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IN THE COURT OF APPEAL
CRIMINAL DIVISION
Case No: 2024/00371/A2
NCN: [2024] EWCA Crim 336



Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 20th March 2024

B e f o r e:

LADY JUSTICE MACUR DBE

MR JUSTICE HOLGATE

HIS HONOUR JUDGE PATRICK FIELD
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

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Computer Aided Transcription 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 N Spasojevic appeared on behalf of the Appellant

J U D G M E N T

Wednesday 20th March 2024

LADY JUSTICE MACUR: I shall ask Mr Justice Holgate to give the judgment of the court.

MR JUSTICE HOLGATE:

1. On 2nd January 2024, in the Crown Court at Cambridge before His Honour Judge Enright, the appellant pleaded guilty on re-arraignment to aggravated vehicle taking (count 2), and also pleaded guilty to three counts of common assault (counts 4, 5, and 6), which were added on that date. On 3rd January 2024, he was sentenced by the same judge to an overall term of imprisonment of 21 months, comprising 15 months on count 2, and consecutive terms of two months on each of counts 4, 5 and 6. The judge disqualified the appellant from driving for a total period of 34 months (comprising a discretionary period of 24 months and an extension period of 10 months), and imposed a restraining order for five years. The appellant now appeals against sentence with the leave of the single judge.

2. We summarise the facts.

Count 2

3. The appellant was in a relationship with Lilian Hill for about two and a half years. On 3rd June 2023 they had already separated, but agreed to meet at a hotel in order to discuss the possibility of the appellant remaining in contact with Miss Hill's youngest child. After an argument with Miss Hill, the appellant, who had been drinking, became aggressive. She felt uncomfortable and left the hotel. She had travelled there in the disability car belonging to her mother, Helen Synnott, which she had full permission to use. It was a Toyota Yaris, valued at about £11,000, but which had been modified as a disability vehicle. Miss Hill left the vehicle at the hotel as she too had consumed alcohol. She travelled home by taxi.

4. After Ms Hill arrived home, she discovered that the appellant had taken the Toyota and had driven it from the hotel. The vehicle was returned to her driveway at around 2 am. It had been involved in a collision with another car. The damage to the vehicle was so substantial that it had to be written off. The appellant accepted causing the damage. Miss Hill reported the damaged vehicle to the police. When she did so, she also provided a detailed statement outlining the background of her relationship with the appellant, the breakdown of that relationship and three physical assaults upon her.

Count 4

5. The appellant and Miss Hill married on 8th June 2021. The appellant had been drinking throughout the day and, when the couple went to their room, he started a jealous argument over her previous sexual relationships. Miss Hill tried to leave. The appellant grabbed her by her hair and dragged her to the floor. Miss Hill's hair came out in clumps and she had a severe headache. As she stood up, the appellant pushed her down onto the bed and choked her tightly around the neck so that she could barely breathe. She was able to pull the appellant's hands off and escape.

Count 5

6. In January 2023, the appellant was about to smoke a cannabis joint when Miss Hill confronted him about that, resulting in an argument. The appellant lit the joint, smoked some of it and then put it out on Miss Hill's arm, causing a burn.

Count 6

7. In February 2023, the appellant and Miss Hill were watching television with her children. Later, when she went up to the bedroom, the appellant was already in bed. She turned the television on, in order to help her to get to sleep, at which point the appellant leapt up and

knocked the television onto the floor, causing it to smash. That alerted Miss Hill's two eldest children to run in. The appellant was pulling Miss Hill by her hair. The children asked him to stop. He went downstairs and sat in a car outside. That was the last time that Miss Hill saw the appellant before the offence of aggravated vehicle taking.

8. The appellant was aged 41 when he was sentenced,. He had 27 convictions for 63 offences between May 1999 and March 2022. There were no previous driving offences, but there were a significant number of offences involving domestic violence and breaches of non-molestation orders.

9. There was no pre-sentence report in this case. We consider that the judge would have been well-advised to have ordered one. However, for the purposes of section 33 of the Sentencing Act 2020, we have concluded that a pre-appeal report is not necessary for the fair disposal of this appeal in the light of the updated information which the court has received.

10. We have read the victim personal statements of Helen Synnott and Lilian Hill.

11. In passing sentence, the judge said that he had been referred to the sentencing guidelines on aggravated vehicle taking for Magistrates' Courts, but they did not constrain his assessment as the case had been committed to the Crown Court for sentence. For count 2, the appropriate starting point was one year's custody. That was increased to 18 months for being under the influence of alcohol and for writing off the mobility adapted car of a disabled person.

12. The appellant has caring responsibilities for his brother who suffers from dementia. But the judge did not treat that as a mitigating factor because he said that it was the responsibility of the local authority to provide care. He allowed a credit of about 15 per cent for the guilty

plea which had been tendered on the first day of the trial.

13. We are grateful to Mr Spasojevic for his helpful written and oral submissions. The appellant does not take issue with the consecutive sentences imposed on counts 4, 5 and 6, the period of disqualification, or the restraining order. The appeal relates solely to the sentence of 15 months' imprisonment imposed on count 2. It is submitted that that was manifestly excessive. The appellant had no previous convictions for driving offences, and he had important caring responsibilities for his brother. While he has been in prison, a friend of the appellant and her daughter have looked after his brother. It is said that there has been little or no assistance from the local authority and that the condition of the appellant's brother has deteriorated.

14. It is also submitted that a sentence after trial of 18 months' imprisonment for count 2 was too close to the statutory maximum of two years. That sentence would have been more appropriate to cases, for example, where injury was caused.

Discussion

15. We do not accept the judge's apparent view that no weight should necessarily be given to the appellant's role as the primary carer for his brother. The significance of that factor would depend upon the precise circumstances of the case.

16. In giving leave to appeal, the single judge rightly suggested that the appellant, or his representatives, should assist the full court by providing the evidence relied upon to support the assertion that the local authority has provided no support and will not do so.

17. In an email sent on 11th August 2023 a care co-ordinator at Support 4U Healthcare Limited, gave a very brief description of the services which they had been providing for the

appellant's brother since October 2022, based upon four visits each day. She said that the police had pointed out that care responsibilities could be raised with the local authority, but that had yet to be done. A second email from that organisation dated 13th March 2024 said that they were continuing to make four visits a day. The writer simply said that she was not aware of any local authority involvement in providing care for the appellant's brother, but no more information was provided. For example, nothing was said as to whether any contact has been made with the local authority and if so, when, by whom and what response the authority gave.

18. It is also apparent from the information before the court that a level of care is being provided. Despite the opportunity which has been given, there is nothing before the court to suggest that this should have been a significant mitigating factor in the circumstances of this offending.

19. Ultimately, the question is whether the overall sentence imposed was manifestly excessive. We do not think that it was. We would point out that the appellant could have had no complaint if the sentence for count 4 had been higher. That was a serious type of common assault, involving choking in a domestic context. Furthermore, the judge allowed 15 per cent credit for the guilty plea, rather than the more usual ten per cent.

20. Turning to count 2, a sentence of 18 months' imprisonment after trial still allows significant headroom before reaching the maximum sentence of two years for more serious offending. It is well established in the authorities that where a statutory maximum is relatively low, as here, a bunching effect is to be expected for sentences approaching that maximum. A range of different forms of serious offending will merit similar sentences in that upper range.

21. It should be borne in mind that, although no personal injury was involved, the appellant caused the Toyota, which had been specially adapted to meet the needs of a disabled person, to be written off. The harm is not simply the monetary value of the car. The effect on Ms Synnott has been serious. She has stage 4 cancer and has to attend many hospital appointments. Furthermore, the car was involved in a damage only collision with another vehicle. We also consider that the judge was entitled to attach significance to the fact that the aggravated vehicle taking took place whilst the appellant was under the influence of alcohol.

22. We conclude that neither the sentence imposed on count 2, nor the overall sentence of 21 months' imprisonment was manifestly excessive.

23. The judge ordered disqualification from driving for an overall period of 34 months, including a discretionary period of 24 months. Applying *R v Needham* [2016] EWCA Crim 455 [2016] 1 WLR 4449, *R v Morrison* [2021] EWCA Crim 917 [2022] 1 Cr. App. R. (S) 20 and section 11(3) of the Criminal Appeals Act 1968, we direct that the record in the Crown Court be amended by reducing the overall period of disqualification of 34 months to one of 33 months and 30 days, comprising a discretionary period of 24 months, an uplift period of seven months and 15 days, and an extension period of two months and 15 days.

24. To that extent only, the appeal is allowed.

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Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
