IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1212

CASE NO 202001277/A1

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 3 September 2020

LORD JUSTICE BEAN

MR JUSTICE STUART-SMITH

MRS JUSTICE FOSTER DBE

REGINA

V

JORDAN CONNOR STICKELLS

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MR G PITT appeared on behalf of the Appellant.

J U D G M E N T

1. MR JUSTICE STUART-SMITH: On 28 October 2019, on the hearing of the PTPH in the Crown Court at Canterbury, the appellant pleaded guilty to counts 2 and 3 on the indictment. They were charges of theft and taking a conveyance without authority. He pleaded not guilty to count 1 which was a charge of false imprisonment. At that point count 4 (to which we will refer later) had not been added to the indictment. There was then a change of representation and within 7 days of that change the Crown Prosecution Service and defence confirmed that a guilty plea would be offered to a new charge of controlling and coercive behaviour in an intimate or family relationship contrary to section 76(1) and (11) of the Serious Crime Act 2015. The case was therefore relisted on 27 January 2020. On that occasion the indictment was amended to add the charge of controlling and co-coercive behaviour between 1 May 2018 and 22 September 2019 as count 4. On arraignment the appellant pleaded guilty to the newly added count. The case was then adjourned for sentence.
2. On 27 January 2020 the Crown indicated that it regarded the case as falling into category 2B. At an ineffective sentencing hearing on 7 February 2020 the Crown submitted that the offence was category 1 but medium culpability. On 3rd April 2020 the prosecution offered no evidence against the appellant on count 1 on the indictment and a verdict of not guilty was entered by direction of the court. The prosecution on this occasion submitted that the case fell within category 1A.
3. The appellant was then sentenced as follows. On count 2, which was the count of theft, to which he had pleaded guilty at the PTPH, the sentence was 2 months' imprisonment; on count 3, which was a charge of taking a conveyance without authority, to which again he had pleaded guilty at the PTPH, he was also sentenced to 2 months' imprisonment concurrent. On the new count 4, the charge of controlling or coercive behaviour, on his plea of guilty, which had been indicated as we have told, he was sentenced to 28 months' imprisonment concurrent. There were two summary offences, to do with his driving of the motor vehicle, on which no separate penalty was imposed and to which we do not need to refer further.
4. The appellant has advanced two grounds when applying for permission to appeal against the sentence of 28 months' imprisonment on count 4. The first ground for which the single judge has given permission is that the judge failed to give the appellant sufficient credit for his plea of guilty to the controlling or coercive behaviour on count 4. The second ground, for which the single judge refused permission but for which the appellant renews his application for permission, is that the judge failed to give any or any sufficient weight to the appellant's personal mitigation or the pre-sentence report or previous case history.
5. The facts as opened to the judge below were as follows. The appellant had been in a relationship with the complainant, Ms Kelly Rickard, from January 2018. The relationship was initially good, apart from one incident in May 2018 when the police had been called as the appellant had been "volatile". Thereafter the relationship deteriorated as the appellant's behaviour became controlling. The appellant made it impossible for Ms Rickard to see her friends, by starting an argument so that Ms Rickard would stay with the appellant rather than go out. He would not allow her to speak to her mother about the appellant and, if she put on make-up or dressed up, the appellant would accuse her of being unfaithful to him. The appellant shouted at Ms Rickard which made

her scared of him. After one argument Ms Rickard left the appellant's flat telling him to leave her alone but the appellant thereafter followed her to her home. She locked the appellant out of her home but the appellant climbed into the house, went to the kitchen and picked up a knife and threatened to kill himself as he could not live without her. She was so scared that she locked herself in the bathroom. In December 2018 Ms Rickard arranged to meet her mother and the appellant subsequently sent her numerous messages asking her where she was. On her return he accused her of lying about her meeting and of being with another man which was an accusation which was a common occurrence during the relationship.

6. By way of further example of his coercive and controlling behaviour: on 21 September 2019 another argument occurred about money. By this time Ms Rickard was 6 months' pregnant. She asked the appellant to leave and locked the front door. Later the appellant returned and began banging on the doors and trying to open the windows asking for money. The police were called whilst the appellant was kicking at the front door which eventually gave way. When he got into the house the appellant took a drill and screwed the front door shut forcing the police to gain entry to the property through a rear door. The appellant was ordered to leave but returned at 2.00 am the next morning. Ms Rickard let him in to avoid further trouble. He stayed but later noticed that she was attempting to leave. The appellant took her keys and mobile phone from her to stop her leaving or being able to call the police. Ms Rickard described the appellant as being "furious". She attempted to leave via a window but the appellant dragged her back. She began screaming for help but when she managed to leave the house he followed her along the road.
7. It was this course of conduct which formed the basis for count 4. The police were alerted and they subsequently saw the appellant driving Ms Rickard's car which he had taken without her permission. This formed the bases for count 3. The appellant was later found by the police asleep in the car. He was arrested on suspicion of controlling and coercive behaviour. After the police had returned her mobile phone to her, Ms Rickard discovered numerous messages relating to the appellant trying to sell her iPad which the appellant had stolen (this formed the basis for count 2).
8. The appellant was interviewed on 23 September 2019. In interview the appellant admitted a number of factual allegations that were made against him, including having prevented Ms Rickard from leaving when she wanted to but overall he denied that he had committed any offences. He was charged with what became counts 1 to 3 and the summary motoring offences to which we have referred. As we have said, he was not charged with coercive and controlling behaviour at that point.
9. Ms Rickard provided a victim personal statement. She described a history of anxiety and depression made worse by the appellant's conduct, to the extent that she feared to go out of the house. She described herself as "shattered as a person" because the appellant had broken her. She referred to being financially drained by his drug habit and that she feared that she would not be able to put trust in a relationship again. Since the events in question she had given birth to their son on Christmas Eve 2019. She did not ask for a restraining order.
10. The appellant was 27 at the date of sentence and is that age now. He had seven previous convictions for 16 offences from 12 March 2009 to 15 May 2017. His relevant convictions included four offences of battery and two offences of breaching

non-molestation orders.

11. A pre-sentence report recorded the appellant as saying that during the relevant period he had been using large amounts of cocaine, which he now regarded as an historic problem. The report said that the appellant showed some remorse but failed to appreciate the full gravity of his offending. It expressed the opinion that he had "deep seated historic issues with trust within relationships, is jealous, possessive and controlling to the point where he will try to physically and emotionally subjugate a partner to his will". It assessed him as presenting a high risk of serious harm to partners within relationships and a medium risk of emotional harm to children of the family. He repeatedly asserted that he now wished to engage with appropriate support. Having regard to the significant period he had spent on remand the report proposed a community order of 24 months' duration, with a rehabilitation activity requirement, a curfew requirement and a requirement for attendance at a Building Better Relationships Programme, as what it described as "a robust alternative to a custodial sentence".
12. The judge had character references which included eloquent and heartfelt letters from the appellant's mother and sister, describing familial difficulties and the effect on the appellant of being excluded from contact with a son by an earlier partner. He also had the benefit of a letter from Ms Rickard herself which described the appellant as "decent at the core but who becomes overwhelmed by personal issues to the extent that he cannot cope with them". She said that he had taken the drug rehabilitation courses on remand and was now drug free. She said she hoped that he would be free to be a father to their young son.
13. In sentencing the appellant the judge recounted much of the history that we have set out above. He then referred to the guideline appropriately as follows:

    i. "The culpability here is high, in my view. It is persistent action over a prolonged period, and I reject the submission that this is anything other than a long period. It is, as I have described it, from the statements. It's also conduct intended to maximise fear or distress, for the reasons which I have already described, and also using multiple methods of controlling or coercive behaviour; violence, and isolation, and financial control, all used. So, it's higher culpability, and it's also category 1 because there was fear of violence on many occasions and very serious alarm or distress, with a substantial adverse effect on the victim, which, again, I have described. So, I'm in no doubt that this is properly a category A1 offence. The starting point is therefore two and half year's custody, with a range of one to four years.

    ii. The aggravating features are your previous convictions, which I outlined at the start, including, in particular, your previous abusive behaviour towards at least one previous partner. And, I'm going to count counts 2 and 3 as aggravating features, particularly the unpleasant selling of your partner's iPad and the taking of her car, as being part of the pattern of behaviour. On the mitigation side, I have read a number of references which I am going to refer to. In

particular, your mother and your sister have written important references, which describe your childhood traumas with your father and his behaviour. Undoubtedly, your own ability to relate to women, I am sure, will have been affected by your experiences in early life, and further detail of that is set out also in the presentence report."

14. After referring specifically to the letters from the appellant's mother and sister and from Ms Rickard and to the terms of the pre-sentence report that we have summarised, he said:

    i. "Looking at these matters in the round, it seems to me that the appropriate sentence before a discount for a guilty plea, looking at the criminality as a whole, is three years. And, that the appropriate credit for count 4 is one of 20 per cent, and I say that because the credit at PTPH is 25 per cent. At the PTPH you pleaded not guilty to the false imprisonment, the facts of which form an important part of the factual background, which you now accept in pleading guilty to an alternative offence. And, so that was denied initially and is now accepted, so it seems to me some reduction from the 25 per cent is indicated, and 20 per cent is therefore the appropriate reduction. And, therefore, the sentence on count 4 will be one of 28 months' imprisonment. That is not one which is capable of being suspended, regrettably. That will be the sentence on count 4."

15. He then passed the sentences on counts 2 and 3 to which we have referred.
16. It is plain from these remarks that first, the judge adopted as a working assumption that a plea of guilty at the PTPH would normally attract a discount of 25%. Secondly, he would have given a discount of 25% for the plea of guilty to count 4 but for the fact that the appellant had pleaded not guilty to count 1 at the PTPH "the facts of which form an important part of the factual background, which you now accept in pleading guilty to an alternative offence".
17. He therefore treated count 4 as being an offence that was "denied initially and is now accepted". Thirdly, he expressed regret that the resulting sentence of 28 months could not be suspended.
18. There can be no criticism of the judge's adoption of category 1A under the guideline, nor of the identification of the aggravating features that he recorded. Neither the prosecution, nor the court were fettered by previous indications made on behalf of the Crown that the case should be treated as falling into a lower category. Equally, though concise, he took into account all relevant mitigation.
19. In support of the ground for which the single judge gave leave, Mr Pitt submits that the appellant was entitled to full credit for his plea of guilty which was indicated as soon as he was able to do after he received appropriate advice from his new solicitors. In the written grounds (which were not settled by Mr Pitt) this submission is summarised succinctly: "The defendant cannot enter a guilty plea to a non-existent charge". It is submitted that there was no discussion at the October 2019 PTPH of alternative charges

and that the impetus for the guilty plea came from the appellant.

20. It is also submitted that the issue of credit should be read in the context of the defendant's police interview where, as we have indicated, he accepted many of the factual allegations concerning the incident that led to the allegation of false imprisonment.
21. Mr Pitt developed that submission with considerable force and subtlety as we shall outline below. These submissions must be seen in the light of the relevant statutory provisions, the guideline on credits for guilty plea and previous binding authority. The relevant statutory provision is section 144(1) of the Criminal Justice Act 2003 which is in mandatory terms:

    i. "144 Reduction in sentences for guilty pleas

    (2) In determining what sentence to pass on an offender who has pleaded guilty to an offence ... a court must take into account—

        (a) the stage in the proceedings ... at which the offender indicated his intention to plead guilty, and

        (b) the circumstances in which this indication was given."

22. The Definitive Guideline includes at paragraph F3:

    i. "F3. **Offender convicted of a lesser or different offence**
    ii. If an offender is convicted of a lesser or different offence from that originally charged, and has earlier made an unequivocal indication of a guilty plea to this lesser or different offence to the prosecution and the court, the court should give the level of reduction that is appropriate to the stage in the proceedings at which this indication of plea (to the lesser or different offence) was made taking into account any other of these exceptions that apply. In the Crown Court where the offered plea is a permissible alternative on the indictment as charged, the offender will not be treated as having.
    iii. made an unequivocal indication unless the offender has entered that plea."

23. In R v Caley [2012] EWCA Crim 2821, at paragraph 3 the court drew attention to the wording of the statute and its emphasis on the offender indicating his intention to plead guilty as opposed to being arraigned and actually entering his plea. At paragraphs 18 - 20 the court said:

    i. "18. All this leads us to the clear conclusion that, absent particular considerations individual to the case, the first reasonable opportunity for the defendant to indicate (not necessarily enter) his plea of guilty, if that is his mind, is not the PCMH, This court pointed towards this conclusion in *R v Chaytors* [2012] EWCA Crim 1810. The first reasonable opportunity is normally either at

the Magistrates' Court or immediately on arrival in the Crown Court – whether at a preliminary hearing or by way of a locally-approved system for indicating plea through his solicitors. There will, we think, ordinarily be some, but limited, difference in public benefits between the two stages of the Magistrates' Court and the first arrival in the Crown Court, but for practical purposes either can properly, we think, ordinarily attract the maximum percentage reduction (one third) provided for by the SGC Guidelines. Properly promulgated local schemes which provide for either appear to be working, may well reflect local variations in the preparation of files for committal or sending, and do not, we think, need at present to be disturbed. However, the possibility adverted to in Annex 1 of the Guideline that an indication at the Magistrates' Court might attract a reduction of 33% and an indication at the first Crown Court hearing 30% is not, we think, generally reflected in practice as experience has developed it over the years, and, given the minimal distinction, is likely to be an unlooked-for complication.

ii. 19. A plea of guilty at a plea and case management hearing will ordinarily not be significantly different from a plea notified shortly after it. Whatever the exact procedure in different courts for fixing trial windows or trial dates this is clearly the stage at which the Guideline contemplates a reduction of about a quarter.

iii. 20. By 'indicate plea of guilty' we mean to include the case where, either in the magistrates' court or at or soon after arrival in the Crown Court, the defendant through counsel or solicitors notifies the Crown that he would admit a lesser charge or invites discussion as to the appropriate charge, at any rate where the position taken up is a reasonable one. The same may be true, where a formal local scheme does not operate, of a considered indication to the court that a trial is unlikely, so long as realistic and prompt discussions with the Crown then take place. Ordinarily these kinds of indication will bring similar public benefits to those which we have described."

24. The submission that full credit should be given in a case where a particular offence has not been charged initially and the defendant either pleads or indicates his intention to plead guilty as soon as it is was considered in R v Wacha [2013] EWCA Crim 1108. There the defendant went to a house armed with a petrol bomb, threw a brick through the window of the house and then dropped the lighted petrol bomb about 30 metres from the house. He was originally indicted with offences of attempted arson with intent to endanger life (count 1), damaging property, being reckless as to whether life was

endangered (count 2) and damaging property (count 3). At a plea and case management hearing he pleaded not guilty to counts 1 and 2 and guilty to count 3. The pleas were not accepted and the case was stood out for trial. On the day of trial the prosecution applied to add a further count (count 4) of having an article with intent to destroy or damage property. Upon arraignment, the defendant pleaded guilty upon a basis of plea. By that plea, he admitted that he had the petrol bomb with the intention to destroy or damage property even though he had later dropped it. The sentencing judge gave 10% reduction for his plea of guilty to count 4. He appealed on the basis that he could not have entered his plea of guilty to count 4 earlier because the prosecution only applied to add that count to the indictment on the day of the trial.

25. Rejecting that submission a different constitution of this court referred to the terms of section 144(1) and the guidance at paragraphs 18 and 20 of Caley to which we have referred. Griffith Williams J, giving the judgment of the court, pointed out that by his plea to count 3 at the PTPH the appellant in that case had admitted no more than the damage to the window. His defence case statement made plain that the defendant was not making any admissions as to the matters which he subsequently pleaded when count 4 was added. The court concluded that:

    i. "15. We are not persuaded that the learned judge's conclusion that the appellant was entitled to no more than the 10% discount for a late change of plea on the day of trial was incorrect. The appellant could have indicated much earlier in the proceedings a willingness to admit to an intention to use the petrol bomb to cause some damage at the house."

26. We accept the submission of Mr Pitt that the added charge under count 4 was not added as an alternative to count 1. We also accept that a charge of false imprisonment, which is a common-law offence carrying unlimited powers of imprisonment and which is a specified offence for the purposes of schedule 15 of the Criminal Justice Act 2003, is potentially a much more serious offence than the charge under count 4 which carried a maximum of 5 years' imprisonment and is not a specified offence.
27. However, it seems to us that the principles established by the statute, the guideline and the authorities to which we have referred are clear. The critical question is when and in what circumstances the defendant first indicates his intention to plead guilty to the offence in question and the mere fact that it has not been charged does not mean that full credit for plea will be preserved until it is. The position is most clear where there is a recognised alternative to the charged defence, as with a plea to section 20 of the Offences Against the Person Act 1861, in the face of a charge under section 18. In such cases it is for the defendant to indicate his intention to plead to the lesser offence and in some cases it may be necessary for him to enter that plea to demonstrate the seriousness and irrevocability of that stated intention.
28. The present case is different because the charge of coercive and controlling behaviour was not a straightforward alternative to a charge of false imprisonment. This is shown by the fact that the charge of false imprisonment was based on the events of 22 September 2019 and was limited to that date, whereas the charge of coercive and controlling behaviour covered the period from May 2018 to September 2019 and did not involve an allegation of false imprisonment, even though it relied upon the facts of 22 September as

part of the basis for the charge. This was recognised by the judge when directing the entering of a verdict of not guilty on count 1, because count 1 covered the same ground, at least in part, as count 4 in respect of which he had been sentenced.

29. In these circumstances, we consider that the judge's approach to the discount for plea was too simple. First, his statement that "credit at PTPH is 25 per cent" though often true is too broad a statement as the discussion in Caley demonstrates. It may be appropriate to allow 25% for a plea or indication at the PTPH but that will be on the basis that it is not the first occasion on which the plea could have been taken or the indication given - see the passage from Caley that we have cited above. Second, the judge's analysis does not appear to us to take into account that the appellant had in fact admitted many of the factual matters upon which the prosecution relied even though he did not accept that he was guilty of false imprisonment. Third, we think that the fact that count 4 was not a conventional alternative to count 1 as commonly understood is of some materiality when considering the timing of the appellant's indication of willingness to plead to a new count 4. Fourth, when considering the benefit to the court and the complainant, it is not clear that the short passage of time between the PCMH and the indication of the proposed guilty plea made any significant difference. On the other hand, it is plain that it was possible for the defendant to take the initiative in offering to plead guilty of a charge of coercive and controlling behaviour were brought forward, since the appellant relies upon the fact that he did just that when he changed his legal representation.
30. Mr Pitt points out that acceptance of count 4 expanded the factual ambit of the conduct that was to be brought into account. We are not privy to the thinking that led to this decision or to the decision being taken when it was, but it may well have been informed by the fact that the penalty for false imprisonment is at large, whereas the maximum sentence for coercive and controlling behaviour is 5 years.
31. Mr Pitt also advanced a detailed and cogent submission that this case was unusual because a charge of coercive behaviour was not foreshadowed by the prosecution and was also not a straightforward alternative to a count of false imprisonment. For that reason he says that the appellant should be commended and afforded maximum credit for his protractive step, albeit taken after the instruction of new representatives, in offering to plead to a new charge of coercive behaviour.
32. We consider that there is significant force in that submission but that it faces the difficulty that the plea that was offered after the change of representation could have been offered before. We do not think that this is a situation to be compared with cases where, for example, the defendant does not plead until the question of fitness to plead has been fully investigated. Given the factual distinction that is to be drawn between those cases and the present case, we do not think that the court below was obliged to give full credit in the circumstances of the present case. We do however consider that the proactive nature of the step that was taken was properly to be taken into account when deciding the level of reduction for the indicated plea.
33. Drawing these strands together, we consider that Mr Pitt is right to submit that a reduction of 20% was too low. We do not accept that full credit should be given because an indication of an intention to offer a plea to a charge of coercive and controlling behaviour could have been given earlier. However, we think that the specific facts of this case justified a reduction of not less than 25% for the reasons we have indicated.
34. That however does not provide an answer to this appeal. The questions for us is whether

the sentence that the judge passed was excessive so that it should be reduced. The case of R v Dalgarno [2020] EWCA Crim 290 was an Attorney-General's Reference where the facts bear comparison with the facts of the present case but there are differences. In Dalgarno the period of coercive behaviour was 3 months as opposed to 15 months here. The offender's behaviour in Dalgarno was significantly influenced by his cocaine habit (as here). Episodes of pernicious behaviour in Dalgarno were interspersed by passing professions of remorse. The behaviour was typified (as here) by unjustifiable and exorbitant jealousy which led to frequent arguments and worse surrounding the victim's mobile phone.

35. As in the present case the overall picture in Dalgarno was of a number of incidents of violence, obsessive and controlling contact by phone and in other circumstances, persistent humiliating and degrading behaviour with verbal threats, physical violence and isolating of the victim preventing or hindering the victim's access to friends and family and the possibility of alerting the police and forcing the victim to leave her home or (in the present case) to try to.
36. Mr Pitt argued cogently that though the period was shorter the level of consistent violence was higher in Dalgarno than in the present case. However, the overall effect was much the same, namely the humiliation and destruction of a vulnerable and (in the present case) pregnant partner, over months. In each case the victim was or became pregnant during the period of coercion. In each case the offender had previous convictions for similar behaviour though Dalgarno's record was longer and worse than that of the present appellant. Quashing the community sentence in Dalgarno passed by the judge below, a different constitution of this court imposed a sentence of 4 years before discount for plea.
37. In the light of Dalgarno we remind ourselves of the statutory maximum of 5 years and the starting point and range for category 1A offences under the guideline, which we have set out above. As in Dalgarno, the present case would have justified a sentence, after taking into account the aggravating features and limited mitigation but before discount for plea, that was close to the top, even if not at the very top of the guideline range for category 1A.
38. Standing back and looking at this sentence overall, as we are bound to do, we are not persuaded that the sentence of 28 months to reflect not merely the criminality on count 1 but the other offences for which he was sentenced, was manifestly excessive. Even if a 30% discount had been allowed the final result of 28 months would represent a sentence before discount for plea of 40 months or 3 years 4 months. In our judgment, a sentence before discount for plea of 3 years 4 months would have been well within the range of sentences that the judge could have passed.
39. For these reasons and having considered both limbs of the appellant's proposed grounds of appeal, we refuse permission on the renewed application on ground 2 and dismiss the appeal.
40. LORD JUSTICE BEAN: Mr Pitt, although the appeal has been dismissed; I speak for all three members of the court in saying that, in our view, your advocacy was exemplary including dealing with a volley of questions from the Bench and this difficult appeal could not have been presented by any advocate of whatever experience. Thank you very much.
41. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the

proceedings or part thereof.

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