



[2024] EWCA Crim 1586

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT CAMBRIDGE

MR RECORDER RICHARD SINGER 35NT2014423

CASE NO 202403144/B2-202403414/B2

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 20 November 2024

Before:

LORD JUSTICE EDIS

MR JUSTICE SAINI

RECORDER OF BRISTOL
(HIS HONOUR JUDGE BLAIR KC)
(Sitting as a Judge of the CACD)

REX

V

GHEORGHE BADELITA

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MS C-L WILLIAMS appeared on behalf of the Appellant.

MR R MANDEL appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE EDIS:

1. What we are about to do is to deal with an appeal against sentence. We are about to hand down a judgment dismissing the appeal against conviction. If you have any questions about what has happened then you can speak to your barrister after the hearing and she will be able to answer those questions with the help of the interpreter.
2. We hand down a judgment in relation to the conviction appeal. We heard oral submissions on Friday and we have received written submissions since then from both sides. We have considered all of those matters and have decided that the convictions were safe so they continue to be in force. But we are going to consider the sentence that was imposed in an appeal against sentence and first we hear from Ms Williams, to argue the appeal, and then Mr Mandel, on behalf of the prosecution may respond, and having heard that, we will give our decision about the sentence.

(Submissions re: sentence)

LORD JUSTICE EDIS:

3. This is an appeal against sentence by leave of the Full Court. This constitution gave leave on Friday. The facts are set out in a judgment on the appeal against conviction, which we have handed down a few minutes ago. It is unnecessary to repeat them in this part of the decision.
4. After the verdicts of the jury were returned in July, a sentencing hearing was held on 2 September. The judge imposed sentences as follows. For count 1, common assault, a sentence of 8 weeks' imprisonment; count 3, making a threat to kill, 12 months' imprisonment; count 4, making a threat to kill, 28 months' imprisonment; count 5,

making a threat to kill, 24 months' imprisonment and count 6, a further offence of making a threat to kill, 15 months' imprisonment. No separate penalty was imposed in relation to count 7, damaging property. Count 7 related to damage caused by kicking and using a brick while trying to get into the property, and that conduct was taken into account as an aggravating feature of counts 4, 5 and 6, which were all committed during the same incident as the criminal damage. All of those sentences were ordered to run concurrently with each other, count 4 having been treated as the lead offence. That meant that a prison sentence was imposed of 28 months. In addition, there was a restraining order and a surcharge.

5. The court had victim personal statements from each of the four women who had given evidence against the appellant at the trial. There was no written pre-sentence report and it is necessary just to record what happened about that. At the start of the sentencing hearing on 2 September the judge observed that there was a nil pre-sentence report, that is to say there was no pre-sentence report. He was informed that the Probation Service had been able to see the appellant and talk to him and they were able to give what is described as a "stand down report" about him. The judge heard the probation officer. The probation officer said that the appellant continued to deny the offences and took no responsibility for his actions. He demonstrated poor problem-solving skills and had issues with temper. His risk of harm to known adults was assessed as being "medium".
6. It is right also to record that, at the start of that hearing, the judge informed counsel that he had made a witness statement which might be used in criminal proceedings against the appellant arising out of his behaviour in court on 10 July. The judge had placed a note on

the Digital Case System a week or so before suggesting that he thought that criminal proceedings ought to be brought. The significance of that, so far as sentence was concerned, in our judgment, was that the judge had to be careful not to aggravate the sentence he was about to impose to reflect that conduct if further specific criminal proceedings in relation to it were going to be instituted. In fact, no such criminal proceedings are going to be instituted because the Crown Prosecution Service, having spoken to the appellant's wife, have taken the decision that they are not necessary. In fact, consideration of the sentencing remarks shows that the judge did not aggregate the sentence to reflect that conduct and Ms Williams, who drafted a ground criticising the sentence on that basis, has very sensibly, having now had the opportunity to consider that transcript, decided not to argue that before us today, so that we will deal with the case on the basis that the judge properly, for sentencing purposes, put out of his mind the activity of the appellant in court on 10 July which is fully described in our judgment on the conviction appeal.

7. What that means is that this appeal is now argued on the basis that the judge's categorisation of the offending was appropriate but that insufficient weight was given to the mitigation which was available to this appellant. In a nutshell, that mitigation was the fact that he had no previous convictions, being now a man in his 50s. There was compelling evidence from Dr Clarke (the psychiatrist) and from the appellant himself and from his wife that his behaviour had deteriorated sharply because of a stroke in 2021. The medical evidence was not definitive because it was based on a single interview, with the appellant imprisoned in July, done at some speed because of the need to ascertain the appellant's mental state then. But for sentencing purposes the whole picture was of a

man who, having led most of his life without committing criminal offences, had suffered a significant acquired brain injury as a result of these strokes, which had had a significant effect on his behaviour. The essential point made by Ms Williams on his behalf in relation to sentence is that that was a significant mitigating factor to which the judge gave inadequate weight.

8. The judge's approach was, as we have said, to take count 4 as the lead offence. He said that the starting point in the guideline for a culpability B1 offence of threatening to kill was 2 years. He identified an aggravating feature, namely the offence being committed while on police bail, and also mitigating features, including the ones to which we have just referred. He said they balanced each other out. That was his approach to aggravating and mitigating factors across all of the offences upon the indictment. He imposed, as we have said, concurrent terms in relation to the other offences and increased the starting point from 2 years to 28 months, so that the sentence on count 4 reflected all of the offending.
9. In our judgment, there is force in the submissions made by Ms Williams in relation to this sentence. We consider that the judge's classification of count 4 as a B1 offence is apposite and that a starting point of 2 years was appropriate. We consider, without hesitation, that these offences taken together clearly passed the custody threshold and required a sentence of imprisonment. We consider however that, having arrived at a starting point somewhat in excess of 2 years, having regard to the classification of the lead offence as a B1 offence, to take account of all the other offences and the aggravating features which there were, the judge was obliged to make a significant discount to reflect

the mental state of this appellant and we consider that he did give that too little weight. There are some phrases in the sentencing remarks which suggest that he felt that it had been exaggerated and that the disability was not as profound as was suggested. He was of course entitled to make his own assessment of the appellant, whom he had observed during the trial. However, there was clear evidence to which we have referred which suggested that there was a significant disability and, in our judgment, that should not have been downplayed to the extent that it was.

10. We consider that an appropriate sentence, having regard to all of those matters, to reflect all of this offending, would have been a total sentence of 18 months' imprisonment. In order to give effect to that, it is necessary for us to deal with the sentences which were imposed both on count 4 and on count 5. They were 2 years and 4 months and 2 years respectively. We consider that those sentences should be quashed and, in their place, there should be sentences of 18 months' imprisonment on each of those two counts concurrently. The other concurrent terms are less than 18 months and do not need adjustment.

11. Having reduced the sentence to a sentence of below 2 years, the issue arises as to whether we should impose that sentence as a suspended sentence. We have had regard to the Imposition Guideline and to the factors which militate in favour of suspending sentences. We consider that this is a case which is so serious that appropriate punishment can only be achieved by the imposition of an immediate custodial sentence. Although mitigated by his mental state in the way we have described, this appellant subjected these women, particularly on the second day, to a terrifying ordeal in which he was attempting to break

down the door, to get into the property where they were sheltering, and all the while he was uttering threats to kill them which he intended they should take seriously, and which they did. They made panic-stricken calls to the police for help, which were recorded and played to the jury. The whole event was truly terrifying for them and their victim personal statements explained the serious psychological harm and distress which they were caused. It is for that reason that the judge correctly put these cases into category B1 for guideline purposes.

12. We have therefore decided that the sentence which we impose is an immediate sentence and not a suspended sentence, and to that extent this appeal against sentence is allowed. Is there anything else we need to do that we have forgotten to do or neglected to do?

13. MR MANDEL: No, thank you.

14. MS WILLIAMS: No, thank you.

15. LORD JUSTICE EDIS: There has been a change in the statutory surcharge amount which is now in a lower sum of £187 which you will have to pay. Otherwise the order in that respect remains the same but the sum is less. Thank you both very much indeed.

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

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