

Neutral Citation Number [2019] EWCA Crim 678

No: 20190088/A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 3 April 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE TURNER

HER HONOUR JUDGE TAYTON QC

(Sitting as a Judge of the CACD)

R E G I N A

v

LISA ATKINS

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Ms L Bald appeared on behalf of the **Applicant**

J U D G M E N T

(Approved)

1. LORD JUSTICE HOLROYDE: On 10 January 2019, in the Crown Court at Kingston-upon-Thames, Lisa Atkins pleaded guilty to an offence of having an article with a blade or point, contrary to section 139 of the Criminal Justice Act 1988. On 28 February 2019 she was sentenced by His Honour Judge Lamb QC to 6 months' imprisonment. Her application for leave to appeal against that sentence has been referred to the Full Court by the Registrar.
2. The applicant is now in her mid-forties. Sadly, she has long-standing addictions to drugs and alcohol. She had no convictions prior to 2017, but between January 2017 and November 2018 she was convicted of offences of possessing a controlled drug of Class A, being in charge of a motor vehicle with excess alcohol and two offences of assaulting a constable. After the present offence, but before she had been sentenced for it, she committed a further offence of criminal damage.
3. Since 2017 the applicant has been in a relationship with a man, also a drug addict, to whom we shall refer as "Cliff". In addition to being her partner, Cliff appears also to have been her drug supplier. On the applicant's account, it has been an abusive relationship in which Cliff has exercised control over her.
4. At around 9.00 am on 15 November 2018 a neighbour, who had frequently seen the applicant and Cliff arguing, saw them in the street. The applicant was clearly intoxicated and was carrying a large knife with which she was threatening Cliff. Cliff shouted out that the applicant was trying to stab him. The neighbour called the police. The neighbour then moved somewhat closer to the scene, but she was stopped by some builders who had also seen what was going on. In a succinct analysis of the situation, one of the builders said to the neighbour: "Stay back, just stay back. She's off her face". At that stage the applicant appeared to be using the knife in an attempt to damage the wheels of a bicycle on which Cliff was trying to leave. The applicant then walked away, discarding the knife - which proved to be a bread knife with a blade some 9 inches long - at the side of the road.
5. When police officers attended, the applicant initially said that she had been locked out of her home by Cliff. Later, in interview, she said she had been locked out, when the door had blown shut whilst she was in the garden. She said she could not remember any incident but that she had not done anything. For the rest of the interview she made "no comment".
6. A statement made by the neighbour indicated that she had been "petrified" by the sight of the knife and had been frightened that such an incident should happen in the street near to her own home.
7. The applicant was sent for trial on 14 December 2018. She pleaded guilty when arraigned at her first Crown Court appearance on 10 January 2019. The case was adjourned to allow time for the preparation of a pre-sentence report. That report indicated that the applicant had had a very troubled childhood in which she suffered abuse and regularly witnessed domestic violence. As an adult she had suffered violence at the hands of a man by whom she had three children, all of whom are now

adults and live separately from her. She reported that Cliff had also been violent towards her. She said she had first been introduced to crack cocaine at the age of 31 by a partner who was also a drug user. In addition, she accepted that she was a heavy drinker.

8. The author of the pre-sentence report assessed her as having an increasingly chaotic life-style linked to substance abuse and her relationship with her current partner. She had stable accommodation and was in receipt of benefits. She was taking prescribed medication for depression. The risks of her re-offending and of her causing serious harm were assessed as low to perhaps medium. The author of the report felt that the applicant was a suitable candidate for alcohol treatment but had reservations about her motivation and ability to engage with such treatment and therefore suggested a further adjournment for assessment in that regard.
9. It should be noted that in the account which the applicant gave to the author of the pre-sentence report she said that she and her partner had been arguing inside the house. She had taken the knife from her kitchen and gone outside with the intention of slashing the tyres of his bicycle to prevent him from leaving.
10. At the hearing on 10 January the case was adjourned so that an assessment could be made as to the applicant's suitability for either a drug rehabilitation requirement or an alcohol treatment requirement. She attended an appointment for that purpose on 18 February but was so intoxicated that she could not stay for the whole assessment. She attended again two days later, when she appeared to be sober. She described pattern of drinking in the mornings and using heroin and crack cocaine in the afternoons and evenings. She spoke about her diagnosis of depression and described incidents of self-harm, the most recent of which had been some 3 months earlier, and a less recent history of taking overdoses. She said that Cliff was very controlling of her, but she felt that her relationship with him would continue. She had previously had some involvement with rehabilitation services on a voluntary basis but her engagement had been erratic.
11. The probation officer who conducted the assessment concluded that although the applicant spoke of wanting to turn her life around, she showed no intention of making steps to leave her partner. The assessor was not satisfied that the applicant met the criteria for rehabilitation or treatment. It was felt that the applicant's mental health conditions would impact on her ability to comply with an order of the type under consideration. The author concluded:

"Although I feel she would benefit from our service, I am unconvinced that she would be able to comply with the order and feel there are more basic aspects of her life which need addressing in order to address her substance abuse. For those reasons, I will not be recommending the ATR or DRR at this time. I do strongly encourage Lisa to present to our service on a voluntary basis..."

12. At the sentencing hearing on 6 March 2019 the author of the original pre-sentence report gave evidence. She indicated that she thought that the applicant's major

problem was alcohol addiction rather than drug addiction. She had no evidence to suggest that the applicant could not cope with a custodial sentence. She confirmed that her original proposal of a community order linked to various requirements had been conditional upon the later assessment of suitability.

13. Counsel Ms Bald, then as now appearing for the applicant, submitted in mitigation to the judge that the applicant was vulnerable, a victim of domestic abuse who had suffered a traumatic childhood and was clearly in desperate need of help. She pointed out that the applicant had previously accessed services voluntarily, albeit that her addictions had caused her attendance to be erratic. She submitted that under the Sentencing Council's Definitive Guideline in respect of offences of possession of a knife or bladed article, the case came within culpability category A, harm category 2, with a starting point of 6 months' custody and a sentencing range from 3 to 12 months.
14. In his sentencing remarks the judge indicated that he assessed the offence as a harm category 1 case, because the applicant's conduct had caused, in terms of the guideline factors "serious alarm or distress". Although the guideline indicates a starting point of 18 months' custody for a category A1 offence, with a range from 1 year to two-and-a-half years' custody, the judge concluded that the appropriate sentence, after trial, would have been one of 8 months. He reduced that by one-quarter to reflect the guilty plea. Thus, he imposed the sentence of 6 months' imprisonment.
15. A short report has been prepared for the assistance of this court by the applicant's offender supervisor in prison. This indicates that the applicant is working within the prison and appears to be engaging well, and that she has been put forward for courses relevant to her alcohol and drug abuse. We note that in describing her offence to the author of this latest report, the applicant said that she had been accidentally locked out of her house and had been screaming abuse at Cliff through the closed door in an unsuccessful attempt to persuade him to open it. Her account does not appear to have included any reference to the fact that she threatened Cliff with a knife in the street.
16. In her well-structured and persuasive submissions to this court, Ms Bald contends that the sentence was wrong in principle. Relying on the Sentencing Council's Definitive Guideline on the Imposition of Community and Custodial Sentences, she submits that the judge fell into error in two respects. First, she submits that even if the custodial threshold was passed, this was a case in which a custodial sentence was avoidable and therefore should have been avoided. Alternatively, if that submission be rejected, she argues that the prison sentence could and should have been suspended. The guideline indicates that custody should not be imposed where a community order could provide a sufficient restriction on liberty by way of punishment whilst addressing the rehabilitation of the offender to prevent future crime. Counsel submits that there was a realistic prospect of rehabilitation, taking into account that the applicant has never before had the benefit of probation intervention. In addition, she submits that there was strong personal mitigation and appropriate punishment could be achieved without immediate custody.
17. In her written submissions, counsel drew attention to one aspect of the assessor's report to which we have referred. She submits that it was "inherently contradictory" on the

author's part to acknowledge the applicant's mental health issues, substance abuse problems and abusive partner, but then to refer to those vulnerabilities as a reason to deny the applicant access to the help which, counsel submits, she clearly needs.

18. We have reflected carefully upon those submissions in what, on any view, is a sad case. We approach our decision by taking matters in the order in which the imposition guideline directs the court to address them. First, we have no doubt that the judge was correct to conclude that this offence passed the custody threshold. It involved the use of a knife to threaten a man in the street, causing fear and distress to at least one person who had witnessed the events and prompting the builder to warn the neighbour about the risk which would be involved in approaching the applicant. It must be borne in mind that even for a category A2 offence, the guideline starting point is a custodial sentence.
19. The guideline next requires consideration of whether a custodial sentence could nonetheless be avoided. The guideline makes clear that this question must be addressed separately from the antecedent question of whether the custody threshold has been passed. An affirmative answer to that first question does not necessarily dictate that a custodial sentence must be imposed.
20. We bear very much in mind the sad features of the applicant's life. We accept Ms Bald's submission that it appears to be no coincidence that the applicant's criminal record only began around the time when she entered into the relationship with Cliff. We also bear in mind that the applicant has never previously received a custodial sentence and has never had any form of sentence in which she could benefit from the assistance of the Probation Service. All those are factors on which counsel rightly relies.
21. As against those factors however, the court cannot overlook three features of the case which point to the conclusion that a community order would not suffice in this case. The seriousness of the offence, which was aggravated and not mitigated by the fact that the applicant was heavily intoxicated; the apparent reluctance or inability of the applicant to accept responsibility for her actions, as shown by her giving various more or less exculpatory accounts of offence without ever admitting that she threatened Cliff with the knife; and the fact that the assessments made of the applicant resulted in her not being recommended for a drug rehabilitation or alcohol treatment requirement.
22. In our judgment, it is not possible to say that the judge fell into an error of principle in concluding that the custody threshold had been passed and that a custodial sentence could not be avoided. There being no challenge to the length of the prison sentence, we turn finally to consider the submission that the judge was wrong in principle not to order suspension of the 6-month term of imprisonment. The imposition guideline indicates factors which may militate either in favour of or against suspension of a prison sentence.
23. In the circumstances of this case, it seems to us that however much one may sympathise with the sad personal history and circumstances of the applicant, the most significant feature is the adverse assessment reached when specific consideration was given to the

question of whether the applicant could and would benefit from either a drug rehabilitation requirement or an alcohol treatment requirement. We do not accept Ms Bald's written submission that there was an internal inconsistency in the assessor's report. It seems to us that the point the author was making, and rightly making, was that it would not be appropriate to impose a requirement with which the applicant would not be able to comply.

24. Sad though it is, it seems to us that the applicant showed herself unable and/or unwilling to comply with either of those prospective requirements and, if she could not comply with such requirements, it follows, in our view, that the judge was entitled to conclude that there could not be said to be any realistic prospect of rehabilitation. It also follows, in our judgment, that the judge was accordingly entitled to assess the case as one in which suspension of the prison sentence was not possible.
25. In those circumstances and for those reasons, we are not persuaded, despite Ms Bald's advocacy, that the judge fell into any error of principle. We accept that the points raised in the grounds of appeal were arguable and for that reason we grant leave to appeal against sentence. For the reasons we have given, however, the appeal fails and is accordingly dismissed.

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