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Neutral Citation No. [2024] EWCA Crim 1512



IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT STAFFORD

HIS HONOUR JUDGE EDWARDS

CASE NO 202403742/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 29 November 2024

Before:

LORD JUSTICE DINGEMANS
MR JUSTICE BRIGHT
THE RECORDER OF BRISTOL
HIS HONOUR JUDGE BLAIR KC
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX
V
MARTIN JOHN COOPER

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MR F HOOKWAY appeared on behalf of the Attorney General
MR S WORLOCK appeared on behalf of the Offender

J U D G M E N T
(Approved)

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an application by His Majesty's Solicitor General for leave to refer a sentence which the Solicitor General considers to be unduly lenient. The respondent Mr Cooper was sentenced in the Crown Court at Stafford on 20 September 2024 for two counts of controlling or coercive behaviour in an intimate or family relationship, contrary to section 76 of the Serious Crime Act 2015. He was sentenced to 18 months' community order with the following requirements: 85 hours unpaid work, 15 days rehabilitation activity requirement and 65 days Building Better Relationships.
2. Mr Cooper was born on 6 April 1986 and is now aged 38 years. Between August 2019 and June 2021 he was in a relationship with the victim. There was a time when the two were separated between February to October 2020. During this break they continued to see one another, save for approximately two months from July 2020 where the victim blocked contact and resided in a caravan in the Blackpool area. Across their relationship the victim said she was the subject of violence, aggression and control and this was reflected in two counts of controlling and coercive behaviour. The first count spanned the period 1 November 2019 to 28 February 2020 and the second count 24 February 2020 to 21 July 2021.
3. Police had visited the victim on 19 July 2021 and took an account of the abuse she said she had suffered at the hands of Mr Cooper and while the police were present Mr Cooper attempted to ring the victim repeatedly. The police noted that the victim was nervous and worried. They also saw a text message that said that if the victim did not text back soon Mr Cooper would get a bus to her address which caused further distress.
4. On 23 July there was a video call between the two. Mr Cooper threatened to break into

her home saying that she would wake at five and see him at the end of the bed. In the event the matter was reported again to the police and Mr Cooper was arrested at 03.10 hours on 24 July 2021.

5. He was interviewed under caution on 24 July. He answered no comment to all questions that were asked of him.
6. He was released on police bail. He contacted the victim's grandmother and sent two messages saying was it possible to speak to the victim, "you're more than welcome to say no, just feel it's best to explain even if I have no proper excuse" and the second read "sorry". He appeared before Cannock Magistrates' Court on 16 June 2022. He was charged with one offence of controlling and coercive behaviour and one offence of assault occasioning actual bodily harm. His case was sent to Southwark Crown Court. The pretrial preliminary hearing took place on 26 July 2022. Mr Cooper was arraigned. He pleaded guilty to counts 1 and 2 (coercive and controlling behaviour) and pleaded not guilty to counts 3, 4 and 5 (which were specific counts of assault occasioning actual bodily harm). It was indicated a written basis of plea would be served which denied any violence.
7. The basis of plea was served on 27 July. It is not necessary to go into the details of it because that was not accepted by the prosecution. This was because some of the more serious elements of violence were not accepted. The case was then fixed for trial in the warned list for the week commencing 19 June 2023, so over a year later. In fact because of further delays that occurred the case was eventually listed for trial on 25 June 2024. The victim attended court and following discussion at court an amended basis of plea was served on behalf of Mr Cooper. We will read that out in full because the first point on this Reference is whether or not the judge ignored the wider basis on which the case had

been brought. It said:

"(1) The Defendant was in an intense and passionate relationship with [the victim] for about 18 months between 2019 and late 2020. In June 2021 they finally split up having reconciled several times (usually after sexual activity). This left their differences essentially unresolved.

(2) None of the Aggravating Factors ... apply in this case.

(3) In August 2020 [the victim] and the Defendant separated and he started another relationship. In November 2020 [the victim] unblocked the Defendant as she was upset that he had started another relationship and she wanted him to return so he did.

(4) Both had children from other relationships (he has 2 daughters) and previous sexual partners which caused some tension between them which surfaced from time to time. The growing uncertainty about existing relationships undermined their own relationship.

(5) Excessive and uneven use of alcohol featured within their relationship and added to their instability. The Defendant accepts for his part this sometimes caused him to lose perspective as to the impact of his own actions and behaviour.

(6) There were mutual accusations relating to relationships with others. During such rows telephones were checked by each of them for WhatsApp messages and social media, both furtively and sometimes forcefully. During this, pushing and shoving occurred when bruising may well have been caused to [the victim] and vice versa. The Defendant accepts responsibility for his actions.

(7) With hindsight the Defendant agree they failed to maintain clear boundaries of trust and behaviour within their relationship which allowed the relationship to spiral out of control.

(8) The Defendant has been in a happy and trusting relationship for the past 3 years without mishap with [his new partner] while awaiting trial.

(9) The Defendant accepts that the injuries shown in the photographs produced are more likely than not to have occurred during the pushing and shoving referred to below.

(10) The Defendant accepts he will be subject to a Restraining

Order albeit that more than 3 years has elapsed since separation.

Specific concessions

(11) Count 1: (limited to 1/11/19 to 28/2/20): The Defendant accepts his behaviour went too far and amounts to Controlling and Coercive behaviour which must have frightened [the victim]. In particular

(i) He accepts on 2 November 2019 his actions broke [the victim's] glasses. It was a petulant instantaneous reaction to seeing [the victim's] behaviour in kissing a former partner. The glasses were broken and although [the victim] was not physically harmed this would have been frightening to [the victim] (and should have been a lesson to them both).

(ii) Similarly 2 months later on 3rd January 2020 another row erupted due to jealousy in checking [the victim's] mobile phone and he used some degree of force which he accepts was wrong and could well have caused injury.

(iii) A month later they rowed in the Greyhound PH after he saw [the victim] dancing with another man and he overreacted grabbing her wrists using force and he was ejected by door staff. Again minor injury may have been caused.

(iv) The Defendant accepts from time to time he used intemperate language and made threats and although he never intended that they would be carried out, this added to the instability of their relationship.

(12) Count 2: The Defendant accepts his behaviour amounts to Controlling and Coercive behaviour which must have frightened [the victim]. In particular this was again fuelled by unwise use of alcohol which led to several protracted arguments centring on their responsibilities to their own children against their commitment to each other.

In particular:

(i) On 27th May 2021 he made threats to [the victim] which included:

- (a) Threats to kick in her door (sufficient to cause her to be apprehensive although never intended)
- (b) Threats of serious violence were made (sufficient to cause her to be apprehensive albeit none was intended)

(ii) He threw a fan downstairs on 16/6/21 causing it to break after [the victim] slapped him. There was physical struggling between them and bruising resulted.

(iii) On 24/6/21 the Defendant accepts they rowed about sex while on holiday in Blackpool and intemperate language was used and there was physical struggling between them and bruising resulted.

(iv) On 17/7/21 the Defendant and [the victim] were drinking and rowed and he over-reacted by damaging a cupboard door.

(13) Counts 1 and 2 are essentially omnibus offences conceding a pattern of coercive and controlling behaviour over a period of time which includes specific incidents but does not require unnecessary duplication of charges as set out in Counts 3, 4 and 5."

The sentencing

8. There was no victim personal statement. There was a pre-sentence report which showed that Mr Cooper had been in a new relationship for three years while awaiting the determination of these court proceedings. The report noted that in the event of a custodial sentence Mr Cooper would lose his accommodation and have no video contact with his children. The report went on to note that if the court considered a community order the writer considered that Mr Cooper's risk could be managed within an 18-month community order.
9. It was common ground at the sentencing hearing that this was a 1B offence for the purposes of the offence-specific guideline, which has a one year starting point and a range of 26 weeks to two years six months.
10. The judge's sentencing remarks took the form of a conversation with the defendant with the judge pointing out various failures on the defendant's part which the defendant accepted, and then concluded with the imposition of the community order that had been at least contemplated in the pre-sentence report. It is not apparent what the judge did in relation to categorisation, discount for plea, or issues of mitigation.

The respective cases

11. It is submitted on behalf of the Solicitor General that: (1) insufficient regard was had to the wider facts which raises a point on the basis of plea; (2) that the starting point of 1B should have been towards the higher end, the judge was wrong to treat the pleas as entered at the first opportunity; and (3) the custodial threshold was crossed so the community order failed to reflect the seriousness and the sentence should not have been suspended. Reference was made to guidelines on suspension and the decision in *R v Katira* [2020] EWCA Crim 89, it being recognised that that was a fact-specific case.

12. On behalf of Mr Cooper, it is submitted that the judge had regard to the proper issues.

There was no basis for going behind the basis of plea, which was agreed. As so far as the starting point was concerned the judge correctly categorised it. The pleas were entered when they were and some discount would have been justified from that period to take account of the fact that there was a dispute about the basis of plea. It was accepted that the custodial threshold was crossed but any sentence should have been suspended given the period of time during which Mr Cooper had not re-offended.

The proper sentence

13. We grant leave for the Reference. So far as the first issue is concerned and the basis of plea, the Court of Appeal in *R v Underwood and others* [2004] EWCA Crim 2256; [2005] 1 Cr.App.R 13 set out the basis on which pleas could be proffered and agreed and accepted by the court. Once a basis of plea has been signed both by the prosecution and the defence and accepted by the judge, as was the case in this case, then in our judgment it is not permissible to go behind it. We understand why the prosecution might have pointed to other factors which do not appear to have been dealt with in the basis of plea, but this was a basis of plea which the judge said was comprehensive of the criminality before him, and agreed by the parties.

14. We note the submission that the basis of plea refers “in particular” to certain incidents, suggesting that other matters might be accepted, but that was not the basis that the judge understood the document. Indeed that construction is contra-indicated by the wording "specific concessions" above count 1, suggesting that that was conceded, and nothing else.
15. We also have regard to the guidance set out in Archbold 2025 at paragraph 7-445 which is to the effect that the Court of Appeal will consider a Reference on the basis of the facts proved or admitted. This court will not constitute itself as a court of first instance inquiring into facts which have not been pursued or proved in the Crown Court. There is a good reason for that: a person can only be fairly sentenced for matters which have either been admitted by him by a plea of guilty or proved against him. So the first ground fails.
16. So far as the second ground is concerned, in our judgment it is right that the two separate features in this case of two counts and the offending disclosed by the basis of plea meant that there was a one year starting point for both offences. It is right those sentences would have been concurrent, but there had to be an uplift to reflect the second count and also an uplift to reflect the elements fairly identified on behalf of the Solicitor General. It is also right there was some mitigation in the sense that there had been a period of three years in which Mr Cooper had not offended, and importantly the fact that he had also offered pleas at an earlier stage. The 25 per cent discount for plea that he would have otherwise been entitled to had to be reduced to take account of the fact that there was a dispute about the basis of plea and the matter was listed for trial.
17. Doing the best that we can, we consider that reflecting the aggravating and mitigating features and the discount for plea, the sentence should really have been a custodial

sentence of some 15 months. In respect of the submission that the custodial threshold was crossed, so the community order failed to reflect the seriousness of the offending, we accept that submission.

18. As to the third ground, we do not however accept the submission that the sentence should not have been suspended. Reference was made to the overarching guideline in relation to custodial sentences and community orders and factors indicating that this should not be suspended were said to be appropriate punishment could only be provided by the imposition of immediate custody and reference was made to *Katira*, but that was a specific case on a specific facts. There is nothing in the guideline to suggest that domestic violence, however serious it is, and it is serious, will always result in an immediate custodial sentence.
19. Reference was made to the risk to the public, but the report writer had identified that the risks could be protected by the community order itself. Factors on the other side were the fact that Mr Cooper had stayed out of trouble for three years, he had only just started contact in person with his children, and a custodial sentence would have affected that.
20. In those circumstances, in our judgment, a proper sentence for this offender would have been a sentence of 15 months' imprisonment suspended for 18 months on the same terms as the community order, namely an 18-month community order with requirements of 85 hours unpaid work, 15 days rehabilitation activity requirements and 65 days Building Better Relationships. To that extent the Reference shows that this was an unduly lenient sentence. We have, however, a discretion whether or not to increase the sentence in circumstances where the practical effect is going to be minimal and in circumstances where Mr Cooper is making progress on his probation order as appears from the information that we have in the report or letter and email dated 24 October 2024 from

Tracey Coggins. We will exercise our discretion not to increase this unduly lenient sentence and will leave it with the community order as it was, but for the reasons we have already given, we have granted leave for the Reference.

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

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