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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT PRESTON  
MR RECORDER GEOFFREY LOWE 04ZL3040423 &  
04ZL2768823

[2025] EWCA Crim 126

CASE NO 202403662/A1-202500308/A1

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday 24 January 2025

Before:

LORD JUSTICE COULSON

MR JUSTICE LAVENDER

MRS JUSTICE HEATHER WILLIAMS

REX

V

TYLER FEWERY

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MS C LARTON appeared on behalf of the Appellant.  
MR A WALMSLEY appeared on behalf of the Crown.

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

MRS JUSTICE HEATHER WILLIAMS:

1. These two linked applications for extensions of time and leave to appeal against sentence have been referred to the Full Court by the Registrar. We will refer to Tyler Fewery as “the appellant” in this judgment, as we are going to grant the applications in both cases.

2. The appellant faced a 10 count indictment relating to events between 1 May 2023 and 22 September 2023. On 13 November 2023, in the Crown Court at Preston, he entered not guilty pleas to all counts. On 29 January 2024, he was re-arraigned and pleaded guilty to counts 1, 2, 4, 5, 6 and 8 and to a section 51 Crime and Disorder Act 1998 matter. The six counts were all offences under section 39 of the Criminal Justice Act 1988 and, in the main, the victim was Martine Lappin, who the appellant was in a relationship with at the time. The offences were as follows:

Common assault of Ms Lappin on an occasion between 1 and 31 May 2023 (count 1);

Assault by beating Thomas Lappin (Ms Lappin’s son) on the same occasion (count 2);

Assault by beating of Ms Lappin on 12 August 2023 (count 4);

Assault by beating of Ms Lappin on 10 September 2023 (count 5);

Assault by beating of Ms Lappin on 14 September 2023 (count 6);

Assault by beating of Ms Lappin on 22 September 2023 (count 8).

The section 51 matter was an offence of using threatening, abusive or insulting words or behaviour to cause harassment, alarm or distress, contrary to section 4A of the Public Order Act 1986 and was committed on 22 September 2023.

3. No evidence was offered on counts 3, 7, 9 and 10 and not guilty verdicts were entered.

Whilst the indictment had contained either-way offences, the offences to which the

appellant pleaded guilty were all summary-only offences.

4. On 14 February 2023, Mr Recorder Lowe heard the prosecution opening for sentence. The Recorder then adjourned the sentencing hearing to obtain a pre-sentence report to address the issue of “risk”.
5. On 11 March 2024, Mr Recorder Lowe sentenced the appellant (aged 26) as follows: count 1, 3 months’ imprisonment; count 2, 3 months’ imprisonment concurrent; count 4, 4 months’ imprisonment consecutive; count 5, 3 months’ imprisonment concurrent; count 6, 4 months’ imprisonment consecutive; count 8, 4 months’ imprisonment consecutive; and for the section 51 offence, 1 month’s imprisonment concurrent.
6. This gave a total term of 15 months’ imprisonment. The Recorder imposed a suspended sentence, with an operational period of 18 months and with the requirements that the appellant complete: (i) alcohol abstinence and monitoring for a period of 120 days until 8 July 2024; (ii) a Building Better Relationships programme; and (iii) a Rehabilitation Requirement up to a maximum of 10 days.
7. A restraining order was also imposed for a 5-year period forbidding the appellant from contacting Ms Lappin directly or indirectly by any means whatsoever and from entering the road in which she lived.
8. On 11 April 2023, at Preston Magistrates’ Court, the appellant pleaded guilty to breaching this restraining order on 30 March 2024. He was committed to Preston Crown

Court for sentencing, pursuant to section 14 of the Sentencing Act 2020. This further offending also put him in breach of the suspended sentence order.

9. On 24 May 2024, before Miss Recorder K Jones, the appellant (still aged 26) was sentenced to 1 month imprisonment for breaching the restraining order. This was to be served consecutively to the suspended sentence of 15 months imposed on 11 March 2024, which the Recorder activated in full.

### ***The facts of the offending***

10. Between 1 and 31 March 2023, the appellant attended Ms Lappin's address whilst intoxicated. Their relationship had ended a few days earlier. He accused her of speaking to other men. He was allowed into the address where he fell asleep. The following morning, during an argument, he swung a clenched fist at Ms Lappin. She moved out of the way and her son (aged 5) was punched in the face (counts 1 and 2).
11. On 12 August 2023, Ms Lappin returned home with a male friend following a night out. The appellant was in her back garden angrily demanding to know who the male was. He pushed Ms Lappin to the floor and kicked her to the head multiple times. When she tried to leave the house, she was dragged backwards by her hair. She tried to escape and was kicked and punched by the appellant who was also verbally abusive to her. She sustained a cut and bruising to her face. Medical attention was not required. The appellant was arrested and denied the offence (count 4).
12. On 10 September 2023, in breach of the terms of his bail, the appellant attended

Ms Lappin's address, accusing her of infidelity and was verbally abusive. He punched her three times to the left arm. There were no injuries reported on this occasion (count 5).

13. On 14 September 2023, whilst Ms Lappin was asleep in bed, the appellant entered her house and her bedroom and punched her three times to her upper left arm, causing some bruising and a scar (count 6).

14. The appellant contacted Ms Lappin on 21 September 2023 and promised that things would be different. They arranged to meet for a drink and the appellant returned to her address where they continued drinking. There was an argument the following morning when the appellant accused Ms Lappin of being unfaithful to him. He was verbally abusive towards her and took a knife from the kitchen drawer and threatened to slash her face. He swiped the knife towards her face and instinctively she put her arm up to protect herself and sustained cuts to her left forearm (count 8).

15. When the appellant was arrested nearby, bleeding from his mid-torso, he stated that Ms Lappin had stabbed him. Police took him to Preston Hospital, where he was verbally abusive towards the nurses, calling one of the nurses who escorted him for a scan "a four-eyed bitch" (the section 51 offence).

16. On 30 March 2024, in breach of the suspended sentence order and the restraining order imposed only nine days earlier, police found the appellant and Ms Lappin in her bedroom. Ms Lappin declined to support a prosecution. There was no application made

to discharge the restraining order, which remained in place.

17. The appellant was remanded in custody from 25 September 2023 until the sentencing hearing on 11 March 2024. He was remanded in custody again from 8 April 2024 to the second sentencing hearing on 24 May 2024.

18. The author of the pre-sentence report (dated 6 March 2024) considered that in interview the appellant significantly minimised the seriousness of his behaviour, denying some of the offending that he had pleaded guilty to and suggesting that Ms Lappin had falsified allegations. At that stage, he was adamant that he intended to have no further contact with her.

19. An updated report from the Probation Service was before the court for the 24 May 2024 hearing. The report said that the appellant failed to attend his first appointment with Probation but had subsequently attended the second one, which was simply for the purposes of induction.

### ***The Sentencing Guidelines***

20. The Magistrates' Court guideline for common assault / assault by beating states that factors indicating high, A, culpability include where the victim is obviously vulnerable due to age, personal characteristics or circumstances and where there is the actual or threatened use of a weapon or weapon equivalent. Category 1 harm applies where there is "more than minor physical or psychological harm" and category 2 where there is minor harm of this nature. The starting point for a 1A offence is a high-level community order,

with an offence range of up to 26 weeks' imprisonment. The starting point for a 2A offence is a medium-level community order, with an offence range of up to 16 weeks' imprisonment.

21. The guideline applicable to breaches of restraining orders provides that a deliberate breach falls into category B culpability and that category 3 harm is appropriate where there is little harm or distress. The starting point for a 3B offence is a high-level community order, with an offence range of up to 26 weeks' imprisonment.

### ***The first sentencing decision***

22. The Recorder considered that the six assaults were all high culpability offences. He did not spell out his assessment of harm in terms, but it appears likely that he accepted the characterisation put forward by prosecution counsel, namely that counts 1 and 5 were in category 2 and the other four counts in category 1 because of the injuries that were inflicted.
23. The Recorder indicated that the offending was aggravated by it being a course of conduct, by the domestic context, as intoxication was a factor in a number of offences and as the later offences had been committed when the appellant was on bail. Account was also taken of the appellant's previous convictions which he described as "not a very long record" but one that contained offences of violence. In particular, in 2019, the appellant was convicted of possession of a knife and racially aggravated common assault and beating, for which he received an immediate custodial sentence of 10 months. In relation to count 2, there was the further aggravating feature that the victim was a young

child. There did not appear to be any mitigation beyond the guilty pleas, save that the Recorder referenced some offence work the appellant had undertaken whilst he was in custody.

24. In imposing the sentences that we have already detailed, the Recorder said that in arriving at an overall custodial term of 15 months, he had regard to totality and had reduced the sentences. He also observed:

“There is the third credit on some of the offences which is more than you were entitled to.”

Beyond that, the Recorder did not specify the amount of credit he had allowed.

25. Regrettably, counsel did not point out to the Recorder that he had no power to pass an aggregate sentence of more than 6 months, although the Recorder had sought some assistance from counsel in that regard. Indeed, it appears that this was not appreciated until some time later, in circumstances that we will come on to describe. It is right for us to note that neither Mr Walmsley or Ms Larton appeared at the 14 February or 11 March 2024 hearings.

### ***The second sentencing decision***

26. The Recorder characterised the breach of the restraining order as falling within 3B of the guidelines. She noted there were a number of aggravating features: the appellant's previous convictions and the fact that the breach was committed only 19 days after the restraining order had been made. She said that there were no mitigating factors other



than the early guilty plea. She considered that in the circumstances there should be an uplift to the category starting point to a custodial sentence of 15 weeks' custody, reduced to 10 weeks because of the guilty plea discount. To take account of totality, she reduced this figure to 1 month to run consecutively to the activation of the full 15 months of the term of the suspended sentence.

27. As regards the suspended sentence, the Recorder reminded herself that the relevant guideline indicated that the custodial sentence should be activated unless it was unjust to do so in all the circumstances; and the predominant factor in determining this related to the level of compliance with the suspended sentence and the nature of the new offending. She accepted that the recent offending was less serious than the original offences, but took account of the fact that there had been no level of compliance with the suspended sentence thus far and that the breach was a flagrant one that had occurred so soon after the suspended sentence had been imposed and in the face of the warnings given by the court on that earlier occasion.

### ***Subsequent Events***

28. Following the activation of the suspended sentence the appellant served a period of custody before being released on licence on 13 June 2024. He then committed a further breach of the restraining order on 3 July 2024. On 23 September 2024, the Magistrates' Court committed him to the Crown Court for this admitted breach of the restraining order and for trial in respect of a denied assault occasioning actual bodily harm allegation, also said to have occurred on 3 July 2024. The District Judge remanded the appellant in custody and he was recalled on licence in respect of 24 May 2024 sentence. It was noted

at this stage that the sentence imposed on 11 March 2024 was potentially unlawful as exceeding the statutory maximum. This was also the view of HHJ Archer when the case came before him on 9 October 2024 in the Crown Court at Preston. At the time, the appellant pleaded not guilty to the actual bodily harm allegation and his trial in relation to that matter was listed as a fixed floater on 12 March 2025. As we understand it, the appellant remains remanded in custody in relation to that matter.

29. Ms Larton has indicated that Probation will be taking action to rescind the recall. We understand from the Registrar that the recall team for the HM Prison and Probation Service are aware of the applications before this Court and will notify the prison if, and when, the recall is cancelled or rescinded and will consider backdating the current period on remand to ensure that it is applied to the sentence that is imposed for the new offence or offences.

30. Following the Crown Court hearing on 9 October 2024, an application was then made to this Court for leave to appeal out of time in relation to 11 March 2024 sentence. After the Registrar pointed out that if the Court accepted that the sentence imposed on that occasion was unlawful, then the activation of the suspended sentence on 24 May 2024 would also need to be addressed, the second application for leave to appeal out of time was made.

### ***The grounds of appeal***

31. Ms Larton submits that the sentence imposed on 11 March 2024 was unlawful, as it exceeded the statutory maximum for what were all summary offences. The maximum

available sentence was 6 months' imprisonment and, in this instance, some reduction from that figure would have been warranted to reflect the applicant's guilty pleas. She invites the Court to quash the suspended sentence order and to resentence the appellant.

32. Ms Larton further submits that the Court should, in turn, quash the activation of the suspended term on 24 May 2024. She points out that given the period that he had been remanded in custody for, had a lawful sentence been passed on 12 March 2024, the appellant would have been due for immediate release on the basis of time served when the suspended sentence was activated on 24 May 2024.

33. The respondent accepts that the sentence imposed on 11 March 2024 was wrong in principle and in law for the same reason. Mr Walmsley agrees that the maximum aggregate sentence available to the Court on that date was 6 months' imprisonment. Apologies are extended to the Court for the omission to point this out to the Recorder at the 14 February and 11 March 2024 hearings. Mr Walmsley also told us today that he accepts that the unlawful sentence imposed on 11 March rendered the activation of the suspended sentence term on 24 May unlawful.

### ***Analysis and Conclusions***

34. An extension of time of 188 days is required in relation to the application for leave to appeal the sentence imposed on 11 March 2024. As the appeal is well founded, we grant this extension and give leave to appeal.

35. Section 133(1) of the Magistrates' Courts Act 1990 provides that:

“A magistrates’ court imposing imprisonment or a sentence of detention in a young offender institution on any person may order that the term of imprisonment or detention in a young offender institution shall commence on the expiration of any other term of imprisonment imposed by that or any other court; but where a magistrates’ court imposes two or more terms of imprisonment or detention in a young offender institution to run consecutively the aggregate of such terms shall not, subject to the provisions of this section, exceed 6 months.”

Accordingly, this provision makes clear that an aggregate sentence passed in respect of two or more summary offences cannot exceed 6 months’ imprisonment, no matter how many summary offences may be involved. Subsection (2) creates an exception where two or more terms are imposed in respect of two or more triable either-way offences that are tried summarily; the aggregate of the terms so imposed and any other terms imposed by the court - that is to say, including those imposed for summary offences - may exceed 6, but not 12 months.

36. The effect of those provisions was confirmed by the Divisional Court in *R v King’s Lynn Magistrates’ Court ex parte Hyam* (10 March 1992, CO/1320/91) and more recently by this Court in *R v Jex* [2021] EWCA Crim 1708 at [44]-[48]. Section 224(3) of the Sentencing Code preserves the effect of section 133(1).

37. It therefore follows that the 15-month suspended sentence imposed by the Recorder on 11 March 2024 was unlawful. In the circumstances, we allow the appeal and quash this sentence.

38. Pursuant to section 11(3) of the Criminal Appeal Act 1968, in its place this Court may pass such sentence as the Court below had power to pass but, in exercising those powers, taking the case as a whole, this Court must ensure that the appellant is not more severely dealt with than he was below.

39. In resentencing the appellant we bear in mind the circumstances of the offending that we have already described. We agree that each of the offences were culpability A offences for the reasons identified by the Recorder. We also agree that counts 2, 4, 6 and 8 involved level 1 harm because of the injuries suffered and counts 1 and 5, level 2 harm. A substantial uplift to the guideline starting point figures is required given the significant aggravating factors identified by the Recorder and given the number of offences involved as, unlike the Recorder, we will be passing concurrent sentences and therefore we need to reflect the overall criminality in the figures arrived at.

40. Accordingly, in respect of the most serious counts, namely counts 2, 4, 6 and 8, the notional sentence after trial figure is 26 weeks. As we have noted, the discount that the Recorder applied to take account of the appellant's guilty pleas is not entirely clear. However, we consider that a credit of a little under 20 per cent is appropriate given that the guilty pleas were only entered some significant time after the PTPH, so we will discount the 26 weeks figures to 21 weeks. We will leave the other terms undisturbed but all the sentences will be concurrent to each other.

41. For the avoidance of doubt, the sentences are: count 1, 3 months' imprisonment; count 2, 21 weeks imprisonment concurrent; count 4, 21 weeks' imprisonment concurrent; count

5, 3 months' imprisonment concurrent; count 6, 21 weeks' imprisonment concurrent; count 8, 21 weeks' imprisonment concurrent; and for the section 51 offence, 1 month imprisonment concurrent. Accordingly, the overall sentence is 21 weeks' imprisonment.

42. As we cannot deal with the appellant more severely than he was dealt with below, we will suspend the sentence for an 18-month period. However, as the sentence will be activated before any of the requirements that were imposed by the Recorder can take effect, we do not attach any conditions to the suspended sentence that we pass.

43. We also quash the surcharge that was imposed of £187 and replace this with a figure of £154, as the term we have imposed is now below the 6-month threshold for the higher figure.

44. We then turn to the sentence passed on 24 May 2024. We again grant the necessary extension of time (on this occasion of 213 days) and we give leave to appeal.

45. The activation of the 15-month suspended sentence was based on the unlawful sentence we have just quashed. Accordingly, it is plainly appropriate to allow the appeal and quash the 24 May 2024 sentence.

46. As the suspended sentence order was breached so soon after it was imposed, like the Recorder, we see no reason not to activate the full 21-week term of imprisonment. This would not be unjust. Indeed, we understand that this term has already been served, given the time spent on remand.

47. This leaves the breach of the restraining order. Had it not been for totality considerations, as she explained, the Recorder would have imposed 10 weeks' custody in respect of this offence. We agree with the Recorder's categorisation of this as a 3B offence and we note that there were substantial aggravating features, namely the very short period that had elapsed since the order was imposed and the appellant's previous convictions which include past non-compliance with court orders. Accordingly, we agree with her uplifted figure and, in turn, with her discount for the early guilty plea. We will therefore resentence the appellant for the breach of the restraining imposing a consecutive sentence of 10 weeks' imprisonment. This approach does not infringe section 11(3) of the Criminal Appeal Act 1968, given the substantially reduced suspended sentence term that we have passed and activated.

48. We conclude by reminding the appellant that the restraining order remains in place until 10 March 2029 and that he must comply with it. If he does not, he faces going to prison for up to 5 years.

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

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