

NCN: [2020] EWCA Crim 604

No: 201904386/A3

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

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Thursday, 30 April 2020

**(VIRTUAL COURT)**  
**B e f o r e:**

**LADY JUSTICE CARR DBE**

**MR JUSTICE SWEENEY**

**MR JUSTICE GOOSE**

**R E G I N A**

v

**PAUL MOLLOY**

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**Mr C Myrie** appeared on behalf of the **Appellant**  
**J U D G M E N T**

## LADY JUSTICE CARR:

### Introduction

1. On 18 November 2019, in Worcester Crown Court, the appellant, who is now 36 years of age, pleaded guilty to the following offences: making a threat to kill contrary to section 16 of the Offences Against the Person Act 1861 (count 3) and assault occasioning actual bodily harm contrary to section 47 of the Offences Against the Person Act 1861 (count 4). He was sentenced to 5 years' imprisonment for making a threat to kill and 1 year's imprisonment to run concurrently for the assault. Having been convicted of an offence during the currency of an 18-month community order imposed by Worcester Crown Court on 13 May 2019, for another offence of making a threat to kill, the community order was revoked. In addition a 4-year restraining order was imposed.
2. This is his appeal against sentence for which purpose he has been represented by Mr Myrie. We would wish at the outset of this judgment to commend Mr Myrie for the professional and effective manner in which he has made his submissions - not only by video link but also by telephone, due to audio difficulties.

### The Facts

3. The appellant had been staying at his mother's house following his very recent conviction for making a threat to kill his ex-wife. His mother was 64 years old and suffered from anxiety and dystonia (a neurological condition similar to Parkinson's) that caused her to shake and required her to use a stick. She was alone in the house with the appellant at the time since her husband was in hospital.
4. The incident in question took place on 24 June 2019 when the appellant had been drinking. He spilt a large bottle containing cider in the front room. As he drunkenly tried to clean up he was simply making the mess worse. His mother asked him to leave the house. He reacted by threatening to kill her, saying: "I'm going to fucking kill you bitch", a threat which she believed to be genuine. He also punched her around four times and sometimes to the head. She begged him not to kill her and crawled to the front door. At 7.00 pm neighbours found her at their front door shaking and covered in blood.
5. Police and paramedics were called. She had sustained bleeding and significant swelling under her left eye. She suffered a nose bleed, had cuts to her right earlobe and her left inner upper lip. She attended hospital. There was a suspected but unconfirmed fracture of her left cheek and jawbone.
6. The appellant was found in a McDonald's restaurant in the early hours of the following morning and arrested.
7. In her victim personal statement, made some two days after this incident, the appellant's mother described of being petrified of being alone in the house. She had her sister live with her as she was unable to move around the house since the offence. She was too scared to open the front door. She suffered from flashbacks and had difficulty sleeping. She suffered severe bruising and swelling, as we have identified, and was unable to see

out of her left eye for some time. She was left with a ringing noise in her right ear as a result of the blows. She was prescribed painkillers and sedatives. She was unable to eat solid food and had been unable to visit her husband in hospital.

8. The appellant had 18 convictions for 25 offences spanning from February 1998 to April 2019. His relevant convictions included offences of common assault, assault occasioning actual bodily harm, possession of a loaded/unloaded air weapon in a public place, disorderly or threatening behaviour likely to cause harassment, alarm or distress and, as already indicated, on 13 May 2019, he had been sentenced to a 18-month community order for making a threat to kill against his ex-wife. He was subject to that order at the time of these offences.
9. The appellant pleaded guilty on a basis: he accepted that he had punched his mother three or four times and causing her the injuries in question. He did not punch her when she was on the floor or sitting in a chair. He was intoxicated at the time and mistakenly thought that he needed to protect himself against his mother. He now accepted the force he had used was unnecessary and unreasonable.

The sentence below

10. Given that a custodial sentence was inevitable we agree that it was proper for the Judge to proceed to sentence without a pre-sentence report, particularly where he had the benefit of a pre-sentence report recently provided for the purpose of the sentencing exercise earlier in the year. However, the sentencing remarks were unduly lengthy – the Judge failed to heed the guidance in R v Chin-Charles and Cullen [2019] EWCA Crim 1140.
11. In summary only, when sentencing on count 3 the Judge concluded that it was a case of higher culpability and higher harm and accordingly placed the offending within category 1A of the Sentencing Council Guideline for Intimidatory Offences. The offence was aggravated by the appellant's previous convictions, in particular the most recent one involving the threat to kill against his ex-wife. That offence was also committed whilst the appellant was under the influence of alcohol. The Judge gave less weight to his other antecedents as they were of some age, albeit some were for offences of violence. They did show a pattern of behaviour.
12. On count 4, the Judge concluded that the offending fell on the cusp between category 1 and 2 offending for the purpose of the Sentencing Council Guideline for Assault. There was a sustained assault against the same victim. The appellant deliberately caused more harm than was necessary and the victim was vulnerable and had been deliberately targeted. There was a lack of premeditation. The aggravating features were the appellant's previous convictions; that the offence was committed in breach of a community order and against a family member in her own home.
13. The Judge stated that he took into account the appellant's remorse, the reference in the pre-sentence report as to his suffering from post-traumatic stress disorder from his time in the Armed Forces and a letter written in support of the appellant. He afforded the appellant 10% credit for his guilty plea for the offence of making a threat to kill

on the day of trial and 25% credit for his earlier plea to the assault.

14. In this context, we note that the Judge in fact made a mathematical error in the appellant's favour on count 3. He indicated that a term of 6 years would be appropriate after trial on count 3. A 10% discount produces a term of more than the 5 years which he ultimately passed. Effectively the notional sentence after trial was lowered to one of 66 months not 6 years.

#### Grounds of Appeal

15. For the appellant, Mr Myrie submits that this was a case of expressive emotional violence rather than a threat to kill with instrumental violence. This is said to be a distinction with substance. The threat to kill was in reality an aggravating feature of the violence. The 6-year starting point adopted by the Judge was manifestly excessive. There was potentially an element of double counting in relation to the Judge's treatment of the appellant's history of offending against family members.
16. Essentially Mr Myrie submits that this was not category 1A offending. Whilst culpability was higher, it could not be said that the harm was at the highest level based on the evidence in the victim personal statement. The victim personal statement, made only days after the incident, evidenced that some, rather than "very serious" distress and "significant" psychological, harm was caused. There was no evidence of any continuing impact by the time of sentence. Mr Myrie submits that the distress in question fell to be attributed to the violence rather than the threat to kill. Moreover by the time of sentence, there was evidence that the impact of the offending was no great since the appellant's mother indicated that she no longer wanted a lifelong restraining order against him. The appropriate category was 2A, which carried a starting point of 2 years' custody with a range of 1 to 4 years' custody. Further, Mr Myrie submits that the Judge paid insufficient regard to the appellant's strong personal mitigation.

#### Analysis

17. The Judge was entitled to treat the offence of making a threat to kill as the lead offence. As to categorisation, it is right (and common ground) that this was higher culpability offending, given the significant violence involved. As for harm, we remind ourselves that it was for the Judge to make a judicial assessment of the factual impact of the offence on the victim - see R v Chall [2019] EWCA Crim 865 (at [15] and [36]). In our judgment the Judge was entitled also to conclude that it was category 1A offending on the basis that, psychological harm and practical impact aside, the appellant's mother suffered, on any view, very serious distress from the threat to kill, with significant violence. This was a truly traumatic experience for a vulnerable elderly lady who believed that her son was going to carry out a threat to kill her, in circumstances where her husband was in hospital and she was only looking after the appellant in order to assist him in the context of the community order which he was serving. On the facts of this case, it seems to us wholly artificial to seek to separate out the effect of the threat to kill from the effect of the assault.
18. There were significant aggravating features as identified by the Judge, namely the

appellant's history of violence towards family members, his previous conviction and the fact that he was under a community order at the time and in drink. We do not consider that the appellant's written basis of plea or his personal mitigation were not properly catered for in the ultimate sentence. The written basis did little to assist him, as Mr Myrie has realistically accepted today before us. The Judge took into account the appellant's service in the Armed Forces and his post-traumatic stress disorder.

19. In all the circumstances, we have reached the conclusion that the sentence imposed was not manifestly excessive or wrong in principle. For these reasons, the appeal will be dismissed.

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

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