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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 7 June 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE LAVENDER

HIS HONOUR JUDGE EDMUNDS QC

R E G I N A
v
NEVILLE JOHN BUCKLE
TRACY BUCKLE

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Mr B Outhwaite appeared on behalf of the **Appellant Neville John Buckle**

Mr C Aspinall appeared on behalf of the **Appellant Tracy Buckle**

J U D G M E N T

MR JUSTICE LAVENDER:

These are two appeals against sentence by a husband and wife.

On 9 May 2018, in the Crown Court at Sheffield, the appellants each pleaded guilty to counts of assault occasioning actual bodily harm, criminal damage and perverting the course of justice.

On 23 October 2018 they were each sentenced to 2 years' imprisonment for the assault occasioning actual bodily harm and to a consecutive sentence of 8 months' imprisonment for perverting the course of justice. They received concurrent sentences for criminal damage: 4 months' imprisonment in Mr Buckle's case and 1 month's imprisonment in Mrs Buckle's case.

These offences all occurred on 8 April 2018. Mr Buckle was then 37 and Mrs Buckle was 33. Neither of them had any previous convictions. They lived at an address in Doncaster next to a woman we will call T and her young children aged 6 and 8. We have made an order under section 45 of the Youth Justice and Criminal Evidence Act 1999 in relation to those two children.

The relationship between the neighbours was not a good one. On the day of the offences, the appellants wanted T to return a football which one of their children had kicked over the fence. Mr Buckle went into T's garden armed with a baseball bat. He used it to break the rear windows of the house. That was the criminal damage occasioned by him. Then he assaulted T and continued to do so after T's young child appeared. Mrs Buckle then joined in the assault.

What resulted was described by the judge as a prolonged, sustained group attack on T in her own home late at night in front of children. Mrs Buckle knocked over mirrors and other items, causing damage which led to her plea and sentence for criminal damage.

The appellants were then concerned that their actions had been recorded on the CCTV which had been installed in her home by T, so they demanded the hard drive from her and, using force, took it away and disposed of it. This was the offence of perverting the course of justice.

These actions had a considerable effect on T. Although her physical injuries were not serious, she was compelled to move home and her children were compelled to move school.

It was agreed that the assault occasioning actual bodily harm fell within category 1 in the sentencing guidelines. The starting point is 1 year and 6 months' custody and the range is from 1 to 3 years' custody. The judge identified the following aggravating factors. The offending had occurred late at night in the privacy of T's own home and in the presence of children and had had an ongoing effect on T and her children. The mitigating factors were that the appellants had no previous convictions and that the judge found that these offences were out of character.

The judge also considered the position of the appellants' children. He noted that they had been in care between April and October 2018, that they were well provided for and bonding well and that the appellants had had limited contact with them. Those children are now aged 13, 8, 7 and 4. We understand that if either of the appellants had not been given an immediate custodial sentence, then the children would have been able to live with their parent or parents and would not have remained in care. As it is, the oldest child is living with an aunt and the youngest three children are in foster care. None of the four children have been to visit either appellant in prison. When the appellants, or one of them, are released from prison, it seems that there will be difficulties in finding accommodation before the family can live together.

In his submissions to us, Mr Aspinall attached significance to the fact that T, who had had some mental health issues, had exaggerated aspects of the evidence. The judge sentenced the

appellants on the basis of what they actually did and on the actual effect of that on T. The significance of this point is simply that it led to some delay in sentencing. As we have said, the sentencing took place in October, the pleas of guilty having been entered in May.

The judge imposed sentences of 2 years' imprisonment on each of the appellants for the assault occasioning actual bodily harm. Although he did not say so, it appears that these were discounted by one-third from 3 years' imprisonment by reason of the appellants' guilty pleas. So he placed the appellants' offending at the very top of the range, notwithstanding the mitigating factors to which we have referred.

The judge rightly imposed concurrent sentences for criminal damage. However, in circumstances where the total value of the damage did not exceed £5,000 and the matter appeared on the indictment having been included in a notice of transfer served under section 51 of the Crime and Disorder Act 1988, the Crown Court was limited to the Magistrates' Court sentencing powers and the maximum sentence was therefore 3 months' imprisonment.

So we quash the sentence of 4 months' imprisonment imposed on Mr Buckle for criminal damage and replace it with a sentence of 2 months' imprisonment.

As for the offences of perverting the course of justice, the judge said that after trial the sentence would have been 12 months' imprisonment, if not more. The judge reduced that to 8 months for each of the appellants in light of their guilty pleas.

In each case, the first and principal ground of appeal is that the total sentence of 2 years and 8 months' imprisonment was manifestly excessive. The second and third grounds of appeal are that the individual sentences were too high. A further ground of appeal is that the judge took insufficient account of the appellants' mitigation.

On behalf of Mrs Buckle, it was also contended that the sentence for the offence of perverting the course of justice ought to have been concurrent rather than consecutive and that her sentence

should have been suspended.

The judge was right to impose consecutive sentences for the offence of perverting the course of justice. The guidelines state that:

> "Consecutive sentences will ordinarily be appropriate where:
>
> (a) offences arise out of unrelated facts or incidents.
>
> Examples include:
>
> ...
>
> an attempt to pervert the course of justice in respect of another offence also charged."

However, it remained appropriate to consider the principle of totality, which is in the following terms:

> "... all courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive."

In our judgment, the total sentence of 2 years and 8 months was manifestly excessive. We consider that a sentence of 2 years and 2 months would have been appropriate. We achieve this by quashing the sentences for assault occasioning actual bodily harm and perverting the course of justice and replacing them with sentences of 22 months and 4 months' imprisonment respectively.

In those circumstances, it is unnecessary to address the submission that the sentences imposed by the judge were individually too high. The total sentence as modified is one which pays proper regard to the mitigating factors in the context of what was a very serious example of this type of offence. In particular, we have considered very carefully the position of the appellants' children in the light of the guidance given by this court in R v Petherick [2013] 1 WLR 1102.

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