NEUTRAL CITATION NO: [2024] EWCA Crim 1219

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Couts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT PRESTON
(MS RECORDER SIDDIQI) [04ZL1997023]

Case No 2024/02667/A2

Thursday 10 October 2024

B e f o r e:

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

MR JUSTICE MARTIN SPENCER

MRS JUSTICE CUTTS DBE

R E X

- v -

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Mr M Harries KC appeared on behalf of the Applicant

J U D G M E N T

Thursday 10 October 2024

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

MR JUSTICE MARTIN SPENCER:

1. The applicant renews her application for leave to appeal against a sentence of two years' imprisonment imposed by Miss Recorder Siddiqi in the Crown Court at Preston on 1 July 2024 for an offence of inflicting grievous bodily harm, contrary to section 20 of the Offences against the Person Act 1861. Leave to appeal was refused by the single judge.

2. The facts of this matter are as follows. Mrs Ghazala Bi Nasir (the complainant) lived next door to the applicant and her family in Richmond Road, Accrington, Lancashire. There had been ongoing issues and feuding between the two families for some years.

3. On Friday 12 May 2023, just after 8 pm, the complainant was at home watching television with her husband and younger son. She heard the sound of breaking glass and immediately ran downstairs and into the front garden. She noticed her front window had been damaged; there was a large hole through the glass. The complainant presumed that it must have been caused by the occupants next door.

4. The applicant was in her front garden which adjoined that of the complainant and was separated by only a hedge. There was an exchange of words between the complainant and the applicant's daughter. As the two families were engaged in an aggressive verbal exchange of words, the applicant picked up a plank of wood which, according to the complainant, had a nail sticking out of it (although this was not substantiated by the prosecution), and threw it over the hedge and at the complainant. The object hit the complainant in the eye, which

started to bleed heavily. She remained at the scene for a couple of minutes holding her eye. A short time later, with the help of one of her sons, she was taken back into the house as she was unable to see anything out of her eye at that point. The police were contacted, and the complainant eventually attended the Royal Blackburn Hospital and later Burnley General Hospital.

5. The complainant was assessed initially at the Royal Blackburn and noted to have sustained injury to the left eye. She had a laceration to the upper eyelid. The cornea showed a suspicious full thickness laceration with blood filling the anterior chamber. A computed tomography (CT) scan showed a fracture to the eye socket. The complainant underwent surgery. However, the outcome has been poor. A consultant ophthalmologist has confirmed that the complainant has been left with no perception of light in her left eye, meaning that she has sustained a complete loss of vision in her left eye as a result of the trauma.

6. The effect of this is reflected in the complainant's Victim Personal Statement. She describes being in severe pain for a number of months. She had to give up her work as a carer. She says that her husband lost his job to look after her and the children. She used to sew, but she is unable to do so now. She finds it difficult to read the Quran in the same way she used to. She is unable to go shopping or to do household chores, such as cooking. She says that her family have moved house, and this has caused challenges as she is not as close to her friends and family. She says that she feels lonely and depressed; she feels as if it would be better if she were dead; she feels her life has been destroyed.

7. Sentencing the applicant, the learned Recorder placed the offence within category B1 for the purposes of the sentencing guideline, which has a starting point of three years' custody and a sentencing range of two to four years. She considered that the aggravating and mitigating factors cancelled each other out, and she reduced the figure of three years to two

years to give credit for the guilty plea. We note in passing that the guilty plea had been at the stage of the plea and trial preparation hearing and therefore should have merited a reduction of only 25 per cent. No indication of a willingness to plead guilty to the lesser offence charged under section 20, as opposed to section 18, had been given at the Magistrates' Court. Therefore, as my Lord, the Vice President, has commented in the course of argument, the full one third reduction was wrong, according to the guideline. Be that as it may, that was the credit which was afforded to the applicant by the learned Recorder. The resulting sentence was one of two years' imprisonment.

8. As regards suspension of the sentence, the Recorder said this:

> "I have carefully considered the imposition guidelines in this case. I have to consider whether an immediate custodial sentence is inevitable given the seriousness of what you did on that day by picking up a wood which caused the injury that it caused. I consider that appropriate punishment can only be achieved by immediate custody."

9. In support of this renewed application, Mr Harries KC, for whose written and oral submissions we are very grateful, submits that although the overall categorisation of the offence as 1B cannot be challenged, there was one category C element, namely that this was an impulsive or spontaneous, short-lived assault, which should have led the Recorder to take a starting point lower down in the range than three years. He also argues, in effect, that the appellant's significant mitigation meant that the mitigating factors far outweighed the aggravating factor identified, namely that the offence was committed in the presence of a child or children, and so should again have reduced the starting point significantly.

10. The mitigating factors upon which Mr Harries relies are: first, the applicant's positive good character – and he refers to the character testimonials which were produced to the court;

the significant degree of provocation; the history of significant abuse towards the applicant from the complainant; and the applicant's difficult background and personal circumstances.

11. Additionally, it is submitted on behalf of the applicant that the learned Recorder was wrong in her conclusion that, pursuant to the imposition guideline, appropriate punishment could only be achieved by immediate custody. Mr Harries again refers to the category C factor of the short-lived, spontaneous, impulsive assault as being a factor reducing the need for punishment.

12. Whilst fully acknowledging the serious nature of the injury to the complainant's eye, Mr Harries submits that this has led the Recorder to pay insufficient weight to other factors referred to in the guideline. Thus, the applicant is of no risk or danger to the public; she has never been in trouble before; the need for rehabilitation is nil; her personal mitigation is strong; and she will be vulnerable in a custodial setting, which is exemplified by the fact that she is currently housed in a vulnerable offenders' wing of the prison. In expanding his submissions in that regard, Mr Harris has included a final element, namely the significant harmful impact on others. He has referred to the effect that the applicant's incarceration has had on members of her family, and in particular her daughter who is now no longer able to call upon her mother for help in looking after the 2 year old grandson, which has had an impact upon the daughter's employment.

13. Thus, it is submitted that in identifying the extent of punishment necessary, the learned Recorder failed to give any or sufficient consideration as to whether a suspended sentence of imprisonment, combined with a community order for unpaid work, might have sufficiently met the necessary punitive element. It is argued that the applicant's age, character, negligible likelihood of re-offending, obvious and genuine remorse, and her mental health fragility all weighed in favour of suspension. These are factors that can equally be taken into account on

this score as they can in relation to the length of sentence that was imposed.

14. In refusing leave to appeal, the single judge stated:

> "During a tense and unpleasant verbal confrontation between your family and your neighbours, between whom there was ongoing bad blood, you took up a length of wood to use as a weapon, and used it in an act of reckless violence that has effectively blinded your neighbour in one eye. Recorder Siddiqui was in my view correct to categorise your offence as 'B1' under the applicable Sentencing Council Guideline and to begin her consideration with the Guideline starting point for that Category. Your new counsel's suggestion that the short-lived nature of your violent action should have reduced the Category B1 starting point is not realistic. The calm and deliberate use, as a weapon, of an item capable of and in fact causing life-changing injury, selected from the materials available in your front yard, is the dominant feature of the case as regards culpability, putting it squarely in Category B. In my view, original counsel was correct to accept as much and cannot be criticised for doing so."

15. We would add to those observations the fact that the action of the applicant in taking up a weapon and using it to cause significant injury was the first act of violence in what, until then, had been verbal exchanges only. In a sense, it transformed the nature of the altercation between the two families.

16. The single judge went on:

> "The argument, next, that the custodial term, prior to discount for plea, should not have been three years, is no more than an attempt to re-plead the mitigation that was put before the Recorder. She judged that it balanced the aggravating factor she identified. There is no error of principle in that, and it cannot arguably be said to have been an unreasonable view to take. In any event, the final custodial term of two years, after a generous application of full credit for a plea at the PTPH, is not arguably excessive for this offence."

We agree with the observations of the learned single judge about the length of sentence.

17. Turning to the question of suspension, the single judge said this:

> "That leaves only the argument that Recorder Siddiqui was wrong not to suspend sentence. Under the Imposition Guideline, an assessment that only immediate custody will appropriately punish the offence in question may properly be sufficient reason to decline to suspend. That was the Recorder's assessment here, and I do not think it arguable that that was an unreasonable assessment. I see no reason to infer that the Recorder failed to have in mind the matters now emphasised by your new counsel, all of which were before the Recorder when sentencing. I do not think it arguable that the Recorder, who said she had considered the Imposition Guideline carefully, did not really do so, or misapplied it when doing so.
>
> For those reasons, … in my view the sentence of immediate imprisonment in fact imposed was not arguably wrong in principle or manifestly excessive. I have therefore refused leave to appeal."

18. Despite Mr Harries' powerful and eloquent submissions, we have come to the conclusion that the single judge was right in what he said also about suspension of the sentence. Leave will only be given either where it is arguable that the sentence was manifestly excessive or where the sentencing judge has erred in principle.

19. For this offence, which caused the complainant's devastating injury, a sentence of two years imprisonment cannot be described as manifestly excessive, even after the full one third discount for the guilty plea has been applied. We cannot see that the Recorder was obliged to suspend the sentence, or that, in failing to do so, she erred in principle in some way.

20. Accordingly, for those reasons, this renewed application for leave to appeal against sentence is refused.

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

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