IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/00217/A5
[2023] EWCA Crim 396

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 31st March 2023

B e f o r e:

LORD JUSTICE WARBY

MR JUSTICE HILLIARD

THE RECORDER OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA
(His Honour Judge Edmunds KC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

GARY ANTHONY REID

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Mr S Cobley appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Friday 31st March 2023

LORD JUSTICE WARBY:

1. This is an appeal against sentence brought with the leave of the single judge. It concerns an offence of domestic violence.

2. On 15th December 2022 the appellant, now aged 56, pleaded guilty in the Crown Court at Nottingham to one offence of assault occasioning actual bodily harm, contrary to section 47 of the Offences against the Person Act 1861. A week later, on 21st December 2022, he was sentenced to two years' imprisonment.

3. The single judge gave leave to argue the single ground of appeal that the sentence was manifestly excessive. Mr Cobley, who appears before us as he did below, has advanced that ground of appeal on the appellant's behalf.

The facts

4. The offence took place in the early hours of 11th July 2022 at a time when the victim, Amy Raynor, was in a relationship with the appellant. They were living together at the home of the victim's mother. During the afternoon of 10th July, the couple had argued. The appellant was angered and left home at around 3.30 pm. He used words which indicated an intention to exact violence on a third party.

5. Shortly after midnight he drove back. Miss Raynor had visited a neighbour opposite. She was alerted by her mother to the appellant's return and went home. She and the appellant met in the drive of her mother's house, which is where the assault took place. The couple had a

conversation in the car. It started amicably, but turned nasty. The appellant angrily accused Miss Raynor of telling him lies about events involving an ex-partner of hers. He poked her in the head and she got out of the car, but left the passenger side door open. The appellant reversed the car towards her. As he did so, the door clipped her arm, causing her to fall to the ground. She got up and ran away. The appellant gave chase and caught her by the neck. He then pulled her back to the car by her hair. At some point during this process he took her phone and her keys, so that she was unable to call for assistance.

6. The incident came to an end when two brave members of the public intervened. They were local residents who had heard Miss Raynor's cries for help. They chased after the car and shouted aloud its registration number. One of them took Miss Raynor back to their house while the police were called.

7. Miss Raynor had sustained multiple bruises to the arms, legs and neck. She was left (as she described it) "aching all over". Beyond that there were psychological effects which she described in a statement which was read to the court at the sentencing hearing.

8. She said that what the appellant had done had come as a massive shock because she had trusted him. She had struggled with her mental health, to the extent that she had recently self-harmed. In September 2022 (two months after the assault) she had injured herself so badly that she had cut a vein and had had to have an operation. She had taken an overdose, and she had also contemplated suicide by throwing herself off Trent Bridge, from which she was talked down. All of this, she said, was a way of trying to release the anger and anxiety that she had experienced. She was frightened of the appellant and what he might do when released. She had also began to drink a lot more. Other effects of the offending described by her included that she had moved house, she had stopped going to places she used to visit with the appellant, and she no longer associated with anyone who knew him. There had also, she

said, been a huge impact on her mother, who at the time had terminal cancer and had only weeks to live.

9. The appellant had handed himself in at around 5.30 am, but had denied the offences. He claimed that if there had been any assault on Miss Raynor, it had been caused in the course of the action he took to prevent her self-harming with a razor blade that she had produced that night. On 12th August 2002 he entered a not guilty plea, and he continued to deny his guilt over the following four months until he entered a guilty plea a matter of weeks before the trial which was due to take place in January 2003.

Sentencing

10. This was far from being the appellant's first encounter with the law. He had 28 previous convictions for 58 offences, most of which were acquisitive. There were also three offences against the person between 1992 and 2002, one of assault occasioning actual bodily harm and two of causing grievous bodily harm, contrary to section 20 of the 1861 Act.

11. The Crown submitted, and the sentencing judge agreed, that this was a case of high culpability and category 1 harm for the purposes of the relevant guideline. The high culpability factors identified by the judge were that it was a prolonged and persistent incident involving assault on a vulnerable, lone woman at night. The harm was in category 1 because of the facts disclosed in the victim personal statement, which showed that there was serious psychological impact. The judge added that the context was a domestic one and a relationship which involved trust. The judge did not treat the appellant's antecedents as aggravating the matter in any way, but he said:

"If you had been convicted after trial, this would have been

worth every day of 30 months."

That is the starting point for an offence in that category. The judge reduced that figure to 24 months to take account of the appellant's progress in addressing his mental health issues, and his behaviour in prison, as well as his guilty plea, for which he allowed a reduction of 15 per cent.

The appeal

12. Mr Cobley, in his written and oral argument, makes three main points. First, he argues that it is "possible" that the judge erred in placing this case in category 1A. The argument is that this was not properly to be regarded as a case of "prolonged and persistent" offending. In his written grounds, Mr Cobley referred to *R v Xue* [2020] EWCA Crim 587, where the court observed that two blows, one of which was not said to amount to an offence contrary to section 18 of the 1861 Act, would not normally amount to a "sustained" or "repeated" assault within the meaning of the guideline for that offence. The submission is, essentially, that a fact-specific approach should be taken to the particular case, and that the impact of prolonged and persistent offending upon the starting point for the sentence should be borne in mind. Further, Mr Cobley argued that the victim's injuries, as shown in the photographs, were "perhaps not the result of a sustained attack" and that although there was "some evidence" of emotional upset, there was not enough to take the case into the highest category of harm. The second main submission was that the aggravating features were given too much weight. The third submission was that insufficient weight was given to the appellant's mitigation.

Assessment

13. These submissions have been presented clearly and succinctly, both in writing and orally

today, but we find ourselves unpersuaded. In our view, the arguments significantly underplay the reality of this case.

14. In our judgment, the judge was right to categorise this offending as he did. The victim was undoubtedly vulnerable for the reasons given by the judge. An assault may fall within category 1 if it is prolonged or persistent. It need not be both. Whether it is either is a fact specific judgment for the sentencing judge to make. In this case we consider that the judge was entitled to conclude that the offending was both prolonged and persistent to a degree that justified his approach to the starting point for sentence. There were, on analysis, four separate phases to the assault, which could have been analysed as four distinct assaults, at least three of which appear to have caused actual bodily harm. The events took place over a significant period of time. This was, in our judgment, a sustained attack in which, as the appellant himself has conceded, he lost his temper and things spiralled out of control. In the circumstances, we do not derive any great assistance from the case of *Xue*.

15. We add that in concluding that this was a case of high culpability the judge did not mention but might also have referred to the element of strangulation – another factor specified in the guideline. We see no fault in the judge's overall approach to that issue.

16. As for harm, we find ourselves unable to agree that the impact on the victim was anything less than substantial, in the context of the offence contrary to section 47. The photographs, which we have viewed, depict a large number of bruises and abrasions to the victim's neck, upper body, torso, arms and legs, as well as some minor lacerations. These must also be considered alongside the victim's account of the physical effects. The judge manifestly had a sufficient evidential basis for concluding that there was "serious psychological harm".

17. The judge took the category starting point as his notional sentence after a trial. We think that in doing so he treated the appellant somewhat mercifully. Other judges might well have considered that the case merited upward adjustment to reflect the combination of high culpability factors that we have mentioned, even before consideration of the domestic context in which the offence took place, which is, as Mr Cobley has conceded, an aggravating factor of the case.

18. We do not consider that there is anything in the submission that aggravation was given excessive weight here. Some judges might have considered that the appellant's previous convictions, especially those for offending against the person, although they were old, had at least some relevance. In his submissions today, Mr Cobley conceded that the appellant's record did not help him. The most recent offence against the person was in 2002, when the appellant was sentenced to two years' imprisonment for an offence of causing grievous bodily harm, committed when he was on licence from a prison sentence for burglary and fraud. In 2003, during the currency of that sentence, and after his release on licence, the appellant committed an offence of resisting arrest, using an imitation firearm, for which he was sentenced to five years' imprisonment.

19. We have taken care to examine the detail of the points relied upon in relation to mitigation. The appellant has clearly made considerable and impressive progress in custody. We are very conscious of the valuable work that listeners do within prisons. But all of those matters were mentioned and taken into account by the judge. In contrast to his approach to the appellant's previous convictions, he did give them some weight. He was entitled to conclude that they played little part in the overall calculation.

20. As there is no challenge to the reduction of 15 per cent for the guilty plea, in all the circumstances we conclude that the sentence is unimpeachable. The appeal is therefore

dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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