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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
Case No: 2023/00092/A4  
[2023] EWCA Crim 522



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Wednesday 3<sup>rd</sup> April 2023

**B e f o r e :**

**VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION**  
**(Lord Justice Holroyde)**

**MR JUSTICE HOLGATE**

**HIS HONOUR JUDGE ANDREW LEES**  
**(Sitting as a Judge of the Court of Appeal Criminal Division)**

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**R E X**

**- v -**

**JOE ROBERT SLACK**

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**Mr T Compton** appeared on behalf of the Appellant

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

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Wednesday 3<sup>rd</sup> May 2023

**LORD JUSTICE HOLROYDE:** I shall ask Mr Justice Holgate to give the judgment of the court.

**MR JUSTICE HOLGATE:**

1. On the first day of his trial, on 9<sup>th</sup> November 2022, in the Crown Court at Southampton before His Honour Judge Rowland, the appellant pleaded guilty to wounding with intent. There was no basis of plea.

2. On 12<sup>th</sup> December 2022, His Honour Judge Gary Burrell KC imposed an extended sentence of seven years, comprising a custodial term of five years and an extended licence period of two years. The appellant now appeals against sentence with the leave of the single judge.

3. On 3<sup>rd</sup> April 2022 the appellant's sister Ella Slack, and her boyfriend Louis Norris, returned to her home to find the appellant there. He was intoxicated, appeared agitated and was in possession of a kitchen knife. The appellant asked Mr Norris if he knew anyone that he could rob. Mr Norris told him not to be silly. Ella Slack then telephoned her mother to ask for help. Both her mother and father arrived soon afterwards. A heated argument took place between the appellant and his father. Mr Norris stepped in between them.

4. Mr Slack Senior and Mr Norris then went outside. The father became aggressive towards Mr Norris. Matters were calming down between these two men when the appellant came out of the house with a large kitchen knife. He swung the knife towards Mr Norris' chest. Mr Norris used his arm to block the blow. The knife went completely through Mr Norris' arm and nicked his abdomen. The appellant fled but was arrested soon after.

5. The wound to Mr Norris' arm required not only external stitches but also internal stitches to repair the muscle. The ulna nerve was divided. In his Victim Personal Statement, Mr Norris describes the serious effects the attack has had on him. He has had to travel to Salisbury for physiotherapy every fortnight. There is a scar and he has been told that some feeling may never return. He had qualified as a carpenter and worked in the construction business. Because his fingers were locked and could not be straightened, Mr Norris could not pick up heavy loads or use a power tool. He was limited to less demanding jobs and had to take a cut in salary. He says that he no longer enjoys going out or socialising. He has had to stop going to the gym. He has had problems sleeping and nightmares about the incident. There have also been strains on family relationships.

6. The appellant was aged 28 when sentenced. He had three convictions for three offences between 2011 and 2018. They included possession of a bladed article in a public place and possessing an offensive weapon in a public place, both in 2018. He had also been reprimanded or cautioned for two offences of battery and possessing an offensive weapon in a public place.

7. Dr Hill, a Consultant Forensic Psychiatrist, produced a report on the appellant in July 2022. He described the appellant's difficult childhood, which included violence at the hands of his father. He himself was violent at school and was expelled. He then worked for about ten years. The appellant told Dr Hill that he had been hearing voices since the age of 12 and had suicidal thoughts. He has self-harmed. Over the last few years the appellant has been referred to mental health teams who have said that there is insufficient evidence of a psychotic illness. But he does have a history of alcohol, cannabis and cocaine abuse from time to time. He was using those substances regularly in the months leading up to the offence and on the day of the offence. His sister stated that the appellant can become aggressive

when he has consumed alcohol or drugs. She made that connection when she saw how aggressive he was on the day of the incident.

8. Dr Hill found no evidence of a psychotic illness. The appellant's very low dose medication could have been prescribed to calm him. His use of cannabis and cocaine would have made it more likely that he would suffer unusual symptoms such as auditory hallucinations. There were no cognitive issues. There were some traits of emotionally unstable personality disorder, but a diagnosis could not be made on one interview. Trauma in childhood was the likely cause of personality problems as an adult. On the day of the offence there was no evidence of psychotic symptoms. Instead, the appellant had described his low mood and suicidal thoughts.

9. There was also a detailed pre-sentence report. Its author had read Dr Hill's report. He considered that the appellant's account was self-serving. On the one hand the appellant tried to say that he could barely remember the attack on Mr Norris; but on the other, he described having responded to what he perceived to be a threat from Mr Norris to stab his father. The impression given was that when the appellant went outside his sister's home, having armed himself with a knife, the stabbing was deliberate. The appellant could not provide a clear explanation of how he had been able to strike Mr Norris so forcibly with the knife.

10. The report stated that although the appellant had given a history of troubled mental health, the author found nothing beyond depression and poor emotional regulation. He considered that the most significant factors in the commission of the offence were those of poor self-control, familial relationships and substance abuse. Mr Norris had borne the brunt of the violent anger that the appellant had felt towards his father. There had been a serious escalation in the seriousness of the violence that the appellant is willing to inflict.

11. The author of the pre-sentence report assessed the likelihood of re-offending as high. The appellant posed a high risk of causing serious harm, both physical and emotional, to the public, his father and the victim of this offence. This risk is enhanced when the appellant is intoxicated. The author concluded that the appellant poses a significant risk of causing serious harm to the public through the commission of further specified offences. He noted that imprisonment could enable constructive work to be undertaken with the appellant, followed by supervision under the Multi-Agency Public Protection Arrangements.

12. In his sentencing remarks the judge placed the offence into category 2A of the definitive guideline, on the basis that the appellant had used a highly dangerous weapon and the injury was grave. The assault could have been lethal if Mr Norris had not put up his arm to protect himself. The judge said that the offence was aggravated by the previous convictions involving weapons and by having been under the influence of alcohol and drugs, but was mitigated by mental health problems. Those factors balanced each other, so that the sentence before credit for the guilty plea was seven years' custody. After allowing credit of 25 per cent, the custodial term was five years.

13. The judge then concluded that the appellant is a dangerous offender based upon the report of a very experienced probation officer and the circumstances of this offence. He said that it was necessary to pass an extended sentence. In addition to the custodial term of five years, there would be an extended licence period of two years.

14. We are grateful to Mr Compton for his submissions on behalf of the appellant. In summary, he advances the following grounds of appeal:

- (1) The judge miscategorised the offence as falling within category 2A of the relevant sentencing guidelines and therefore took too high a starting point.

The offence should have been placed within category 2B. The knife had not been a highly dangerous weapon falling within high culpability A. There were also elements of lesser culpability C in that, firstly, the appellant considered that he had been seeking to protect his father from Mr Norris, and so this was a case of excessive defence of another; and secondly, the appellant's ill-health was linked to the commission of the offence, as opposed to being triggered or aggravated by his voluntary consumption of alcohol and drugs.

(2) Although the judge had treated the harm as grave, rather than particularly grave and therefore falling within category 1 rather than 2, the evidence suggested that the harm was significantly towards category 3.

(3) The judge failed to give any or any sufficient weight to the mitigation and took an overly simplistic view of the case overall. If the mental health issues were not linked to the commission of the offence, they formed part of the appellant's personal mitigation.

(4) The judge's interventions during the prosecution opening and defence mitigation made it apparent that he had pre-judged the case in such a manner that justice was not done, or seen to be done, and the appellant was left with the view that, firstly, the hearing was unfair and/or, secondly, that the sentence passed was manifestly excessive.

15. Mr Compton says that the judge was extraordinarily hostile to him from the moment he began to mitigate. His behaviour had been amongst the most hostile and off-putting he had encountered in 35 years of practice at the Bar. He did not give counsel a fair opportunity to make the points in mitigation upon which he wished to rely.

## **Discussion**

16. We have had the benefit of reading a transcript of Mr Compton's mitigation and of hearing the audio recording. We can understand why the judge was frustrated by counsel's repetition of points which had no merit. The judge remained calm and polite throughout. But it would have been preferable for him not to have interrupted the mitigation so extensively and to have allowed it to proceed in the normal manner. Having said that we do not accept that this was a case where there was any appearance of bias, applying the standard in *Porter v Magill* [2002] 2 AC 357. This was a judge who simply responded to the continual repetition of points which, for understandable reasons, he considered to be unsound.

17. Rightly Mr Compton recognises that the criticisms he sought to make on this basis do not render the sentence passed by the judge manifestly excessive or wrong in principle.

## **Ground 1**

18. The definitive guideline states that "highly dangerous weapons" can include knives and that "the court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case". In *R v Alvis of Lee* [2022] EWCA Crim 127, [2023] 1 Cr. App. R.(S) 16, the court concluded that a kitchen knife with a blade of four to six inches used to stab a victim in the neck was a highly dangerous weapon. We are certain that the kitchen knife used by the appellant in this case to attack Mr Norris was a "highly dangerous weapon". He used it to stab him in the chest with what must have been considerable force. The fact that the knife passed completely through the victim's arm shows how dangerous it was. The knife was a potentially lethal weapon.

19. We reject the submission that there were culpability C elements in the offence. There was no basis of plea. The case was opened by the prosecution on full facts. The



prosecution's case was that any argument outside the property between Mr Norris and the appellant's father was calming down when the appellant came out. The suggestion that the appellant had then acted in order to defend his father comes from the appellant. It does not sit well with the evidence that inside the house it was Mr Norris who had to intervene to stop an argument between the appellant and his father from becoming violent. The pre-sentence report refers to the lack of coherence in the appellant's explanation for his assault. The judge was entitled to take the view that the appellant should have sought a *Newton* hearing if he wishes to rely upon his version of events, given that this aspect of the mitigation went to the circumstances of the offence, rather than to some extraneous matter: see *R v Tolera* [1999] 1 Cr. App. R. 29, *R v Underwood* [2005] 1 Cr. App. R. 13, and *R v Cairns* [2013] 2 Cr. App. R. (S) 73. The appellant has not asked this court to consider whether that procedure ought now to be followed, as to which see *R v Rodgers* [2017] 1 WLR 481.

20. It is clear from Dr Hill's report that there is no basis for reducing the appellant's level of culpability because of a mental disorder linked to the commission of the offence. A central problem in this case was the appellant's abuse of alcohol and drugs.

### Ground 2

21. The harm in this offending fell squarely within category 2 as grave harm. There is no basis for saying that it tended towards category 3.

### Ground 3

22. We have considered the definitive guideline "Sentencing Offenders with Mental Disorders, Developmental Disorders or Neurological Impairments". Having rejected the suggestion that a mental disorder was linked to the commission of the offence, the issue under paragraph 22 of the guideline is whether the sentence should have been reduced because a custodial sentence could weigh more heavily upon the appellant because of the

disorder and/or custody could exacerbate the effects of any impairment or disorder.

23. However, in this case there is no firm diagnosis of a mental disorder; nor is there any evidence falling within paragraph 22 of the guideline. Plainly, there were features, namely the consumption of alcohol and cocaine, as well as the previous convictions, which significantly aggravated the offence. The judge's decision that that uplift was counterbalanced by personal mitigation amply took into account the issues of low mood and suicidal thoughts, to which Dr Hill referred.

#### Other Matters

24. The judge's decision to allow 25 per cent credit for the guilty plea does appear to have been generous. Dr Hill's report was produced in July 2022. The guilty plea was not entered until November 2022. The judge leaned further in the appellant's favour when he arrived at a term of five years' imprisonment, when the credit allowed pointed to a sentence of five years and three months' imprisonment. This only serves to reinforce the conclusion we have already reached, that the custodial term of five years was not excessive, let alone manifestly excessive.

25. The appellant has not challenged the finding of dangerousness, nor the decision to impose an extended sentence, with an extended licence period of two years. We entirely agree with those conclusions.

26. Accordingly, for these reasons we dismiss the appeal.

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