IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202202176/A4
[2022] EWCA CRIM 1341

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 23 September 2022

Before:

LADY JUSTICE SIMLER DBE

MR JUSTICE PEPPERALL

REX
V
IMRAN MICHAEL SADDIQ

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MR O'CONNOR appeared on behalf of the Appellant.

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**J U D G M E N T**

LADY JUSTICE SIMLER:

Introduction

1. On 28 February 2022 in the Crown Court at Bradford the appellant pleaded guilty to an offence of inflicting grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861. No evidence was offered against him on a more serious count of grievous bodily harm with intent, and a not guilty verdict was entered.

2. On 8 July 2022 HHJ Nadim sentenced the appellant to a term of immediate custody of 20 months for that offence. The appellant's co-accuseds in relation to the incident that gave rise to his offending were also sentenced for the same offence. Lee Woodhead and Bailey Betker, both of whom had pleaded guilty to the same count, were sentenced to 24 months' immediate imprisonment.

3. This application having been referred to this court by the Registrar, we give leave.

The facts

4. At around 2.00 am on 23 December 2021, Nathan Sloane was socialising with friends at a bar in Halifax. The appellant, Betker and Woodhead, were also in the bar but had been ejected by security staff following allegations that they had been fighting. The three men were outside the bar and unhappy about the situation. CCTV footage showed Betker assaulting an unidentified man immediately after leaving the bar. He punched that man once in the face, knocking him to the ground. After that Woodhead assaulted the same man by leaning down and striking him to the face. A little later Betker returned to throw punches at that man.

5. The assault on Nathan Sloane took place at a point when the appellant was at the entrance to the bar, trying to get back inside. He had threatened the deputy manager with violence when he was stopped from re-entering. At that moment Nathan Sloane left the bar to have

a cigarette. He bumped into the appellant as he squeezed past him. The appellant took hold of his throat and threw him into the street or at least that is how it appeared on the CCTV. Betker and Woodhead joined in the assault. Betker pushed Nathan Sloane to the ground. Woodhead then ran across and stamped on Nathan Sloane's head with his right foot. The appellant kicked Nathan Sloane who was lying on the ground, twice, in quick succession with his left foot, to Nathan Sloane's body. Woodhead struck out at Nathan Sloane using his right hand. Betker delivered a kick to Sloane's head or upper body and Woodhead threw a glass or bottle at Nathan Sloane from short range, which appeared to bounce off him and smash on the ground. The footage showed Nathan Sloane curled up in a ball trying to protect himself with his arms and hands.

6. At that point the men stopped the attack and left the scene. Camera operators tracked the group to a car belonging to the appellant. The car was stopped. Woodhead and Betker were arrested. The appellant was initially allowed to leave and drive away but was arrested from his home address later that day.

7. Nathan Sloane was taken to hospital. He had sustained fractures to his right eye socket and the walls of his right maxillary sinus. He had swelling to the back of his head, bruising about his face and cuts and scrapes to his body. He was discharged from hospital but attended again later that day suffering from the effects of concussion. He had been vomiting and was given head injury advice. He later underwent an operation which involved the stabilisation of the fractures by the insertion of two metal plates and he has been left with permanent scarring.

<u>The sentence</u>

8. The appellant had no previous convictions. He had a reprimand for shoplifting in 2008 and a caution for possession of MDMA in 2019.

9. The judge had a victim personal statement from Nathan Sloane dated 11 February 2022, which we too have read.

10. The judge also had a pre-sentence report. The report author concluded that the appellant posed a low risk of re-offending. On that basis and taking account of his then circumstances the report author identified a community-based order for 18 months with 20 days RAR and an unpaid work requirement at a level deemed suitable by the court, as the most appropriate sentence. The appellant had accepted the benefit of targeted intervention and had confirmed that he could arrange child care on weekends in order to complete any hours of unpaid work directed by the court.

11. The judge concluded that the assault by a drunken group was so serious that it crossed the custody threshold. He concluded that appropriate punishment could only be achieved by immediate custody. It was a category B2 assault within the SCG, with a starting point of two years. The judge afforded the appropriate 25% credit for the appellant's guilty plea.

12. The judge made no reference to the appellant's personal mitigation in his sentencing remarks.

The appeal

13. In written grounds of appeal that were developed orally Mr O'Connor submitted that a sentence of 20 months' immediate custody wrong in principle and manifestly excessive. The judge erred in taking too high a starting point having regard to both aggravating and mitigating features. The appellant had a lesser role in the group offending and the two kicks he delivered to the victim's body were not forceful.

14. Most significantly Mr O'Connor submitted that there was substantial personal mitigation in this case. The appellant was a man of hitherto good character who had overcome significant trauma in recent years. In 2012 he had begun a new relationship and the couple

had a son. Following the birth of his son, the appellant's partner had struggled with postnatal depression. In 2018 they had a second son. Once again, and sadly, the appellant's partner suffered with severe postnatal depression that led to her suicide. The appellant discovered her body upon returning home.

15. Since that time the appellant had become the sole full-time carer for his two young sons, who are now aged eight and four respectively. He had little family support. He struggled with his own mental health issues, battling both depression and anxiety. His eldest son experienced separation anxiety following the loss of his mother at such a young age, such that even short absences from his father, for example, going into a shop and leaving the boy in the car, caused him significant distress.

16. The appellant was deeply remorseful for his actions. He wished to apologise to the victim, and had offered apologies to the court. He had demonstrated genuine remorse for his offending behaviour. Mr O'Connor submitted that the imposition of immediate custody was likely to and had already had a disproportionately harsh effect upon the appellant's children, for whom he was the sole carer, following the death of his partner.

17. For all these reasons a notional sentence before credit of what must have been 26 or 27 months was too high. It did not properly account for the distinction between the lesser involvement of the appellant in the offending as compared with his co-accused where a starting point of 32 months was adopted. Mr O'Connor also submitted that the role of the appellant as sole carer of his two young sons meant that greater reduction for mitigation should have been afforded by the judge. Further, having recognised that consideration the judge was wrong not to suspend this sentence.

18. The Registrar directed a prehearing progress report from the Probation Service and one has been provided. So far as the children are concerned, it reported that the children were in

the care of their maternal grandmother who was happy with that arrangement. There had been separation and anxiety issues with the eight year old boy and the family had not been told (the children in particular) that the appellant was in prison. The appellant was speaking to his sons everyday on the telephone and they were clearly suffering the loss of their daily contact with their father and upset by it. The appellant himself was on the ACCT system in prison to support those at risk of suicide and self-harm. He had received no adjudications or negative comments whilst in custody but due to the short period he had been in custody he had not completed any intervention work or engaged with services within the prison. The author of the report confirmed that the assessment made by the probation officer remained realistic.

Discussion and conclusion

19. This was undoubtedly a serious assault by a group of young men under the influence of alcohol and we have no doubt that the offence itself crossed the custody threshold. Nor can we see anything wrong with the categorisation of this offence by the judge in B2 of the Sentencing Council Guideline with a starting point of two years.

20. Nonetheless, we accept the submission that this appellant played a lesser role within the group assault and although he initiated the incident by first taking hold of the victim, it was Betker who threw Nathan Sloane to the floo,r and Betker and Woodhead together who delivered the kicks that caused the significant injuries. Those kicks delivered by the appellant to the victim's body were not to the face or head and were, as the prosecution conceded "not forceful".

21. The real question, in our judgment, concerns the apparent absence of any consideration by the judge of the exceptional personal mitigation available to the appellant and the fact that he was sole carer for his two sons following the death of his wife. The judge made no

mention of although it is expressly identified in the Assault Guideline as a mitigating factor. Moreover, given the difference between the appellant's notional sentence of 26 or 27 months after a trial and the notional sentences of 32 months after a trial for the principal offenders, who had previous convictions, it is difficult to see that any further credit was given by the judge for this additional mitigation.

22. While even sole carers of children are not thereby immune from a sentence of immediate custody, the impact of a sentence on young children in that situation should be considered and weighed in determining whether immediate custody is proportionate in the circumstances. Here there is no clear evidence that the judge had proper regard for that important feature of this case. Furthermore, because the judge did not deal with the point he did not, when balancing the factors in the Imposition of Community and Custodial Sentences Guideline, appear to take account of the appellant's caring responsibilities, by addressing that issue when considering the question whether the sentence should be suspended because "immediate custody will result in significant harmful impact upon others".

23. Since we consider that either the judge failed to consider the point or we must assume in the appellant's favour that he failed to do so in the absence of any indication that he did, it falls to us to consider afresh the question of suspension.

24. We have dealt with the appellant's lesser role in this group assault. We have referred to his absence of any previous convictions and to the finding that he posed a low risk. In our judgment, the prospects of rehabilitation were good and he was genuinely remorseful. Significantly, it is plain to us that immediate custody was liable to result in significant harmful impact to the appellant's four and eight year old sons for whom he was the sole carer.

25. Taking full account of those additional personal mitigation matters and after the credit of 25% accorded for his guilty plea, we consider that a sentence of 15 months and no more was justified in this case. Furthermore, in the particular circumstances of this case, we consider that the sentence should have been suspended for two years.

26. In those circumstances, we will quash the sentence of 20 months' immediate custody. We will substitute for it a sentence of 15 months suspended for two years. There will be a 20-day RAR requirement as initially recommended by the Probation Service. Since the appellant has served the equivalent of a five month sentence, we impose no additional requirements.

27. To that extent only this appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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