APPEAL COURT, HIGH COURT OF JUSTICIARY

[2019] HCJAC 6
HCA/2018/000526/XC

Lord Glennie
Lord Turnbull

OPINION OF THE COURT

delivered by LORD TURNBULL

in

APPEAL AGAINST SENTENCE

by

CARLA CAMPBELL

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: A Ogg (sol adv); Robert Kerr Partnership, Greenock
Respondent: M Hughes AD; Crown Agent

8 January 2019

[1] The appellant Carla Campbell is 25 years old. At a trial diet on 1 October 2018, in the Sheriff Court at Greenock, she pled guilty to a charge in the following terms:

> "On 17 May 2018 at Ingleston Street at Cartsburn Street, Greenock you did assault LAJ c/o Police Service of Scotland and did demand money from her, repeatedly punch her on the head and body, seize hold of her by the hair and pull her to the ground and thereafter restrain her there and repeatedly strike her on the head and body with a brick all to her severe injury and you did rob her of a quantity of money and a piece of jewellery."

A plea of not guilty from the appellant's co-accused was accepted.

[2] The presiding sheriff made an order returning the appellant to custody for a period of 8 months in respect of an unexpired sentence in terms of section 16 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. He then imposed a sentence in respect of the present offence which comprised a headline sentence of 42 months, reduced by a period of 4 months to reflect the plea of guilty, and then by a further period of 9 months to reflect the time spent on remand, resulting in a custodial sentence of 29 months. That sentence was ordered to commence on the expiry of the order for return.

[3] On the appellant's behalf it was submitted that the headline sentence was excessive having regard to the nature of the offence committed and its consequences, and taking account of the appellant's history of previous convictions. It was observed that the assault element in the present offence did not include an aggravation of permanent disfigurement or impairment and it was submitted that the sentence selected by the sheriff was of the sort of level that one would associate with an offence including such an aggravation. Whilst it was acknowledged that the appellant had two previous convictions for assault it was pointed out that one of those had resulted in a non-custodial sentence and the other, in 2017, led to a sentence of 18 months imprisonment. It was submitted that it was excessive to select a headline sentence of 42 months in all of these circumstances.

[4] The circumstances of the assault were explained to us by the sheriff in his report and it is clear that the appellant pled guilty to what was an unprovoked assault of a serious nature. The complainer required hospital treatment where she was found to have severe bruising and swelling to her face and wrists and abrasions to her face and head. She had a

laceration to her scalp and a facture of her nose and of the maxillary sinus. She required to remain in hospital for a number of days.

[5] The appellant is a young woman with a significant record of previous convictions. She has convictions concerning anti-social conduct which included, on one occasion, the possession of a knife. She has two convictions for assault to severe injury. The last of which, in 2017, involved the use of a bottle resulting in permanent disfigurement and impairment and led to a sentence of 18 months imprisonment. She was released early from that sentence on 27 April 2018, less than 3 weeks before the current offence was committed.

[6] In his report to this court the sentencing sheriff described the appellant as a dangerous individual and that characterisation may well be accurate. However, other matters arise from the content of that report which are relevant to the assessment of the appropriate sentence. On page 3 of his report the sheriff informs us that he was addressed on the circumstances surrounding the appellant's conviction in 2017. He returns to this matter in his response to the grounds of appeal at page 5 where he provided the following account:

> "It was submitted that the appellant's last conviction in 2017 for serious assault took place against a background of the same complainer as in this case. Having appeared in court in respect of hiding the appellant's partner's body, I was familiar with that case. The complainer had been dealt with by me in October 2015 well over 1 year before the assault on her by the appellant in 2017. It was of concern that the current proceedings involved a further serious assault by the appellant on the same complainer."

The only inference that can properly be drawn from what the sheriff says here is that he considered a second assault on the same complainer to constitute an aggravation. However, Ms Ogg explained to us that there must have been some form of confusion, since the appellant's solicitor did not inform the sheriff that the complainer in the present case was the same as the complainer in the 2017 case. Having been given notice, the Crown

confirmed to us that the complainer in the 2017 case was not the same complainer as featured in the present case.

[7] In further comment on page 5 of his report the sheriff said the following:

> "The offence is of course aggravated by the appellant being on bail, she having been released on bail in respect of charge 1 on the indictment the day before."

Again, this appears to be incorrect. Each of the two charges which the appellant originally faced alleged that the offences were committed by the appellant whilst acting along with a co-accused who was granted bail on 16 May 2018 at Greenock Sheriff Court. No bail aggravation was libelled against the present appellant. The sheriff appears to have confused the appellant's position with that of her former co-accused. Whilst we note that the sheriff goes on at page 6 of his report to say that he did "not consider it necessary to take the bail aggravation into account in selecting the appropriate period of custody" it is difficult to see how his mistake and assessment that the appellant's offending was aggravated, had no effect at all on the selection of the appropriate sentence.

[8] In light of these mistaken factual matters we are satisfied that the sentence imposed ought to be quashed. No challenge is made to the order for return and that will remain in place. Approaching the question of sentencing of new in respect of the present offence we consider that a headline sentence of 3 years imprisonment would be appropriate in light of the appellant's significant record. This is now the third conviction for assault to severe injury which she has accrued and the present offence includes the crime of robbery. From that figure we shall deduct a period of 9 months to reflect the period of time spent on remand resulting in a period of 27 months imprisonment, which we shall then discount by approximately the same percentage as permitted by the sentencing sheriff resulting in a sentence of 24 months imprisonment to be served after the completion of the order made

under section 16 of the 1993 Act.