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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT

SOUTHAMPTON

MR RECORDER TAIT CP No: 44SC0038124

CASE NO 202401566/A5

[2024] EWCA Crim 1334

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 22 October 2024

Before:

LORD JUSTICE COULSON
MR JUSTICE JOHNSON
HIS HONOUR JUDGE FLEWITT KC
(Sitting as a Judge of the CACD)

REX
V
JAMES LEROY RUSSELL

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MR C GAIGER appeared on behalf of the Appellant

J U D G M E N T

(Draft for Approval)

LORD JUSTICE COULSON:

1.Introduction

1. The appellant is now aged 30. On 15 January 2024 he pleaded guilty before the Magistrates' Court to one offence of criminal damage and two offences of assaulting an emergency worker. He was committed for sentence under section 20 of the Sentencing Act 2020. One count of section 18 assault with intent was sent to the Crown Court for trial, although the appellant indicated to the Magistrates' Court that he would plead guilty to the lesser charge of section 47 assault occasioning actual bodily harm.
2. On 23 February 2024 in the Crown Court at Southampton the appellant was charged with and pleaded guilty to the lesser offence of section 47 assault. It was agreed that the appellant was entitled to a full one-third credit for his guilty plea. On 27 March 2024 the appellant was sentenced by Mr Recorder Tait ("the judge") to 32 months' imprisonment in respect of the section 47 assault. In respect of the three committed offences, he received two terms of six months' imprisonment for each assault on an emergency worker, such periods to run consecutively, both to one another and to the 32 months imposed for the section 47 assault. There was no separate penalty in respect of the charge of criminal damage. In total therefore, the appellant was sentenced to 44 months' imprisonment.
3. He appeals against that sentence with leave of the single judge.

The Facts of the Offending

4. The appellant had been out for the evening with the victim Ms Challis, with whom he was in a relationship. Having visited a public house in Eastleigh they then went to a Travelodge. They arrived there at about 10.30 pm. Thereafter Ms Challis reported that the appellant became "odd". He attacked her. She was held down on the bed where a large quantity of blood was subsequently found. There was also blood smeared on the walls. Ms Challis was bleeding heavily from the back and side of her head where the appellant had struck her.

5. Ms Challis spoke to her daughter who rang the police. The police attended and Ms Challis was taken to hospital. The police arrested the appellant at the hotel. He said:

"I hope that the bitch got what she deserved. I smashed her effing head in and broke her nose, innit."

During the course of the arrest the appellant punched one officer in the head and also injured another officer. Those assaults gave rise to the two counts of assaulting an emergency worker.

6. Ms Challis was left with a variety of painful injuries. There was a head wound: an injury to the left side of her face by the left eye which was swollen and bruised. It had an imprint of it of a thumbnail or a fingernail. Ms Challis also had a further injury to the right eye. There was bruising to the left shoulder, bruising around both wrists, a swollen and bruised right elbow, a bruised right hand and signs of suffocation. She was also left with a number of loose teeth.

The Sentencing Remarks

7. The judge's sentencing remarks were brief. He said:

"...You have an appalling record for committing offences of violence against female partners. You breach Restraining Orders when they are imposed on you. It has been evident in recent months that there is an epidemic of domestic violence in this country perpetrated by people like you on vulnerable women, and you did it time and time again. In my judgment, you are a dangerous individual. However, on the other side of the coin, you offered to plead guilty to the offence which is before this Court at the Magistrates' Court and you are entitled to a one third discount against the sentence that I would otherwise pass in relation to the assault occasioning actual bodily harm. I also have to deal with you for two offences of assaulting emergency workers, police officers when they endeavoured to arrest you.

It is quite clear that you have, firstly, alcohol issues and then anger management issues. Until you curb your behaviour, you will be back before Court time after time after time. I impose a Restraining Order upon you that you have no contact with Clare Challis directly or indirectly or through any social media channels, and secondly, that you do not go to any address where you know or believe Clare Challis to be living and that order will be an indefinite order. In other words, until further notice."

8. The judge then dealt with the particular offences:

"In my judgment and experience, this was a very serious offence of its kind. You are here for assault occasioning actual bodily harm which carries a maximum of 5 years' imprisonment. Bearing in mind the injuries and the sustained attack upon Ms Challis, my judgment is that this is certainly culpability A within the meaning of the guidelines and somewhere between harm 1 and a harm 2. Of course, the starting point for that offence is significantly aggravated by your previous convictions and behaviour, and in my judgment the starting point for this offence of assault occasioning actual bodily harm is one of 4 years' imprisonment. I have to reduce that by law by one third and I do so. That reduces the sentence for the assault occasioning actual bodily harm to one of 32 months' imprisonment. I impose consecutive sentences of 6 months on each of the offences of assaulting an emergency worker and that will bring the total sentence of the Court to 44 months' imprisonment."

The Grounds of Appeal

9. There are three grounds of appeal. They were clearly set out in Mr Gaiger's advice and

he has repeated them crisply and succinctly this morning. They are:

(a) The 32 months imposed for the section 47 assault meant that, prior to the one-third discount for a guilty plea, the sentence must have been 48 months (or four years). That was manifestly excessive.

(b) The starting point of 18 months for the two offences of assault of emergency workers was also manifestly excessive.

(c) The judge took no account of totality.

10. We agree with Mr Gaiger that the sentencing exercise was unsatisfactory. The judge did not properly explain into which category he put the assault, or how and why a 48 month term was justified prior to discount for plea. It is not easy to see whether or not the judge took into account totality. It is therefore necessary for this court to re-undertake the sentencing exercise.

The Appropriate Sentence for the s.47 Assault

11. It is conceded that this was a culpability A offence. It was in our view plainly a culpability A offence, and one at the top of the range. There is a dispute as to harm and whether this was Category 1 or Category 2. Category 1 is "serious physical injury or serious psychological harm and/or substantial impact upon the victim". Category 2 is harm falling between Categories 1 and 3. Category 3 is where there is some level of physical injury or psychological harm with limited impact. Mr Gaiger argued both before the judge and before this court that this was a case where harm fell into Category 2.

12. In our view the judge was right to say that the nature and range of the injuries in this case meant that harm was close to Category 1. The injuries were serious in the context of this offence, a conclusion that Mr Gaiger fairly does not dispute. They were also extensive. For Category A1 the recommended range is from one year six months to four years' custody. By comparison, Category A2 has a recommended range between 36 weeks and two years six months' custody. Because we are putting this between those two categories, the upper end of the range in the present case would have been around three years three months.

13. We consider that, simply by reference to the assault itself, that upper end of the range would have been the appropriate starting point. That was because of the prolonged nature of the attack and the volume and extent of the injuries sustained by Ms Challis. But in our view that starting point plainly requires to be uplifted again because of the appellant's appalling antecedents. He has 35 convictions for 60 offences beginning in April 2008. The vast majority of those convictions are for offences of violence, many of them committed against women with whom the appellant was in a relationship. The appellant has clear anger management issues and violent tendencies. In this way, the appellant's previous convictions are a significant aggravating feature. In our view they would justify an uplift from three years three months to a starting point of four years. That then fell to be reduced by one-third to reduce the sentence to one of 32 months.

14. Accordingly, we consider that, on the particular facts of this case, the term of 32 months for the section 47 assault was neither wrong in principle nor manifestly excessive. It was just not properly explained. The first ground of appeal therefore fails.

The Assaults on the Emergency Workers

15. The assaults on the two policemen were separate incidents of violence with different victims to the section 47 assault. In our view they plainly attracted a sentence that would be consecutive to the term for the section 47 assault. Although the maximum term for this offence in the Magistrates' Court is one of six months' imprisonment, and that was the relevant maximum (because the case was sent to the Crown Court rather than committed for sentence), the judge was entitled in principle to take as his starting point nine months for each assault for the reasons set out in R v Yearwood [2024] EWCA Crim 1094.

16. On the facts too, we consider that the judge was entitled to take a nine-month starting point for each offence, again given the appellant's antecedents. The appellant is entitled to a full one-third discount for his guilty plea. That would mean that the sentence in respect of each of the assaults was six months' imprisonment. That was the maximum available but for the reasons that we have explained it was appropriate in this case. Thus the second ground of appeal also fails.

Totality

17. This gives rise to the final ground of appeal. We have said that the sentence in respect of the emergency workers was properly made separate to the section 47 assault. The victims were different and a consecutive sentence is therefore justified.

18. However, we do accept that the judge's decision to make both the sentences for the

assaults on the emergency workers consecutive, not only to the section 47 assault but to one another, was contrary to the Guideline on Totality. In our view, whilst the first sentence of six months was properly made consecutive to the 32 months for the section 47 assault, the second assault should have attracted a concurrent term of six months.

Conclusion

19. We accept that the sentencing exercise was flawed and required to be redone. For the reasons that we have given, we consider that the sentence for the section 47 assault was unimpeachable. The two sentences in respect of the assaults on emergency workers of six months each was stern but not excessive. But we accept that the second sentence for the assault on the emergency worker should have been made concurrent, not consecutive, in order to properly reflect the principle of totality.

20. Accordingly, we make that second sentence concurrent. That has the effect of reducing the overall sentence from 44 months to 38 months, being 32 months for the section 47 assault, six months for the first assault on the police officer, with the second sentence of six months being concurrent. To that extent only this appeal against sentence is allowed.

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

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