IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2024/01930/A4

On appeal
from the Crown Court at Croydon
(His Honour Judge Dunne)

[2024] EWCA Crim 936

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 10th July 2024

B e f o r e:

VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE BRYAN

MRS JUSTICE THORNTON DBE

R E X

- v -

KARLEY HARDING

Miss S Fergus-Simms appeared on behalf of the Applicant

Miss C Langevad appeared on behalf of the Crown

A P P R O V E D J U D G M E N T

MR JUSTICE BRYAN:

1. On 26 March 2024 in the Crown Court at Croydon the applicant pleaded guilty to one offence of inflicting grievous bodily harm, contrary to section 20 of the Offences Against the Person Act 1861. On 22 May 2024 she was sentenced by His Honour Judge Dunne to 27 months' imprisonment.

2. The Registrar has referred the applicant's application for leave to appeal against sentence to the Full Court and has granted a representation order for Ms Fergus-Simms to represent the applicant. Miss Langevad appears for the prosecution on the direction of the Registrar.

3. Turning to the facts. On 20 October 2021, just before 8 pm, police were called to a disturbance. A witness reported seeing two women fighting in Davidson Road, Croydon. The police received a further call from the applicant who informed them that she had hit her neighbour, Eleanor Gauntlett, several times in the face. When the police arrived they found Ms Gauntlett on the pavement covered in blood. She was barely conscious; she had a cut over her left eye and a number of marks and bruises. She was taken to hospital by ambulance where it was found that the attack caused an injury to the left eye, described as an artery occlusion, resulting in a 50 per cent sight loss and an ongoing risk of further strokes affecting her heart. Part of a tooth had been knocked out and she also had sustained damage to a metal plate in her gums.

4. Ms Gauntlett made a statement in which she said that she was walking along the road looking at her phone when she was approached and had her hood pulled over her head. She was hit repeatedly with a hard object, which was in fact a bottle of rum which the applicant had purchased at an off-licence and with which she was returning home. She recognised the applicant by the sound of her voice and heard her say: "I'm going to fucking kill you".

5. In interview the applicant admitted hitting Ms Gauntlett with the bottle of rum and repeatedly punching her. She maintained that she was acting instinctively in self-defence, albeit she was to acknowledge that the force used was excessive.

6. Ms Gauntlett was examined at Moorfields Eye Hospital on 21 October 2021. The vision in her left eye was found to be reduced compared to her right eye. A CT scan showed undisplaced fractures in the left inferior orbital margin extending along the interior wall of the left maxillary sinus. Ophthalmology examination and multi-modal imaging of the left eye was consistent with a cilioretinal artery occlusion. The long-term prognosis was that this was unlikely to improve due to the damage to the retina but that Ms Gauntlett should maintain peripheral vision in the eye as the cilioretinal artery only supplies a small central area.

7. The applicant's written Basis of Plea, dated 26 March 2024, was accepted by the prosecution and no Newton hearing took place. That basis was as follows:

> (1) There had been a number of previous incidents between the applicant and Ms Gauntlett known to both the police and the housing association.
> (2) The applicant had previously reported being threatened by Ms Gauntlett on a number of occasions.
> (3) The applicant had been returning from the shops when she saw Ms Gauntlett and feared for her safety.
> (4) She accepted that she used a bottle of rum recently purchased to hit Ms Gauntlett when a fight ensued between her and Ms Gauntlett (although the basis was ambiguous as to the number of blows inflicted).

> In the absence of a Newton hearing the applicant fell to be sentenced on a full basis on this aspect, whereby she may have inflicted a number of blows. In any event, it was accepted by the applicant that the first and intentional blow was that which caused the eye injury.

8. There were two Victim Personal Statements from Ms Gauntlett before the Learned Judge on the sentencing hearing each dated 26 March 2024. In her first statement Ms Gauntlett stated as follows:

> "As a result of the assault physically my left eye has been permanently damaged and I will not regain my vision back in my left eye. Before the incident I would describe myself as a strong, confident woman. However I have now become a shell of my former self. I am currently suffering with PTSD as a result of this incident. It has left me feeling very anxious. The incident has had an impact on my entire family. My son is now suffering from separation anxiety and will not leave my side. This is having an adverse effect on his schooling. I am hoping the conclusion of this matter will help me start to begin to heal and get my life back with my son."

9. In her second statement Ms Gauntlett addressed the vision in her left eye before, as a result of the attack, and as at the time of her statement. She said:

> "Prior to the 20th October 2021 when I was assaulted by Karley Harding who hit me in the head with a bottle injuring my left eye, I can confirm I had no problems with my vision. I have never had to wear glasses or contact lenses. After the assault the vision in my left eye has been permanently damaged. I have double vision in my left eye which means I can only see blurry images. I rely on my right eye to see clearly. After the assault I attended MOORFIELDS EYE CLINIC at CROYDON UNIVERSITY HOSPITAL for approximately (6) six follow up appointments between October 2021 to late 2022. I was told on my last appointment that nothing could be done to regain getting my sight back in my left eye, not even laser eye surgery. I was informed this was as a result of [the] assault I had suffered. Since the assault I can confirm I have not sustained any further injuries to my left eye."

10. The Learned Judge had the benefit of a pre-sentence report prepared in relation to the applicant, a Mental Health Treatment Requirement Report and a Psychology report. There were also reports from the applicant's GP.

11. The applicant was born on 16 February 1988 and was aged 36 at sentence. Whilst she had a warning for shoplifting in 2003, she had no previous convictions. She has two children, a son aged 8 and a daughter aged 15.

12. In his sentencing remarks the Learned Judge referred to the seriousness of the injuries

suffered by Ms Gauntlett and the evidence of the doctor and consultant ophthalmologist to the effect that the long-term prognosis was that Ms Gauntlett's vision is unlikely to improve because of the damage to the cilioretinal artery, although she will maintain some peripheral vision in her left eye. In terms of culpability, the Learned Judge noted that whilst it was said that she had acted in excessive self-defence, the applicant had hit Ms Gauntlett with a bottle on multiple occasions, with the result that there was a degree of persistence to the offence. He concluded, in terms of culpability, that the case fell firmly within Category B, and not lower down the range. In terms of harm, he concluded, with reference to the consultant ophthalmologist's evidence, that the injury to Ms Gauntlett's eye and her loss of vision was permanent and that the long-term prognosis was that her vision was unlikely to improve, although some peripheral vision would be retained. He also referred to what was stated by Ms Gauntlett as to her vision, as we have quoted above. The consultant ophthalmologist also opined that her vision was unlikely to improve. Indeed, by March 2024 (over two and a half years since the assault) it had not. The judge found that the injury had had a permanent effect on Ms Gauntlett's ability to carry out her daily activities and considered that the offending was Category 1 harm.

13. He identified the starting point for a Category B1 offence of three years' imprisonment, with a category range of two to four years. He acknowledged that there were no aggravating factors, but that there was available mitigation. The applicant had no previous convictions and it was acknowledged that the offence was out of character. The applicant expressed remorse for what she had done and said that she had been provoked over a long period of time by Ms Gauntlett, and that she would not have acted as she did without such provocation.

14. The Learned Judge identified that the applicant was the primary carer to two children, a son aged 8 and a daughter aged 15. Her daughter had specific health concerns and he accepted that she remained unwell. He expressly referred to *R v Petherick* [2012] EWCA Crim 2214 and stated that he bore in mind the impact that the applicant's immediate imprisonment would have on the children, although he did not refer to the impact that immediate imprisonment would have upon the applicant in such context. He referred to the applicant having had a conversation with her mother who may well be able to look after the children, although she herself suffers from health difficulties and would need to be assessed by Social Services (although it is not clear when it was envisaged that that would take place). He stated that he was satisfied that there were arrangements in place for the care of the children. He also stated that he did not underestimate the terrible impact that the applicant's immediate imprisonment would have upon the children, and that he had taken this into account when considering sentence. However, he stated that it was a very serious offence and that the needs of the applicant's children had to be balanced against the need to pass an appropriate sentence for an offence of this seriousness.

15. He confirmed that he had read the psychology report, the mental health treatment report and the pre-sentence report, as well as the numerous letters from medical professionals which set out that the applicant was diagnosed with depression and anxiety 15 years ago and that she had recently been diagnosed with PTSD arising from abuse that she had suffered earlier in life and also from being adopted. He stated that these conditions did mitigate the applicant's culpability and noted that the applicant suffered from a long-term physical conditions which will mean that prison will have a significant impact upon her. He also noted that the offence was old, that the applicant had not committed any further offence, and that she had made efforts to improve her life. He stated that this reinforced his conclusion that this was tragically an offence that was out of character.

16. Taking all of those points into account, the judge identified the sentence at trial, after taking account of the available mitigation, would be two years and six months' imprisonment;

and with a guilty plea on the day of trial, credit of ten per cent (or three months) would be given. He passed a sentence of two years and three months' imprisonment. It appears, therefore, that he reduced the sentence for the available mitigation by only six months from the three year starting point.

17. The applicant's grounds of appeal against sentence are that the sentence passed was manifestly excessive in that the Learned Judge:

> (1) Erred in finding that the case fell within Category B1 in the absence of the victim's outstanding medical evidence, as ordered on 26 March 2024; and/or
>
> (2) Failed to take sufficient account of the impact of an immediate custodial sentence on the applicant's children; and/or
>
> (3) Failed to take sufficient account of the impact of imprisonment on the applicant's physical and mental health in line with the submitted medical documents and the psychological evidence, and failed in those circumstances to apply sufficient discount which, it is said, could have resulted in a suspended custodial sentence.

18. In referring the application for leave to appeal against sentence, the Registrar stated:

> "This was a serious offence and the judge considered the relevant guidelines and the impact of a sentence of immediate custody on the applicant's dependents but it is appropriate for the full court to consider the impact of the sentence on the applicant's two children in light of the arrangements for their care that are in place. For that reason, the application is referred to the full court."

19. A Respondent's Notice, dated 2 July 2024, has been served and we are grateful for the assistance of Miss Langevad on behalf of the prosecution.

20. We have also been provided with information from the Probation Service (which originates from Children's Services) subsequent to the original sentence and for the purposes of the present hearing. That information is that the applicant's daughter is residing with her maternal grandmother, and that the applicant's young son is residing with his father. There are extant family proceedings in relation to the son as between the applicant and the father. Children's Services have provided information that the case has been closed to Children's Services since February 2024, and they have had no involvement since that time. Accordingly, the intervention by Children's Services predates the sentencing hearing. They state, however, that the maternal grandmother has informed them that the applicant's son has resided with his father since the applicant was sentenced and that the father is reported to have denied contact and access between the son and his (half) sister, as well as access to the maternal family. It is stated that this would not be considered to be in the best interests of the son who would have experienced not just the loss of his mother, but his half-sister with whom he has lived for his entire life, as well as contact with his maternal family whom he saw regularly before the sentencing.

21. We commend Miss Fergus-Simms for the quality of her written and oral submissions before us. We have been greatly assisted by such submissions.

22. We can deal with her first ground in short order, as we do not consider that it has any merit. Whilst the Learned Judge originally directed the Crown to serve further information from the Moorfields Eye Hospital, we are satisfied that he was entitled to conclude that he could proceed to sentence on the existing medical evidence and the Victim Personal Statements. Dr Aginal gave details how, following her examination and subsequent review with Mr De Carvalho (a consultant ophthalmologist), Ms Gauntlett was advised that the long-term prognosis was that the vision in her left eye was unlikely to improve because of the damage to the central retina, but that she should maintain peripheral vision. We have already quoted from Ms Gauntlett's Victim Impact Statements, including the statement that:

> " After the assault the vision in my left eye has been permanently damaged. I have double vision in my left eye which means I can only see blurry images. I rely on my right eye to see clearly."

At her last follow-up appointment in late 2022, she was told that "nothing could be done to regain getting my sight back in my left eye, not even laser eye surgery". We are satisfied that the Learned Judge correctly identified the victim's injury as permanent and irreversible which had a substantial and long-term effect on her ability to carry on her normal day to day activities. The offence fell into Category 1 harm and medium Culpability B, which resulted in a starting point of three years' custody and a range of two to four years.

23. We consider that the second and third grounds can be taken together. It will be recalled that these grounds are that the Learned Judge failed to take sufficient account of the impact of an immediate custodial sentence on the applicant's children, and/or failed to take sufficient account of the impact of imprisonment on the applicant's physical and mental health in line with the supporting medical documents and psychological evidence, and failed to apply sufficient discount which, it is said, could have resulted in a suspended sentence.

24. We do not consider that the Learned Judge erred in his application of the principles in *Petherick*, to which he had express regard. He made clear that he did not underestimate the terrible impact that the applicant's immediate imprisonment would have upon her children, which he said that he had taken into account.

25. However, we consider that the Learned Judge had insufficient information before him, whether in the pre-sentence report or otherwise, as to how the children were to be cared for and the suitability of the arrangements that were to be put in place, which we consider should have involved assessment by Social Services, and that there should have been an adjournment, if necessary, to achieve that.

26. Whilst it has proved possible for the applicant's mother to look after the daughter, in the context of the mother's own health difficulties, we consider that further investigation should have been undertaken with Social Services. Equally, whilst in the event the father has looked after the son to date, there was a contact dispute in the context of the ongoing family proceedings (with a hearing due the same week), and there was in fact a Prohibited Steps Order in place against the father, which should also have set alarm bells ringing. Further investigation should have been undertaken about this aspect as well before sentence. There was a possibility about a friend looking after the children, but there was very little information about that either. It was also unclear what would happen to the applicant's lease from the housing association if she was sent to prison. We remain unclear as to what has

happened in that regard, following our enquiry to counsel at the present hearing. For all these reasons, we consider that it would have been far better if the sentencing hearing had been adjourned for investigations to be undertaken. Indeed, we consider that it should have been adjourned.

27. There is no doubt that this was a very serious offence and that the need of the applicant's children had to be balanced against the need to pass an appropriate sentence for an offence of such seriousness. The impact upon the victim's children was itself a further relevant factor.

28. In relation to such matters what was said in *Petherick* at [21] is pertinent:

> "21. Fifth, in a criminal sentencing exercise the legitimate aims of sentencing which have to be balanced against the effect of a sentence often inevitably has on the family life of others, include the need of society to punish serious crime, the interest of victims that punishment should constitute just desserts, the needs of society for appropriate deterrence (see section 142 Criminal Justice Act 2003) and the requirement that there ought not to be unjustified disparity between different defendants convicted of similar crimes. "

29. In the context of the seriousness of the applicant's offending, what was said in *Petherick* at [23] is also of relevance:

> "23. Seventh, the likelihood, however, of the interference with family life which is inherent in a sentence of imprisonment being disproportionate is inevitably progressively reduced as the offence is the graver …"

30. In relation to the third ground, the Learned Judge had express regard to the impact of imprisonment on the applicant's physical and mental health in line with the supporting medical documents and psychological evidence, as we have already noted.

31. We stand back, however, to consider the cumulative impact of all the points made by way of mitigation, which also extend to the delay and the lack of further contact offending by the applicant over an extended period of time. We do consider that the mitigation, taken as a whole, justified a larger reduction from the starting point than that given by the Learned Judge, with the result that an appropriate sentence at trial would be one of two years' imprisonment, before around ten per cent or three months' credit for the guilty plea, to produce a sentence of 21 months' imprisonment.

32. At that point we consider that the Imposition Guideline needed to be considered, having regard to all the points made by way of mitigation and the realistic prospect of rehabilitation and the lack of previous offending. Ultimately, the question is whether those factors which militated in favour of suspension were nevertheless trumped on the basis that the offending was so serious that only an immediate custodial sentence was appropriate. On any view, this was very serious offending.

33. Had there been a trial, we are in little doubt that an immediate custodial sentence would,

in all likelihood, have been passed. However, the applicant did plead guilty, which showed remorse. Having regard to the entirety of the available mitigation and the position of the applicant's children, we consider that the sentence passed was manifestly excessive and that a suspended sentence could and should have been passed in the exceptional circumstances before the court.

34. Accordingly, we grant leave, allow the appeal and quash the sentence that was passed. We substitute a sentence of 21 months' imprisonment, suspended for 24 months on the following conditions:

> (1) During the next 24 months the appellant must not commit any kind of offence anywhere in the United Kingdom;
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> (2) During the same period the appellant must keep in touch with an officer who will be responsible for her case. That officer must be notified if the appellant changes her address;
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> (3) The appellant must comply with the following requirement, namely a rehabilitation activity requirement, whereby the appellant must participate on 20 days in a rehabilitation activity and whilst doing so must do as she is instructed by or on behalf of the person in charge. The appellant must complete this requirement within 24 months.

35. If the appellant keeps to these conditions, the sentence which has been suspended will not take effect. If the appellant breaks any of the conditions, a court could order the sentence to take effect in full or in part, or alter it to make it more demanding.

36. Accordingly, and to that extent, this appeal against sentence is allowed.