offence*". Therefore, whilst there were factors indicating higher culpability, there was also a significant factor indicating lower culpability. The judge was entitled to find, even after balancing these factors together, that the offence fell within category 1, but the lower culpability factor should have come into play when fixing the sentence within the category range. This would have applied some downward pressure on any post-conviction sentence. Even allowing for the aggravating factors identified, when taking into account the mental disorder identified in the psychiatric reports, the adult post-conviction sentence at step 2 should have been at or close to the starting point of 12 years rather than 15 years. The judge expressly and correctly identified the mental disorder and plainly took it into account in relation to the question of dangerousness, but appears not to have identified it as a factor indicating lower culpability so as to adjust the sentence at step 2 accordingly. In our judgment taking into account the aggravating and mitigating factors, the sentence of 15 years before discounting for age and plea was too high.

22. At step 3 of the Guideline, the court is required to consider any other factors which indicate a reduction should be applied to the sentence fixed at step 2. The appellant's age is such a factor. Within the Sentencing Children and Young People Guidelines at paragraph 6.46, the court is invited to apply a sentence broadly within the region of half to two-thirds of the adult sentence for those aged 15 to 17. Although this is a guide and not to be applied in mechanistically, a significant discount to reflect a young age is necessary. The judge correctly applied such a significant discount of the sentence. Allowing for a one-third discount, the sentence of 12 years for an adult after conviction is reduced therefore to eight years. Then applying a one-third discount for early plea reduces the sentence to approximately five years. In our judgment, the custodial term on the appellant of seven years is too high and should be reduced, therefore, to five years.
23. We are not persuaded that there is any merit in the submission that these offences were an isolated incident out of character; the gravity of the wounding offence speaks for itself. Further, as we have explained already, the discount given to the appellant for her young age was adequately reflected in the judge's sentence.
24. We turn to the issue of dangerousness. We are satisfied that the judge correctly identified the features of this offending, in particular its unpredictability and the seriousness of the violence, to conclude that an Extended Sentence under section 226B of the 2003 Act was necessary. The further psychiatric evidence obtained since this appeal was adjourned and which we have read, does not cause this court to change its assessment. We are satisfied that the judge was correct to find the appellant dangerous, notwithstanding her young age, and to impose an extended licence of five years.
25. Accordingly, we allow this appeal against sentence in part only: to the extent that the custodial term of the Extended Sentence is reduced to five years from seven years, whilst the extended licence remains the same. Finally, there will be a victim surcharge order of £30.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Fournival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: [Rcj@epiqglobal.co.uk](mailto:Rcj@epiqglobal.co.uk)