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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT NORWICH

HHJ ANDREW SHAW 36CJ2415123

CASE NO 202401152/A2

**Neutral Citation Number: [2024] EWCA Crim 1131**

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 10 September 2024

Before:  
LORD JUSTICE SINGH

MRS JUSTICE MAY

MR JUSTICE GRIFFITHS

REX  
V  
JOHN LINDFIELD

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MR J MORGANS appeared on behalf of the Appellant.

**J U D G M E N T**  
(Approved)

LORD JUSTICE SINGH:

***Introduction***

1. This is an appeal against sentence brought with the leave of the single judge. On 16 January 2024, in the Crown Court at Norwich, the appellant pleaded guilty to an offence of inflicting grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861. Count 2, which was an offence of intentional strangulation, was subsequently ordered to lie on the file on the usual terms. On 27 February 2024, at the same court, the appellant was sentenced by HHJ Andrew Shaw to an extended sentence of 5 years, comprising a custodial term of 3 years and an extended period of licence of 2 years. An appropriate statutory victim surcharge was imposed. A restraining order was made until further order.

***The Facts***

2. Gavin Whittaker, a support worker for Great Yarmouth Council, received a phone call from the complainant (Kelly Flynn) stating that she had been beaten up by the appellant on 9 December 2023. The appellant was known to her and at some point, they had had what had been described as a “fling”. Kelly Flynn sent Mr Whittaker some photographs but did not want to contact the police as she was scared of potential repercussions, as the appellant had been violent towards her in the past. Mr Whittaker, however, having seen the photographs, contacted the police on 10 December 2023. The police attended Kelly Flynn’s address, took a statement from her and then took her to hospital.
3. The index offending had occurred when Kelly Flynn had been at a friend’s flat on 9 December 2023. Someone else present at the flat had telephoned the appellant and told

the appellant that Kelly Flynn was at the flat. The appellant subsequently attended and went to a bedroom where Kelly Flynn was. At that point, the appellant began screaming and shouting at her. The appellant thereafter began punching her to the face and the head. She felt something pop near to her eye and then blood began to pour out. The appellant then grabbed her around the throat. She almost lost consciousness.

4. The appellant was arrested by the police. In interview, he stated that he had been in the room with Kelly Flynn for around 30 minutes when she had left and returned with injuries, saying that she had been robbed. The appellant could not account for his blood being in the bedroom and said that the injuries to his knuckles were from punching a wall.
5. Medical notes from Kelly Flynn's injuries noted that she had sustained a fractured eye socket and associated injuries, including a broken nose.

### ***The Sentencing Process***

6. The appellant was born on 7 May 1980 and was aged 43 at the date of sentence. He had 23 convictions for 55 offences spanning the period from 21 November 1997 to 22 February 2023. His relevant convictions included six offences against the person.
7. The sentencing judge had a victim personal statement from Kelly Flynn, which we too have seen. The court also had a pre-sentence report, to which we will return. There were medical notes and photographs of the victim's injuries.

8. The maximum sentence for an offence under section 20 of the 1861 Act is 5 years' imprisonment. The Sentencing Council has issued a Definitive Guideline for such offences with effect from 1 July 2021. There is no dispute in the present appeal that culpability fell into category A (high culpability), not least because there was strangulation. As the guideline observes, all cases under section 20 will involve "really serious harm" and states that the court should assess the level of harm caused with reference to the impact on the victim. Category 1 sets out the following bullet points where there is a:

- “• Particularly grave and/or life-threatening injury caused
- Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment
- Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work.”

Category 2 sets out the following two bullet points:

- “• Grave injury
- Offence results in a permanent, irreversible injury or condition not falling within category 1.”

Category 3 relates to all other cases of really serious harm and other cases of wounding. For an offence falling within category 1A, the guideline recommends a starting point of 4 years' custody with a range of 3 to 4 years and 6 months. For an offence falling within category 2A, it recommends a starting point of 3 years' custody with a range of 2 to 4 years. For an offence falling within category 3A, it recommends a starting point of 2 years' custody with a range of 1 to 3 years. The guideline goes on to point out that there may have to be an adjustment, upwards or downwards from the starting point, so as to

reflect aggravating and mitigating factors.

9. In his sentencing remarks (at pages 5 to 6) the judge addressed the question of *dangerousness* and had no hesitation in concluding that the appellant is *dangerous*. The judge did so on the basis of the facts as known to him and on the basis of the pre-sentence report. That report assessed the appellant as posing a high risk of domestic abuse offending behaviour. He was assessed as posing a high risk of serious harm to known adults. The judge concluded that an extended sentence was required in order to protect the public from that risk. No issue is taken before this Court about that finding of *dangerousness* or the decision to impose an extended sentence. Nor is any issue taken with the extended licence period of 2 years.
  
10. Complaint is made about the length of the custodial term of 3 years. The judge arrived at that by placing this offence into category 2A. He then concluded the aggravating features took it to the top of the range for that category, that is 4 years after trial. The judge considered that there was no mitigation other than the guilty plea. He gave an appropriate discount of 25 per cent for that plea. No complaint is or could be made about that reduction.
  
11. The judge said, at page 4 of the sentencing remarks, that this offence was a borderline category 1/2 case but was at least a “grave injury”. That would mean that it falls squarely within category 2. As the judge observed, the victim is still suffering the impact and may yet be referred for surgery. The judge rejected the submission that the second bullet point in the Definitive Guideline for category 2 harm cases was a definition of the first

bullet point “grave injury”. He said that it was just another example of how an offence might fall into category 2. We agree. He did not hesitate to conclude that the broken bones to this victim’s face and the enduring impact amounts in law to a grave injury. Furthermore, the judge found that there were the following aggravating features: the appellant’s previous convictions; the offence was committed in a domestic context; there was an abuse of power and the offence was committed whilst the defendant was under the influence of alcohol or drugs.

### ***The Grounds of Appeal***

12. On behalf of the appellant Mr Morgans advances four grounds of appeal. First, the 3-year custodial element of the extended sentence was manifestly excessive. Second, the judge erred in categorising the offending as a borderline category 1/2 offence. Third, the offending should have been categorised as a category 3 offence which had a starting point of 2 years’ imprisonment with a category range of 1 to 3 years. Fourth, it is submitted that with 25 per cent credit for the guilty plea, the correct sentence should have been around 27 months’ imprisonment.
  
13. In developing those grounds of appeal, Mr Morgans submits that the judge erred in categorising this case as a borderline category 1/2 offence. He submits that it was plainly a category 3 offence. He accepts that the top of the range for such an offence would have been appropriate for an offence after trial, that is 3 years. Mr Morgans submits that this Court has emphasised that all section 20 offences required there to be really serious injury, that is an intrinsic element of the section 20 offence itself. He submits therefore that there must be “grave injury” in the context of that offence: see *R v O’Bryan* [2021]

EWCA Crim 1472, in particular at [34], where Bean LJ said that the guideline must be read as a whole and that category 1 is reserved for cases of exceptional seriousness even within the class of such cases. Although that was a section 18 case, no suggestion has been made there is any principle to distinction from section 20 cases.

### ***Our Assessment***

14. We do not accept Mr Morgans' submission in this appeal. In our judgment, the judge was correct and certainly entitled to conclude that this case fell squarely within category 2 harm. It was unnecessary for him to say the case fell at the borderline between categories 2 and 1, but he was certainly entitled to adjust the notional sentence after trial, upwards from the starting point for a category 2A case, of 3 years. He was entitled to conclude that with the aggravating features of this case, the notional sentence after trial would have been one of 4 years' custody.
  
15. As well as the matters to which we have already referred in summarising the judge's sentencing remarks, it bears repetition that the injuries in this case included the following: a bleeding open wound to the victim's left forehead temple; swelling and bruising to her left periorbital; a depressed fracture of the floor of her left eye socket with partial muscular entrapment; a depressed fracture of the lateral wall of the left eye socket; a displaced fracture of the anterior wall of the left maxillary sinus (a broken nose) and a build-up of gases in the left orbital and soft tissues of the periorbital region. At the time of sentence she still had blurred vision, air came out of her eye when she blew her nose and she had a constant sore throat and earache. Even having regard only to the physical impact on the victim, that plainly fell within the concept of a "grave injury" and the judge

was certainly entitled so to conclude. But we also bear in mind the non-physical impact on the victim. For example, she has had to move away from her former home, leaving her son behind and finds herself in isolation.

16. After an appropriate discount for the guilty plea of 25 per cent, that results in a sentence of 3 years so far as the custodial term is concerned. Despite Mr Morgans's succinct and attractively presented submissions, we have reached the clear conclusion that the sentence in this case was not wrong in principle nor was it manifestly excessive. Accordingly, this appeal is dismissed.



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