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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WOOD GREEN
(HIS HONOUR JUDGE WALKER) [01YE1283423]

Case No 2024/00901/A5

Friday 27 September 2024

Neutral Citation No: [2024] EWCA Crim 1159

B e f o r e :

LORD JUSTICE STUART-SMITH

MR JUSTICE DOVE

MR JUSTICE MARTIN SPENCER

R E X

- v -

JAMIE MACKLIN

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Mr J Biby appeared on behalf of the Appellant

J U D G M E N T

Friday 27 September 2024

LORD JUSTICE STUART-SMITH: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. The appellant, Jamie Macklin, who was born on 11 August 1986, appeals with the leave of the single judge against a sentence of four years and eight months' imprisonment imposed in the Crown Court at Wood Green on 13 February 2024 by His Honour Judge Walker for one offence of assault occasioning actual bodily harm.

2. The appellant had been committed to the Crown Court for sentence after being convicted following summary trial at the Highbury Corner Magistrates' Court.

3. The victim of the offence, which took place on 22 November 2022, was the appellant's former partner, Kathleen Bonner.

4. The facts were as follows. The appellant was waiting for Miss Bonner as she left home to collect her 9 year old son from school. The appellant was verbally abusive and made derogatory comments about Miss Bonner's pregnancy. She was expecting a child with her new partner. Miss Bonner left the appellant and went to collect her son. When she returned, the appellant hit her to the right eye with what she thought was a beer can. The appellant used a bag containing beer cans to strike Miss Bonner with such force that the cans exploded. He punched her to the head with both fists and kicked and punched her to the stomach. As the learned judge commented, this was a persistent assault which lasted many minutes. The incident in total lasted some 30 minutes. Miss Bonner managed to get away and she flagged down a passing police car. Her son was present during the attack.

5. On the evening following the assault, Miss Bonner noticed blood spotting. She miscarried her baby two weeks later.

6. Sentencing the appellant, the learned judge referred to Miss Bonner's Victim Personal Statement which had been read to the court. In it she stated that she had no doubt that the appellant intended to kill her baby during the attack. She described often waking at night. She suffers constant anxiety and panic attacks, and describes being too scared to leave the house, unless to go to the shops or to take her children to school. Putting it bluntly, she is absolutely terrified that the appellant will come for her again.

7. The judge also referred to the appellant's previous convictions and in particular his conviction for arson with intent to endanger life in 2006. The learned judge said:

"I am told that the victim in that matter was a former partner. I accept that offending was many years ago but it is indicative of your general attitude to former partners."

8. For the purpose of the guidelines on assault occasioning actual bodily harm, the judge found that this was a category 1A offence, which carries a starting point after trial of two and a half years' custody, and a sentencing range from one and a half years to four years' custody.

9. In relation to culpability, the judge said:

"This is high culpability. Miss Bonner was very obviously vulnerable. She was pregnant, you knew it, you had hit her very hard around the head, so much so that she was dizzy, and you continued to assault her thereafter, both to the head and to the body. You used a weapon equivalent, a shod foot. This was a persistent assault, which lasted many minutes and the incident, in total, lasted some 30 minutes. The incident, I

remind myself, include[ed] serious abuse, very offensive abuse being thrown at her in its early stages, before culminating in the serious violence that you inflicted. There was an element of planning to this. You waited for her outside her house, knowing that she would be likely to be collecting her 9 year old son and you then chose, at that point, to interact with her and subsequently assault her. It is harm category 1. You did cause serious physical injury and serious and substantial harm. ... that injury [has had] a substantial impact upon her. As I have said, she places the miscarriage fair and square at your responsibility, given the assault that you inflicted upon her."

10. The learned judge took into account the aggravating factors of the appellant's previous convictions and the fact that the assault was committed in the presence of Miss Bonner's 9 year old son. He found not only that Miss Bonner was pregnant – something that the appellant had had the temerity to question – but was known to be pregnant by the appellant who directed the full force of his assault at her unborn child.

11. We note that even now, according to a footnote in the grounds of appeal, the appellant does not accept that she was pregnant.

12. In relation to mitigation, the learned judge said this:

"The mitigation that I have already referred to affords you only minimal mitigation, given the further and ongoing excuses that you have expressed to probation and your overall lack of remorse in relation to your offending."

13. Those mitigating factors are set out by Mr Bibby in his grounds of appeal, and he has repeated them this morning. They relate to the fact that the appellant has had no convictions for 12 years prior to this matter; his difficult background and upbringing; the references set out in the grounds of appeal, including from his current partner; and the work undertaken while he has been in custody.

14. The learned judge then went on to explain why he intended to go outside the parameters of the guidelines. He said this:

"This offence is so grave that it falls close to the maximum sentence that the court can impose. There comes a point where the sentence must come close to that maximum and this is such a case, even with the mitigation that has been presented on your behalf."

We note that the maximum sentence for the offence is five years' custody

15. It is argued by Mr Bibby, for whose written and oral submissions we are very grateful – and no one could have said more on the appellant's behalf than Mr Bibby has done in his able submissions – that the learned judge placed undue weight on the aggravating features and/or failed to give due consideration of the appellant's mitigation. He criticises the judge for treating as a fact that the assault caused Miss Bonner to have a miscarriage, when no further action had been taken in relation to an allegation of child destruction and when there was no medical evidence linking the assault to the miscarriage, which indeed did not occur until about two weeks later. He also suggested that the pregnancy may have been double counted, having been taken into account in categorising the offence as high culpability, and then as a factor in taking the case outside the sentencing guideline. He submitted that too much weight was placed on the previous conviction, given that the appellant was only 16 years of age at the time, and that it occurred as long ago as 2006. He submitted that insufficient account was taken of the appellant's lack of convictions in the period of 12 years leading up to the offence. He submitted that the aggravating factors present did not justify taking a starting point as long as two years and two months higher than the usual starting point for a category A1 offence in the guidelines, and eight months higher than the top of that category range.

16. Despite Mr Bibby's able submissions, we find ourselves unable to accept them. Whilst we accept that the evidence did not establish that the assault caused the miscarriage - had it done the appellant would have faced a charge of child destruction - but for the purposes of this charge of assault occasioning actual bodily harm, that is in a sense of limited relevance. First, the assault was wickedly aimed at Miss Bonner's abdomen, and we have no doubt was intended to harm her baby. Secondly, Miss Bonner believes, and will always believe, that the assault caused her to lose her baby, whether that belief is in fact well-founded or not. This, therefore, legitimately forms a major part of the impact upon her.

17. In our judgment there was no element of double counting. The despicable nature of this assault took this case through the guideline range and beyond that range. In our judgment, reminding ourselves that guidelines are exactly that – only guidelines – on this occasion the learned judge was fully entitled to go beyond the guidelines for the reasons which he expressed.

18. Despite the fact that the previous conviction was in 2006, the learned judge was right to place reliance on it. The appellant was convicted of harassment as well as arson, and the present conviction shows that there has been little change in his attitude towards ex-partners in the intervening 18 years.

19. This was a wicked offence, committed out of jealousy, in the presence of a 9 year old child on that child's mother and over an overall period of 30 minutes. The effect on Miss Bonner of losing her baby has been devastating.

20. Given that the maximum sentence for this offence is five years' imprisonment, it must be that Parliament envisaged that some offences, albeit rarely, would require a sentence at or approaching the maximum. The learned judge was entitled to find that this was one such

offence. We find nothing manifestly excessive about the sentence of four years and eight months' imprisonment.

21. This appeal against sentence is accordingly dismissed.

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