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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/02278/A5

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 14th December 2023

B e f o r e:

MR JUSTICE TURNER

and

SIR ROBIN SPENCER

R E X

- v –

LEWIS RICHARD JOHN ROMANIS

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Mr J Rosen appeared on behalf of the Appellant

J U D GMENT

SIR ROBIN SPENCER:

1. This is an appeal against sentence brought by leave of the single judge.

2. On 19th June 2023, in the Crown Court at Warwick, the appellant (who is now 23 years old) was sentenced by Mr Recorder Mason to concurrent terms of three years' imprisonment for two offences of causing or allowing serious injury to a child, contrary to section 5(1) of the Domestic Violence, Crime and Victims Act 2004. He had pleaded guilty to the offences some 16 months earlier, but for reasons which we shall explain, sentencing had to await further investigations.

The facts

3. The offences were committed in December 2019. The victim was a baby boy who was then aged only seven months. The appellant was 20 years old at the time. He had moved in to live with the baby's mother, "M", in October 2019. She was 19 years old. They had met through social media in the summer.

4. In the first offence (count 5 on the indictment), the appellant admitted shaking the baby which resulted in a degree of brain injury. In the second offence (count 6), the appellant admitted causing severe bruising to the baby's bottom on a later occasion.

5. The relationship between the baby's mother and father had ended soon after the baby was born, but the father still had regular contact with the baby.

6. The appellant and M were living with the baby in M's flat. The appellant showed little or no interest in the care of the baby. He would become irritated when the baby cried. He expected M to give him as much attention as the baby. He was plainly immature.

7. From November 2019 onwards, the baby was having weekend staying contact with the father and his family. They became concerned that the baby would arrive with bruising. By then M was pregnant again, this time with the appellant's child.

8. On 6th December 2019, the appellant was left in charge of the baby while M went to the shops. As she was making her way home, the appellant ran towards her in the street. He told her that the baby had gone "all stiff and floppy" and would not move his hand from above his head. M phoned her aunt for advice and was told to call an ambulance, which she did. Before the ambulance arrived, the baby vomited several times and then appeared to be unconscious. The baby was rushed to hospital. The appellant refused to travel to the hospital.

9. It was believed initially that the baby had a viral infection. After a period of observation he was discharged. The baby's father was told what had happened, and he took the baby to his home for the weekend. However, the baby continued to present as unwell and was admitted to hospital again. The baby was given medication to prevent sickness and was again discharged. After the weekend the baby was returned to the care of his mother and the appellant at her flat.

10. At that stage the treating clinicians did not recognise the significance of the symptoms, and no CT scan was carried out. In fact, however, it was established in due course that the baby must have suffered a subdural haemorrhage from some trauma to the brain. The appellant was later to accept that he had shaken the baby that day (count 5).

11. Happily, the baby appears to have suffered no long-term ill effects from that injury but, obviously, the consequences of such an injury could have been very serious indeed.

12. Between 7th and 19th December (after the baby had come back to the flat following the hospital admissions), very severe bruising appeared on the baby's bottom. On one occasion, when M returned home, she heard the baby crying in his cot, followed by a bang. When she changed his nappy, she saw bruising to his bottom. She pointed it out to the appellant who said, "That's bad". By now M suspected that the appellant had been harming the baby, but she sought no professional assistance. She asked her brother to have the baby for a while.

13. On 18th December the brother saw the bruising to the baby's bottom and took appropriate steps, as a result of which the baby was again admitted to hospital, where he remained for six days. It was determined that the injuries were non-accidental. The appellant was later to accept that he had caused them (count 6).

14. A lengthy police investigation followed. In February 2021 both the appellant and M were charged with offences of child cruelty, although it was not suggested that the mother had inflicted any injuries, simply that she had neglected the child or failed to protect him.

15. The first hearing in the Crown Court was in August 2021. There were proceedings in the Family Court, which led to further delay in the criminal proceedings. Eventually, both M and the appellant tendered guilty pleas which were acceptable to the prosecution. M accepted that she had not protected the baby as she should have. The appellant pleaded guilty to counts 5 and 6 on 14th February 2022. That was only a day or so before his trial was due to commence.

The sentencing hearing

16. Sentence was adjourned to a date in April 2022, but could not go ahead because more medical evidence was required, and so it was that sentencing eventually took place over a year later, on 19th June 2023.

17. The appellant had no previous convictions. There was a pre-sentence report. In accordance with his basis of plea, the appellant told the probation officer that he had not harmed the baby intentionally, but he accepted that he had been reckless. He said that he had shaken the baby, not because he was crying, but in order to get a reaction. He was scared and unsure what to do when he had been left alone with the baby.

18. There were two psychological reports: one prepared in 2020, the other in 2021. The appellant had suffered physical, emotional and sexual abuse at the hands of both his natural parents and his stepfather. He was fostered at around the age of 7, and at the age of 10 was adopted by a family who still support him and are currently looking after the baby whom the appellant fathered subsequently. The reports confirmed that the appellant functioned intellectually in the bottom four per cent of the population. This impacted on his problem solving ability and his ability to anticipate the consequences of his actions. He would struggle to work things out. He tended to be impulsive. He was emotionally immature.

19. The judge had an impressive letter from the appellant's adoptive parents in Yorkshire which acknowledged the seriousness of what he had done, but spoke too of his positive qualities.

20. There was a new Sentencing Council guideline for the offence of causing or allowing a child to suffer serious physical harm, which came into effect on 1st April 2023, a couple of months before the sentencing hearing. It was common ground that these offences fell within category 3C of the guideline: medium culpability and serious harm which has not had a substantial or long-term effect. The starting point for a single category 3C offence is 18 months' custody, with a range of six months to three years.

21. In his sentencing remarks the judge said:

> "Even at your age, with your cognitive understanding, everybody knows you do not shake a baby because it can lead to death and very serious brain damage".

The judge said that, having done that, when the baby was discharged from hospital, the appellant continued to cause bruising to the baby over the following two weeks. The judge continued:

> "I accept that you are clearly not capable of looking after a child, but to treat a child in that way, particularly the child of your partner, is unforgivable."

22. The judge acknowledged that the appellant was a man of good character and that the offending was now a long time ago, but he said that the offences were far too serious to be dealt with by a non-custodial sentence. The judge took the view that because there were two separate offences, and because of the seriousness of the first offence in particular, the sentence before credit for the guilty plea would, in total, be three and a half years' custody. For the late pleas of guilty, which had come only a day or so before trial, he allowed credit of six months, which resulted in the sentence of three years' imprisonment.

<u>The appellant's submissions</u>

23. We are grateful to Mr Rosen for his written and oral submissions on behalf of the appellant. Mr Rosen submits primarily that the judge failed to take proper account of the findings in the psychological reports, with the result that the sentence was manifestly excessive. He points out that the judge acknowledged that the appellant was not capable of looking after a child. He submits that the appellant lacked the cognitive ability to understand and appreciate the implications of his actions at the time and to assess the significant risk of

injury. Mr Rosen accepts that the judge was correct to place the offences in category 3C, but submits that a sentence at the lower end of the range would have been appropriate.

24. Developing these grounds of appeal in his oral submissions this morning, Mr Rosen relies on the fact that the second offence (the bruising to the bottom) was, in comparison to the first offence, far less serious and would not have justified a sentence even at the level of the starting point of 18 months' custody had it been the only offence for which sentence was being passed. He goes on to submit (although this was not part of the grounds of appeal as such) that if the court felt able to reduce the sentence below two years, as he submits would be proper, the court ought also to consider suspending the sentence, on the basis that a far more constructive way forward could be achieved along the lines of the recommendations in the pre-sentence report.

Discussion and conclusion

25. We have considered all these submissions carefully. As the judge said, these were indeed very serious offences committed against a small baby. There were two separate offences, and the second was committed after the baby had been discharged from hospital, which was an aggravating factor. However, from a starting point of 18 months under the guideline, the judge elevated the total sentence to three and a half years before credit for the guilty plea. We think that was manifestly excessive for a number of reasons.

26. First, although the overall sentence had to reflect the fact that there were two offences, we think that if individual sentences for each offence had been imposed consecutively, with a starting point of 18 months for each, considerations of totality would alone suggest that an uplift to three and a half years was manifestly excessive.

27. Second, having fixed upon his starting point, the judge did not identify specifically the

mitigating factors under the guideline. He mentioned the appellant's age, his lack of previous convictions and the delay. But the principal mitigating factor was the appellant's limited mental and emotional functioning. Under the guideline for this offence, a specific mitigating factor is mental disorder, learning disability or lack of maturity. The judge accepted that the applicant was not capable of looking after a child. We agree that, even with his limitations, the appellant must have known that he should not shake a small baby and that he should not have inflicted bruising as he did, and must have known that it was very wrong to do so. But those limitations in his functioning were nevertheless a significant mitigating factor.

28. Third, there was no consideration, as there should have been, of the overarching Sentencing Council guideline on sentencing offenders with mental and developmental disorders. Regrettably, the judge's attention was not specifically drawn to that guideline. The guideline required the judge to consider whether the appellant's culpability was reduced by reason of his psychological problems. The guideline states that a careful analysis of all the circumstances and all the relevant materials is required in such a case, and an explanation must be given of the judge's conclusions. The judge was required to consider whether the appellant's psychological difficulties impaired his ability to exercise appropriate judgment, to make rational choices, and to understand the nature and consequences of his actions. Had that assessment been carried out, there would have been a reduction in the sentence to reflect that mitigating factor.

29. Taking all these matters into account, we think that the proper total sentence here, before credit for the guilty pleas, giving appropriate weight to the mitigation, was two years' imprisonment, not three and a half years. The judge allowed six months' credit for the guilty pleas, which equated to a reduction of one seventh. We shall allow a reduction of three months' credit from the reduced term of two years, which results in a sentence of 21 months' imprisonment.

30. We turn to the secondary submission which Mr Rosen made in the event that we came to the conclusion we have: his submission that the sentence should be suspended. We have considered that matter carefully. We have had regard to the Sentencing Council guideline on the imposition of custodial sentences and have considered the factors in the guideline for and against suspension. It may well be the case that there is a realistic prospect in due course of rehabilitation and there is, as we have indicated, some strong personal mitigation. But the guideline requires the court to weigh the factors for and against suspension. It seems to us – and in effect this is what the judge said in his sentencing remarks – that for an offence as serious as this, appropriate punishment can only be achieved by immediate custody. That is our firm view.

31. We are therefore unable to accede to the submission that the sentence should be suspended. But we hope that when he is released on licence there will be work done with the appellant to achieve that which might have been achieved by work with him either under a community order or under a suspended sentence.

32. We therefore allow the appeal. We quash the sentence of three years' imprisonment and substitute, on each count, concurrent terms of 21 months' imprisonment.