IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202303556/A3

ON APPEAL FROM THE CROWN COURT AT PORTSMOUTH

HHJ Ashworth

[2024] EWCA Crim 108

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 26 January 2024

Before:

LORD JUSTICE WARBY
MR JUSTICE ANDREW BAKER
THE RECORDER OF CARDIFF
HER HONOUR JUDGE TRACEY LLOYD-CLARKE
(Sitting as a Judge of the CACD)

REX
V
MARTIN ADAMS

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR D SAWYER appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

1. This is an appeal against sentence by Martin Adams, now aged 54.

2. On 29 September 2023 in the Crown Court at Portsmouth, he was sentenced by His Honour Judge Ashworth to 27 months' imprisonment for having an offensive weapon, contrary to section 1(1) of the Prevention of Crime Act 1953. He had pleaded guilty to that offence at an earlier hearing on 25 July 2023.

3. The charge stemmed from an incident in a pub in Fareham on Sunday 24 October 2021. At around 5.40 pm the appellant and another male had an argument. There was a suggestion that this involved the appellant assaulting the other male but no charge was laid in respect of that. The male left but returned to the venue a short while later, where a further altercation took place. Things spilled out into the street. At some point the appellant smashed a wine glass on the table and followed the other male outside holding the broken stem of the glass and intent on using it to attack or at least to threaten the other man.

4. Police community support officers nearby saw the appellant and he was captured on body-worn video holding the stem of the shattered glass in his hand. The officers walked towards the appellant who was seen to throw the broken glass away. He then left the scene. He was however traced via town centre CCTV. A search of the alleyway in which he had been seen did not yield the thrown away glass. The appellant was traced to a bus station where he was arrested. He was heavily intoxicated and angry and declined to give

his details or a statement.

5. At the plea and trial preparation hearing he pleaded not guilty. He later served a defence statement denying that he had been in possession of the wine glass. He changed his plea to guilty on the day fixed for his trial which was the first time that he saw his counsel and body-worn footage which clearly showed him holding the shattered glass.

6. The appellant had a very poor record, with nine convictions for 13 offences between 1987 and 2018. A closer look shows that the earliest of these were committed in a 10-year spell between 1987 and 1997 when the appellant was between about 17 and 27 years of age. His first conviction was for possessing an offensive weapon in January 1987, aged 17, for which he received a fine. He was then convicted at the age of 18 of assault occasioning actual bodily harm for which he received a community order. The following year he was fined for threatening behaviour. In 1989 he received a community order for affray. In 1990 he was fined for driving offences and assault on a police officer and on a separate occasion for criminal damage. In 1997 he received a community order for a further offence of affray.

7. There was then a gap of over a decade followed by the previous offending that is most significant today. In 2011 the appellant was convicted of attempted murder. He had tried to kill his then partner of four years on the grounds of infidelity, inflicting 15 stab wounds. The offence was committed in the presence of the victim's son who was then aged five. On 15 December 2011 the appellant was sentenced to 10 years' imprisonment.

8. He was released from custody in July 2016. On 18 June 2018 (still on licence) he committed an offence of inflicting grievous bodily harm, contrary to section 20 of the Offences Against the Person Act 1861. This was an attack on his then partner's son. The appellant had been drinking at a pub with his partner at the time. Later he met her son for the first time. It was said that he reacted badly to a joke and so went home. The partner and her son went to his address to check that he was okay, whereupon the appellant opened the door holding a knife and launched himself at the victim, stabbing him once in the hand and once in the back. The assault moved inside the flat and the appellant further assaulted the victim by punching and headbutting him. The victim was a child at the time.

9. The appellant was arrested and recalled to custody for breach of his licence conditions. On 22 October 2018, in the Crown Court at Portsmouth, he was sentenced to 32 months' imprisonment for the section 20 offence. He also had to serve the remainder of the 10-year sentence imposed in December 2011.

10. He was released from custody on 16 July 2021, some three months before the offence with which we are now concerned.

11. The pre-sentence report assessed the offences in the decade from 1987 to 1997 as irrelevant to the appellant's current risk and the sentencing judge took a similar approach judging by his remarks. The report did note however that these offences were violent in nature and that the appellant reported being a "football hooligan" at that time. The attempted murder was however said in the pre-sentence report to show "excessive

violence" and was cited as evidence of the appellant's inability to manage conflict “in the context of a relationship”. The 2018 offence of inflicting grievous bodily harm was described. The index offending was said to follow a pattern of offending that was similar to the offending of 2011 and 2018, though on a less serious scale, exhibiting the use of violence and weapons as a way of managing conflict.

12. The pre-sentence report identified problem factors as the appellant's poor management of emotions, his tendency to use violence to manage conflict, his use of alcohol and the associated lack of inhibition, his failure to recognise this as a problem, and deficits in his thinking skills, including his failure to acknowledge responsibility for the index offence for which he blamed the victim.

13. The appellant was assessed as posing a medium risk of serious harm to the victim, to partners and to children, specifically those of future partners. They would be at risk of witnessing or experiencing violence at his hands. His response to recall had been poor and the probation officer doubted his professed willingness now to engage with the Probation Service. But, the officer reported, he was not currently in contact with children. He was working in the building trade, and able to pay a financial penalty. He would lose his employment if given a custodial sentence. A rehabilitation activity requirement would improve his thinking skills.

14. There was some limited mitigation in the form of a reference from the appellant’s employer and some personal mitigation involving his caring responsibilities for older siblings.

15. The report proposed a 24-month community order with a prohibited activity requirement that he not contact the victim or enter the Ironmaster pub; up to 20 hours of rehabilitation activity requirements to support what was described as "desistance"; and unpaid work for between 150 and 300 hours. Realistically, defence counsel did not rely on that proposal at the sentencing hearing but argued that the inevitable custodial sentence should be suspended.

16. The sentencing judge assessed the offence as involving guideline category B culpability because the broken glass was possessed to threaten, at the very least, and harm category 1 on the basis that there was a risk of serious disorder. This gave a starting point of nine months' custody with a range of six to 18 months.

17. The judge said however that there were "severe" aggravating features. He cited the previous convictions, the attempt to conceal the offending and the fact that the appellant was in drink at the time. Those factors were treated as meriting a sentence above and beyond the category range, taking it to the top of the range for Category A1 and thus attracting a notional sentence after trial of 30 months. Reducing this by 10 per cent to reflect the late guilty plea, the judge arrived at the sentence of 27 months that we have mentioned.

18. That being his conclusion no question of suspending the sentence arose.

19. On this appeal, Mr Sawyer, who has represented the appellant skilfully and concisely,

takes no issue with the judge's categorisation of the offence, although he did make submissions on that topic at the sentencing hearing. Nor does Mr Sawyer question the conclusion that a custodial sentence was appropriate. He accepts that the judge correctly identified the aggravating factors, although he does suggest that the judge may have overstated the position in respect of disposal of the broken glass. The essential ground of appeal is however that the judge increased the sentence much further than was required or justified by the aggravating factors, with the result that the sentence was manifestly excessive. It is submitted that the sentence before reduction for plea should not have exceeded the top of the category range and that in any event the final sentence should not have exceeded 24 months, so that consideration should have been given to suspending its operation.

20. In our judgment the concession that this offending crossed the custody threshold is rightly made. There is no room for doubt about that. The judge's categorisation was plainly not too high. We floated in the course of argument today with Mr Sawyer whether the offence itself could have been placed in culpability Category 1. The shattered stem of a wine glass is certainly a dangerous weapon. It might be argued that it is similar to a bladed article which would place the case in that category. Ultimately however Mr Sawyer has persuaded us that that would be a mistaken categorisation. Nonetheless, in our judgment the facts of this offence would have justified the judge in placing the starting point towards the top of the range for category B1.

21. The aggravating factors were, as the judge said, severe. That is particularly true of the convictions of 2011 and 2018 which were, in real terms, relatively recent and highly

relevant. Taking these together with the current offence and the evidence in the pre-sentence report a disturbing pattern emerged of a man with a persistent readiness to engage in serious violence, easily triggered when under the influence of alcohol. To our eyes, the older convictions tend to underscore that point. But even without regard to these, the aggravating features in combination undoubtedly merited a substantial upward adjustment from the appropriate starting point.

22. We are therefore satisfied that the judge was entitled to conclude that the matters he identified justified a notional sentence beyond the top of the range for Category B1. The guideline expressly contemplates that this may occur, and identifies recent relevant convictions as a particularly potent factor for that purpose.

23. The extent of such an increase is very much a matter for the discretionary judgment of the sentencer on the facts of an individual case. In the absence of any error of principle this court is unlikely to interfere unless it is satisfied that the judge's ultimate conclusion falls outside the range which was reasonably open to him. We have anxiously considered whether the judgment of this judge on these facts can be said to have resulted in a manifestly excessive sentence. We accept that the sentence was in a range that could be described as severe, but we have concluded that it is not properly characterised as manifestly excessive.

24. It follows that the question of suspension does not arise and this appeal is dismissed.

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

Lower Ground Floor, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk