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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301064/A2
[2023] EWCA Crim 518

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 25 April 2023

Before:

LADY JUSTICE THIRLWALL DBE

MRS JUSTICE STACEY DBE

MR JUSTICE BENNATHAN

REX

V

FRANCIS PETER MONK

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MR K SHARPE appeared on behalf of the Appellant.

J U D G M E N T

(Approved)

1. MRS JUSTICE STACEY: On 13 February 2023, in the Crown Court at Chelmsford before Mr Recorder Conley, the applicant (then aged 70) pleaded guilty on re-arraignment to a single count of the assault occasioning actual bodily harm of his neighbour, Colin Statham, on 29 September 2018. A further count of putting a person in fear of violence by harassment, contrary to section 4(1) of the Protection from Harassment Act 1997 was ordered to lie on the file. The sentence was adjourned for a pre-sentence report and on 24 March 2023 the applicant was sentenced to a term of 6 month's immediate imprisonment. The applicant's appeal has been referred to the full court by the Registrar and the hearing expedited. We give leave.

The Facts

2. The offence occurred in Fold Croft, a cul-de-sac in Harlow, Essex. The complainant, Colin Statham and his wife, Gill Coleman lived a little further up from the appellant, their son, Tom Coleman, lived diagonally opposite the appellant closer to the entrance of the cul-de-sac. At approximately 11.40 am on 29 September 2018 Tom Coleman had trouble manoeuvring his vehicle out of his drive because of the way in which a pick-up truck belonging to the appellant's family had been parked opposite his driveway. Mr Coleman beeped his horn in frustration as he drove off. The appellant and his wife challenged Ms Coleman and asked why her son had beeped his horn. When Ms Coleman tried to explain that it was hard for her son to get out of his driveway with a large truck parked in front of it, the appellant became extremely angry. He was spitting with anger and rage and walked right into her face. He threatened to kill her son and bury him. Ms Coleman

was calm throughout but felt very threatened by the appellant. Her husband, Mr Statham, then arrived back in his car and the appellant repeated his threat to "kill and bury your son" before going back into his house. Ms Coleman was sufficiently concerned to telephone her son to tell him not to beep his horn or react when he returned home and that he should park across his driveway in an effort to be placatory.

3. After Tom Coleman had returned and an hour or so later, the appellant's daughter had a little difficulty driving out of the cul-de-sac because of the positioning of the appellant's pick-up truck and Tom Coleman's vehicle parked on opposite sides of the road. It did not block the road but had created something of a chicane. The appellant's wife was standing outside and said to her husband: "Let's go and have a row". The appellant then marched over to Tom Coleman's house and violently banged on his window with a Tesco bag containing hard vegetables (including a marrow, a butternut squash and some gourds) and shouted at him to come out, abusing him with words including "come out here you royd (sic) cunt, I will fucking bury you in Epping Forest". Ms Coleman heard the commotion from her house and came out to see what was happening. She told Tom Coleman, who had been hanging out the washing in the garden at the back, to remain indoors which he did. Mr Statham followed slowly behind her. The appellant then ran towards them, dashed past Ms Coleman, grabbed Mr Statham's arm and swung him round before hitting him full in the face and mouth by either punching him with his fist or swinging the Tesco bag with vegetables at him.
4. Mr Statham was 68 at the time, with a number of health conditions. Ms Coleman said: "What have you done to Colin? He's an old man" to which the appellant replied that he himself was 65 and he moved forward to continue the attack before another neighbour intervened and urged him to stay back. The appellant then moved to punch Ms Coleman

in the stomach but was restrained by his wife. Mr Statham was bleeding profusely from his mouth and while they waited for an ambulance, the appellant abused Mr Statham, called him “a cunt” in front of the police and mocked and taunted his son Charlie, seemingly intending to goad him into a response. The police officers who arrived at the scene were sufficiently concerned to call for backup.

5. Mr Statham was taken to hospital by ambulance where he required 40 stitches to the mouth, face and lips. He has ongoing mild paralysis. In a victim personal statement made a year after the incident, he describes the permanent nerve damage to his bottom lip and inside mouth which has left him without feeling. It has affected his speech, makes it hard for him to shave and he is now prone to dribbling.
6. Mr Statham and Ms Coleman have suffered considerable fear, stress and anxiety as a result of the attack. They avoided leaving the house when the appellant and his wife were in and would wait for the appellant's car to leave before visiting their son or walking the dog. Ms Coleman did not like coming home anymore. It led them to request a council house transfer after more than 11 years in their home, with the attendant disruption, cost and financial pressures which caused arguments between them. The house swap came through some time after September 2019.
7. The matter came to court following a postal requisition served almost a year after the incident on 6 September 2019. Initially the appellant pleaded not guilty, relying on self-defence in his Defence Case Statement. There were considerable delays in the matter coming to trial. At the plea and trial preparation hearing on 18 November 2019, the case was given a five-day time estimate and placed in the Warned List for 26 May 2020 but then removed at the prosecution request because of witness availability. The Covid pandemic then occurred and it did not re-enter the Warned List until 12 April

2021. It was not called on. The following year it was again Warned for trial for a period commencing 4 April 2022 but once again it was not called on. The trial was subsequently fixed for 26 September 2022, but vacated on 23 September, because of the Bar industrial action and lack of availability of defence counsel. It was then re-listed and given a fixed date of 13 February 2023, which would have been an effective date. At the outset of the hearing the appellant asked to be re-arraigned and pleaded guilty to count 1 on a full-facts basis and count 2 ordered to lie on the file. The case was adjourned for the preparation of a pre-sentence report, and he was sentenced the following month.

8. Since his first appearance in the Magistrates' Court on 14 October 2019, the appellant has been subject to a single bail condition not to contact either directly or indirectly Colin Statham or Tom Coleman. In his pre-sentence report interview the appellant showed no remorse, did not accept his guilt and said that he had pleaded guilty only to get the matter dealt with. He maintained his account that Mr Statham had ran at him brandishing a Stanley knife. In the pre-sentence report he was assessed as having a low risk of reconviction within a 2-year period, but of posing a medium risk of serious harm to the public either to those known to him or strangers that he perceives have aggrieved him in some fashion.
9. Risk factors were identified of a lack of temper control, attitudes condoning the use of violence, issues of problem solving and a lack of victim empathy. Although the appellant did not meet the eligibility criteria for an accredited program, the report writer proposed a rehabilitation activity that she suggested could assist him to address his thinking behaviour and attitudes in rehabilitation and activity requirement (“RAR”) days. She suggested a number of punishment elements that could be included in a community order of a 3-month curfew, a fine, as well as 15 RAR days. He was unsuitable for unpaid work

on account of health issues.

10. The appellant has 11 convictions for 18 offences committed between 1964 and 2007, including two offences of violence: assault occasioning actual bodily harm, for which he was sentenced to a 9-month suspended sentence order on 8 December 1980 and common assault which resulted in a conditional discharge in 1993. He had received custodial sentences in the past for theft and dishonesty offences in 1993 and in 2005 for perverting the course of justice. There is no history of poor compliance with court orders.

The Sentencing Remarks

11. There is no criticism of the Recorder's decision that the offence fell into category B2 of the Sentencing Council Guidelines with a starting point of 36 weeks' imprisonment, and a category range from high-level community order to 18 months' custody. There is also no dispute that the Recorder was entitled to conclude that there were a number of serious aggravating features, in particular that the victim was an older gentleman who was not in a position to defend himself and who was not directly involved in the appellant's dispute.
12. The Recorder did not specify the upward adjustment he had made to the starting point in light of the aggravating factors, before he identified the mitigating factors. He noted that the appellant not only had no remorse whatsoever but continued to blame the victim. Four mitigating features however were identified. Firstly, his age (71 at the time of sentence); secondly, his lack of recent convictions; thirdly, the very substantial delay to the conclusion of the proceedings, and fourthly, his health difficulties which included chronic obstruction pulmonary disorder, diabetes and hearing loss. He was also under early-stage investigation for possible bowel cancer.
13. The Recorder concluded that the mitigating factors reduced the sentence quite

considerably to a sentence of imprisonment of 30 weeks after trial. He then reduced the sentence by 4 weeks for the day of trial guilty plea, to arrive at a final sentence of 26 weeks representing a discount of a little over 10 per cent by rounding it up to the nearest week. He next considered whether the sentence could be suspended in accordance with the Sentencing Council Guidelines and said this:

"There is some personal mitigation in this case, as I've already referred to, but that's already been taken into account by reducing the sentence to the position where it is now. There is going to be an impact on others. Your wife is here and I understand that, if you were to go into custody, there would be an impact upon her and that stands to reason. You're an elderly couple, but the matters that cause me most concern are really whether or not there is any prospect of rehabilitation in this case. Had you told the probation officers that you accepted responsibility, that you showed even a scrap of remorse for what you'd done, any concern for Mr Statham's welfare or wellbeing, any sort of insight into your own behaviour, then you might have been a candidate for rehabilitation, but you, frankly, at the age of 71, if you don't know by now that this is a wholly unacceptable way to behave, then you're never going to know and I do not see why Probation resources, which are scarce, should be channelled into trying to teach a man of 71 that it's unacceptable to punch the lights out of their neighbour, ... who at the time was 68.

In my judgment, this is a case where appropriate punishment can only be achieved by immediate custody."

14. The Recorder also made a 5-year restraining order pursuant to section 360 of the Sentencing Act 2020. Although the order is incorrectly recorded as having been made under section 5(1) of the Protection from Harassment Act 1997, it does not affect the lawfulness of the sentence, because of the transitional provisions (see paragraph 4 schedule 27 of the Sentencing Act 2020) and by analogy the case of *R v Ayhan* [2011] EWCA Crim 3184.) It prohibited the appellant from both direct and indirect contact by

any means, and from intentionally approaching any of Gill Coleman, Tom Coleman or Colin Statham.

15. No reference was made to the Senior Presiding Judge's guidance of 20 March 2023 following the judgment of 3 March 2023 of *R v Ali (Arie)* [2023] EWCA Crim 232 which draws the attention of sentencing courts to Operation Safeguard. Operation Safeguard permitted 400 police station cells across the country to be used for serving prisoners and the guidance highlighted the impact on conditions for prisoners given the very high current prison population which had been set out in a letter from the then Deputy Prime Minister to the Lord Chief Justice of 24 February 2023. The Court had found in *Ali* that the courts can take into account impact of the current prison population levels when deciding whether the imposition of a short custodial sentence can properly be suspended while there continues to be pressure on prison capacity.

Grounds of Appeal

16. The appellant seeks to appeal the sentence on two grounds. Firstly, that it was wrong in principle not to suspend the sentence, and secondly, the fact of and length of the restraining order which it was said was neither necessary nor proportionate and therefore wrong in principle. In the referral the Registrar noted that while the Court may well agree that a custodial sentence was appropriate in the context of the case:

"... this is a short sentence and the full court can consider whether the sentence should have been suspended in light of the applicant's mitigation, the conclusions in the pre-sentence report and the recent judgment of *Ali (Arie)* [2023] EWCA Crim 232 in relation to prison conditions."

Discussion and Conclusion

17. There is no criticism of the length of the sentence imposed, the only issue is whether it should have been suspended. This was a very nasty incident of unprovoked violence and aggression, in a quiet residential cul-de-sac with a number of aggravating features as identified by the Recorder. The background to the assault demonstrates that this was not a momentary flash of anger, but a prolonged incident of neighbour intimidation, culminating in a vicious attack on a vulnerable individual who was not directly involved. After the appellant had responded aggressively to Tom Coleman, who had not unreasonably tooted his horn, Tom and his parents sought to de-escalate the situation and refused to be provoked by the appellant's various provocations. Although the appellant was assessed as at of low risk of reconviction by reference to the probation actuarial tools sentence, the pre-sentence report writer explained why she considered that he still posed a medium risk of serious harm to the public of physical assault and psychological harm from verbal abuse, acts of intimidation and threats of violence. The Recorder was therefore entitled to conclude that the factors militating against suspending the sentence such as the risk of harm to the public and that the troubling facts of the case (including Mr Statham and Ms Coleman feeling driven out of their home) warranted an immediate period of custody and were not outweighed by the appellant's history of compliance with court orders. Although there was some prospect of rehabilitation identified in the pre-sentence report, it was tentatively suggested. There was no strong personal mitigation and nor could it be said that immediate custody would result in significant harmful impact on others. It cannot be said that the Recorder failed to follow the Sentencing Council Guidelines.

18. In Mr Sharpe's clear and helpful submissions, his best points were the long delay in this

case and the impact of Operation Safeguard. For 12 months after the assault the appellant was waiting to find out whether he would face charges and from September 2019 to February 2023, he faced two serious charges, one of which was not proceeded with on the day of trial. Matters therefore have been hanging over him for a total of just under 4½ years. But it is not to be forgotten that the delay has also impacted on the victim and his family too, for whom justice has been denied for the same period of time. The impact has been set out in the victim personal statement.

19. Counsel did not draw the Recorder's attention to this Court's judgment in *Ali*. The facts in *Ali*, however, were very different. In that case there was a realistic, not merely speculative, prospect of rehabilitation and a positive report from Mr Ali's probation officer enabling the sentencing judge, to conclude that on the face of it he rehabilitated himself. In addition, Mr Ali did not present a risk or danger to the public. In *Ali* the impact of the surge of offenders in the prison estate was described as a "further exceptional factor" in addition to the other factors justifying suspending Mr Ali's sentence.

20. The delay and the current prison conditions are both powerful factors which, in a more borderline case, may well be decisive, but when weighed against the facts in this case, the seriousness of the offence, the appellant's total lack of insight and remorse, together with the harm done, (both physical and psychological causing them to move from their home of over 11 years), it cannot be said that the Recorder's decision not to suspend the sentence was wrong in principle. The appellant's age does not assist him since, as noted by the Recorder, he was old enough to know better.

Restraining Order

21. The restraining order made under section 360 of the Sentencing Act provides that a court may make a restraining order against an offender for the purpose of protecting the victim or victims of the offence or any other person mentioned in the order from the conduct which amounts to harassment or will cause a fear of violence.
22. In light of the appellant's conduct and behaviour on 29 September 2019, the terms and 5-year duration of the order were clearly justified. Although Mr Statham and Ms Coleman moved from Fold Croft there remains a risk of encounter in the local area and it is not known if Tom Coleman remains living in the cul-de-sac.
23. For the above reasons the appeal is 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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