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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT BURNLEY

THE RECORDER OF PRESTON CP No. 04ZL1165323

Neutral Citation Number:

[2024] EWCA Crim 783

CASE NO 202402016/A3

Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday, 2 July 2024

Before:

LORD JUSTICE POPPLEWELL  
MR JUSTICE HILLIARD  
HIS HONOUR JUDGE DEAN KC  
RECORDER OF MANCHESTER  
(Sitting as a Judge of the CACD)

REX

V

MARLEY CONNOR JONES

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MR T LORD appeared on behalf of the Appellant

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**J U D G M E N T**

1. MR JUSTICE HILLIARD: On 6 March 2024, in the Crown Court at Burnley, the appellant, aged 29, pleaded guilty to an offence of blackmail. On 29 March 2024, he was sentenced to 16 months' imprisonment. He now appeals against sentence with the leave of the single judge.
2. The appellant and the victim "A" were on friendly terms prior to the offence taking place. A lent the appellant £20 for a take-away on 18 January 2023 and on that date there was a conversation between them which A described as "slightly flirtatious".
3. On 19 January 2023, the appellant came round to A's address at about 12.50 am. They were sitting in the bedroom and a conversation about sexual preferences arose. A said that the appellant placed his hand over A's pants in an attempt to touch him. At one point, he placed his hand on A's neck and tried to force his head down in an attempt to make him perform oral sex. A extricated himself from that position and the appellant left soon after, telling A that he felt slightly weird. The appellant left his mobile phone at the address. Just after 1.00 am, A messaged him to let him know about the phone. The appellant came round to collect the phone and mentioned that he felt uncomfortable with what had happened. A told him to forget about it.
4. Thereafter, the appellant began messaging A telling him that he had a recording of what had happened earlier and that he would delete the recording if A gave him £20. When A did not send the money, the appellant said that he would tell the police, saying that he had set the whole thing up. The appellant intimated that he would expose A in relation to activities with younger individuals, although there was no such activity. A felt shaken and intimidated. He sent the appellant £20 and then blocked him on Facebook.

5. On 20 January A received a Facebook message. It purported to be from another person but was in fact from the appellant using that person's account. There were multiple messages in which they discussed the events of the previous evening. The appellant indicated that he wished to come round to A's address, although he did not in fact do so.
6. On 21 January, the appellant again made contact with A, saying that he wanted to come round to his address. A told him to do so quickly as he was just about to make a meal. The appellant messaged that he wanted £50 and referred to A as a "paedo". At about 5.55 pm, the appellant and another male came to A's address. They both entered the property although A did not give them permission to come in. A tried to usher the appellant back out of the property. The appellant was abusive to him, called him a "nonce" and a "paedo" and said he was a "wrong un". The appellant followed him into the kitchen, making repeated demands for £50. A eventually complied. As he had no cash on him, he drove the appellant to a nearby ATM machine, withdrew £50 and gave it to him. In the conversations with A on 21 January, the appellant had made reference to what he was doing as extortion and said that he needed £50. He made reference to vehicles being smashed up if the money was not paid. The appellant also told him: "If you have young men at your house, this is how you can expect me to behave".
7. On the return journey from the ATM, the appellant was friendlier and told A that that would be the end of it and that if there were any further problems from anybody else in the area, A should inform him and he would deal with it. A then reported the matter to the police and made a statement on 23 January, providing them with recordings he had made of some of the conversations.
8. On 24 January, the appellant again attended at A's address and he apologised for what had taken place. During that recorded conversation, a neighbour could be heard standing

up for A and telling the appellant to leave. There was a discussion between A and the neighbour in which A said he wanted to leave the area because of how upset he was. The neighbour reassured him that nothing the appellant had been talking about had happened and the neighbour did not believe it. At some point, the appellant told A that he was keeping the £50 as evidence, implying that A had paid him to keep quiet.

9. The appellant was arrested. When interviewed, he accepted that he had sent the messages. He said that he had not recorded anything which passed between him and A and that he had asked for £20 for a takeaway. He said he then demanded £50 and apologised two days later. He did not accept making any of the sexual allegations.
10. A made a statement in which he described the stress caused by the appellant's actions. He had moved out of the area where he lived, partly because of what had happened.
11. The appellant had no previous convictions. The author of a pre-sentence report said that he seemed genuinely remorseful and ashamed of his behaviour. He had been deeply entrenched in alcohol and cocaine abuse. He had needed money to pay for his drug and alcohol abuse. His partner had been pregnant with their third child. The appellant was not in employment. He had stopped using cocaine and reduced his alcohol consumption. The author thought that he was unlikely to re-offend and proposed a community order with rehabilitation activity requirement days and unpaid work.
12. When he passed sentence, the judge noted that there were no offence-specific sentencing guidelines. In those circumstances, he followed the over-arching principles in the sentencing guidelines and took account of the maximum penalty, of sentencing decisions of the Court of Appeal, of culpability and harm and of the purposes of sentencing. He said that the offence involved a wholly unwarranted threat to put it about in the neighbourhood that A was a paedophile. If that happened, people's homes and families

would be targeted and they might often never escape the wrongful allegation which had been made. The judge said that he took a starting point of 30 months' imprisonment, which he reduced to 24 months on account of personal mitigation, including good character. He made an allowance of one-third for the guilty plea which resulted in a sentence of 16 months' imprisonment.

13. The judge then referred to the imposition guideline. He said that the appellant was not a danger to the public, there was no history of failing to comply with previous sentences, there was a realistic prospect of rehabilitation, and he had a young family. However, the judge said that when the offence involved such an unpleasant threat as here, appropriate punishment could only be achieved by immediate custody.
14. It is now argued on the appellant's behalf by Mr Lord that the judge's starting point was too high and that in any event the sentence should have been suspended. We have given these submissions careful consideration and we are grateful to Mr Lord for his assistance.
15. We have been referred to MJC [2015] EWCA Crim 1519. The appellant had threatened to report a 16-year-old boy to the police. The boy had sent an image of his penis to a 14-year-old relative of the appellant. The appellant demanded £75. Exchanges took place over a period of about 30 minutes at 1.00 am. The fourteen-year-old relative took over the conversation in the morning and reassured the boy that nothing would happen. The sentencer had taken a figure of two years' imprisonment before credit for plea of guilty, resulting in a sentence of 16 months' imprisonment. The Court of Appeal held that before credit for plea, a sentence of 12 months' imprisonment would have sufficed. Eight months' imprisonment was therefore substituted on account of the guilty plea. The appellant in that case had some caring responsibilities for three children. The Court of Appeal said that his family circumstances were not sufficiently compelling to justify

suspending the sentence.

16. As it seems to us, MJC was much less serious than the present case. The threats in MJC extended over a very short period of time and the victim was reassured very soon afterwards.

17. In Attorney General's Reference (O'Sullivan) [2021] EWCA Crim 248, the offender had been sentenced to a suspended sentence of 21 months' imprisonment after a plea of guilty to blackmail. The victim had sent an image of his penis to the offender who posed online as a female. They exchanged sexual messages. A few days later, the offender said that he was going to tell the victim's wife and family. He made demands for money. The victim paid £2,870 over a six week period. The victim had taken out a bank loan. The offender, posing as a female, contacted the victim's wife on two subsequent occasions: once asking her to tell her husband to get in touch and then telling her that she had the image and threatening to send it to family and friends. The police had been alerted by this time. The judge took a starting point of four years' imprisonment. The Court of Appeal said that a starting point of that length had not been inevitable and that some judges would have started at three or three-and-a-half years' imprisonment on the particular facts of the case. The offender had particularly compelling personal mitigation, as well as the benefit of a guilty plea. The court held that although 21 months' imprisonment was lenient, it was not unduly so, and the decision to suspend the sentence had been well reasoned and justifiable.

18. In our judgment, MJC was less serious than the present case and O'Sullivan was more serious. The judge here took a starting point of 30 months' imprisonment before allowing for mitigating features. Whilst this was a substantial sentence, it cannot be categorised as manifestly excessive. A serious view is always taken of any case of blackmail. The

sums of money demanded were small but the threat falsely to expose the victim as a paedophile was an extremely serious one. In addition, the appellant had gone to A's home with another man and both had entered the property uninvited. The appellant had abused the victim, threatened to damage property and made repeated demands for money. The reduction that the judge then made from the starting point for mitigating features cannot be the subject of legitimate criticism. On any view, the mitigation was limited.

19. We turn finally to the question of suspension. This very experienced judge made express reference to the Imposition Guideline and to the factors set out there. The appellant did not have compelling personal mitigation like the offender in O'Sullivan. Such mitigation as the appellant had was expressly referred to by the judge. He correctly identified relevant matters and addressed the guideline. It was then for him to assess and balance the various considerations. Having done so, he concluded that appropriate punishment required immediate custody. In our judgment, that was a conclusion which was open to him after considering the elements of culpability and harm to which we have referred.

20. In these circumstances, this appeal must be dismissed.

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