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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202301542/A4



NCN: [2023] EWCA Crim 1216

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 22 September 2023

Before:

MR JUSTICE JACOBS

MR JUSTICE GRIFFITHS

REX

V
RYAN BROWN

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MR T DOMINGUEZ appeared on behalf of the Applicant.

J U D G M E N T
Approved

MR JUSTICE JACOBS:

1. This is a renewed application for permission to appeal against sentence, after refusal by the single judge. We are grateful to Mr Dominguez for his meticulous examination of the sentence and the analysis of the judge, and for the way in which he has presented his argument concisely this morning.
2. The offences to which the applicant pleaded guilty at various stages involved two different women, with whom he had relationships at different times. First in time, albeit in a shorter relationship, were a series of offences where the victim was Ms Abbie Richardson. Prior to trial, the applicant pleaded guilty to three offences as follows: (1) count 1, putting a person in fear of violence by harassment, for which he received a sentence of 26 months' imprisonment; (2) threatening to disclose a private sexual image, for which he received a concurrent sentence of 6 weeks' imprisonment; and (3) intimidation, contrary to section 51(1) of the Criminal Justice and Public Order Act 1994, for which he received a consecutive sentence of 2 months' imprisonment.
3. Second in time, there was a longer relationship with Ms Cheyenne Cook. On the second day of the trial for certain matters, which included those to which he decided to plead guilty, the applicant changed his plea of guilty to two offences of assault occasioning actual bodily harm. He was sentenced on each offence to 22 months' imprisonment to run concurrently with each other but consecutive to the total of 28 months on the counts involving Ms Richardson.
4. The total sentence for all the offences was therefore 50 months.
5. It is not necessary to describe the unpleasant facts of both cases in great detail. It suffices to say as follows. The applicant and Ms Richardson had a brief relationship. The complainant decided to end the relationship, but the applicant then bombarded her with calls and messages which included threats to her, threats to disclose intimate photos he had taken of her and threats as to what he would do if she did not retract her statement to the police. At one stage Ms Richardson had to move out of her house to ensure her safety. He then, after the breakup of that relationship, met the second complainant, Ms Cook. They met in January 2022, and the applicant moved in the very next day, explaining that he was losing his own home. At first the relationship was happy, with the complainant feeling supported in caring for her 5-year-old autistic son. The relationship lasted for about 7 months, with the applicant becoming progressively more aggressive and, at times, violent. He was verbally abusive and criticised the complainant's parenting. The two charges of assault occasioning actual bodily harm related to two very serious assaults on Ms Cook, on separate occasions, on 1 June 2022 and 4 June 2022. They were violent and extremely nasty assaults. Ms Cook described in her witness statement being left with 33 bruises in both incidents, some of them large, a headache from her hair being pulled and her throat and jaw still hurting from having been strangled. She said that the first assault lasted about 2 hours and the second about 2½

hours.

6. In his sentencing remarks the recorder dealt first with the two assaults. There is no criticism of his categorisation of each assault as category A2 under the Guideline, which has a starting point of 18 months custody and a range of 36 weeks to 2 years. The applicant's previous convictions for battery and assaulting the emergency worker were aggravating circumstances, as were the facts that this was domestic abuse and at least one of the offences was witnessed by Ms Cook's young son and one involved strangulation. The recorder considered that each assault would merit a 24-month sentence after trial, but since he intended to impose concurrent sentences for the two assaults, he increased the 24 months by a modest 3 months in order to reflect the overall criminality involving Ms Cook. A 10 per cent credit for plea reduced those sentences back to 24 months for each assault. Later in his judgment he made a further reduction to reflect totality in respect of all the offences that he was considering, hence the 22-month sentence to which we have referred.
7. In relation to the offences involving Ms Richardson, the recorder said that the harassment charge fell within 1B of the relevant Guidelines. The case involved very serious distress. Category 1B has a higher starting point than the Assault Guideline to which we have referred. The starting point there is 2 years and 6 months, and the range is 1 to 4 years under the relevant Guideline. The recorder said that this offence was aggravated by the domestic context, a previous stalking conviction and the threat to disclose a private sexual image. The latter was the subject of count 2 on the indictment, and the recorder was proposing to impose a concurrent sentence on that. Accordingly, it was treated as an aggravating factor on the harassment charge in order to reflect the overall criminality. Taking the aggravating and mitigating factors into account, the recorder said that after trial the appropriate sentence would be 3 years, and credit for plea reduced that to 28 months. Again, later in the sentencing remarks he reduced that 28 months further for totality, hence the 26 weeks to which we have referred. He dealt specifically with the threat to disclose on which he was proposing a concurrent sentence and he considered that that offence, on its own, would merit 2 months after trial, reduced to 6 weeks and that was the length of the concurrent sentence imposed. Finally, in relation to witness intimidation, he said that the appropriate sentence, after trial, would be 9 months, a reduction of 20 per cent by way of credit for plea reduced that to 7 months and later in his sentencing remarks that was further reduced by the recorder to the 2 months to which we have referred.
8. On behalf of the applicant Mr Dominguez accepts that the recorder's categorisation of each offence, under the relevant Guidelines, in so far as they existed, was appropriate. But he submits that the sentence for the harassment offence was impermissibly high. His argument is that although the recorder's starting point of 2½ years was appropriate for what he rightly accepted was an extremely unpleasant offence, the recorder was wrong to move to 3 years, bearing in mind the threat to disclose the sexual image only warranted a 2-month sentence prior to credit for plea.
9. We consider there is no substance in that point. The judge's uplift to 3 years was the result of a combination of factors in addition to the disclosure of the sexual image,

namely the domestic context of the offence and also a relevant previous stalking conviction. In any event, as the single judge was later to point out, the relevant question is not whether a particular component of the overall 50-month sentence was manifestly excessive but whether it was excessive in the light of all of the offending.

10. This leads to the main point which Mr Dominguez advanced in various ways, namely that the recorder failed to make sufficient allowance for totality when looking at the overall offending. On that point, we consider that we need to do no more than to quote the decision of the very experienced single judge, since we do not consider that we could express the position any better. The judge said, this:

1. I have considered the papers in your case and your grounds of appeal.
2. One needs to stand back here and view matters in the round, without an unduly mechanistic approach to the application of the Guidelines.
3. With regard to Ms Cook this was extremely grave domestic abuse. There were sustained and violent assaults, which included attempted strangulation, kicking and other violence. With regard to Ms Richardson, there were sinister and unpleasant threats, harassment and intimidation after the briefest of relationships. The applicant has relevant previous convictions and there could be only relatively limited credit for the late pleas.
4. A total sentence of 50 months' imprisonment for all the offending does not begin to look manifestly excessive. The two counts of ABH relating to Ms Cook (sentenced concurrently) could easily have been higher than 22 months, even having regard to totality. As to Ms Richardson, a figure of 3 years following trial and before credit for plea was appropriately selected and was taken as a lead sentence, having regard also to Count 2. The recorder having done that, there can be no objection, as a matter of substance, to an essentially formal concurrent sentence of 6 weeks imprisonment on Count 2 itself. As to the intimidation count, that in principle merited a short consecutive sentence.
5. Accordingly, the sentences imposed on in respect of the offences in relation to Ms Cook were not excessive as a matter of totality. The sentences imposed in respect of the offences in relation to Ms Richardson were not excessive as a matter of totality. The overall sentence of 50 months imprisonment is not excessive as a matter of totality. The contrary is not realistically arguable.”

11. We fully agree with the approach of the single judge and accordingly this renewed application is dismissed.

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