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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 466



No. 202002993 A3

Royal Courts of Justice

Tuesday, 9 March 2021

Before:

LADY JUSTICE CARR

MR JUSTICE JAY

HER HONOUR JUDGE DEBORAH TAYLOR  
(THE RECORDER OF WESTMINSTER)

REGINA

V

CHRISTOPHER PEARCE

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MR A. WATKINS appeared on behalf of the Appellant.

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

**Introduction**

1 On 11 November 2020 in the Crown Court at Stoke on Trent the appellant, then aged 31 years, was convicted on his guilty plea to a single count of controlling or coercing behaviour in an intimate or family relationship contrary to s.76(1) and (11) of the Serious Crime Act 2015 ("s.76"). He was sentenced to 30 months' imprisonment and made the subject of a restraining order pursuant to s.5 of the Protection from Harassment Act 1997 for a period of ten years. This is his appeal against sentence.

**The Facts**

- 2 The victim, Sonya Johnson, had been in an on/off relationship with the appellant since 2010. They went on to have two children together. The relationship had started well, but after about a year the appellant's behaviour changed. He would damage her clothes and her telephones, forbid her to socialise and lock her out of her own home. She ended the relationship in 2013 before a reconciliation led to the birth of their first child, a son, in 2015 and their second, a daughter, in 2016.
- 3 The appellant would verbally and physically abuse Ms Johnson, damage property, flick cigarettes at her and spit at her. He would sit outside her home in his car. There were tussles over their son which involved pushing and shoving and barricading of doors. On one occasion she was locked in her kitchen. When she was pregnant with their daughter the appellant would refuse to allow her to see her friends. Again, he verbally and physically abused her and spat at her.
- 4 In 2017 Ms Johnson permanently ended the relationship. The appellant however continued to seek to control her. He threatened harm to Ms Johnson's mother and sister. From around 2020 onwards he would also threaten to commit suicide. On 21 June 2020, as an example, he verbally abused Ms Johnson, demanding child contact and threatening suicide unless he could get what he wanted. He knocked on her door, shouted through the letter box and pestered her with texts. On this occasion he entered the back garden of her home, took a picture on his telephone of a petrol can which he sent to her, implying the threat of arson and letting her know with that image that he had been in her back garden. The following day he attended her home again and verbally abused her. He tried to force open the front door and again threatened suicide. He breached child contact arrangements.
- 5 Ms Johnson said that he had destroyed her as a person and she wanted her life back. She had become anorexic. There were statements from others highlighting how impossible it was for her to get away from his control.
- 6 The indictment period ran from 29 December 2015, when s.76 came into force, through to 23 June 2020. The appellant had 17 convictions for 25 offences spanning between 2006 to 2020. These offences included offences of using threatening behaviour and battery. Specifically, in 2016 he was convicted of the battery of another female partner arising out of an occasion when he had kicked a door breaking his partner's nose.
- 7 The author of the pre-sentence report commented that the appellant was very focused on what he perceived to be the unacceptable behaviour of his partner. He had either failed to recognise that his actions amounted to controlling or coercive behaviour or he had elected to ignore the victim's perspective. He justified his actions on the basis that he had felt unjustifiably vilified by the victim. He was assessed as posing a high risk of reoffending, particularly against current or former partners.

## **Sentence**

- 8 The judge referred to events predating the indictment period, commenting that they demonstrated why the appellant was able to behave as he did during the indictment period. He said that his previous conduct amounted to a serious aggravating factor. Having then referred to events from 2015 onwards, the judge said that he was in no doubt that Ms Johnson was a vulnerable woman who was unlikely ever to regain the confidence that she had lost by becoming involved with the appellant. She had demonstrated bravery in providing evidence against him and was a good role model to their children, in stark contrast to the appellant. Whilst the appellant had suffered from depression and had been prescribed anti-depressants in prison, that was no excuse for this offending. He had witnessed domestic violence as a child, but that made it even more concerning that he would choose to allow his children to witness this behaviour. He could have broken the chain, but chose not to. He was aggressive and unpleasant to anyone who tried to remonstrate with him.
- 9 The judge considered the relevant Sentencing Council Guidelines, including the Guideline on Intimidatory Offences and took into account the impact of the pandemic on prison conditions in accordance with *R v Manning* [2020] EWCA Crim 592. He categorised the offending as falling within category 1, culpability A. The appellant's previous convictions were a significant aggravating feature in the judge's view, elevating the seriousness of his offence, as was his proven history of violence and threats in a domestic context, including an occasion in which he broke Ms Johnson's leg by restraining her forcibly while trying to take their child out of the house against her will. The judge referred to his previous conviction for a domestic battery. He had read the pre-sentence report, noting that the appellant sought to minimise his behaviour, which demonstrated a complete lack of insight. The judge said that the impact on Ms Johnson and their children could not be overestimated. He had preyed on Ms Johnson's vulnerability. His main mitigation was his guilty plea. The starting point for category 1A was 30 months' imprisonment. In his judgment the offence was so serious that only custody could be justified. The aggravating features elevated the seriousness of the offence quite considerably. He would be given 25% credit for his guilty plea. The judge ruled that the sentence after trial would have been 40 months' imprisonment. After credit for plea, the appellant was sentenced to 30 months' imprisonment.

## **Grounds of Appeal**

- 10 Mr Watkins for the appellant advances two grounds of appeal. At the forefront is his contention that, having found this to be a category 1A case, the judge was wrong significantly to further increase the sentence by reference to apparent findings that the appellant had both assaulted and controlled or coerced the victim prior to the indicted offending, resulting in a manifestly excessive sentence. On any fair reading, submits Mr Watson, the judge fell into error in his treatment of the pre-indictment period of conduct on the part of the appellant. His finding that that earlier offending was a seriously aggravating feature led the judge wrongly to arrive at a manifestly excessive sentence.
- 11 Mr Watkins relies particularly on the judge's reference to what he recorded as a proven incident in November 2015 in which the appellant had caused Ms Johnson's leg to be broken. The circumstances of that incident were in fact not admitted or proven at all against the appellant. They had formed the subject of a separate count alleging the infliction of grievous bodily harm contrary to s.20 of the Offences Against the Persons Act 1861, a count which the respondent had elected not to pursue in the light of the appellant's plea to the s.76 offence. Whilst Mr Watkins accepts that the court was not required to be blind to the assertions that the appellant's abuse had lasted longer than was covered by the indictment

period, it was wrong to sentence the appellant directly or indirectly for alleged offending outside that period.

- 12 The second ground of appeal is advanced with less enthusiasm by Mr Watkins, but it is nevertheless maintained. The suggestion is that the judge was wrong to find that this was a case of greater harm in the absence of any clear evidence as to the impact of the offending on the complainant. In particular, Mr Watkins points to the fact there was here no psychological evidence, only (it is suggested) a couple of lines in the victim's statement as to the impact of the offending on her. Further, Mr Watkins points out that although the judge professed to take into account the impact of the pandemic on prison conditions, this would mean that the notional post-trial sentence in normal circumstances must have exceeded a period of 40 months. That again, he submits, is manifestly excessive.

### **Discussion**

- 13 We are not persuaded that the ground of appeal relating to the categorisation of harm in this case as greater harm is made out. The judge was entitled on the material before him to conclude not only that this was higher culpability offending but also that it involved category 1 harm. The level of harm is to be assessed by weighing up all the factors of the case. The judge was entitled to conclude as a matter of common sense inference from the admitted particulars that Ms Johnson was caused to fear violence on many occasions.
- 14 The indictment period covered over a year when the appellant and Ms Johnson were living together and beyond. Not only were there threats of harm, but she was also physically abused. These were not isolated incidents, but rather represented a pattern or continuum of controlling and coercive behaviour involving the threats of violence. The incident with the petrol can speaks for itself. One can also point to very serious alarm or distress having had a substantial adverse effect on Ms Johnson, not least by reference to her anorexia.
- 15 The starting point for category 1A offending is, as has been pointed out, two years and six months' custody with a range of one to four years.
- 16 We turn then to the main ground advanced on this appeal. We accept that it was wrong in principle for the judge to sentence the appellant by reference to what was a disputed and unproven incident involving injury to Ms Johnson's leg said to have been caused by the appellant.
- 17 However, the question remains as to whether or not the sentence of 30 months' imprisonment was manifestly excessive. Although it is right that the judge mentioned the incident involving injury to Ms Johnson's leg in his sentencing remarks, he did so in the context of his reference to the appellant's offending record. It is not clear to what extent that particular incident influenced the overall sentencing outcome.
- 18 First, it is to be noted that there were multiple higher culpability factors present in this case: conduct intended to maximise fear or distress; persistent action over a prolonged period of many years and the use of multiple methods of controlling or coercive behaviour (namely the direct threats, the threats of suicide, property damage and threats to Ms Johnson's mother). Secondly, as is rightly recognised for the appellant, the background to the index offending was not to be ignored. It was rightly taken into account as an aggravating feature. Thirdly, the appellant had a relevant record of offending with a conviction in particular for domestic battery. By way of mitigation beyond his guilty plea, all that the appellant could meaningfully point to was his depression.

- 19 Balancing all of these factors, in our judgment an increase from a starting point of 30 months to 40 months' imprisonment after adjustment for the impact of the pandemic and before credit for guilty plea cannot be said to be manifestly excessive.
- 20 For these reasons, we dismiss the appeal. We record our thanks to Mr Watkins for his succinct and focused submissions which he delivered very clearly by telephone.
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**CERTIFICATE**

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This transcript has been approved by the Judge.