IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 2023 01754 A2

NCN: [2023] EWCA Crim 798

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 29 June 2023

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE JACOBS

RECORDER OF SHEFFIELD
His Honour Judge Jeremy Richardson KC

REX
v
WILLIAM GEORGE McKINLEY

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Non-counsel application

J U D G M E N T

MR JUSTICE JACOBS:

1. This is a renewed application for leave to appeal against sentence following refusal by the single judge.

2. On 10 March 2023, having pleaded guilty before the Southampton Magistrates' Court, the applicant was committed for sentence pursuant to s.14 Sentencing Act 2020 in respect of two offences of assault on an emergency worker contrary to s.1 Emergency Worker Act 2018. The maximum sentence for that offence is 2 years, which represents a considerable increase in the maximum 6-month sentence for a common assault. The two emergency workers in the present case were police officers, PC Walsh and PC Pope.

3. On 28 April 2023 in the Crown Court at Southampton, Recorder Pilgerstorfer KC sentenced the applicant (then aged 32) to imprisonment of 9 months for the assault on PC Walsh and 2 months concurrent for the assault on PC Pope.

4. The facts concerning the offences were as follows. On Thursday 2 March 2023 the applicant had been out, in and around Eastleigh, drinking for hours. He was labouring under a sense of injustice as far as access to children were concerned and took it upon himself to go and visit the home address of his previous partner and mother of his two children. Sometime between 12 and 1 in the early hours of the morning there erupted a furious row between the two of them. Neighbours heard it and several of them telephoned the police. The applicant threatened his former partner with violence and threw two television sets from inside the property to outside the property.

5. PC Walsh and PC Pope arrived at just gone 1 am to find one of the television sets. The former partner was in a considerable state of distress. She informed the officers that the applicant had just gone round the back. The officers found the applicant on the ground between two vehicles. PC Walsh tried to talk to him. The applicant was arrested. He gave a false name and, whilst officers were trying to establish his true identity, he attempted to walk off.

6. PC Walsh took hold of one of the applicant’s arms and PC Pope endeavoured to take hold of the other arm in order to try to detain him. The applicant took hold of PC Walsh’s vest. PC Walsh shouted at him ,"Get off my vest or you’ll be arrested on suspicion of assaulting the police". The applicant would not do so and therefore PC Walsh took out his PAVA spray in order to deter the applicant from any further violence. The struggle got worse and worse. PC Walsh again asked the applicant to let go of his vest. The applicant replied, "Spray me, knock yourself the fuck out bruv". PC Walsh did then use the PAVA spray, but it did not work. Whilst that was happening PC Pope was trying to hold on to the applicant. She had her vest seized and she was threatened with being hit by the applicant if she did not desist. The officers tried to get handcuffs on the applicant and asked him to release his arms as he was holding his arms in front of him and trying to make it difficult for them to arrest him. They managed to get hold of him from both sides and put him over a bonnet, but that did not stop him. He wriggled and pushed away. There was another attempt to use the PAVA spray. The applicant shouted, "You're assaulting me bruv. How do you like it you silly. I’m not fucking with you." PC Walsh managed to get the handcuffs on one of the applicant’s hands. The applicant was told repeatedly to release his arms but would not do so. He then began to allege police brutality.

7. In the struggle both the applicant and PC Walsh went to ground. PC Walsh was at the bottom with the applicant on top of him. By the time he had gone to the ground PC Walsh had been hit and punched at least four times, twice in the face and twice to the back of the head. He believed that he had been head-butted. The blows to him were sufficient to knock his glasses off and they were subsequently found to be broken. On the ground the assault continued with the applicant straddling PC Walsh, with a forearm pressed down and across his throat, and hitting him repeatedly with the other arm. PC Walsh pressed his emergency

button. PC Pope tried to take hold of the hand that the applicant had been using to hit PC Walsh. PC Walsh feared serious injury as he could not breathe and called out words to that effect. A number of police vehicles rushed to the scene and officers managed to pull the applicant away. During the course of this the applicant was told to put his hands behind his back, but he continued to refuse. The other officers managed to pull the applicant off and handcuff him. PC Walsh was taken to hospital. He had suffered bruising and a cut to his hand. In his victim personal statement PC Walsh said that he had never previously encountered such a level of violence and that he had feared that he could have ended up with traumatic injuries. He said that he would carry this throughout his career and his personal life and it would make him more cautious about approaching suspects.

8. The applicant had 38 convictions for 66 offences between 2004 and 2023, largely for offences of dishonesty, breach of court orders and failing to surrender. His previous violent offences were battery, for which he received 6 weeks' imprisonment in 2008, and robbery, for which he received 6 years' imprisonment in 2014.

9. In his sentencing remarks the recorder categorised the assault as A1 under the Assault Guidelines as far as PC Walsh was concerned. He identified various aggravating features. He had the benefit of a pre-sentence report and referred to that in his sentencing remarks. His sentence was 14 months prior to a reduction of 33 per cent to 9 months because of the applicant's early guilty plea. On count 2 the sentence was 3 months reduced to 2, to run concurrently. He considered suspension but came to the view that this was inappropriate: there was no realistic prospect of rehabilitation and the offending was really serious.

10. In his written grounds of appeal prepared by his solicitor, there was no dispute that the assault on PC Walsh was A1 under the guideline, but it was submitted that a sentence of 14 months was manifestly excessive; it was more than double the top of the range for a common assault offence.

11. The single judge who dealt with the application said this:

> "You were guilty of a deliberate, frightening, unprovoked and sustained attack. Your offending was aggravated by your poor antecedent record and the fact that there were two victims. The recorder took into account such mitigation as there was but was fully entitled to take into account the Assault Guideline which provides:
>
> 'Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now apply an appropriate uplift to the sentence in accordance with the guidance below. The uplifted sentence may considerably exceed the basic offence category range.'
>
> The fact that the statutory maximum for the aggravated offence is now two years demonstrates Parliament’s intention that assaults on police officers should result in condign punishment. This is what you deserved and this is what you got. It is not reasonably arguable that your sentence was manifestly excessive.”

12. We are in complete agreement with the single judge. Accordingly the application for leave to appeal is refused.

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

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