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Case No: 202203254 A4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT MOLD
His Honour Judge Petts
T20210215

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/01/2023

Before :

LADY JUSTICE THIRLWALL
MRS JUSTICE CHEEMA-GRUBB
and
MR JUSTICE SWEETING

ATTORNEY GENERAL'S REFERENCE UNDER SECTION 36
OF THE CRIMINAL JUSTICE ACT 1988

Between :

REX
- and -
DALTON JEFFERIES

Appellant

Respondent

L Organ appeared on behalf of the **Attorney General**
P Clemo appeared on behalf of the **Offender**

Hearing dates : 15.11.2022

Approved Judgment

This judgment was handed down remotely at 11:30am on Monday, 16 January 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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Lady Justice Thirlwall :

1. There is in place an order under S45 of the Youth Justice and Criminal Evidence Act 1999, made in the Mold Magistrates' Court on 27 November 2021. It remains in force. No matter relating to the child witness there named may be published if it may identify them. This includes references to their name, address and school and any picture of them. In this judgment we shall refer to the subject of the order as C and to her mother as A.
2. Dalton Jefferies is now 22. He was 21 at the time of the offences with we are concerned. On 16 May 2022 at the Crown Court in Caernarfon he pleaded guilty to two counts on a four count indictment: Count 1, Cruelty to a person under the age of 16, contrary to S1(1) of the Children and Young Persons Act 1933. Count 2, Controlling or coercive behaviour in an intimate or family relationship, contrary to S76(1) and (11) Serious Crime Act 2015. The prosecution did not pursue two counts of assault by beating on the basis that the facts of those two offences, which the offender admitted, could be reflected in count 2. The trial had been listed for 4 July 2022.
3. The judge directed that the two counts of assault should lie on the file not to be proceeded with without the leave of the Crown Court or of this court.
4. On 12 October 2022 the offender was sentenced on Count 2 to two years and six months' imprisonment. On Count 1 the sentence was 15 months imprisonment to be served concurrently, making a total sentence of two years and six months' imprisonment. The judge imposed a 20 year restraining order preventing him from (i) contacting the victims of the offences directly or indirectly and (ii) attending at any premises or part of any premises occupied by the victims for the time being as their usual place of residence.
5. This is an application by the Solicitor General on behalf of the Attorney General for leave to refer the sentence to the Court of Appeal on the grounds that it is unduly lenient.

FACTS

6. The offender, then 21, began a relationship with A in the early part of 2021. As their relationship progressed, he would stay over from time to time. According to C, A's 8 year old daughter, in the early days it was fun when the offender was around but as time passed things changed. Her mother said that from about mid July 2021 to late October 2021 the offender persistently interrogated her about what she was doing on her phone. He was sure that she was having contact with other men. He would ask her to show him her phone so he could see with whom she was communicating. It was her account that he would not permit her to use the phone unless she was with him. If she left the room he required her to leave her phone with him. She stopped using Snapchat as he took to checking her account.
7. A had her own mobile hairdressing business. She went to client's homes for this purpose. The offender insisted on accompanying her to work. When clients were coming to her home the offender would remain in the room while A got on with hairdressing.

8. The offender did not like her seeing her friends. On one occasion a friend challenged him about that. He put his arm around her neck with his hand covering her throat. This was interpreted as a warning and A did not see her friend for some time.
9. On one occasion he pushed her backwards onto the bed, put his hands around her neck and began to strangle her. This lasted two seconds, she said. The offender stopped when C came into the room and the offender then shouted at C.
10. The offender was generally noisy, shouting at A and C. He banged around the house, headbutting doors, he broke mirrors. He self-harmed, usually but not always, by cutting himself or rubbing himself with sandpaper. He blamed A for provoking him to do such things. He had and still has a range of mental health problems.
11. When they were out, he prevented C's mother from holding her hand. He shouted at C a great deal, often with his face right up to hers. C was frightened of him. If she did not do what her mother asked the offender would intervene. He said he would "batter" her father. After some perceived bad behaviour by C he forced washing liquid into her mouth to teach her a lesson. This happened about three times.
12. From early September 2021, some six weeks after they began living together A began to use her phone to record the offender's episodes of angry and aggressive behaviour. The recordings reveal him shouting at her, threatening her with violence in thoroughly nasty terms, including that he would rip out her tongue. In the background C could be heard crying.
13. In early October A told the offender that she did not want to continue their relationship. He responded by self harming, cutting his arms. He punched her twice, then apologised, then tore down the shower curtain and attempted to strangle her.
14. On 15 October A returned from taking her daughter to school. The offender accused her, again, of cheating on him and blaming her for the fact that he was self harming. He put his hand over her mouth and squeezed it, knowing that she had recently had a tooth removed and was in pain. He also grabbed her by the throat. This was seen by a neighbour who called the police. At that stage A said little to the police. The next day A's mother and partner went to her house. The offender was repeatedly striking himself and blaming A. That weekend with the support of her mother A got the offender to leave her home.
15. Three days later, on the morning of 18 October A left the back door open and the offender came in. He pushed her onto the bed and held her down. There was a scuffle. A was bitten by her dog. The offender put his hands over her mouth and started squeezing. She bit his hand, he released her, and she left. The police attended. A had bruising to her arms on that occasion.
16. The offender was arrested that day and interviewed on 22nd October 2021. He was bailed with a condition not to contact A. He did contact her and blamed her for his mental health difficulties. He was arrested again, and the police played to him a number of audio recordings A had made from the beginning of September. He said he was shocked at what he had heard. He agreed that he had called C a bitch but said he had never said to this to her face. He said that he had never squirted washing up

liquid into C's mouth. That was her mother. He would never do that as it had been done to him as a child. He was later to accept that he had done it once.

17. There were before the court victim personal statements from C and from A. C's statement very powerfully and simply describes her primary concern which was to try and protect her mother. She is much happier now that the offender is no longer in their lives. She is very fair, remembering that it was fun when the offender first moved into their home. She is nervous when she hears banging and does not want him ever to come back.
18. A has written two statements. She felt disregarded and powerless. She is worried about what will happen when he is released. It is impressive that she took control while she was still in the relationship. She recorded the incidents, she kept the recordings and handed them to the police. With the help of her family she persuaded him to leave the house. When he returned against her wishes she did not tolerate it. Her recordings were played to him and he accepted that his behaviour was unacceptable. He pleaded guilty.
19. The offender had no previous convictions. He had a caution for possession of cannabis.
20. The writer of the Pre-Sentence report considered that the offender showed little remorse. Notwithstanding his guilty pleas he did not readily accept responsibility for his actions. In her view he posed a high risk of harm to partners, although there was, as yet, no suggestion of difficulties in his current relationship which had been continuing for most of a year.
21. There was before the court a detailed report from a consultant psychiatrist. The offender's childhood had been characterised by his father's violence towards him, his siblings and his mother. For some years his mother and the children moved around the country, running away from and staying ahead of the father who pursued them wherever they went. In the end his mother agreed to go back to the father, with the children. His father had not changed.
22. The offender's school life was much disrupted. He was unhappy and began self-harming in his teens, usually by cutting himself. The psychiatrist describes his mental health as poor in his mid-adolescence. He was impulsive, set on self-destruction. He was unstable, turning to drugs on occasion, including crack cocaine. We note that he took money from A to pay for drugs.
23. The psychiatrist diagnosed a personality disorder with predominant borderline features (moderate to severe degree). He considered that drug use was a likely exacerbating factor. Personality disorder is listed under the general heading "Developmental disorders" in Annex A to the Guideline "Sentencing offenders with mental disorders, developmental disorders, or neurological impairments" to which sentencers are referred when considering factors reducing seriousness or reflecting personal mitigation as part of the sentencing exercise for Controlling or coercive behaviour. The relevant passage reads, so far as is relevant "Mental disorder...where not taken into account at step one) then "Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence."

The sentencing exercise

24. The judge accepted the submission of prosecuting counsel that the Child Cruelty Count came within category 2B of the relevant guideline. He also accepted that Count 2 came within Category 1A of the Controlling or coercive behaviour guidelines. Having set out in succinct form the details of the offending, the applicable guidelines and starting points he said “ Making matters worse for each, as it were, there is the fact I am dealing with you for two offences, although I have got to have regard to the principle of totality. I do not look at each offence in isolation and add them together. I have to look at what overall sentence would be fair and just, to reflect what you did to both of them and there is obviously a lot of overlap.”. He pointed out that he was comparatively young “which is another point of mitigation in the guidelines and I accept having read the psychiatric report, that you have had mental health issues since at least your teenage years and that these affect your culpability. Although they are clearly aggravated by your use of drugs and alcohol. Something which, according to the pre sentence report, you take limited responsibility for.” He added that “Although it is clear you had a very difficult upbringing that clearly is only something of limited mitigation. You are now an adult and need to behave rather better than this”
25. He explained that he intended to pass concurrent sentences because there was so much overlap between the two offences. He took Count 2 as the lead offence. He took the guideline starting point of 2 years and 6 months. He then went up from there to reflect the fact that he was sentencing for two offences. He then moved down to reflect the offender’s youth, lack of previous convictions and mental health, ending up fairly close to the starting point. He said that after a trial he would have sentenced the offender to 3 years imprisonment. He reduced it by one sixth, to reflect the relatively late guilty plea to reach a sentence of 2 years and six months. The sentence on Count 1 would have been 18 months after a trial, so 15 months after the one sixth reduction, to run concurrently with the sentence on count 2. He imposed the Restraining order in respect of contact with both A and C, to run for 20 years.
26. On behalf of the Solicitor General, Ms Organ submits that the judge should have imposed consecutive sentences. Alternatively, the sentence on Count 2 should have been longer so as properly to reflect the overall criminality.
27. She submits that the judge overlooked the Guideline: Overarching Principles: Domestic abuse. He considered only the offence specific guidelines namely the guideline for controlling or coercive behaviour in an intimate of family relationship (count 2) and Child Cruelty (count 1).
28. She further submits that the judge did not adequately reflect the aggravating factors in respect of each count and gave too much weight to the mitigating factors.
29. In the result the sentence was unduly lenient.
30. Mr Clemo points to the careful sentencing exercise. He submits there is no gross error by the judge and so the sentence is not unduly lenient.
31. We are grateful to both counsel for their focussed and succinct submissions.

Discussion

32. In the first part of the guideline for Controlling or coercive behaviour in an intimate or family relationship, the following appears “Where offence committed in a domestic context, also refer to Overarching Principles: Domestic Abuse”.
33. Neither counsel nor the judge referred to the Domestic Abuse guideline. We think that unsurprising. The domestic context was an integral part of the offence at Count 2. . We can see that there may be controlling or coercive behaviour in a relationship away from the domestic context but this offence is far more commonly committed, as here, in the domestic setting.
34. The Domestic Abuse guideline points out that a victim of domestic abuse can include a child who sees or hears or experiences the effects of the abuse and is related to the primary victim. In this case the offender was charged with a separate count of child cruelty in respect of C. It occurred within the domestic context. We note there is no direction in the Cruelty to a child guideline to consider the Domestic Abuse guideline, but it is plain from the judge’s sentencing remarks that in respect of both counts, he had at the centre of his considerations the fact that this mother and child were physically and psychologically abused within a domestic context – in their own home and in the context of the mother’s relationship. The absence of a reference to the Domestic abuse guideline was not an error and did not affect the sentence on either count.
35. There was no error of principle in treating count 2 as the lead offence, making the sentence on count 2 concurrent, as Ms Organ accepted in argument. This was an orthodox approach, particularly where, there was, as the judge found, significant overlap in the offences. The conduct which made up counts 1 and 2 was inflicted on a mother and child, often at the same time, usually in their home. The child was very frightened for her mother’s safety. That concern caused the offender to respond aggressively to her. When she did not obey her mother, he took it upon himself to shout and threaten her. They were both collectively subjected to his controlling and cruel conduct.
36. The central question is whether the judge properly reflected the whole of the criminality in a sentence of two years and six months imprisonment. This was a lenient sentence. Was it outside the permissible range of sentences open to the judge given all the matters he had to consider?
37. Ms Organ submits that having started at the category starting point of 2 years and six months the judge should have gone up to 4 or even 5 years’ imprisonment (the maximum sentence) to reflect the aggravating factors and the fact that the sentence was marking two offences. Notwithstanding the presence of another offence we do not accept that the judge should have gone up to 5 years’ imprisonment before considering mitigation and reduction for the pleas of guilty. Given that the judge came down to a sentence after trial of 3 years imprisonment he must have moved up significantly from 2 years and six months to at least 4 years to mark the two offences and the aggravating factors, including his drugs use. The reduction for mitigation given his age, his lack of maturity, his mental health problems and his lack of convictions was bound to be significant. Whilst some judges may have made a

smaller reduction there was no gross error by the judge in reaching a sentence before reduction for the pleas of 3 years' imprisonment.

Conclusion

38. The judge conducted a careful, focussed sentencing exercise. This sentence, though lenient, was not outside the range of sentences which a judge, applying his mind to all the relevant factors, could reasonably consider. It follows that we refuse leave. The application is dismissed.