IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2020] EWCA Crim 1303

CASE NO 202002015/A2

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 25 September 2020

LADY JUSTICE SIMLER DBE

MR JUSTICE DOVE

MR JUSTICE CHAMBERLAIN

REGINA

V

BRADLEY WAYNE

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
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MR W SNEDDON appeared on behalf of the Appellant.

J U D G M E N T

1. MR JUSTICE CHAMBERLAIN: On 26 February 2020 the appellant, Bradley Wayne, having pleaded guilty at West Sussex Magistrates' Court, was committed for sentence in respect of four offences. On 8 July 2020, in the Crown Court at Portsmouth, HHJ Melville QC sentenced him as follows. For burglary, contrary to section 9(1)(a) of the Theft Act 1968, 32 months' imprisonment; for harassment, contrary to section 2(1) and 2(2) of the Protection from Harassment Act 1997, 8 weeks' imprisonment concurrent; for two offences of criminal damage, contrary to section 1(1) and (4) of the Criminal Damage Act 1971, there was no separate penalty. An order was imposed restraining the appellant from contacting Mrs Wayne or going to her home until further order.
2. The appellant appeals against sentence by leave of the single judge.
3. The appellant was 56 years old when these offences were committed. He and his wife, Victoria Wayne, had separated 3 years previously. The two had a 17-year-old daughter who lived with the appellant.
4. On Friday 21 February 2020 the appellant began to send abusive messages to Mrs Wayne and also persuaded their daughter to contact her. He suspected that Mrs Wayne was seeing somebody else. She told him that she did not wish to speak to him again. On Saturday 22 February he called her approximately 80 sometimes starting at 4.00 am and left text messages and voicemails. One of the messages said: "In the house waiting for you". Later that day the appellant attended Mrs Wayne's house. He entered with a set of keys which had been lent to him. As he was leaving the house a woman who lived with Mrs Wayne returned. He told her: "I'll be back tomorrow to destroy this place". Mrs Wayne's housemate went in to find bicarbonate soda on the floor and a crowbar on the stairs. She found that Mrs Wayne's room had been "trashed", with her bedding pushed onto floor and her make-up all over the place. She took photographs of all of this on her mobile phone. Mrs Wayne's evidence was that she returned to find the doors to her Vauxhall Astra car wide open and both back tyres slashed. Plant pots and a bird bath in the garden had been smashed.
5. On Monday 24 February the appellant called Mrs Wayne when she was at work and said: "I'm coming down to your work. How dare you ignore me? You will see me face-to-face". Later that evening he drove to Mrs Wayne's workplace and continuously sounded the horn. The police were called. They escorted Mrs Wayne to a BMW vehicle she had borrowed from her landlady. The windscreen had been smashed and the door damaged.
6. There was a victim personal statement from Mrs Wayne in which she said that she believed the appellant would never stop trying to destroy her life mentally and physically. She continued:

    i. "Although I found the strength to get away from him 3 years ago, he continues to control my life and threaten me. I live in fear of him every day at home and at work."

7. She believed the damage and aggression he had taken out on her belongings would have been inflicted on her if he had been able to get hold of her. She was also concerned about

the effect of his actions on her daughter.

8. The judge noted that the appellant had been before the court on 19 previous occasions for 53 offences although the last of these was in 2014. The judge dealt first with the harassment offence. In terms of the Definitive Guideline he placed this offending into category 1A because the appellant's behaviour was calculated to cause serious concern and fear in his victim and because he had continued to telephone her in a determinate way.
9. The judge then considered burglary, which he took to have been the most serious offence. So far as harm was concerned, the appellant had soiled, ransacked or vandalised the victim's property (to use the terms in the Definitive Guideline). As to culpability, he had deliberately targeted her and left his "calling card" in the form of a crowbar on the premises. This meant that the offence had to be placed into category 1, with a range of 2 to 6 years' custody. The judge relied particularly on Mrs Wayne's victim personal statement for the conclusion that this was offending in the context of domestic abuse.
10. The judge took into account that the appellant had expressed remorse, had a very troubled past, had suffered from mental health problems and in particular had a diagnosis of Bipolar Disorder and was emotionally fragile. The judge considered that the appropriate starting point for the offence of burglary, if it had been contested, would have been 4 years. After credit for an early plea, that meant a sentence of 32 months.
11. In relation to the harassment offence the starting point was 12 weeks, leading to a sentence of 8 weeks concurrent, after credit for an early plea.
12. In his grounds of appeal, in a skeleton argument prepared for today's hearing and in oral argument before us, Mr William Sneddon submits that the judge was wrong to place the burglary in category 1. He takes issue with what he says are the judge's findings that Mrs Wayne's bedroom had been ransacked, that the tyres of her car had been slashed and that her housemate had returned while the appellant was in the house. Mr Sneddon submits that the judge gave no consideration to the factors indicating lesser harm, the fact that nothing was stolen from the property and the fact that there was limited damage done and lower culpability, in particular his mental disorder.
13. Mr Sneddon submits further that no consideration was given to factors reducing the seriousness of the offence or reflecting personal mitigation. In particular, he criticises the judge's reference to previous convictions stretching back as far as 1976.
14. These historic convictions, he submits, had no relevance and should not have been mentioned. Mr Sneddon also criticised the judge for failing to reflect in his sentence the remorse which the appellant had expressed, his manic disorder and the fact that he was the sole or primary carer for his and Mrs Wayne's 17-year-old daughter.
15. Next Mr Sneddon criticises the judge's observation that "it is no excuse to say that you are mentally ill". This, he submits, showed a complete disregard for the principle that diagnosed mental disorders must be considered as a factor either indicating lower culpability, when committing the initial offence or reduce the seriousness in other cases. Reliance is placed on a decision of this court in R v PS [2019] EWCA Crim 2286; [2020] 4 WLR 13, paragraph 12.
16. Finally Mr Sneddon notes that although the matter was not specifically raised before the judge, no consideration was given to the present ongoing effects of the Covid-19 Pandemic on the conditions of which the appellant would have been detained. In that regard he relies on the decision of this court in R v Manning [2020] EWCA Crim 592 and

R v Jones [2020] EWCA Crim 764.

17. For our part, we consider that the judge was entitled to regard this as a category 1 domestic burglary. So far as greater harm is concerned, there was an incontrovertible evidential basis to conclude that Mrs Wayne's bedroom had been "ransacked". Not only had Mrs Wayne and her housemate said so, the latter had a photograph of the bedroom immediately after the appellant had left the house.
18. The judge made reference to the photographs in his sentencing remarks. Likewise, Mrs Wayne's evidence, taken together with photographs, provided ample basis for the finding that at least one of the tyres on her Vauxhall Astra having been slashed. In any event the appellant's denial that he had damaged that car was flatly inconsistent with his plea of guilty to criminal damage of that vehicle.
19. The fact that nothing was stolen was not in this case a factor indicating lesser harm. The purpose of the burglary was not to steal but to do damage to the property as part of the campaign of harassment against Mrs Wayne, albeit one which took place only over several days. What was done had to be and was seen by the judge in that context. When leaving the property the appellant had made a threat to return the following day and destroy it. He must have known that that threat would be relayed to Mrs Wayne. The ultimate harm he intended and caused was psychological harm to her. Any damage to property was simply the instrument by which that psychological harm was inflicted. That being so, the judge was, in our view, correct to regard this as a category 1 case despite the relatively limited nature of the physical damage done.
20. As to culpability, the judge was plainly correct to say that the property had been deliberately targeted. The Definitive Guideline makes clear that this is a factor indicating higher culpability. Sometimes premises are targeted due to vulnerability of the victim or to hostility based upon disability, race or sexual orientation. But, as the guideline also makes clear, these are only examples. In this case, the property was targeted so that the burglary would cause fear and other psychological harm to Mrs Wayne. That is also deliberate targeting. The judge was correct to treat this as a factor indicating higher culpability.
21. We accept that the appellant's mental health diagnosis as explaining and discussed in the pre-sentence report was capable of constituting a countervailing factor. We also accept that it had to be taken into account at some stage as this court made clear in PS. But on a fair reading on the whole of the judge's sentencing remarks the judge did take into account, having referred to the appellant's troubled past and his diagnosis of Bipolar Disorder, he said: "I have to put all that against the context of what happened over that weekend". He also had regard to what had been said on the appellant's behalf about his disability given his mental illness to cope with prison. The judge concluded that: "Provision can be made accordingly to keep you safe in prison".
22. The judge considered that despite his mental illness and the fact that this burglary took place in the context of a serious campaign of harassment by the appellant against his wife, meant that the starting point of 4 years was appropriate. We do not consider that this involved any error of principle nor was the starting point manifestly excessive. Nor do we consider that the judge made any error in referring to the appellant's previous convictions. He was aware and mentioned in his sentencing remarks that the last conviction was in 2014. There is nothing to indicate that the judge considered that these convictions were matters of great weight nor, in our view, were they irrelevant.

23. Although the judge made no reference to the fact that the appellant was the sole or primary carer of his daughter, this factor was of minor relevance given that she was 17 and she could and would live with her mother. We can detect no error in principle in the judge's conclusion that the harassment offence attracted high culpability for the purposes of the relevant Definitive Guideline given that he plainly intended to cause his victim fear and distress. The victim personal statement provides a plainly justifiable basis for the finding that very serious distress and therefore greater harm having been caused to the victim. The judge made no error in placing this offending into category 1A. The starting point of 12 weeks' imprisonment, leading to a sentence of 8 weeks' imprisonment concurrent, after credit for plea, was not, in our view, manifestly excessive.
24. Nor did the judge err in restraining the appellant from contacting Mrs Wayne or going to her home until further order. The appellant's daughter will be an adult by the time he is released. There is no reason why he should need to contact Mrs Wayne when, for good reason, she does not wish to hear from him again. If the position changes an application can be made to vary the order.
25. The final matter raised by Mr Sneddon is the judge's omission to consider the impact of the pandemic on the conditions in which the appellant is likely to be detained and has been detained. There can be no criticism of the judge in this regard, given that as Mr Sneddon candidly accepts, this point was not raised in mitigation. That may be because sentencing in this case took place just after a major relaxation of the lockdown restrictions.
26. Although more stringent national restrictions have now been reimposed Mr Sneddon has told us that the conditions in prison in which the appellant is now detained have ameliorated: prisoners are no longer confined to their cells for 23 hours per day and the appellant is able to carry out work outside.
27. In those circumstances, we cannot say the principles in Manning and Jones require a reduction in this case. In our view there was no error in principle, nor was the sentence manifestly excessive. The appeal will therefore be dismissed.

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