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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 814



No. 202201149 A1

Royal Courts of Justice

Friday, 27 May 2022

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE GOOSE
HIS HONOUR JUDGE LOCKHART QC

REGINA

V

LIAM KINGSWELL

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MR D. REILLY appeared on behalf of the Appellant.
MS. C. PATTISON appeared on behalf of the Respondent.

J U D G M E N T

LORD JUSTICE WILLIAM DAVIS:

- 1 On 29 September 2021 Liam Kingswell appeared before the Portsmouth Magistrates' Court charged with offences of criminal damage, battery and controlling and coercive behaviour in an intimate relationship. He pleaded guilty to causing criminal damage, but not guilty to the other charges. The magistrates retained jurisdiction for trial. They gave directions for trial and a trial date of 14 February 2022 was set.
- 2 On 10 February 2020 those instructed by Kingswell contacted the prosecution. They indicated that he was prepared to plead guilty to controlling and coercive behaviour on what was termed a full-facts basis. The prosecution accepted this proposed plea, which was tendered on the day the case was listed for trial. Kingswell was committed for sentence to the Crown Court sitting in Portsmouth.
- 3 On 18 March 2022 Kingswell was sentenced in respect of the offence of controlling and coercive behaviour to 12 months' imprisonment suspended for 24 months. Two requirements were attached to that sentence: a rehabilitation activity requirement for 25 days; a requirement to attend the Building Better Relationships programme. No separate penalty was imposed in respect of the offence of criminal damage.
- 4 Her Majesty's Solicitor General now seeks leave pursuant to s.36 of the Criminal Justice Act 1988 to refer the sentence to this court as unduly lenient.

The Facts

- 5 From the end of July 2020 to 16 June 2021 Kingswell was in a relationship with a young woman named Ellesse Wiley. They lived together in Fareham in Hampshire. Almost from the beginning of the relationship Kingswell behaved abusively, aggressively and, on occasion, violently towards her. Specific incidents recalled by Ms Wiley were as follows:
 - In August 2020 when Kingswell believed Wiley wished to end the relationship he made threats to commit suicide.
 - In September 2020 he was abusive to her in a public house when they were together. Later on the same day, he smashed her mobile telephone.
 - The same month, after Wiley had lent him her replacement mobile telephone, Kingswell smashed that telephone also.
 - From October 2020 Kingswell had a drug habit. He demanded money from Wiley to buy drugs. She lent him between £600 and £700 in October and November 2020, which was never repaid.
 - In late November 2020 Wiley drove Kingswell to an appointment he had made with a drug dealer. The dealer failed to turn up. Kingswell, who was drunk, became angry. He punched Wiley hard on the nose, causing her nose to bleed and cutting her lip. This happened as she was driving her car.
 - On Boxing Day 2020 Kingswell forced Wiley to leave the home they shared. She had nowhere to go so she sat outside the address. Kingswell eventually let her back in on condition she gave him more money for drugs. Inside the house, he pushed her onto a bed and then pulled her off the bed. He dragged her around the room by her ankle. Once free, Wiley tried to call the police, but Kingswell grabbed her telephone from her. Later, the police were able to speak to Wiley. Initially, she made a complaint, but did not pursue it when she was told Kingswell would be arrested.

- In January 2021 Wiley took out a loan in the sum of £300 at an exorbitant rate of interest when she was pressured by Kingswell to give him money to buy drugs.
- In February 2021 Kingswell wanted Wiley to sell photographs of herself naked. She refused. He threw her mobile telephone at her, causing a cut to her head. Wiley's mother reported this incident to the police. Wiley declined to pursue the matter.
- In March 2021 Wiley was delivering food in her car. This was to make money to give to Kingswell. He was in the car with her. He became angry and threw food at Wiley. He then threw a Bluetooth speaker at the windscreen of the car, which caused £150 worth of damage.
- In April 2021 Wiley believed that Kingswell was being unfaithful to her. When she challenged him on this, he struck her with force to the right side of her face causing bruising.
- In May 2021 in the course of an argument at the house they shared, Wiley threw a pair of shoes at Kingswell. They did not strike him, but he became angry. He took her mobile telephone and smashed it. He grabbed her by the throat and strangled her with both hands. She believed that she was going to die. He stopped only when Wiley stopped struggling. He then kicked her with his bare foot to the side of her head. She suffered bruising.
- On 16 June 2021 Kingswell withdrew £90 from Wiley's bank account when she had given him permission only to withdraw £10. That led to an argument. Kingswell threw a bracelet on the floor damaging it. He threw her mobile telephone and her laptop computer out of the window. He then went out of the house and jumped on the computer. The items were damaged irreparably.

6 It was the incident in June 2021 which led to the police being involved again. A member of the public had seen the events outside the house. Wiley went on to make a statement dealing with all of the matters we have outlined. She explained that Kingswell owed her approximately £3,450 from money he had borrowed and never repaid.

7 Kingswell was arrested on 16 June 2021. He admitted causing criminal damage. He said he had thrown items out of the window because he wanted Wiley out of the house and she would not leave. In relation to all other matters he made no comment.

The matters available to the judge

8 Wiley's statement made in June 2021 concluded with this passage:

"I don't feel as though I can trust anyone at the moment. I feel used and that nobody will respect me. I don't recognise myself when I look in the mirror. I feel he has affected my future. I have a poor credit score and believe it will be difficult to get finance. My relationship with my family is extremely strained. My job is in danger due to feigning illnesses and staying away when my injuries were so bad. My mental health is low. I have no energy, I am anxious and depressed due to the whole experience. I have been left disfigured by a scar and this is a constant reminder of this man and what he has done to me."

9 She made a further victim personal statement in March 2022 in which she said:

"I don't like looking at myself in the mirror and seeing the scar does remind me of his behaviour and how he controlled me even now. Due to the finance I took out for Liam I now have a number of marks on my credit history which means I can't get my own credit and have to ask for guarantors and help from my family for things even as simple as a mobile phone contract.

Since being able to leave Liam I feel like I have turned a corner, he is still contacting me, but I have been able to open up to work colleagues and friends who have helped me understand and start to move on. I do still feel affected by Liam and his behaviour, but I no longer feel trapped by him due to their help."

- 10 The detailed pre-sentence report set out the factors affecting Kingswell's offending, in particular substance abuse. When assessing his thinking and behaviour, the author of the report said this:

"As evidenced throughout this report, the author has highlighted concerns in relation to Mr Kingswell's thinking and behaviours, he can be calculated and controlling, he can be emotionally and financially abusive and will use violence as a weapon to coerce and to cause fear.

There is an inability to think consequentially, and there appear to be values and beliefs that support and condone domestic abuse when in intimate relationships. The defendant also has poor emotional management, and he uses substance as a poor attempt to self-medicate his mental health difficulties. That said, Mr Kingswell has expressed a willingness to work with probation practitioners, whether this is in custody, or with the community teams".

- 11 The risk of harm was described as follows:

"The nature of the risk to known adults and female members of the public relates to the defendant making contact on dating websites then forming an intimate relationship.....there is a high likelihood of long term emotional and psychological harm caused by domestic abuse, obsessive and fixated thinking contributing to controlling and coercive behaviours with the addition to financial abuse and exploitation, by repeated physical violence, and threats to harm himself. There is also the propensity for the defendant to damage property to resolve the situation."

- 12 The author of the report offered the option of the requirements, which were in the event attached to the suspended sentence, "in the unlikely event that an immediate custodial sentence can be avoided."

- 13 Kingswell (who was born in January 1997 and is now aged 25) was convicted in December 2017 of battery and criminal damage. He was conditionally discharged for six months. In May 2018 he was convicted of pursuing a course of harassment from March 2018 onwards. This put him in breach of the conditional discharge. For the harassment offence and for the offences for which he was conditionally discharged he was made the subject of a community order. He failed to comply with that order. In January 2020 it was discharged and Kingswell was conditionally discharged for 12 months. The offences in December 2017 and May 2018 related to his then partner i.e. a young woman other than Ms Wiley.

- 14 We should say that there is possibly some doubt about the date of the second conditional discharge. We do not take into account that there may have been a breach of that order in considering the application of the Solicitor General.

The Sentence

- 15 The judge set out in some detail the incidents which the charge of controlling and coercive behaviour represented. He summarised the position thus:

"This litany of damage to property and assaults upon her must have made it a year of hell as far as she was concerned."

- 16 The judge noted Kingswell's previous convictions, which involved another partner. He observed that the response to the previous community order had been poor. In relation to mitigation, the judge said that Kingswell had demonstrated remorse, this flowing from what Kingswell had said to his counsel on the day of sentence. The judge said that the plea of guilty was "even more pleasing". He said that he was prepared to accept that Kingswell had made efforts to put his life on a better course.

- 17 The sole passage in the sentencing remarks relating to the Sentencing Council guideline in relation to the offence of controlling and coercive behaviour was as follows:

"I have to consider the guidelines. I have no doubt this steps straight into Category 1A with a starting point of two and a half years. Mr Reilly, to whom I hope you will express your profound thanks at the conclusion of this hearing because he has done a great deal on your behalf, points out that the range is one to four years, and undoubtedly these are offences which can cover a multitude of differing offences. Particularly because of your guilty plea I have come to the conclusion that there must be a sentence of imprisonment but it can be suspended in your case."

- 18 The judge then went on to impose the sentence to which we have already referred. In this sentencing remarks he said nothing about the level of discount for the plea of guilty. However, in the course of submissions from counsel, he had indicated that a reduction of 25 per cent would be appropriate.

Submissions

- 19 The Solicitor General argues that the judge was correct in his categorisation of the offence by reference to the relevant Sentencing Council guideline. That gave a starting point of two and a half years. There were multiple harm and culpability factors. There were also aggravating factors, in particular the previous convictions demonstrating a history of violence in a domestic context and the fact that Wiley was left in debt. Thus, there should have been a significant uplift from the starting point. The mitigating factors were of limited effect. Thus, the sentence before any discount for plea should have been substantially greater than that determined by the judge. The discount which the judge must have applied was excessive, given the point at which the plea was indicated.

- 20 It is argued that for those reasons the appropriate sentence exceeded that which could have been suspended. In any event, it was not appropriate to suspend any sentence given Kingswell's poor response to court orders in the past and the fact that appropriate punishment could only be met by an immediate sentence.

- 21 The submission on behalf of Kingswell before the judge was that, whilst the offence of controlling and coercive behaviour clearly fell into Category 1A in the guideline,

the sentencing range within that category is wide, namely one to four years. It was argued that the judge could properly conclude that, using his experience, the offence fell at the lower end of the category. The resulting sentence would be one which could be suspended. The prospect of rehabilitation meant that suspending the sentence would be an appropriate course. It is argued today that these prospects have been confirmed in an updated report dated 21 April 2021. The arguments in the court below were repeated before us to support the proposition that the sentence imposed was not unduly lenient. It was accepted that the sentence was "at the generous end of the spectrum". Nonetheless, it was submitted that any sentence should still be of such a length to allow it to be suspended.

Discussion

- 22 In order to decide whether the sentence imposed by the judge was unduly lenient, we have to ask whether the sentences imposed by him fell outside the reasonable range of sentences open to him. We have no doubt that it did and that the sentence imposed was unduly lenient.
- 23 First, the offending fell squarely into 1A of the relevant Sentencing Council guideline, the starting point identified therein being two years and six months' custody. There were multiple harm and culpability features. In relation to culpability, Kingswell's action was persistent over a prolonged period and he adopted multiple methods of controlling and coercive behaviour. As to harm, Wiley was in fear of violence on many occasions and she suffered very serious distress which had a substantial adverse effect on her. As the judge observed, for her it was "a year of hell". Rather than putting the offending towards the lower end of the category range, the multiplicity of features served to move the starting point upwards.
- 24 Second, the aggravating effect of Kingswell's previous convictions representing a history of violence in a domestic context and the extent to which Wiley was left in debt was very substantial. It far outweighed the effect of any mitigating factors. The remorse upon which reliance was placed was not reflected in the detailed pre-sentence report. The late plea did not sit easily with the suggested remorse. Further, the pre-sentence report gave limited support to the suggestion that there were real prospects of rehabilitation. Balancing the aggravating and mitigating factors should have led to a further increase from the starting point for a Category 1A offence.
- 25 Third, the plea of guilty was indicated four days before trial. Until that point, Wiley was anticipating having to give evidence. Had the plea of guilty been indicated on the day of trial, the maximum reduction in sentence would have been ten per cent. That is clearly stated in the Sentencing Council guideline in relation to reduction in sentence for a guilty plea, a guideline to which the judge did not refer at any point in his sentencing remarks. Some greater reduction than 10 per cent was justified since Wiley did not need to attend court assuming she was to give evidence. Rather, she was notified of the position in advance. However, there was no reasonable basis upon which to reduce the sentence by 25 per cent (assuming that is what the judge did) given the point at which the plea was indicated. The reduction could not have been more than 15 per cent.
- 26 This was a serious case of prolonged domestic abuse. The seriousness of such offending is explained in the Sentencing Council Overarching Principles: Domestic Abuse. We refer in particular to para.7 and to 9 of that guideline, a guideline which sadly is regularly ignored by sentencing judges. The sentence imposed in this case wholly failed to represent the principles set out in those paragraphs.

27 With all due respect to the sentencing judge, he gave no explanation of why Kingswell's sentence was towards the lower end of the relevant category range, other than saying that offending of this kind covers "a multitude of differing offences". That is true. But to justify reducing the starting point as he did, it was incumbent on the judge to explain in clear terms how he had done so. In our view, had the judge conducted a proper analysis of the offending by reference to the guideline and to the aggravating and mitigating factors, he could not possibly have reached the conclusion he did.

Conclusion

28 In our judgment the sentence before any reduction for plea should have been three years and three months' custody. Applying a reduction of 15 per cent for the plea of guilty gives a sentence to serve of 33 months' imprisonment.

29 We give leave to refer the sentence imposed by the judge. We quash the sentence of 12 months' imprisonment suspended for two years. We substitute an immediate sentence of 33 months' imprisonment, of which Kingswell will serve half before he is entitled to automatic release on licence.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.