IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA CRIM 1817

No. 202201784 A2

Royal Courts of Justice

Thursday, 1 December 2022

Before:

LADY JUSTICE SIMLER
MR JUSTICE SWEETING
HIS HONOUR KATZ KC

REX
V
MEHMET DENIZ

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Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MR C JOHNSTON appeared on behalf of the Appellant.

THE CROWN did not appear and were not represented.

J U D G M E N T

LADY JUSTICE SIMLER:

Introduction

1 On 4 January 2022, in the Crown Court at Luton, the appellant (then aged 36) pleaded guilty to an offence of attempted murder, contrary to section 1(1) of the Criminal Attempts Act 1981. On 20 May 2022 Her Honour Judge Tayton KC sentenced the appellant for that offence to an extended determinate sentence of 20 years, comprising a custodial term of 16 years and an extended licence period of four years, pursuant to section 279 of the Sentencing Act 2020.

2 He appeals against sentence with limited leave of the single judge, and we have had the benefit of submission, both written and developed orally, from Mr Johnston, who was trial counsel below and to whom we are grateful.

The facts

3 On 16 May 2021 the appellant attempted to murder his wife, Sharron McCloskey, who was then aged 54. They had met in 2007 in Turkey and married subsequently in Turkey in October 2012, moving back to this country shortly afterwards. The couple separated some five weeks before the offence. Although their relationship had had moments of turbulence, the appellant had never previously been violent and the police had never before been called.

4 On 16 May 2021 Ms McCloskey was away from their shared home in Colchester. The appellant was looking after the dog and had stayed in the marital home the previous night. He was specifically asked to leave before she returned, as the two were prone to argue at that time. Ms McCloskey believed that he was cheating on her. Despite that request, when she returned, he was still in the house. An argument developed. During the course of that argument she took his telephone and discovered what she believed to be proof of his infidelity. She told him to pack the remainder of his belongings, and that she wanted the truth.

5 Having looked through the appellant's telephone, Ms McCloskey went upstairs to tell the appellant that all she had ever wanted was to be told the truth. She threw his bag towards the door and slapped his face, telling him to leave. She was later to describe the slap as being "four or five" on a scale of one to ten. They continued to argue, and the appellant struck Ms McCloskey forcefully

from behind to the back of her head. This occurred at about 10.45 pm and the wound bled profusely. She turned to him, asking "What have you done" and was then struck by him to the front of the face and head. One of the blows struck her hand. She feared at that moment that she would die.

6 The appellant was holding a large Maglite torch that belonged to Ms McCloskey's son. Because of the bleeding, Ms McCloskey went and stood in the shower to wash off the blood and then went to lie down on the bed. As she was lying down, he struck her again, twice to the head with the torch. She described the last blow as feeling as though it "cracked my head in two", and as coming from "as high as his arm could get." She said words to the effect, "Oh God, you've done it. You've killed me." The appellant then armed himself with his stepson's hockey stick, although he did not in the event use it to inflict violence. He told Ms McCloskey to "shut up" or she would "get it." She believed that she was struck five times altogether, each blow with the Maglite torch. The appellant was shouting that he was going to kill her and then kill himself. He said he would take tablets. He repeated the threat that Ms McCloskey would die. He placed a pillow over her face at one point.

7 As Ms McCloskey lay bleeding in the bedroom, she pleaded with him to think of the children. A neighbour heard her screaming, "my children". The screaming lasted for about ten minutes. Ms McCloskey vomited on herself, and the appellant told her that this was all her fault as she had slapped him when ordering him to leave.

8 The appellant eventually took his wife's telephone and left, telling her that he would call an ambulance. Footage from the Ring Doorbell captured him saying, at around 2.45am, "Sharron, it's on the way. Yeah, I promise." That was a lie. At 2.47 am the appellant called a local taxi firm to take him back to Bedford town centre, where he was living at the time. The taxi arrived shortly before 3.00 am. Meanwhile, Ms McCloskey believed that help was on its way and was listening desperately for the sound of sirens.

9 At 3.19 am the appellant used the same taxi firm to return from Bedford town centre to the house, arriving at 3.27 am. Ms McCloskey heard him return and hoped that it was the paramedics. Realising that it was the appellant, she pleaded for the return of her phone in order to call 999. The

appellant did not give it to her. He left the property again at 4.12 am. Five minutes later, at 4.17 am, Ms McCloskey, who had by then had her phone returned to her, contacted emergency services. She said she had been attacked by an intruder.

10 The police arrived swiftly at 4.25 am finding Ms McCloskey in a shocking state. The stairway in her home had to be cut down so that she could be lowered on a trauma board. She was taken to hospital.

11 Although Ms McCloskey would not divulge the identity of her attacker, police used CCTV footage from the Ring Doorbell and identified her husband as the man responsible for the injuries. His photograph was circulated and he was arrested at 2.00 pm the following afternoon in Bedford. He was in possession of his identity documents and passport. Analysis of his telephone showed that he had researched flights to Turkey and searched sentencing for the offence of attempted murder.

12 Ms McCloskey's injuries were identified as a complex scalp laceration, head injury, facial laceration, left sided radial fracture, and right middle finger laceration. The injuries to her head and scalp comprised a vertical, deep laceration to the forehead connected to a diamond-shaped, exposed area of skull on top of the head, with a single vertical, closed laceration, the depth of which was not assessed; an L-shaped laceration above the left eyebrow with bruising; and a one centimetre laceration below the left eye. The scalp and face lacerations were closed under local anaesthetic. A skin graft was required in relation to the soft tissue loss from the skull. Ms McCloskey was in hospital for 11 days.

13 Meanwhile, having been arrested, the appellant was deemed unfit to be interviewed. Investigations were subsequently conducted as to the appellant's mental health state, and we shall return to these below.

Sentence

14 The appellant was of previous good character. Notwithstanding his previous good character and the absence of previous violence, the pre-sentence report author concluded that by the very nature of the offending he posed a high risk of serious harm to Ms McCloskey and any future partners.

15 The judge also had a report from a clinical psychiatrist, Dr Zaman. We, too, have read that report, and note the following passages:

> "There is no past psychiatric history of note in the UK. He reported admission to psychiatric institutions in Turkey for several years as a child. He reported instances of suicidal ideation and attempts on his life, the last being four years previously. He manifested significant distress following arrest, requiring lengthy support under ACCT procedures and in prison healthcare conditions. He had been initiated on antipsychotic and antidepressant medication, which have apparently led to subjective and objective improvement in his mental state. In hospital conditions his symptoms have not been consistent. There is no medical history of significance. He was admitted to Dune Low Secure Ward at Brockfield House, Wickford, Essex in September 2021. He was initially transferred on mirtazapine 45 milligram oral daily and olanzapine 10 milligram oral daily, initiated at HMP Bedford. There was no initial risk concern, and he was managed on general observations. He had initially talked about four voices and seeing animals and said that they had been present for five months. He had progressively become better but that following admission he said that he was getting worse. He spoke about hearing two to three voices inside his head, talking directly to him or whispering. The voices were said to be telling him to kill himself and that nobody likes him. He acknowledged he was in a low mood following death of his cousin and his mother in Turkey in 2020.
>
> By October 2021 he was free of antipsychotic medication. When observed on the ward, he was not seen to be responding to any unseen stimuli. He was otherwise observed to be able to function. There were no acute risks identified. He had reported to nursing staff that he was not able to sleep because of experiencing voices, but the nursing staff observed him to be sleeping throughout the night. He was interacting with other patients without concern. He was playing pool with peers. There was no concerns or paranoia about the other patients on the ward. Mr Deniz has been noted to be overheard asking other patients about their symptoms. The nursing team noted in November 2021 that he appeared to be receiving 'coaching' from his peers regarding symptoms to report in his fortnightly ward rounds. From that point he typically would come into the ward round meeting and discuss his reported auditory hallucinations and request additional medication. However, alongside this his ability to engage in activities on the ward with staff and peers had increased. He was noted to speak about wanting to bang his head to get rid of the auditory hallucinations. However, there was no actual evidence that he had harmed himself in this way. There had been no further concerns regarding self-harm.
>
> A Miller forensic assessment of symptoms test was undertaken. This was completed on 22 February 2022 and utilised an interpreter. It was concluded that the total score was significantly elevated, and therefore, indicated that he may be malingering mental illness. Amy Jones (Psychologist) concluded that during the assessment process it did not indicate that there was any genuine psychosis present. It was also suggested that he is likely to be malingering symptoms of psychiatric disorder. It was

> noted that Mr Deniz is able to organise and articulate his thoughts. It was, however, noted that there was some presence of mood disturbance."

16 In terms of his opinion and recommendations, Dr Zaman noted that the appellant had been assessed under sections 48 and 49 of the Mental Health Act 1983 (as amended) over a period of five months. The opinion of his treating team was that he was not suffering from a mental disorder of a nature or a degree that warranted treatment in hospital under the Mental Health Act 1983. Dr Zaman agreed with the opinion of the treating team. He did not recommend a hospital order. He referred to the fact that the appellant had undertaken a period of treatment without antipsychotic medication and said there had been no enduring positive or negative psychotic symptoms consistent with a chronic and enduring psychotic illness. Nor had there been any significant affective symptoms. The inpatient team had treated him for a provisional diagnosis of an adjustment disorder. His reported perceptions were not of psychotic quality and there was some inconsistency in his presentation between his subjective perception of distress and that observed by staff.

17 The judge also had victim personal statements from Sharron McCloskey dated 15 November 2021, 3 February 2022 and 1 March 2022. We too have read those statements.

18 The judge concluded in light of all the material before her that this was a medium culpability case in category C of the Guidelines: there was the use of a weapon, but not so serious as those used in categories A or B. It was an unpremeditated attempt to kill. She was satisfied notwithstanding submissions to the contrary by both defence and prosecution counsel, that the injuries suffered amounted to serious physical and psychological harm and were, therefore, in category 2, and not category 3. This was therefore a category 2C case.

19 That meant a starting point of 20 years with a category range of 15 to 25 years' imprisonment. There was serious aggravation in the facts that the offence took place in a domestic context; the steps taken to stop Ms McCloskey obtaining medical assistance; that he returned her phone only when she said she would not name the appellant as the offender; the steps taken to conceal

evidence of his bloodied clothing; and the fact the appellant appeared to be contemplating fleeing the country.

20 Against that, in mitigation, the appellant had no previous convictions and had been diagnosed with an adjustment disorder as a result of these proceedings. In the context of this particular case, given the psychiatric report this did not impact significantly on his culpability.

21 The judge addressed the dangerousness criteria. She referred to the views of Ms McCloskey who had accepted the appellant's account that he was mentally ill at the time of the offence and powerless to act in any other way than he did. Nonetheless in light of the psychiatric evidence the judge was satisfied that the appellant was not suffering from a mental illness which undermined his responsibility for what he did. She referred to the pre-sentence report author's conclusion that this was a finely balanced decision, given the likely substantial custodial sentence. She continued:

> "Standing back as an objective observer, I am satisfied that you've lied to Ms McCloskey on a number of occasions. You have manipulated her and you have attempted to manipulate mental health staff. You have given inconsistent accounts about yourself and their assessments indicate that you have been malingering. I am satisfied that Ms McCloskey was right after the attack on her when she was questioned whether she ever really knew you. In my view, you have not been frank about how you were living your life. All of this feeds into the assessment I have to make about the risk you pose in the future. The attack on Ms McCloskey was serious and sustained, and it appears that you deliberately left her without medical assistance, in my view, in anticipation that she would die. Your actions at the time of the offence and afterwards indicate to me a degree of calculation, as do your actions in the psychiatric unit. All of this raises a substantial question mark as to the extent of any remorse. In my view, you do pose a significant risk to members of the public and, in particular, Ms McCloskey and any other domestic partner with whom you may establish a relationship – of serious harm occasioned by the commission of further specified offences"

22 In light of that conclusion, the judge decided that an extended sentence was appropriate. After trial, the appropriate determinate sentence would have been in the order of 22 years, reduced to 20 years for personal mitigation. The judge gave credit of 20 per cent despite the guilty plea on the day of trial because this meant that Ms McCloskey was not required to give evidence.

23 The sentence the judge passed was an extended sentence with a custodial element of 16 years and an extended licence period of four years.

<u>The appeal</u>

24 The grounds of appeal contend that the sentence was manifestly excessive because the judge placed the case at too high a level in the Sentencing Guidelines. First, culpability was wrongly assessed in circumstances where the offence lacked premeditation, the weapon was picked up in response to the slap, and there had never been violence before. Secondly, harm was assessed at too high a level given that the complainant made a full recovery within a year. The harm assessment was wrongly elevated to category 2 and made in contradiction of realistic submissions made by both defence and prosecution counsel. Thirdly, insufficient regard was paid to the appellant's personal mitigation. He had his own personal difficulties. He was described as a gentle, caring man. The offending was entirely out of character. His grief was not properly reflected by the judge. Overall the sentence was simply too long and too severe.

Discussion and conclusions

25 We can see no realistic basis for challenging the judge's assessment of culpability as too high. It was common ground that this was a medium culpability C case within the relevant Sentencing Council Guideline and the judge correctly adopted this. We entirely accept that this was not a case where the weapon used was taken to the scene intending to use it. The metal torch was picked up at the scene and used as a weapon having done so. However, although the initial attack was spontaneous, it continued over a period of time and there were pauses during the violence before further violence was meted out. The appellant told Ms McCloskey that she was going to die and refused her requests to summon medical assistance. The judge said that it appeared that the appellant did this in anticipation that she would die and in any event, there was no material difference in terms of culpability between premeditation and withholding medical assistance over a period of time after an attack in the expectation that the person will die as a result. We take the view as we will explain, that these higher culpability factors could and should have been reflected in the judge's overall assessment of culpability, and the notional custodial element of the sentence she ultimately identified.

26 Similarly, we see no arguable basis for interfering with the judge's discretion in relation to credit for guilty plea and this point was rightly not pursued. This was a matter of discretion and the judge was fully entitled to conclude that the reduction should be less than 25 per cent given that the principal reason for the delay in plea was the obtaining of medical reports, and given the evidence that the appellant had been feigning psychosis.

27 We have given careful consideration to the contention that the judge ought to have categorised the harm in this case as falling at the top end of category 3 (with a starting point of ten years and a range of seven to 15 years) or at the lower end of category 2 (with a starting point of 20 years and a range of 15 to 25 years) within the Guideline. The degree of harm in cases of attempted murder varies greatly. The Guideline describes three broad categories of harm. Category 1 comprises injury resulting in "physical or psychological harm resulting in lifelong dependence on third party care or medical treatment" and cases where there is "permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out their normal day to day activities or on their ability to work". Category 2 comprises "serious physical or psychological harm not in category 1". Category 3 covers cases not in either of those categories.

28 The first category is plainly reserved for the most serious injuries causing permanent injury or disability of one kind or another. It follows that to establish serious harm in category 2, it is not necessary for the physical or psychological injury to have permanent, irreversible or life-long consequences.

29 Here, the injuries inflicted to Ms McCloskey's head were horrifying as the photographs demonstrate. There were deep lacerations to her forehead exposing her skull (with a patch of soft tissue loss attached to her hair which required grafting) and other lacerations to her face. These required sutures and no doubt left permanent scarring to her forehead. The injuries led to her hospitalisation for 11 days. Once discharged she attended hospital as an outpatient and experienced at least, ongoing dizziness, nausea and vomiting. For a time she required a

wheelchair and then the use of a stick because the dizziness affected her balance. She was still experiencing dizziness in March 2022 though it had substantially reduced. She complained that these episodes were a reminder of what had happened, suggesting ongoing trauma. She continued to experience painfully intense stabbing headaches. In her March victim impact statement she expressed a wish to have a restraining order put in place, and the clear inference is that she was in fear of the appellant.

30 While it may be true that Ms McCloskey made a full recovery from her physical injuries within a year of the offence, these were serious physical and psychological injuries. We have come to the conclusion that the judge was fully entitled to conclude that harm (both physical and psychological) was properly categorised as category 2 in this case. The judge was not bound by the view of counsel in the case. This was an evaluative assessment for her to make. Her assessment was fully supported by the evidence.

31 However even if notwithstanding that conclusion, the judge might have reflected the nature and extent of the injuries inflicted in this case, including the fact that the physical injuries had broadly resolved, by starting lower on the range than the 20 year starting point she took, an assessment that fully reflected the higher culpability features we have identified, would ultimately have justified the same 20 year notional sentence reached by the judge in any event.

32 Standing back and focussing on the question to be addressed by this court, namely whether the total sentence passed is one that can properly be characterised as manifestly excessive having regard to the culpability and harm involved, and bearing in mind all relevant aggravating and mitigating features, we are entirely satisfied that the sentence cannot be characterised in that way. It was an appropriate sentence that fully and properly reflected the full circumstances of this offending and was both just and proportionate.

33 We therefore dismiss the appeal.

CERTIFICATE

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