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Neutral Citation Number: [2024] EWCA Crim 1581

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT NORWICH

MR RECORDER PAUL GARLICK KC 36CJ2362623

CASE NO 202403046/A1

Royal Courts of Justice
Strand
London
WC2A 2LL
Thursday 5 December 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE GARNHAM

RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY KC
(Sitting as a Judge of the CACD)

REX

V

RHYS PHILLIPS

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
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 GARNHAM:

1. The provisions of section 45 and 45A of the Youth Justice and Criminal Evidence Act 1999 are engaged in this case. No matter relating to any person concerned in these proceedings shall, whilst he or she is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him or her as a person concerned in the proceedings.

Introduction

2. On 2 May 2024, in the Crown Court at Norwich, the applicant (then aged 29) pleaded guilty to a charge of doing acts tending and intended to pervert the course of public justice (count 4). On the 30th of that month, he pleaded guilty to a charge of assault occasioning actual bodily harm (count 2). On 25 July 2024, at the same court before Mr Recorder Paul Garlick KC, the applicant was sentenced to 30 months' imprisonment on count 2 and 12 months concurrent on count 4. He now seeks to renew his application for leave to appeal against sentence and for a representation order after refusal by the single judge.

The Facts

3. The events underlying count 1 occurred following an argument between the applicant and his 16-year-old girlfriend ("the complainant"). That argument had begun at the home of a mutual friend and continued in the street outside and in a nearby park, where the applicant assaulted the complainant. The assault involved the applicant punching the complainant, pulling her hair, bending her arm and, when she fell to the ground, kicking her to the body. The complainant subsequently attended hospital for medical treatment.

Her injuries were noted as tenderness to the scalp and right elbow and bruising to the back of the arm and leg.

4. Whilst on remand the applicant made contact with the complainant on more than one occasion and tried to get her to withdraw her statement. He sought to discourage her from giving evidence against him by using threats towards her. That was the subject of count 4.
5. The applicant was aged 29 at sentence. He had 21 convictions for 63 offences spanning from 30 July 2008 to 22 December 2022. His relevant convictions included five offences against the person and 15 offences relating to police, courts and prisons.

Grounds

6. On the applicant's behalf it is argued, first, that the Recorder's starting point of 38 months' imprisonment for the offence of actual bodily harm was too high and the resultant sentence of 30 months' imprisonment was manifestly excessive. Second, it is said that the sentence of 12 months' imprisonment for the offence of perverting the course of public justice was manifestly excessive, again because the Recorder's starting point was too high.

Discussion

7. Refusing leave to appeal sentence the single judge provided detailed reasoning. We repeat his observations:

“You were sentenced by Recorder Garlick KC to 30 months’

imprisonment. That must be taken to be the learned Recorder's assessment of a proper sentence to reflect, in aggregate, the s.47 offence (ABH) and the subsequent offence of attempting to pervert the course of justice. That is because a concurrent sentence was passed for the subsequent offence. The learned Recorder did not explain that aspect of his reasoning. Indeed, his sentencing remarks did not give any proper reasons for your sentence at all. At a minimum, they should have: (a) identified how the learned Recorder categorised the ABH offence under the applicable Sentencing Guideline; (b) identified what aggravating features and mitigating features (if any) he was taking into account; (c) identified what reduction for your guilty plea was being applied (and why); (d) explained what upward adjustment was being applied to ensure that the sentence took account of the separate matter of perverting the course of justice. Instead, the learned Recorder simply stated, without explanation, that the custodial term to be imposed would be 30 months, and the only decision he sought to explain was his erroneous decision that an extended sentence should be imposed on the basis of a finding of dangerousness, which he withdrew upon being reminded by counsel that there was no power to impose an extended sentence where the custodial term was less than 4 years.

Although, therefore, the learned Recorder's sentencing remarks were inadequate, that does not by itself give you any arguable basis for a successful appeal. The question remains whether the sentence in fact imposed is arguably wrong in principle or manifestly excessive.

The ABH offence was a sustained (i.e. prolonged and persistent) assault on an obviously vulnerable victim that had a substantial impact on her, as evidenced by her several witness statements, even if, mercifully, the physical injuries themselves were not particularly serious, and bearing fully in mind the accepted Basis of Plea. It was aggravated by the domestic abuse context and by your bad record of previous offending. There was some evidence of apparent remorse and a degree of insight, but it is difficult to attach much weight to that in light of the well-reasoned, evidence-based and very negative pre-sentence report.

The Guideline range for the ABH offence, which was a Category 1A offence as submitted by the prosecution, was 1½ years to 4 years, with a starting point of 2½ years. Taking account of the aggravating and mitigating features, there could not properly have been a sentence of less than 3 years after a trial. It is said on your behalf that 20% credit for plea was justified. That seems to me to

be debatable, but even if it is correct it would give a final sentence, for the ABH alone, of at least 28 months.

The final sentence of 30 months in fact imposed, which is still well within the Guideline range for the ABH offence alone, therefore builds in at most a modest uplift for the separate, serious offence of attempting to pervert the course of justice, for which, taken by itself, a sentence of at least 6 months, after full credit for plea, was plainly justified. In my view, that means your sentence was not arguably either wrong in principle or manifestly excessive. I have therefore refused your application for leave to appeal.”

8. We agree with all those reasons and adopt them. In those circumstances, there is no properly arguable ground of appeal and 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.

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk