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IN THE COURT OF APPEAL
CRIMINAL DIVISION



[2023] EWCA Crim 1371
CASE NO 202302185/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 6 October 2023

Before:

LORD JUSTICE EDIS
MRS JUSTICE STACEY DBE
HIS HONOUR JUDGE LEONARD KC
(Sitting as a Judge of the CACD)

REX
V
TIRMINDER SINGH LALLIE

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MR J RICHARDS appeared on behalf of the Appellant

J U D G M E N T

1. LORD JUSTICE EDIS: This is an appeal against sentence with leave of the single judge. The appellant is now 38 years old. On 8 November 2022 in the Crown Court at Wolverhampton he entered a late guilty plea to an allegation of assault occasioning actual bodily harm. On 21 March 2023 he entered a guilty plea to an offence of using threatening abusive or insulting words or behaviour with intent to cause fear or provoke unlawful violence, contrary to section 4 of the Public Order Act 1986. That is a summary only offence. He was able to plead guilty to it because the indictment had been amended to include a count of affray. Originally the appellant had been charged with an offence of assault on an emergency worker. He had elected trial. That allegation appeared on the indictment. Subsequently, as a result of discussions between the parties, as we have said, an allegation of affray arising out of the same facts was added to the indictment and that enabled at that stage and for the first time the guilty plea to the alternative summary only offence under section 4 of the 1986 Act to be tendered.
2. Ultimately, following a process which we shall briefly describe in a moment, the appellant was sentenced to immediate custodial terms of 26 weeks for the assault occasioning actual bodily harm and six weeks for the section 4 offence to run consecutively. That was a total of 32 weeks' imprisonment. That sentence was imposed with effect from 29 June 2023.
3. The appellant has in fact been released under Home Detention Curfew having served nine weeks of that sentence. He is therefore here in court before us, at liberty but subject to the terms of that curfew.
4. Briefly, the facts of the two offences are as follows. The first offence in time, the assault occasioning actual bodily harm, was committed on 4 August 2021 against a victim named Alan Jarman. Mr Jarman was a painter who was at about 3 o'clock in the afternoon

packing his equipment away in his van which was parked in the street. The appellant was driving a Range Rover along the road nearby. Mr Jarman thought he was driving too fast so made a gesture at him which was intended to say that the appellant should slow down. In one sense he did - in fact he came to a complete halt. However, that was not to reduce the danger that he may have been presenting by his driving, it was so that he could confront Mr Jarman. The appellant had formed the impression that Mr Jarman had called him a "brown bastard". He lent out of his window, shouting and swearing at Mr Jarman and then got out of the car. He approached him shouting, "I'll knock your block off". There was a stand-off in the street. Mr Jarman asked him whether he was on drugs and the appellant said, "I could be".

5. Mr Jarman, it was agreed for the purposes of sentencing, had a pole in his hand. At that point he hit the appellant twice over the head with it. That was the first physical violence that was used during this confrontation. Although the confrontation itself had been inspired by the appellant's behaviour, it is not the case that he was the first person to strike a blow. He did however then headbutt Mr Jarman to the forehead, causing him to stagger back. This was followed by punches which caused him to fall to the ground. He then held him in a headlock, hitting him three or four further times.
6. Mr Jarman said that the appellant was wearing a steel bangle around his wrist which he apparently pulled over his fist in order to make those blows more forceful while he was in the course of striking them. Some neighbours came out and broke this incident up and it ended without further violence. Mr Jarman was taken to hospital where wounds in his scalp had to be glued back together.
7. The appellant initially said that he acted in self-defence. His guilty plea was tendered on the basis that he had acted in self-defence but that he had overreacted in self-defence and

went far beyond what was reasonably necessary to prevent Mr Jarman causing him any injury.

8. Subsequently, and while on bail, on 1 July 2022 the appellant was encountered by two police community support officers. He was driving a vehicle. They were concerned about the manner in which he was driving it. When he pulled up outside a shop they attempted to speak to him about his driving. He was told to wait where he was while the police officers parked their vehicle, but he went into the shop while they were doing that. When he came back to his van the police officers tried to speak with him but he became aggressive and gesticulated with his hands, saying that they were lying and that there had been nothing wrong with his driving at all and it was in any event none of their business. He went back to his van. One of the police community support officers stood by and inside the open door of the van so that he (the appellant) could not close it. He nevertheless tried to do that while the police community support officer was in the way. He did this twice and then got out of the vehicle and was again aggressive towards the police community support officer, pointing his finger in the officer's face and saying he did not like the police and that they should "fuck off". He then got in his van and drove away. Subsequently he was arrested and charged with assaulting an emergency worker. The matter was dealt with in the way that we have already described.

9. The case came for sentence before District Judge MC Lower sitting in the Wolverhampton Combined Court on 29 June 2023. The judge can be commended for the brevity of his sentencing remarks but unfortunately the attempt to achieve brevity resulted in one or two aspects of the sentencing process being rather unclear. In particular, the extent to which the judge thought it right to give credit for the guilty pleas which had been tendered is not clear. In the result the sentence of the court, as

pronounced, was a total term of 12 months' immediate imprisonment. That was comprised of a sentence of 12 months for assault occasioning actual bodily harm with a concurrent term of six weeks' imprisonment for the section 4 public order offence. In relation to the matter of credit for the guilty plea, the judge said that he would give "some limited credit" for those pleas but said no more than that.

10. The judge observed, as is the case, that the appellant has no previous convictions and presumably took that into account. He said:

"I suspect that finding yourself at court is more of a punishment to you than anything else and you are now likely to be back in court again."

11. The judge dealt with the assault occasioning actual bodily harm guideline by referring to the mitigation to be derived from the plea which was on the basis of excessive self-defence, but also observed that the use of the bangle over the knuckles was the equivalent of a weapon. He said that this should lead to a starting point of one-and-a-half years' imprisonment, with a range between 36 weeks to two-and-a-half years. For the public order offence he said that this would normally be dealt with in the Magistrates' Court where the guideline would suggest a medium level community order with a range of a fine up to 12 weeks' imprisonment.
12. The judge had a pre-sentence report. The pre-sentence report observed, as may have become obvious from what we have already said, that the appellant has difficulty controlling his temper. It appears that he suffers from anxiety and depression which may perhaps have something to do with that, although the causal link is not clear.
13. The pre-sentence report suggested that these matters could be dealt with by way of a community order with an unpaid work requirement and a 25-day rehabilitation activity

requirement. The judge did not refer to that recommendation or explain why it was not to be accepted. Perhaps more significantly he did not either in the course of his sentencing remarks explain why the custodial sentences which he had decided were required could not be suspended. Counsel after the sentencing remarks were complete asked for an explanation of why the sentences were not suspended and the judge said:

"I have considered it however I do not consider it just to suspend the sentence of custody in all the circumstances of the case."

14. Even at that stage the judge did not refer to the relevant guideline on the imposition of sentences.

15. There appears to have been some further discussion at that hearing during which the judge observed:

"Well, even if you are right about that, Mr Richards, there was a headbutt."

16. The case then, on 24 August 2023, came before the court again in circumstances which are not fully explained. The appellant was not present but a hearing in open court took place at which he was represented. Mr Richards, who has appeared on his behalf before us and who appeared at the original sentencing hearing on his behalf was not present and through no fault of his own has been unable to explain what we are about to set out. The judge said this:

"It's my error, I am sure, but when I sentenced Mr Lallie on 29 June, I intended to sentence him to twenty-six weeks for the offence of assault occasioning actual bodily harm, with six weeks to be served consecutively for a section 4 Public Order Act offence making a total of thirty-two weeks, compensation ordered, the surcharge reduced to zero to prioritise compensation and no order as to costs.

I understand that Mr Lallie has made an application to the Court of Appeal asking for an appeal against sentence to be considered, and the registrar has been in touch with me possibly with counsel as well, to ask that I correct my sentence under the slip rule in open court, which I am more than willing to do subject to any other representations that either counsel want to make."

17. The judge then said that the sentence was intended to be a different sentence from that which he had pronounced on 29 June, namely 26 weeks for assault occasioning actual bodily harm (half the term which was actually imposed) and a consecutive term of six weeks for the section 4 Public Order Act offence, rather than, as was originally imposed, a concurrent term.
18. It is not wholly clear to us why there was a slip rule hearing or what exactly had gone wrong with the process so that the judge initially pronounced a sentence other than the one which he intended to pronounce but nevertheless he did correct the position and reduce the sentence and that was an effective order which was made. It is that reduced sentence against which this appeal is now brought.

Discussion

19. It appears to us that the judge did err in failing first to consider what alternatives there were which were available to the court to an immediate sentence of custody. Two clear alternatives presented themselves to that course. The first was that suggested in the pre-sentence report and the second was the option of suspending the term which was imposed. That second option was available to the judge given the length of the sentence which was imposed on both occasions, which was in total less than two years, and in those circumstances the guideline requires the court to consider suspension of the sentence before it can be imposed as an immediate sentence. There was no express

consideration of either those two alternative courses by the judge and there is therefore no explanation from him as to why they did not commend themselves to the court. In our judgment, given the fact that Mr Lallie at the date of sentence was 37 years old and of good character, and given the fact that it was agreed for the purposes of sentencing that the more serious of the two offences by far had been committed as a result of an assault against him (in that the victim used the first violence between the two), this was a case which did not require an immediate sentence of imprisonment. The exercise therefore which the judge ought to have been embarking on was a consideration of which of the two alternative courses was available to the court which would not involve an immediate sentence of custody.

20. In our judgment, sentencing on 29 June 2023 in the circumstances which then prevailed the option of a community order suggested by the author of the pre-sentence report would have been a perfectly appropriate outcome. Equally, the alternative option of a suspended sentence with or without some additional requirements would have been another perfectly appropriate option and the task of the judge was to choose between those.

21. Accordingly, we will allow this appeal and we will substitute for the sentences imposed by the judge different sentences of our own. We consider that on the facts of this case the decision to impose an immediate sentence of custody on this man of good character was manifestly excessive. We are not of course sentencing on 29 June of this year. Events have taken place since then which have changed the position and we consider that it would not in the circumstances be appropriate to impose a community order. This appellant has in fact served all of the immediate sentence which he is required to serve under the current regime. That current regime includes Home Detention Curfew and

after nine weeks he is now free to that extent. We therefore do not consider it is appropriate to impose a community order. The case plainly passes the custody threshold and we consider that broadly speaking adopting the approach to the guideline of the judge sentences of 20 weeks in relation to the assault occasioning actual bodily harm and a consecutive term of six weeks in respect of the section 4 public order offence would have sufficed. We therefore impose those sentences in the place of those imposed by the judge. Those sentences include a modest reduction for the late pleas. In the case of the assault offence the reduction is 10%. The plea to the public order offence was entered on the first occasion when that was possible, but was not foreshadowed by any earlier admissions of guilt to it. That sentence would have been 8 weeks after a trial and has been reduced by 25%. Those sentences will be suspended for 18 months.

22. We do consider it appropriate to attach as a requirement to that suspended sentence the 25-day rehabilitation activity requirement. That was an appropriate option in June and again in August and in our judgment remains so now. We are confirmed in that view by the very sensible approach of the appellant himself who tells us through Mr Richards, his counsel, that following his release from imprisonment he has found his dealings with the Probation Service while on licence to be of considerable value to him. That, it seems to us, shows a sensible approach to his current position. He is a man of good character. He has found himself involved in two separate acts of criminality both of which involved unrestrained and uncontrolled behaviour in public, one of them involving the use of significant unlawful violence. Plainly he has, or at least had at those times which are now quite remote, a problem with anger. The fact that he has acknowledged that and regards the assistance of the Probation Service as useful is reassuring and encouraging. We will therefore attach the rehabilitation activity requirement of 25 days to the suspended

sentences. The other orders made by the judge in relation to compensation and so on are unaffected and to that extent this appeal is allowed.

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