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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 1520



CASE NO 202303552/A4

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday, 6 December 2023

Before:

LORD JUSTICE EDIS  
MR JUSTICE JEREMY BAKER  
SIR ROBIN SPENCER

REFERENCE BY THE ATTORNEY GENERAL UNDER  
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX  
V  
ROBERT EVANS

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MR P HALL appeared on behalf of the Attorney General  
MR S MULDOON appeared on behalf of the Offender

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

1. LORD JUSTICE EDIS: This is an application by His Majesty's Solicitor General for leave to refer a sentence on the basis that it is unduly lenient and should be increased by this court, exercising its powers under section 36 of the Criminal Justice Act 1988. We grant leave.
2. The sentence to which this application relates was passed by His Honour Judge Glenn sitting in the Crown Court at Stoke-on-Trent on 13 September 2023 and was a total sentence of three years' imprisonment.
3. The offender, Robert Evans, is 35 years old. He entered guilty pleas to four counts on an indictment on 25 May 2023, for which he was later sentenced on the occasion to which we have referred. Those pleas were entered at a stage in the proceedings which later resulted in credit being extended to him of 25 per cent. Neither party has sought to challenge that decision by the sentencing judge, which we shall not interfere with.
4. The guilty pleas were to count 1 on the indictment, an offence of breaching a restraining order, contrary to section 5 of the Protection from Harassment Act 1997; count 3, putting a person in fear of violence by harassment, contrary to section 4(1) of the Protection from Harassment Act 1997; count 5, an offence of assault occasioning actual bodily harm and count 7 an offence of theft. The other three counts on the indictment were not proceeded with in one way or another.
5. The court below recorded the offences in the way which we have described. In fact the Sentencing Act 2020 had come into force by all relevant material times and the breach offences ought to have been recorded in line with the new Act and we have directed that the court record should be corrected accordingly.
6. All four offences related to conduct on four days in March of 2023 when the offender

terrorised, assaulted and humiliated a woman with whom he had been in a relationship but who, as he well knew, wished by then to have nothing further to do with him. That is why there was a restraining order in place which had been made for her protection. We shall set out further detail of this offending shortly but it is right to add to this short description that the series of incidents reflected in the indictment involved him repeatedly entering her home against her wishes in order to commit offences against her in that location.

7. The sentence was constructed as follows. In respect of count 1 there was a sentence of 18 months' imprisonment; in respect of count 3 a sentence of two years' imprisonment, ordered to run concurrently with the sentence on count 1; in respect of count 5 there was a consecutive term of nine months' imprisonment; and in respect of count 7 a further consecutive term of three months' imprisonment. That totalled three years, as we have said. Other consequential orders were made, including a restraining order, on which nothing now turns.
8. The Solicitor General in summary submits that the judge ought to have classified the offending on count 3 as involving culpability A from the relevant guideline rather than, as he must have done, culpability B. The Solicitor General also submits that the harm was clearly Category 1 which gives rise to a starting point of five years and a range which extends upwards as far as eight years. The Solicitor General identifies as aggravating factors the detailed chronology of offending, beginning as long ago as 10 October 2021, which we shall set out shortly. The fact that the offending was committed as a series of breaches of a restraining order is a further significant aggravating factor, if the sentence in respect of those breaches is, as it was, to run concurrently with the sentence for count 3. The Solicitor General also draws our attention to the fact that all

these offences were committed while the offender had very recently been released from a sentence of imprisonment which had itself been imposed for earlier breaches of the same restraining order and another offence committed against the same victim.

9. The Solicitor General refers to the Overarching Guideline on Domestic Abuse. This offending arose out of a relationship in what is sometimes called a "domestic context" when in fact the victim of the offending had done everything she could to bring that relationship to an end, before the time when the first offence was committed against her in August 2022. The Solicitor General observes that there was in reality very little mitigation and that the result is, in his submission, that the total sentence of three years' imprisonment was so low that this court should intervene.
10. The judge found that the offender was a dangerous offender for the purposes of sections 266 to 268 of the Sentencing Code but held that he could not impose any sentence within that regime because the sentence which he was imposing was not four years or above. This necessary precondition for the imposition of an extended determinate sentence was therefore absent and the Solicitor General submits that it should be a consequence of this court's reviewing and increasing that sentence that the court should give effect to the judge's finding on the dangerousness issue by itself imposing an extended determinate sentence.
11. Turning to the facts in a little more detail, it is necessary to set out the chronology with some care. By way of background, before embarking on that process, it is right to record that in June 2012 the offender was sentenced to a total of 60 months' imprisonment for two offences of wounding. We know nothing about the circumstances of those offences and will proceed on the basis that they were different from the present context but nevertheless they represent a significant history of violent offending in themselves.

12. In the pre-sentence report, the Probation Service sets out some further information from their records and police call-out logs, recording threatening and violent behaviour towards other previous partners and family members dating back to 2005. In relation to family members, the allegations were of verbal abuse and threatening language when they refused to give the offender money. None of these episodes resulted in any conviction and they therefore do not operate as statutory aggravating features for the purposes of sentence. The information however is part of the factual matrix which gave rise to the judge's dangerousness finding and they are not for that purpose irrelevant. It is right to observe that the series of events we are about to record reveals a very significant escalation in the gravity and intensity of this behaviour.
13. The chronology begins with offending against a previous female partner, Sarah Brakewell. On 10 and 29 October 2021 the offender committed two offences of battery against her. Those offences were also committed in a domestic context. He did not plead guilty to those offences until 15 June 2022. There was a significant period of delay in dealing with those offences which is unexplained.
14. During it, however, in February 2022 the offender formed a relationship with Rebecca Bailey who was to become the victim of all of the series of events which followed. He committed his first offence against her when he committed an offence of battery on 3 August 2022. The offences against Sarah Brakewell resulted in a 12-week sentence which was suspended for two years and which was imposed on 24 August 2022. That is the first recent attempt that the courts have made to restrain this offender's dangerous behaviour and its failure to achieve that objective is about to be illustrated.
15. On 27 September 2022 he pleaded guilty to the offence which he had committed against Rebecca Bailey. He was sent to prison for 10 weeks and the restraining order, which is

the basis for count 1 on the present indictment, was made. The restraining order was for the protection of Rebecca Bailey. He was released, no doubt halfway through that sentence, and almost immediately upon release, on 20 and 21 October and on 23 November, he committed three offences of breach of that restraining order on which the ink was still wet. On the second of those three occasions he also committed an offence of battery against Rebecca Bailey.

16. He was finally remanded in custody as a result of that spate of offending on 1 December 2022. He was sentenced on 12 December 2022 for the offences against Rebecca Bailey and the suspended sentence order which had been imposed on 24 August was dealt with. A total term of 46 weeks' imprisonment followed. That resulted in his release on home detention curfew on 6 February 2023.

17. Almost immediately he ignored entirely the conditions of that conditional release and the Probation Service lost contact with him. For reasons which are explained in the pre-sentence report, which it is unnecessary to set out here, the response to that loss of contact was not immediate. There was a request to recall him to prison, which was issued on 22 February 2023, but he was not arrested until after he had been able to commit the offences which are the subject of the present indictment.

18. Therefore, in March of 2023, when these offences were committed, this offender was subject to a restraining order, of which he had been convicted in being in breach on three occasions already, and he was subject to the terms of the home detention curfew, resulting from the sentence of 46 weeks which did not expire until 3 October 2023.

19. For most rational people those restraining factors, the restraining order and the licence, would have operated to prevent further offending of the same kind and against the same victim. It is a striking feature of this case that they wholly failed to achieve that objective

in the case of this offender. Instead, he began to offend on 16 March 2023 and continued to offend on 17, 18 and 19 of that month. Four consecutive days passed during which he subjected Rebecca Bailey to a series of terrifying incidents. It needs to be remembered when describing them that she already had good cause to fear him, having been the victim of an assault in August 2022 and a further assault in October 2022, together with the breaches of the restraining order which we have already dealt with. All of that offending happened after she had tried to end the relationship and keep him away from her.

20. What actually happened was that at 11 o'clock on 16 March 2023 she contacted the police to say that he had telephoned her 13 times asking her to go to a hotel and sent her 60 messages expressing his love for her and apologising to her. He did say however in the messages that if she did not do what he wanted he would "kick her head in". This conduct constituted a breach of the restraining order and was the start of the course of conduct which resulted in the harassment conviction which was count 3 on the indictment.
21. She did not do as he asked. The result of that was that at 3 o'clock in the afternoon he turned up at her home, she called the police, but he climbed into her home through a window. When they were in the kitchen he asked her if he could stay with her because he was homeless. She said that he could not. This resulted in him headbutting her to her nose and grabbing her throat with both hands. He said he would kill her and set the house on fire. He left the property. He had not caused any significant injuries to Rebecca Bailey on this occasion but she was angry and frightened. The police had been called, and attended, and they attempted to find him. They failed that night.
22. At 1.30 in the afternoon on the following day he attended her home again and she called

the police again. He walked into her house through a side door. He said to her that he would get 16 years in prison and needed her help. He said that if she did not help him the police would raid her house and she would not get her children back. He had with him something that looked like bullets to her, and gave her to understand that he wanted her to keep them. She took them and put them upstairs but then said that she had called the police. He said he could not believe she had done that, took these bullets back and took them away, he said he was going to throw them in a field. He did not on that day attack her.

23. The following day he was again back at her house at 1.30 in the morning. She was very distressed. She was crying and bleeding because she had self-harmed in her fear. She heard a sound downstairs which she thought, probably rightly, was somebody kicking in her door. She assumed, certainly rightly, that it was the offender. She went downstairs and there he was. At first it appeared that he was concerned at the sight of blood on her arm. He expressed that concern by offering her some "monkey dust", which is a form of narcotic to which she appears to be addicted. She refused, saying that she had not had any for six days and she was trying hard to get her children back. Her relationship with the offender had caused the social services sufficient concern as to the children's welfare that they were no longer with her and she wanted them back. At that point his mood changed and he shouted at her that he was fed up with walking around the estate with her not letting him in. He said that he loved her and that she should stop ringing the police. He then pushed her against a wall, slapped her to the face a couple of times and to the back of the head. She had an injury to her lip which she thought may have been the result of a headbutt. She took out her telephone to call the police. He went to grab it from her, but she had called the police already using it. He began to leave the house but as he went



he said, "The next time I see you, you're dead." He took some money and left. This was money which she needed in order to buy food.

24. He was back again at 11 o'clock on the same morning. She was in the garden. He screamed: "Why have you called the police on me yesterday? I love you." She went upstairs. When she was in her bedroom the offender appeared with a sweeping brush and struck her with it to her head. He grabbed hold of her and she screamed at him to leave her alone. She thought he was going to kill her and was trying to reason with him. She was punched to her face and she thought she was going to lose consciousness. She later said about this:

"I am always scared of him but I have never been that scared."

25. She described the pain as being "unreal" but the assault continued and, on this occasion as he was leaving, he threw something heavy at her head which caused her ears to ring and gave her lasting pain to her head. Her injuries bled profusely, covering her face in blood.

26. In the early hours of the following morning, 19 March 2023 at about 6.15, he was again at her house and again forced entry to it, causing her to wake up. This time he tried to get into bed with her. Again, she managed to call 999 but did not manage to speak to the operator. Again, he offered her some monkey dust and on this occasion he appears to have wanted to have sex with her, although he did not do anything which amounted to any form of sexual assault or sexual conduct.

27. He became angry again with her and punched her to her right ear. She says that he often used to punch her to the right ear because she has a shunt placed surgically there and this would be particularly painful or distressing for her. He demanded to know if she had

called the police and repeatedly punched her. He pulled out her hair extensions and took her phone. Once again he grabbed her to the throat, this time pushing her onto the bed. She tried to protect herself by pushing her face into the bed so that he could not hit her face any longer. She begged him to give her telephone back to her because it was her only means of contacting her son and it had irreplaceable pictures of her children on it which were of great sentimental and emotional value and which had not been backed up on any other device. Notwithstanding all of that, he took the phone with him and it has never been recovered. That act of theft resulted in count 7 but to describe it simply as theft seriously undervalues the nature of the criminality. It was a deliberate attempt to cause her serious emotional distress and it has no doubt succeeded. He also took some money and perhaps more significantly her back door key so that he would always be able to come into her house whenever he wanted to. He left.

28. Eventually, but on the same day, the police managed to find him. He was found at another address where he was hiding behind a door and he was arrested. He was later interviewed but did not answer any question.
29. That series of events, which we have described now at some length, is the conduct which gave rise to the four convictions with which we are now dealing.
30. Before turning to the question of classification of the offending for guideline purposes, it is right to identify in a nutshell the aggravating and mitigating features which have been identified. The aggravating features are, first, the previous convictions; secondly, the history of disobedience to court orders; and thirdly, the fact that these offences were committed while he was on licence having been released very recently from a sentence of imprisonment. The mitigating features were, first, the pleas of guilty; and secondly, some matters of personal mitigation which are identified in the pre-sentence report and of

which we have been helpfully reminded during the course of this hearing in oral advocacy by Mr Muldoon who has appeared on behalf of the offender before us.

31. There were victim personal statements which the judge had and which we have read. We will not set out their contents at length in this judgment. Their contents are wholly unsurprising. The conduct of this offender has been catastrophic for his victim. In addition to the fear for her personal safety, she has suffered a serious deterioration in her relationship with her children who were taken away from her because they were thought to be at risk from the offender and from the impact he was having on their mother's behaviour and ability to look after them. She has been diagnosed with significant depression and anxiety which she says prevents her from working properly and earning her own living. She has been referred to hospital for treatment for that. She says: "I feel broken and so low. I feel like I never had these issues before I met him. My life was good." She concludes with this passage: "I want to prosecute Rob as I don't want him to keep coming to my house and beating me up, even though we are broken up and have been for a while. He keeps turning up at my address and coming in and assaulting me. I want it to stop before he kills me. I have chosen not to have a screen at court even though it would be easier to have one as I want to look him in the eyes and see his face when I am taking back control of my life."

32. The sentencing powers of the court were as follows. The maximum penalty for count 1, breach of a restraining order, is five years. The maximum penalty for putting a person in fear of violence by harassment is 10 years' imprisonment. This is a specified offence for the purposes of section 279 of the Sentencing Code which means that in the event that a person is found dangerous and that a sentence of four years or more is imposed, the court has the option of imposing an extended determinate sentence in relation to count 3. The

maximum penalty for assault occasioning actual bodily harm, contrary to section 47 of the 1861 Act is five years. That is also a specified offence for the purposes of section 279 but in view of the maximum penalty available that give rise in most cases to a somewhat academic power. The maximum penalty for theft is seven years and there are sentencing guidelines from the Sentencing Council in relation to all of these offences.

33. The judge approached the sentencing exercise on the basis that the sentence which was to be the longest part of the sentence which he imposed was for count 3, the offence of harassment. That was entirely appropriate in view of the sentencing powers available to him which we have just described. Therefore, the most significant guideline to which he was required to turn his attention was that for that offence. He first had to decide what the culpability level was, whether it was for guideline purposes Culpability A or Culpability B. Culpability A is very high culpability requiring "the extreme nature of one or more Culpability B factors or the extreme culpability indicated by a combination of Culpability B factors which might elevate the offence to Category A". Culpability B, includes these two factors in a list of four factors: "conduct intended to maximise fear or distress, persistent action over a prolonged period". So far as harm is concerned, if there is very serious distress caused to the victim the offence will be classified as a Category 1 offence. There is no possible criticism of the judge's criticism to classify this offence as involving Category 1 harm. The issue is whether he should have put it into Culpability A or B. For a Category 1A offence the guideline provides a starting point of five years' custody with a range of three years and six months to eight years. For Category 1B the guideline provides a starting point of two years and six months' custody with a range of one to four years.

34. Following that classification, the judge was next required to decide to what extent the

other three counts on the indictment required an increase in the overall sentence either by increasing the sentence on count 3 to reflect those others and ordering those sentences to be concurrent or, as he chose to do, by making some of those sentences consecutive to the term which he imposed for count 3. He was also required to adjust the sentence for the mitigating factors and aggravating factors which we have already identified.

35. In response to this application, Mr Muldoon has submitted to us that the judge in classifying the offence of harassment as a B1 offence, as he must have done, went to the top of the range and clearly had full regard to all the aggravating features which we have identified. He does not challenge the finding of dangerousness but submits that in view of the sentence which the judge imposed, which he seeks to support, the option of imposing an extended determinate sentence did not arise.

#### Discussion

36. It is therefore common ground that the judge's finding of dangerousness was correct. The factors which led to that finding include the two Culpability B factors which are present to an extreme extent in this case. They also include the very serious nature of the aggravating features of the case. In our judgment this is quite clearly a case in which the appropriate categorisation for the harassment offence standing alone was a sentence in Category 1A. That gives rise to a starting point of five years which then requires further adjustment in the way we have just described. The judge's categorisation was in error in this respect and resulted in a sentence which was unduly lenient.

37. The range extends upwards to eight years' imprisonment. In deciding where in that range to place this sentence, the court is required to give full effect to the other three offences on the same indictment. Count 1 in particular is an offence of breaching a restraining order. In the circumstances of this case that offence standing on its own would be an

offence of very considerable gravity. When it operates, as it will in this case, as an aggravating feature of count 3, this requires an upward adjustment to the sentence for count 3 to give full effect to these repeated breaches of the restraining order, following as they did earlier convictions for breaches of the same restraining order only a few weeks before. It is necessary then also to give effect to count 5, assault occasioning actual bodily harm, a serious offence of violence against the same victim, and count 7, a particularly serious offence of theft for the reasons we have explained already. All of this taken together plainly requires a significant upward adjustment to the starting point which would have been appropriate if the offence of harassment had stood on its own.

38. The approach we propose to take is as follows. It is clear to us, for the reasons we have just explained, that this sentence was unduly lenient and unduly lenient to a very significant extent. It is necessary therefore for this court to quash those sentences and to replace them with sentences of our own. The approach that we take then is as follows. We consider that the appropriate sentence for count 3, taking into account count 1, would be a sentence of eight years before the discount for the guilty pleas, reducing it to a sentence of six years' imprisonment. We propose to honour the approach taken by the judge to counts 5 and 7 by increasing that sentence by the 12 months which he imposed in relation to those two counts and the sentence on count 3 is therefore further increased to a sentence of seven years' imprisonment. The other sentences in respect of count 1, 5 and 7 will remain as they were but will all be concurrent with the sentence of seven years imposed in relation to count 3. That is a sentence which clearly attracts the dangerousness provisions because of its length and in view of the finding of dangerousness, which as we say has not been challenged, we propose to impose an extended determinate sentence in the total duration of 10 years, with a custodial term of

seven years. What that means is that after two-thirds of that term the offender can apply to the Parole Board for release. The Parole Board will then decide whether it is safe to release him at that stage. If they decide not to, then he may be detained and required to serve the whole of the custodial term. In any event, he will be on an extended licence following his release until the expiry of the licence period. The terms of that licence will be explained to him and he will be required to comply with them, otherwise he may be recalled to serve the rest of this extended determinate sentence.

39. We have dealt with the case in the way that we have because of the particular circumstances of this offending which we have set out in some length and with some care. We consider that this offender is indeed truly dangerous to women with whom he is having a relationship and it is necessary for the court to take severe action in order to protect those women and Rebecca Bailey in particular. That is why we have dealt with the matter in the way that we have.

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

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