

IN THE COURT OF APPEAL  
CRIMINAL DIVISION

[2023] EWCA Crim 899



No. 202301900 A3

Royal Courts of Justice

Friday, 30 June 2023

Before:

LORD JUSTICE WILLIAM DAVIS  
MR JUSTICE BRYAN  
HIS HONOUR JUDGE SLOAN KC  
(Recorder of Newcastle)

REX  
V  
ALEX BORSODI

---

Computer-aided Transcript prepared from the Stenographic Notes of  
Opus 2 International Ltd.  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
[CACD.ACO@opus2.digital](mailto:CACD.ACO@opus2.digital)

---

MR P WILLIAMSON appeared on behalf of the Appellant.

---

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

MR JUSTICE BRYAN:

- 1 On 18 May 2023, having pleaded guilty before the Chester Magistrates' Court, the applicant was committed for sentence pursuant to s.14 of the Sentencing Act 2020 in respect of the offence identified below and on the same date, in the Crown Court at Chester (Mr Recorder Ainsworth), the applicant, then aged 28, was sentenced in respect of an offence of intentional strangulation contrary to s.75A(1)(a) of the Serious Crime Act 2015 and was sentenced to 10 months' immediate imprisonment.
- 2 The applicant's application for leave to appeal against sentence has been referred to the full court by the Registrar. The grounds of appeal are that the Learned Judge erred in principle in his approach to sentencing by reference to the case of *Cook (Alfie)* [2023] EWCA Crim 452 and had he not done so, he would, and should, have suspended the sentence that he passed.
- 3 Immediately as we were about to commence the hearing, counsel for the applicant indicated that he wished to abandon the appeal in circumstances where he was no longer with his partner and has applied to be voluntarily deported from this country.
- 4 The grounds of the appeal raise a point of principle which we consider requires addressing and, given the timing of the application, we did not accede to the application and have proceeded to hear the application.
- 5 Turning to the facts. On Sunday 19 June 2022, the applicant and the complainant, his partner Katrin Didova, attended a birthday celebration at Ms Didova's sister's address. During the evening whilst at the party, the applicant became heavily intoxicated, having been provided with alcohol (vodka) by family members. Ms Didova described this being unlike the applicant. They returned to their home address in Crewe by taxi at around 9.30 p.m. When the taxi dropped them off, a neighbour, Ms Leyshon, heard the applicant shouting. His voice became increasingly aggressive and Ms Leyshon heard a female becoming more and more distressed.

- 6 Ms Leyshon went into her garden, which afforded her a view of the applicant's kitchen, to see if she could see what was happening. She could still hear the applicant shouting and she looked over the fence and could see into the kitchen. She saw that Ms Didova was holding her baby in one arm and the applicant was gripping her round the throat using one hand to push her. Ms Leyshon estimated this lasted for about 30 seconds. The applicant was bare chested and described as very aggressive. Ms Leyshon shouted over at the applicant several times to release her. He did this and went to the close the window. At this point, Ms Didova ran out of the property with her two children. Ms Leyshon caught up with her and invited her into her home. Ms Leyshon noted that Ms Didova was very distressed, was crying and had reddening to her neck and had blood around her mouth.
- 7 Ms Didova and the children returned to Ms Leyshon's address and the police were called. The police attended at around 11.30 p.m. and arrested the applicant. He was shouting aggressively. Ms Didova confirmed to officers that the applicant had been physically aggressive and had grabbed her throat. Her injuries were photographed and the photographs were before the Learned Judge and this court. Ms Didova did not provide a written statement of complaint then or later.
- 8 The applicant was arrested and thereafter interviewed the following morning in the presence of his solicitor. He declined to comment on the questions put to him, however he subsequently pleaded guilty in the Magistrates' Court and was afforded full credit for his plea.
- 9 The Learned Judge rightly acknowledged that it was a difficult sentencing exercise and he stated that it was one which placed the court in something of a dilemma with the fact that there was significant mitigation. The strangulation was short lived. The applicant had desisted from it of his own volition. He pleaded guilty at the first opportunity. As was clear from the pre-sentence report which recommended a Community Order or suspended custodial sentence, the applicant had demonstrated remorse for what had happened that night. The applicant had no previous convictions. He had a strong work ethic and he provided financially for his partner and their two children. They had been together for eight years. There had been no previous incidents of physical violence. They were at that time reconciled and Ms Didova was pregnant with their third child and was due to give birth the following month.

- 10 He identified that there were however aggravating factors. At the time the offence was committed, the applicant was very much in drink. At least one of their two children was actually present at the time whilst the applicant was intentionally strangling his partner who was holding their baby daughter and the attack took place in Ms Didova's home where she was entitled to feel secure.
- 11 In the absence of sentencing guidelines applicable to the offence itself, the Learned Judge rightly had regard to the guidance given by the Court of Appeal Criminal Division in *Cook (Alfie)* that had recently been handed down on 4 April 2023 and which offers valuable guidance in respect of offences such as the present.
- 12 In particular, he referred to para.16 to 18 thereof. It is convenient to set out those paragraphs in full at this point:

**"16. In view of the inherent conduct required to establish this offence a custodial sentence will be appropriate, save in exceptional circumstances. We consider that ordinarily that sentence will be one of immediate custody.** The starting point will be 18 months' custody. In this instance the offender was a man, and the victim was a woman. As we have noted, the offence is much more often committed by a man against a woman, however the starting point will be the same irrespective of the gender of the perpetrator. The starting point may be increased by reference to the following factors, this list not being exhaustive:

- (i) History of previous violence. The significance of the history will be greater when the previous violence has involved strangulation.
- (ii) Presence of a child or children.
- (iii) Attack carried out in the victim's home.
- (iv) Sustained or repeated strangulation.
- (v) Use of a ligature or equivalent.
- (vi) Abuse of power.
- (vii) Offender under influence of drink or drugs.
- (viii) Offence on licence.
- (ix) Vulnerable victim.
- (x) Steps taken to prevent the victim reporting an incident.
- (xi) Steps taken to prevent the victim obtaining assistance.

Statutory aggravating factors will apply:

- (a) Previous convictions, having regard to (a) the nature of the offence to which the conviction relates, and its relevance to the current offence; and (b) the time that has elapsed since the conviction.
- (b) Offence committed whilst on bail.
- (c) Offence motivated by or demonstrating hostility based on any of the following characteristics, or presumed characteristics of the victim, disability, sexual orientation, or trans gender identity.

17. The Sentencing Council overarching principles in relation to domestic abuse are likely to be relevant when sentencing for the offence of intentional strangulation. As the guideline makes clear, domestic abuse offences are to be regarded as particularly serious. The aggravating factors at paragraph 11 of the overarching principles will apply in every case of domestic abuse. As set out at paragraph 13 of that guideline: "Provocation is no mitigation to an offence within a domestic context, except in rare circumstances." Mitigating factors will include:

- (i) Good character.
- (ii) Age and immaturity.
- (iii) Remorse.
- (iv) Mental disorder.
- (v) Genuine recognition of the need for change and evidence of the offender having sought appropriate help and assistance.
- (vi) Very short lived strangulation from which the offender voluntarily desisted.

Again, this list is not exhaustive.

18. Finally, since this offence does not have a specific sentencing guideline, the Sentencing Council Overarching Principles' Guideline will apply. The aggravating and mitigating factors which we have identified as being relevant to this offence are drawn substantially from that overarching guideline. When sentencing for this offence, reference must be made to the guideline to check if a particular factor applies given the circumstances of the case in question."

[emphasis added]

- 13 It is clear that the Learned Judge had particular regard to the opening sentences of paragraph [16] that:

"In view of the inherent conduct required to establish this offence a custodial sentence will be appropriate, save in exceptional circumstances. We consider that ordinarily that sentence will be one of immediate custody."

- 14 It is also clear that his interpretation of what was being said in these sentences was the reason why he considered that an immediate custodial sentence was needed. In this regard he stated at 5C - F of his Sentencing Remarks:

"This is a difficult sentencing exercise. This places the court in something of a dilemma because the situation is clear from the report, you are reconciled with your partner and whilst you have two children at present your partner is pregnant and is due to give birth next month. I have taken into account all that has been said on your behalf by Mr. Williamson, I have taken account of all I have read in the pre-sentence report **but I see nothing exceptional about this case.** There is nothing about this case that would cause me to impose a suspended sentence order.

I of course have been referred to the imposition guidelines and I acknowledge that there is a prospect of rehabilitation but it seems to me that the words of the Court of Appeal in paragraph 16 'We consider that ordinarily that sentence will be one of immediate custody' is effectively saying that appropriate punishment can only be attained in a case of this nature save in exceptional circumstances with the imposition of an immediate sentence of imprisonment. As I have already said, there is nothing exceptional about this case. It is a very sad case and the impact of any sentence of imprisonment will be significant because it means you will miss the birth of your third child as you serve your first sentence of imprisonment. Nevertheless, that is the duty of the court."

[emphasis added]

- 15 It was in such circumstances that the Learned Judge imposed an immediate custodial sentence of 10 months' immediate imprisonment (15 months' imprisonment before full credit for guilty plea). Rightly, no complaint is made as to the length of the custodial sentence.
- 16 The grounds of appeal are that it is clear that the Learned Judge misinterpreted the first two sentences of [16] in *Cook* by conflating the first two sentences of that paragraph with the result that he understood that it was being suggested that appropriate punishment could only be obtained in a case of this nature, save in exceptional circumstances, with the imposition of an immediate sentence of imprisonment and had then concluded that these were not exceptional circumstances. It is submitted that if this error had not been made and having regard to the aggravating and mitigating features and the application of the factors identified in the Sentencing Guideline on the Imposition of Community and Custodial Penalties, in particular the prospect of rehabilitation and the impact on Ms Didova and their children of the applicant's incarceration, the sentence should have been and would have been suspended

and in not doing so the Learned Judge erred in principle that the consequence of the sentence passed was manifestly excessive.

17 We grant permission. We are in no doubt that the Learned Judge did misinterpret the first two sentences of [16] in *Cook*. The first sentence makes clear that in view of the inherent conduct required to establish this offence a custodial sentence will be appropriate, save in exceptional circumstances, and such a custodial sentence may be immediate or, in appropriate cases, may be suspended. The second sentence makes clear that:

"Ordinarily the sentence will be one of immediate custody".

"Ordinarily" is not to be equated with "exceptional circumstances", which is where the Learned Judge fell into error.

18 If the Learned Judge had understood this distinction, we are in no doubt that having regard to the aggravating and mitigating features of the applicant's offending and applying the relevant guidelines, including the Sentencing Council's Overarching Principles Guideline, the Overarching Principles in Relation to Domestic Abuse and the Sentencing Guideline for the Imposition of Community and Custodial Penalties, the Learned Judge would, as the circumstances then existed, have imposed a suspended sentence on the particular facts of this case, as they then existed.

19 However, as the circumstances now exist, a suspended sentence would no longer be appropriate, given the fact that the applicant is in the process of being voluntarily deported and would not be in a position to comply with the conditions that we consider would be necessary to be imposed.

20 Accordingly, we dismiss the appeal.