

WARNING: reporting restrictions apply to the contents transcribed in this document, as stated in paragraph 2 of the judgment, because the case concerned offending against a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202200135/A3
NCN [2022] EWCA Crim 401



Royal Courts of Justice
Strand
London
WC2A 2LL
Thursday 10 March 2022

LORD JUSTICE HOLROYDE

MR JUSTICE JULIAN KNOWLES

MR JUSTICE COTTER

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REGINA

v

“ALS”

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR B LLOYD appeared on behalf of the Attorney General.

MS G HENSHAW appeared on behalf of the Offender.

J U D G M E N T

1. LORD JUSTICE HOLROYDE: This offender (now aged 40) pleaded guilty to three offences of cruelty to a person under 16 years contrary to section 1(1) of the Children and Young Persons Act 1933. On 15 December 2021 in the Crown Court at Manchester (Minshull Street) he was sentenced by HHJ Nield to a total of 3 years 4 months' imprisonment. Her Majesty's Solicitor General believes that sentence to be unduly lenient. Application is accordingly made, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this Court so that the sentencing may be reviewed.
2. The victim of the offences is the offender's daughter, aged 13 during the period covered by the indictment. To protect her, an order pursuant to section 45 of the Youth Justice and Criminal Evidence Act 1999 was made in the Crown Court. It provides that no matter relating to her shall, whilst she is under the age of 18, be included in any publication if it is likely to lead members of the public to identify her as a person concerned in these proceedings. This prohibition extends in particular to her name, her address, the identity of any school or other educational establishment attended by her, the identity of any place of work and any still or moving picture of her. That order remains in force and we confirm that it applies to any report of this application. We will therefore refer to her simply as "V". It would defeat the purpose of that order if the offender were to be named in any report which also identified his paternal relationship. We shall accordingly refer to him simply as "the offender" and we direct that in any report of these proceedings he must be anonymised by using the randomly chosen letters "ALS". We shall refer to a witness in the case (a former partner of the offender) as "L".
3. As a young child, V had lived with her mother. The offender had struggled with alcohol dependency. When V was aged 10, and the offender had recently completed a detoxification, V was placed in his care. It is apparent from all we have read that the offender wanted to care properly for his daughter and did his best to do so. For a time, all was well. V's attendance at school improved, reports from the school about her were positive and the local Children's Services were able to end their involvement.
4. Sadly the relationship between father and daughter began to break down, and they fell into frequent arguing. The offender used violence against V. Count 1 charged an offence of cruelty between 22 May 2018 and 3 March 2021, the particulars being that he wilfully ill-treated V by undertaking excessive chastisement and isolating her from her school and friends.
5. When lockdown began, the offender was furloughed from his employment for a lengthy period. He struggled with caring for and home-educating V. It seems that he slid back into his former problems, and became increasingly prone to violent outbursts of temper against V. These came to light on 16 March 2021 when L visited the offender and saw V obviously injured and in considerable distress. On the following day L informed the police.
6. Counts 2 and 3 were charges of cruelty relating to the period between 4 and 17 March 2021. Count 2 related to wilful assaults on V, count 3 related to wilful neglect of V by failing to secure medical treatment for the injuries which the offender had inflicted.
7. V was medically examined. We have read the medical evidence and seen the photographs. There were at least 48 injuries. It is no exaggeration to say that V was covered with bruises. In addition to the bruising of her face, body and limbs her right eye was very swollen with conjunctival hematoma. Her jaw was so painful that she was unable to eat solids and had been living off soup. Her left hand was painful and swollen,

and X-ray confirmed a fracture. That injury has resulted in a continuing deformity, with the left little finger permanently bent.

8. V described how the offender had frequently beaten her when he thought she had done something wrong. He would hit her until she agreed with him that she was in the wrong, even if she was not, and she therefore made false admissions in order to stop the assault. About 2 weeks before the intervention of the police he had wrongly accused her of something she had not done, and had punched her all over. He hit her with a cable and then tried to strangle her with it. V managed to prevent him from doing so, and he instead put his hand round her throat, choking her until she could not breathe. He then continued to punch her face. She raised her hands to protect herself and he hit her left hand, causing the fracture to which we have referred. V said that on another occasion he had used a different weapon, hitting her on the head with a ruler.
9. V said that she had hidden her injuries, mainly by staying home from school. She had never told anybody about the beatings, and did not want her father to get into trouble. She said that he would always say sorry, would tell her that he knew he was doing wrong and would give her painkillers.
10. The offender himself made admissions as to what he had done. When challenged by L on 16 March 2021 about the injuries to V which were visible that day, he said that he had "battered her over a few days". He went on to say that V had looked at him in a funny way, so he had "battered" her again; and he had then "battered" her yet again because she had disrespected him by not doing what he told her to do. The following morning, when further bruising was seen by L, the offender graphically listed what had done: "I've punched her, I've kicked her, I've kneed her, I've strangled her with a charging wire, I've pushed her, I've bit her". He went on to say to L: "What you don't understand, when I'm in a rage fight mode takes over and it doesn't matter who you are". He added: "Something would normally trigger me to stop but she looked at me funny and I would go back into fight mode". Having heard this, L contacted the police.
11. The offender was arrested and interviewed under caution. He made no comment. He was charged with the offences and on 22 March 2021 was sent for trial. No indication of plea was given at the magistrates' court. The Better Case Management form records that he had been advised as to credit for plea, but the box providing an opportunity to indicate pleas had been left blank.
12. At a PTPH in the Crown Court on 16 April 2021 the offender indicated pleas to counts 2 and 3. The hearing was adjourned to allow counsel to have a full conference and on 4 May 2021 he entered his guilty pleas. He initially did so on a basis which was not accepted by the prosecution, but this was later amended to a basis which was accepted.
13. The offender had previously been sentenced on 22 separate occasions for a total of 48 offences. Ten of those were offences of violence and a further three had related to weapons. His last conviction in 2015 was for offences of assault occasioning actual bodily harm and battery upon L, for which he had received a custodial sentence.
14. Following the intervention of the police, V went to live with her aunt. A victim personal statement by the aunt described V's frightened state and constant fear that she would be beaten. As a result of the circumstances in which she had been living, V at first found it difficult to accept that she was allowed a choice in things. The statement indicated that V was adapting well to her new life.
15. The judge was assisted by a pre-sentence report. The author felt that the problems caused

by lockdown, including difficulties in the offender's accessing services coupled with the offender's deteriorating mental health, had contributed to the commission of the offences. The offender had accepted full responsibility and had volunteered what the author described as "full and unprompted" expressions of remorse. The author assessed these as genuine.

16. The offender himself had written a letter to the court. He described the progress he had made in overcoming his alcoholism in the past, reaching the stage where he had been accepted for an apprenticeship and was both working and caring for V. Those commitments, he said, had caused him to neglect his addiction programme, which had become a problem when he was furloughed during lockdown. He expressed his great remorse for having, as he put it, "taken out my problems on the ones I love".
17. L had also written to the court. She too described how the offender had turned his life around after a period of residential rehabilitation and commended his success in providing, for a time, a home for V which was more stable than any V had endured at any other time in her life. During lockdown, L said, the offender had been without support when he needed it most.
18. The judge observed that it was an appalling case of significant cruelty to a vulnerable young girl, who was already emotionally damaged and who was at the time wholly reliant on the offender. She assessed count 2, which involved prolonged and multiple incidents of serious cruelty, as falling into category 1A of the Sentencing Council's relevant definitive guideline, with a starting point of 6 years' custody and a range from 4 to 8 years. She considered whether the offender was dangerous, but noted the significant period of time which had elapsed since his last conviction for violence and concluded that in any event an extended determinate sentence would not be necessary. The judge accepted that the offender was genuinely remorseful, and also accepted that lockdown had brought to the fore frailties which she felt should perhaps have been identified earlier during V's placement with her father.
19. Having regard to what was said in the pre-sentence report, the judge concluded that the guideline starting point should be lowered to a sentence of 5 years before reduction for guilty plea. She allowed full credit for all the guilty pleas and so imposed a sentence of 3 years 4 months' imprisonment on this count. In reaching that decision she treated the count 3 offence as an aggravating feature of count 2, and therefore imposed no separate penalty on count 3. On count 1 she imposed a concurrent sentence of 12 months. Thus the total sentence was, as we have said, 3 years 4 months' imprisonment.
20. On behalf of Her Majesty's Solicitor General, Mr Lloyd submits that the judge failed to give sufficient weight to the prolonged course of incidents of serious cruelty, the presence of many high culpability factors relevant to count 2, the aggravating feature of the previous convictions, including previous domestic assaults, and the failure to seek medical treatment charged in count 3. The combination of those features, he submits, should have resulted in a substantial adjustment above the guideline starting point for count 2, before considering the mitigating factors of remorse, mental health issues and personal mitigation. Mr Lloyd adds that the offender should not have received full credit for his guilty pleas, which were not indicated at the first opportunity. He submits that the total sentence was for those reasons unduly lenient.
21. Ms Henshaw submits on behalf of the offender that the sentence was not unduly lenient. She accepts that count 2 fell into category 1A of the guideline, but submits that factors of

medium culpability and harm were also present and that the guideline starting point was therefore properly reduced by the judge. She submits that the offender had succeeded in making substantial progress in his recovery from alcoholism and in overcoming his past problems, but his mental health relapsed in the circumstances thrust upon him by lockdown and by the lack of support available to him during that difficult period.

Ms Henshaw recognises the aggravating feature of the previous convictions, but points out that the most recent of them was sustained before the residential rehabilitation which for a time succeeded in turning the offender's life around. She submits that the judge rightly took into account the substantial mitigation and balanced it against the acknowledged seriousness of the offence. She also reminds us of the particular difficulties faced by prisoners during the pandemic.

22. We are grateful to both counsel for the clarity of their written and oral submissions. Having reflected upon them, our conclusions are as follows. Like the judge, we recognise that the offender had made substantial efforts to turn his life around and deserves credit for the success with which he did so. We accept that the offences were committed during a period which many people found very difficult and which was particularly difficult for a man with the offender's problems and limitations. No one doubts his remorse. Nor is there any reason to doubt that he loves his daughter, and we recognise that the inevitable separation from her will be a source of lasting distress to him. The judge was right to recognise, and to give significant weight to, the substantial personal mitigation available to the offender.
23. We hesitate to differ from the view taken by the judge, who has long experience in both the criminal and family jurisdictions and was careful to ensure that she was equipped with all the information relevant to sentence. However with all respect to the judge, we accept the submission on behalf of the Solicitor General that the judge failed to give sufficient weight to the offender's culpability and the aggravating features of the case. Of the seven characteristics of high culpability listed in the guideline, at least four – namely, prolonged and multiple incidents of serious cruelty, the use of very significant force, the use of a weapon and the deliberate disregard for the welfare of the victim - were present. In our view, the incident of attempted strangulation, first by ligature and then manually to a point where V was unable to breathe, was a particularly serious incident of cruelty. The level of harm caused by the count 2 offence plainly fell into category 1. Moreover, as the judge was rightly imposing concurrent sentences, the sentence on count 2 had to reflect the overall seriousness of the offending. Counts 1 and 3 were by no means minor offences. Count 1 related to a number of periods when V had been kept off school so that teachers would not see the injuries which the offender had inflicted on her. Count 3 related to the period of prolonged cruelty in March 2021, when the offender, in addition to failing to seek medical help, was also again keeping V away from school. As Mr Lloyd submits, had staff at the school had the opportunity to see V and to note the injuries inflicted upon her, it may well be that the prolonged course of cruelty would have come to an end sooner than it did.
24. Moreover, whilst we recognise the difficulties faced by the offender during lockdown, the judge had to take into account that V herself was particularly vulnerable during that period. The fact that the offender kept her away from school shows his awareness of the harm he was causing, and his failure to give priority to her needs rather than to his own avoidance of detection. In those circumstances a significant upwards adjustment of the

starting point applicable to count 2 was necessary before consideration of the aggravating and mitigating features.

25. The offender's previous convictions were a serious aggravating feature. True it is that none of the convictions for violence was very ; but they included domestic abuse of his former partner, and should have served as a clear warning to him of the need to control his temper when caring for V. We should add that having responsibility for the child concerned is an essential ingredient of the offence of child cruelty. Such offences therefore necessarily involve a domestic context which is reflected in the sentencing levels set by the Guideline.
26. The deliberate concealment of the offending was a further aggravating factor, though we keep in mind that to some extent it overlaps with the counts 1 and 3 offences and it is therefore necessary to take care to avoid double counting.
27. In those circumstances, we are unable to share the judge's conclusion that the balancing of all relevant features of the case resulted in a final sentence which, before reduction for plea, was less than the guideline starting point for the count 2 offence alone. In our judgment, even giving as much weight as possible to the personal mitigation, it was unavoidably necessary to come to a final sentence markedly above the starting point for a single offence. In all the circumstances, we conclude that before reduction for guilty pleas the least total sentence commensurate with the seriousness of the offending as a whole was 8 years' imprisonment.
28. The Sentencing Council's guideline on Reduction in sentence for a guilty plea makes clear that the maximum reduction of one-third is reserved for cases in which the offender indicates his guilt at the first stage of the proceedings. This offender did not do so. He gave no indication at all in the magistrates' court and his pleas were not immediately entered in the Crown Court. He could not expect a reduction of more than one-quarter.
29. For those reasons we grant leave to refer, we quash the sentence imposed below on count 2 and substitute for it a sentence of 6 years' imprisonment. The sentences on counts 1 and 3 remain as before. Thus the total sentence is now 6 years' imprisonment.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk