



Neutral Citation Number: [2010] EWCA Crim 126

No: 200904683/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL
Monday, 25th January 2010

Before:
LORD JUSTICE PILL
MR JUSTICE BENNETT
MR JUSTICE FIELD

REGINA

- v -

JASON PAUL DAY

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WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Miss E Verity appeared on behalf of the **Applicant**
Mr A Collins appeared on behalf of the **Crown**

JUDGMENT (As Approved by the Court)

- 1 . LORD JUSTICE PILL: On 26th June 2009 in the Crown Court at Canterbury, Jason Paul Day, pleaded guilty before Her Honour Judge Williams to an offence under section 20 of the Offences Against the Person Act 1861. He had been charged with section 18 at a trial conducted by a different judge. The jury were unable to agree. Thereupon, on rearrangement he pleaded guilty to section 20. We are told by Miss Verity of counsel, and we accept, that, in March 2009, before the trial, a plea to section 20 had been offered and offered on the basis on which it was subsequently accepted.
- 2 . On 7th August 2009 Judge Williams sentenced Day to an extended sentence, 6 years pursuant to section 227 of the Criminal Justice Act 2003. That was made up of a custodial term of 4 years' imprisonment (with a direction under section 240 that 158 days spent on remand should count towards the sentence). An extension period, that is an extended period of licence, of 2 years was ordered giving the total of 6 years.
- 3 . The application for leave to appeal against sentence has been referred to the court by the Registrar. The court has granted leave to appeal. On the evening of 25th August 2008 the complainant was at her home with the appellant, who was her former partner. The evening was proceeding smoothly until about 9.30 pm when the appellant's attitude changed completely and he demanded money from her. She said she did not owe him any money. At about 10.00 pm, in the kitchen, the kettle was turned on by the complainant. Her evidence was that while the kettle was boiling the appellant continued to shout at her, demanding money. He then picked up the kettle and poured water over her right shoulder. She felt excruciating pain and contacted a friend. Thereupon the appellant's attitude changed and he was acting as if nothing had happened.
- 4 . When interviewed he said he had not poured water over her, she had been trying to stab him with a knife and had picked up the kettle to pour water over him. In the ensuing struggle the water had gone over her when she slipped.
- 5 . The basis of plea on which the judge sentenced was that in the course of the argument the water was boiling and the appellant had hold of the kettle. In the course of the struggle the water was poured over the complainant: he did not intend to pour water over her, nor to cause the injuries that she received. He accepted, however, that he was responsible for them and that during the struggle he was able to foresee that such an injury could be caused. We have seen photographs of the injury, both to the front of her body and on the upper part of her back. There was serious damage. We are told that there is no serious scarring left but there is irregularity of the skin.
- 6 . In her sentencing remarks the judge put the offence in this way:

"I deal with you on your basis of plea to recklessly causing the grievous bodily harm to your partner... by pouring boiling water over her during a struggle between the two of you."

The judge referred to the "bad record" of the appellant:

"You are now forty-two years of age and you have a bad criminal record. It goes back to 1986 when at this court you were convicted of an offence contrary to section 18 of the Offences Against the Person Act. Robbery, 1992. Threats to kill, 1993, common assault and from then onwards common assault or assault on police officers until 1998 when you assaulted

your former wife and in 1999 caused criminal damage to her property. In 2001 you were convicted of harassment and in 2003 assault on the police."

7. Miss Verity draws attention to the lack of serious convictions of violence in recent years. She accepts that the assault on the police in 2003 was sufficiently serious to be dealt with by a sentence of 60 days' imprisonment. The judge added:

"In addition to those offences, you have a large number of offences which are all fuelled by alcohol, in my judgment."

The judge stated that she had considered the mitigation advanced on the appellant's behalf and the pre-sentence report.

8. The pre-sentence report provided that the appellant satisfied the criteria for dangerousness. The judge's view was that public duty would be satisfied by the imposition of an extended sentence:

"This would allow for protection of the public, punishment of Mr Day and also the opportunity for him to engage in the rehabilitative measures necessary to adduce his risk."

The judge stated that the appellant posed:

"A significant risk of causing serious harm to women by the commission of further specified offences."

However, she decided to deal with the offence by an extended sentence of imprisonment rather than a sentence of imprisonment for public protection.

9. Miss Verity's first submission is that the number of days taken into consideration as having been served was wrong. We have now seen a letter from the prison service in which it is confirmed that the figure should have been not 158 days but 209 days under section 240 of the 2003 Act.

10. Her second submission is in relation to the discount allowed for guilty plea. The judge stated:

"I give you approximately ten per cent credit for offering this plea of guilty on the day of the trial that took place on 7th of May this year."

Miss Verity tells the court, and we accept, that in fact a plea of guilty on the basis eventually accepted was offered in March. That is significantly before the trial at which the jury disagreed. She submits that the appellant was entitled to credit of between a quarter and a third. To the extent of a discount of the order of a quarter, we accept that submission.

11. This sentence was unlawful in that the maximum which the judge could impose under section 20 was one of 5 years' imprisonment. Including the extension period she imposed a sentence of 6 years. That cannot be upheld.

12. On the substance of the matter Miss Verity refers to the guidelines in relation to section 20. We have considered those guidelines and the range of sentence indicated in

them. In our judgment, the judge was correct to regard this case as a serious one. She was also correct to have regard to the bad criminal record which included serious offences and included a previous offence involving a partner, in that case his wife.

13. We have considered the circumstances of this offence and the nature of the injury. In our judgment, the appropriate sentence is one of 3 years' imprisonment. We note the judge's concern about the period of training but, in our judgment, having regard to the matters to which we have referred, the appropriate sentence is one of imprisonment and having imposed a sentence of 3 years, it would not be appropriate to put on top of that an extension period.
14. In the result the period to be taken into account under section 240 is increased from 158 days to 209 days. The term of the sentence as imposed is quashed. There will be substituted a sentence of 3 years' imprisonment. To that extent, this appeal is allowed.