Neutral Citation Number: [2019] EWCA Crim 484
No: 201804806/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 14 March 2019

B e f o r e:
LORD JUSTICE DAVIS
MR JUSTICE WILLIAM DAVIS

HIS HONOUR JUDGE POTTER
(Sitting as a Judge of the CACD)

R E G I N A
v
ANNA DICKINSON

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Mr T Wainwright appeared on behalf of the **Appellant**

J U D G M E N T
(As Approved by the Court)

1. LORD JUSTICE DAVIS: The appellant in this case, Anna Dickinson is a young woman who was born on 8 December 1999. On 6 August 2018, which was the date fixed for trial, she pleaded guilty in the Crown Court at Preston before Her Honour judge Heather Lloyd to two offences of unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861. On 6 September 2018 she was sentenced by the judge to two years and eight months' detention in a young offender institution on the first count of unlawful wounding (which was count 3 on the indictment) and a sentence of 18 months' detention in a young offender institution on the second count of unlawful wounding (which was count 4 on the indictment) to run concurrently. The total sentence therefore being two years and eight months' detention in a young offender institution. Counts 1 and 2 had charged wounding with intent, contrary to section 18 of the 1861 Act but had not been pursued.

2. There were co-accused. Jordan Gardner pleaded guilty to count 4 and was sentenced to 21 months' detention in a young offender institution. Kathryn Stanley pleaded guilty to counts 3 and 4 and she was sentenced to a total of two years and eight months' detention in a young offender institution.

3. The appellant now appeals against the sentence imposed upon her by leave of the single judge.

4. The background facts of this case are disconcerting. They need setting out in some detail. The appellant had been in a relationship with a young man named Tyrone Baines for around a year, but at the time of the offending in question they had separated and Baines had begun a relationship with another young woman called Lois Henderson. The appellant knew Lois Henderson. The appellant also knew the co-accused and it seems that all in one way or another knew each other. At all events, the developing relationship between Tyrone Baines and Lois Henderson had greatly upset the appellant. She had indeed sent social media messages threatening to "bang" or "stab" Lois Henderson.

5. On 19 February 2018 the appellant had sent messages to Tyrone Baines asking if Lois Henderson was with him. Jordan Gardner had spent the day with Tyrone Baines and Lois Henderson but had left Baines' home at around 9 o'clock in the evening. Tyrone Baines and Lois Henderson then went to bed and fell asleep.

6. About two hours later, Tyrone Baines was woken by the sound of Jordan Gardner shouting to be let back into the property. He got out of bed and heard Gardner trying to get back into the property through a window. Baines subsequently opened the front door and Jordan Gardner, the appellant and the co-accused Kathryn Stanley came into the house and ran up the stairs.

7. The appellant was thereafter seen to be carrying a knife which Tyrone Baines recognised as coming from his kitchen. Tyrone Baines was immediately scared for Lois Henderson and he attempted to prevent the appellant, Jordan Gardner and Kathryn Stanley from entering the bedroom but he was overcome. In the process, Tyrone Baines had been stabbed a number of times by the appellant; she having the knife. Kathryn Stanley then ran into the bedroom and jumped onto Lois Henderson and began

punching her. Kathryn Stanley also held Lois Henderson's wrists, making it difficult for Lois Henderson to defend herself.

8. The appellant then subsequently stabbed Lois Henderson several times with the knife, including under her arm. Lois Henderson understandably thought that she was going to be killed. At one stage also the appellant attempted to cut off the hair of Lois Henderson; obviously a very degrading act. It appeared in fact that by the time of this latter stabbing, Jordan Gardner had left the house. At all events, Tyrone Baines managed to get the appellant and Kathryn Stanley out of the bedroom and down the stairs. Baines had himself sustained stab wounds to the middle of his back and cuts and bruises to his back and the back of his head, including a bruise to his neck where the appellant had tried to bite him whilst he was attempting to stop her getting at Lois Henderson. Lois Henderson had herself sustained a number of stab wounds.

9. The emergency services were notified. Lois Henderson was taken to a local hospital where she received treatment for stab wounds to her left arm and chest and cuts to her face and forehead. She had multiple superficial stab wounds. Her wounds included a 2.5 centimetre long left upper back wound, a 3 centimetre left anterior chest wound, a 2 centimetre wound to the left arm and a half centimetre wound of the left arm. These wounds were all stitched in Accident and Emergency. A chest X-ray revealed a small left pneumothorax and for this reason she was admitted to hospital for a period of observation, although she was discharged the following day, with a course of antibiotics being prescribed.

10. Tyrone Baines also was treated at hospital for his wounds which included three lacerations to the back involving a superficial 2 centimetre skin laceration and 1 centimetre and 3 centimetre lacerations to his skin.

11. The appellant was arrested by the police on 20 February 2018. In interview she answered no comment to questions asked of her.

12. The appellant has no previous convictions of any kind. However, it is evident that she has had a very troubled background. During the course of the court proceedings, psychological and psychiatric reports were obtained. It is not necessary to refer to them in detail for present purposes; indeed it would not be appropriate to do so. Suffice it to say, there have been mental health issues; there have been issues of depression; there have been issues of self-harm. Furthermore, there have been pronounced learning difficulties and there has been a diagnosis of autism.

13. A detailed and very careful pre-sentence report was also obtained and was before the sentencing judge. Again, it is not necessary to set out in great detail what that careful report discusses, but reference may be made to this particular passage:

> "The defendant's disability clearly impacts upon her cognition and daily functioning... Miss Dickinson 'struggles to understand the consequences and implications of her statements and actions'. Furthermore, the defendant can be impulsive in her language and actions; finds verbal language hard to process and needs additional time to understand. She

> has significant problems recognising, regulating and expressing her emotions; she can be very sensitive and has significantly low self-esteem; she can misunderstand others' language and is quick to take offence, always open to exploitation and abuse; she can agree to things without fully understanding... she struggles to imagine consequences outside her current experience; she finds it hard to understand social rules and behaviour..."

The writer of the pre-sentence report could identify no pro-criminal attitudes.

14. Also before the judge was a victim impact statement from Lois Henderson. Again, it is not necessary to refer to that in detail. The effect on her will have been, and is, obvious.

15. When the judge came to pass sentence, after hearing submissions of counsel for the prosecution and counsel for the various accused, she set out the background facts very fully and carefully. As to the reports, the judge had been referred to them and of those she said this:

> "In your case Miss Dickinson your legal representatives have sought reports to see if you were fit to plead. You were. You had been well able to provide an account to your solicitors and the various doctors and there was absolutely no doubt about your ability to stand trial and understand the consequences of what you had done."

So the judge had had full regard to those reports and also had regard to the fact, as it was said, that those reports had had to be obtained to assess the mental state of the appellant, both at the time of the offending and at the time of the trial, and to assess her ability to plead.

16. The judge then went on further to deal with the position of the various accused. She noted the personal mitigation of this appellant and referred to the "educational and emotional challenges during your life". The judge also, however, very properly noted that in her case, and unlike sadly many other cases, she had had the constant support of both her parents. The judge then went on to say this:

> "Although you may have had long-term difficulties, the psychiatric report says there was no evidence that you were suffering an acute mental health crisis or major mental disorder on the date you were assessed in June. It is suggested that you may have an emotionally unstable personality disorder, although the psychiatrist said that this is difficult to diagnose after a single assessment..."

The judge dealt with further aspects of the psychiatric and psychological evidence and then said this:

> "With the appropriate therapy I am sure this will improve, but this incident did not arise out of a spur of the moment meeting. You made the decision to go at night on the train with others to attack your victims

and you had threatened to stab Miss Henderson in messages the preceding days."

17. The judge then expressly took into account the age of the appellant, as indeed the other accused. The judge then gave 10 per cent credit for the plea entered at the date of trial and imposed the sentences which we have indicated.

18. On behalf of the appellant, Mr Wainwright, who did not appear at any stage in the court proceedings below, submits that the sentence imposed was excessive. He advances two points. First, he submits that insufficient credit for the plea was given and the judge should have accorded the appellant far more credit than the 10 per cent which she did accord the appellant. Second, he submits that the judge had simply given insufficient weight to the very strong personal mitigation available to this appellant, and in particular her age and complex psychological and psychiatric background.

19. We will deal with his second ground of appeal first. As our account of the facts indicates, this was on any view very serious offending. This was a sustained assault which had been planned and a knife taken from the kitchen was used. Undoubtedly this was Category 1 offending for the purposes of the relevant guideline relating to assault. That for one offence connotes a starting point of three years' imprisonment with a range of two-and-a-half to four years. Moreover, there was in this case not one victim but two victims; the victims were in their own home, indeed they had gone to bed; this was a planned group attack by way of revenge or punishment in which the appellant played a major role; and the assault also included, so far as Lois Henderson was concerned, an element of further degradation in the form of her hair being cut off.

20. It is quite true that there was very significant mitigation. Not only had the appellant no previous convictions of any kind, but there were also the important circumstances of her psychiatric, psychological and personal make up as set out in the psychiatric, psychological and pre-sentence reports. Moreover, it was certainly a very important point that she was only 18 at the time of this offending and indeed it would appear an immature and impulsive 18-year-old. As Mr Wainwright rightly said, reaching the age of 18 does not represent some sort of cliff edge for the purposes of sentencing.

21. Even giving the fullest weight to this mitigation, this nevertheless remained very serious section 20 offending involving two victims. A figure balancing aggravating and mitigating factors, but before credit for a plea in the order of three years, which would appear to be the figure the judge had in mind, cannot in our judgment in any way be said to be excessive. Indeed, it might be said that it was perhaps generous on the part of the prosecution to accept a plea to the lesser counts of section 20; and at all events, that no doubt sensibly having been accepted by the prosecution on the day of trial, our assessment overall is that the gravity of this offending is such that the judge's own sentence, notwithstanding her correct degree of condemnation of this appellant, itself can be regarded as a sentence which (entirely properly) was on the merciful and lenient side.

22. Mr Wainwright also sought to add the point, which had not been known at the time of sentence, that this appellant is pregnant and is expecting a child. Clearly it is

unfortunate indeed that she will be in custody when the baby is born. We have no reason to think, however, that she will be separated from her baby when the baby is born, always assuming of course that it is not considered adverse to the interests of the baby that that should be so. Obviously there will be a pronounced impact upon the appellant that she will not be able to have the loving support of her family immediately around her at the time of the birth and thereafter; but that unfortunately, is the consequence of her having committed so serious crimes which necessitated a prison sentence of some significance.

23. Accordingly, the second ground of appeal fails.

24. We then turn to the ground relating to credit for plea. The position is that the appellant at the PTPH tendered pleas of not guilty to the counts then on the indictment, being counts 1 and 2. There was no qualification to that. There was no suggestion that she should not be arraigned or should not plead. There was also no proposal at that time that she would plead to alternative section 20 counts.

25. Mr Wainwright is very critical of the process that was adopted. He says that, given the identified need to obtain psychiatric and psychological reports, the appellant should not have been arraigned at all on that occasion. However, the fact is that she was arraigned without any objection from anybody and she pleaded not guilty. Furthermore, the reports that were subsequently obtained showed that she was indeed fit to plead and that there was no available defence of insanity or anything like that relating to the time of the actual offending.

26. Mr Wainwright sought to pray in aid an indication given in the PTPH form to the effect that there would be a preparedness to plead guilty to a lesser offence. But that 'tick' in the form did not mature into anything more concrete than that; and it seems was not discussed or explored before the judge at the PTPH and the issue for trial on the form was identified as "presence accepted, intent challenged".

27. Subsequently, when the reports were obtained, and very shortly before trial, a defence case statement was put in on behalf of the appellant. In the course of that defence statement, which was a detailed document and signed by the appellant's solicitor, the defendant was recorded as "denies intending to wound Lois Henderson, but accepts that she acted recklessly". So far as Tyrone Baines was concerned, the defence case statement said: "The defendant denies that she used a knife to injure Tyrone Baines but acted in self-defence". It is also made clear that issue was taken with intent to cause really serious harm. It was only at the date of trial that the appellant then pleaded guilty to alternative counts of section 20 wounding. It is not suggested that the defence team had approached the prosecution at an earlier stage offering a plea of guilty to alternative section 20 counts.

28. In those circumstances, it is difficult to see how there can be a viable challenge to the judge's decision to give credit of 10 per cent for the very late pleas, especially when the judge clearly had borne in mind the obtaining of the psychiatric and psychological reports.

29. Mr Wainwright, however, says that the appellant should have had significantly more than 10 per cent in these circumstances. He has produced a statement from the solicitor then acting for the appellant which, amongst other things, says:

> "... the appellant instructed us from before the PTPH hearing date of 27 March 2018 onwards that it was her intention to plead guilty to offences contrary to section 20 of the Offences Against the Persons Act 1861. This was subject to the content and opinions expressed in the psychiatric report obtained by this firm on her behalf."

30. The position is put rather differently in paragraph 26 of the formal perfected grounds and advice which states:

> "The applicant indicated a willingness to plead guilty to the lesser offences at the PTPH as required by the Sentencing Guidelines."

Mr Wainwright contacted counsel who had previously appeared for the appellant. Counsel amongst other things was recorded in the perfected grounds as "Confirming that the applicant had indicated her willingness to plead guilty to section 20 offences at the PTPH as above, subject to the planned psychiatric reports." However, as we have said, no such statement was made unequivocally to the judge at the PTPH. The highest that it can be put is that which is contained in the PTPH form and in circumstances when the appellant then pleaded not guilty to the counts then on the indictment.

31. Mr Wainwright nevertheless says that that being the stance of the appellant, as indicated throughout to her legal team, she should have had greater credit than just 10 per cent.

32. With respect, this simply will not do. If credit is to be accorded for a preparedness to plead guilty to a lesser offence then that ordinarily must be in circumstances where that preparedness has been formally and without equivocation indicated to the court. It will not in the ordinary way suffice simply to give such an indication to a defendant's own legal team in circumstances where that is not then communicated to the court at the time. In the present case, the appellant was arraigned at the PTPH and pleaded not guilty to the counts then on the indictment. No indication was made to the court that she would be willing to plead to lesser counts. There was no request at that time that alternatives be added to the indictment on which she could plead. There was no record in the court log and no judge's note that such an indication had been made. The reality is that the appellant, as she was perfectly entitled to do, was keeping her options open. Moreover, even when the reports had been obtained, the defence case statement subsequently submitted (indeed submitted only a few days before trial) still did not unequivocally indicate an acceptance of guilt of unlawful wounding. On the contrary, the defence case statement was somewhat equivocal so far as Lois Henderson was concerned and so far as Tyrone Baines was concerned was putting forward a plea of self-defence. It was only on the day of trial that the pleas then were forthcoming to section 20 counts.

33. As the relevant guideline concerning credit for plea indicates, in the ordinary way a formal and unequivocal indication to the court is needed if the indication is to attract the appropriate credit. In this case no such formal indication was at any stage given before the date of trial. In those circumstances, we think that the judge was entitled to accord only credit of 10 per cent. It may be that some judges might have been prepared to give rather more; but the judge had the issue of obtaining the reports well in mind, and as the judge pointed out this appellant had known what she was doing and it had been established that she had indeed been fit to plead at the time of the PTPH.

34. In all those circumstances, it cannot be said that there was any error of principle in the judge's approach to credit for plea and in the circumstances we dismiss this appeal.