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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation No: [2023] EWCA Crim 778

CASE NO: 202300485/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 22 June 2023

Before:

LORD JUSTICE LEWIS
MR JUSTICE MORRIS
SIR NIGEL DAVIS

REX
V
ARTHUR McDONAGH

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MR S POULIER appeared on behalf of the Applicant

J U D G M E N T

LORD JUSTICE LEWIS:

1. On 2 February 2023 in the Crown Court at Leicester, the applicant, Arthur McDonagh, who is now aged 37, pleaded guilty to an offence of using threatening and abusive words or behaviour with intent to cause fear of violence. He was sentenced to two months' imprisonment suspended for 12 months.
2. The facts can be stated briefly. The complainant, Mr Saeed Dizaei, is a gas engineer and has worked as an engineer since about 2009. On 28 November 2020, as arranged, Mr Dizaei went to the applicant's home and fitted a gas hob. The cost of the work had been agreed at £95. Mr Dizaei, having fitted the hob, was not paid by the applicant. The applicant asked him to come back later, which Mr Dizaei agreed to do.
3. Later on the victim received a text message from the applicant saying that the applicant would pay online and asking for Mr Dizaei's bank details. The payment never arrived. Mr Dizaei chased it on 29 November. The applicant said he would make payment but by the afternoon of 30 November nothing had been received and there was no response to text messages or telephone calls to the applicant.
4. As a result of that, shortly after 5.30 pm on 30 November Mr Dizaei went to the applicant's address to find out when he could expect to be paid for the work he had already done. The applicant signalled through the window that the victim should go round to the back of the property, which he did. There was at that stage two children present in the house looking out of the window.
5. The applicant opened the door and stood in the doorway. Mr Dizaei said that he had come because he had tried contacting the applicant and wanted to know what was happening about payment. The applicant initially said that his wife had already paid. The victim showed the applicant his bank account on his mobile phone and said no, he

had not been paid.

6. The applicant then became aggressive. He called Mr Dizaei a fraud and accused him of not being a gas engineer. He told him to get out of his house -- although Mr Dizaei was not inside the house. The victim remained calm and handed the applicant his gas engineer safety card. The applicant threw it on the floor, telling him it was a fake. Mr Dizaei picked it up. The applicant picked up an axe. He shouted for Mr Dizaei to get off his property. Mr Dizaei ran from the garden to the road. The applicant came down the driveway behind him, waving the axe and threatening him with it. He then started to close the gate at the end of the driveway.
7. Mr Dizaei described himself as feeling petrified by the incident but he was able to take a couple of very short video clips of the applicant holding the axe. They showed Mr Dizaei asking about payment and the applicant telling Mr Dizaei to "fuck off" before turning back and walking up his driveway. Mr Dizaei called the police.
8. The applicant was arrested on 12 December 2020. The axe was seized from his garage. In interview the applicant denied any threatening behaviour, denied having the axe and he denied any abuse. He said that the argument occurred because Mr Dizaei had not done a good job.
9. The applicant was initially charged with an offence of racially aggravated behaviour with intent to cause fear of violence. On the day of the hearing in the Crown Court the applicant was re-arraigned and charged with the lesser offence of using threatening words or behaviour with intent to cause a fear of violence, contrary to section 4 of the Public Order Act 1986. He pleaded guilty to that offence.
10. In his sentencing remarks, the judge said that the victim did the work in good faith and trusted the applicant to pay him. The applicant then produced an axe and chased him off

the premises. That had an affect on the victim and affected his trust in people and caused him to be worried. The applicant had threatened violence to a person providing a service to the public. There were children in the house who would be able to watch the events. The judge considered that the custody threshold had been passed and imposed a sentence of two months' imprisonment. He considered however that could be suspended for 12 months. He ordered the applicant to pay £95 compensation and £600 costs.

11. Mr Poulier, in his written and oral submissions on behalf of the applicant, submitted that the judge had not referred to the relevant Sentencing Council guidelines for this offence and he had not sought assistance on the guidelines. Mr Poulier submitted that had the judge done so the offence would have been treated as Category A in terms of culpability because of the production of a weapon but it would be Category 2 in terms of harm. Mr Poulier submitted that no reference was made to any reduction for a guilty plea. In the circumstances, Mr Poulier submitted that a sentence of two months' imprisonment was manifestly excessive.
12. The sentencing judge's remarks were brief. It would have been preferable if he had referred specifically to the relevant guidelines and explained the sentence by reference to those guidelines. Further, it would have been preferable to identify the amount of reduction of the sentence for the guilty plea. It is right to note however that the judge stated specifically that the offence crossed the custody threshold. He identified relevant factors under the guidelines - the production of the weapon and the fact that the victim feared violence. He also identified two aggravating factors, namely that the victim was providing a service to the public and there were children present in the house.
13. In the circumstances, having regard to the guidelines, the sentence is not manifestly excessive. This was a Category A offence involving high culpability because of the

production of a weapon, namely the axe. The harm was Category 1 within the guideline. The victim clearly feared serious violence. Indeed, given that the applicant was waving an axe at him, it is hard to see what else he could have feared. The starting point for such an offence is a high level community order and the range is up to 26 weeks' custody. Even if the harm had been categorised as Category 2 the range would be up to 12 weeks' custody. There was at least one aggravating factor - the fact that the victim was providing a service. There was in fact in our judgment a second aggravating factor as there were children present observing at least part of this event. But for present purposes we proceed on the purpose that there was one aggravating factor only, the fact that the victim was providing a service to the public.

14. The applicant has four previous convictions involving several offences, mainly for theft and the last was in 2015. Those convictions were not a matter which aggravated this offence materially but nor would it be right to treat him as a man with no previous convictions.
15. In all the circumstances, a sentence before the reduction for the guilty plea in the region of 10 to 12 weeks' custody would fall well within the range for a Category 1A offence and indeed it would be within the range for a Category 2 offence. Given that the applicant pleaded guilty on the day and had not previously indicated a willingness to plead guilty to this offence, he would only have been entitled to a reduction of 10 per cent. In those circumstances a sentence of two months' imprisonment suspended for 12 months is proportionate and justified. It is not arguably manifestly excessive. Indeed, given the circumstances of this offence, involving threatening a person with an axe, the appellant could not have complained if he had been subjected to a longer sentence and if he had been subjected to immediate custody.

16. In those circumstances, this application for leave to appeal against sentence is refused.

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