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NEUTRAL CITATION NO; [2024] EWCA Crim 1220

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT INNER LONDON
HHJ DAVID RICHARDS T20220849

CASE NO 202402652/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 4 October 2024

Before:

LORD JUSTICE WARBY

MR JUSTICE MARTIN SPENCER

HIS HONOUR JUDGE DREW KC
(Sitting as a Judge of the CACD)

REX
V
ARH

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
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MR M SHILLIDAY appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1. The appellant appeals with leave of the single judge against a sentence of 3 years 4 months' imprisonment (40 months) imposed by HHJ David Richards sitting in the Crown Court at Inner London on 19 July 2024, for an offence of attempted wounding with intent committed on 28 October 2022. She also received a sentence of 3 months concurrent for having in her possession a bladed article, namely a kitchen knife.

2. The facts of this matter are that Mr Kobi Gordon ran the Deens Furniture Store on Brixton Hill. The appellant lived in a flat on Trent Road, which joined Brixton Hill at the junction where Deens Furniture was located. Mr Gordon had known the appellant for about 6 years. She regularly passed the shop and had previously displayed erratic behaviour. Mr Gordon tried to avoid any eye contact with her so as not to trigger any incident.

3. At about 10.30 am on 28 October 2022, the appellant came to the store. She approached Mr Gordon's uncle and made malicious remarks to him about Mr Gordon. She went away but came back at about 4.00 pm and was pacing up and down outside the store and calling Mr Gordon various names, such as "molester." Mr Gordon tried to ignore her but after about 10 minutes told her to go away. The appellant remained in the vicinity. Shortly afterwards, when Mr Gordon was turned away, the appellant came running around the corner from Trent Road brandishing a large kitchen knife. She ran up to Mr Gordon with the knife held above her head and attempted to stab him in a round arm downwards motion. Mr Gordon caught sight of her as she did so and was able to turn and deflect the blow and minimise contact. He in fact sustained only a 1-centimetre cut to his

upper right arm from the knife. Mr Gordon then chased the appellant off.

4. Despite her actions, the appellant remained around the shop after the incident until the Police arrived and arrested her. By this stage she had put the knife in her handbag, from where it was recovered. It was a very large carving knife with an 8-inch (20cm) blade.

5. In interview, the appellant suggested that Mr Gordon had been abusive towards her. She provided no account in relation to the knife or what she had done with it.

6. The victim, Mr Gordon, made a statement to the police on the same day and attached to it a Victim Personal Statement. He had grown used to her behaviour until the day in question as it had only been verbal abuse, but this was different. He feels vulnerable because, as he says, he cannot get away from her as she lives nearby. He says that the offence has had a big impact on his work at the shop because of the risk that she will turn up at any time and be abusive towards him, making his working conditions difficult.

7. The appellant pleaded guilty to the offences at a further case management hearing on 29 September 2023, which was after the PTPH hearing had been held and after the case had missed its first warned list but before it had been listed for trial. Thus, it was a late plea, and the prosecution submitted that the credit for plea of guilty should be in the range 15-20 per cent. When sentencing the appellant, the learned judge said:

> "You pleaded guilty after the case had already been in a list for trial but was not called on, but I accept that for much of these proceedings, your mental health was deteriorating. So for your plea, I give you about 15 per cent credit."

8. Mr Shilliday, for whose submissions both orally and previously in writing we are very grateful, submitted that the discount for plea should have been substantially greater, by reference to the psychiatric report of Dr Ghosh at page 33 of 36, paragraph 24 where he said:

> "[The appellant's] clinical features appear to fulfil the diagnostic criteria for emotionally unstable personality disorder - borderline type, and complex Post Traumatic Stress Disorder. She also appears to have significant Bulimia Nervosa, Alcohol dependence and illicit drug misuse (with historical dependence). She also had strong paranoid and persecutory ideation against the neighbours including the victims. She said she was not able to find her house keys or her phone (which she thinks was stolen) so could not inform the court. She regretted it and appeared to understand the seriousness of missing it. Relevant factors include paranoia and concern her property and belongings were at immediate risk. PTSD-related anxiety and hyper-arousal would relate to this. Her poor social network was relevant. lmpulsivity and emotional dysregulation together with a chaotic lifestyle involving alcohol dependence would also have impacted. The aforementioned factors together with the stress of the court case and her social circumstances appear to have affected her ability to attend court on 19.3.24 to some extent (more than someone without her mental health difficulties)."

9. However, we do not consider that the appellant's mental health problems were significantly different on the day that she pleaded guilty to the earlier period and that she could and should have pleaded earlier. In our judgment, the decision of the learned judge to afford the appellant a 15 per cent discount was well within his discretion.

10. The more substantive ground of appeal relates to the length of sentence which, it is claimed, is manifestly excessive when the guideline on sentencing those with mental disorders is applied. In mitigation, Mr Shilliday had taken the learned judge to specific passages in Dr Ghosh's report to show that the explanation for these offences lay in the

horrendous childhood which the appellant had suffered. The medical records showed that, as a one-year-old, she had suffered burns to her face, head and neck and was recognised as a child at risk. At the age of 8, she was documented to be the victim of sexual abuse by her mother's partner. This led to acts of self-harm over the subsequent years and depression. Unsurprisingly, Dr Ghosh records the appellant as struggling to cope and her life becoming chaotic, leading to dependence on alcohol and drugs. Despite this, to her credit, she attempted to rebuild what Dr Ghosh calls a "pro-social life" in the service of vulnerable people, attending university and holding down paid employment. Although he deferred to the court in the determination of how the appellant's long history of mental health symptoms may have affected her ability to exercise appropriate judgment, he suggests that she appeared significantly to underestimate the potential level of harm to Mr Gordon and herself by her actions, which is potentially associated with her level of emotional difficulties. She suffers from Complex PTSD which has probably impaired her decision making, particularly with regards to weighing up information. She also suffers from an emotionally unstable personality disorder. This feeds into the views of Catherine Knight who wrote the pre-sentence report and who states:

> "[The appellant] is in need of help particularly around her mental and emotional wellbeing. It is of no fault of her own that she has a rather troubled past and childhood which has impacted her ability to emotionally regulate due to the impact of trauma. Time spent in custody would only further exacerbate this in my view and cause her to lose her accommodation, affecting her stability in the community."

11. Drawing on this material, Mr Shilliday submits that the history, together with Mr Gordon's unhappy resemblance to one of the men who had raped the appellant in the past, provides a ready explanation, if not excuse, for her offence, which should have led

to the court's attention being focused on paragraphs (b)-(d) of section 57(2) of the Sentencing Act 2020 which reiterates the purpose of sentencing being the reduction of crime, the reform and rehabilitation of offenders and the protection of the public rather than on paragraph (a) which refers to the punishment of offenders.

12. Powerfully and attractively as these submissions are put, we cannot accept them. Certain offences are simply so serious that immediate custody cannot be avoided, and this is one of them. The learned judge took full account of the mitigating factors in reducing the sentence to the lowest that he could, but he recognised that this left a term of imprisonment which was too long to suspend. He said:

> "I am invited to depart from the proper custodial sentence because a mental health treatment requirement is recommended and that can be a proper alternative to a moderate custodial sentence. I can't in your case. What you did was too serious."

13. In so deciding, we cannot see that the learned judge erred in principle. He took into account all the matters urged on us today by Mr Shilliday and the sentence of 40 months' imprisonment cannot properly be described as either manifestly excessive or indeed, in our judgment, excessive given the seriousness of the offending.

14. This appeal must be dismissed.

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

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