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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202203652/A2
[2023] EWCA Crim 645

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 24 May 2023

Before:

LORD JUSTICE COULSON

MRS JUSTICE FARBEY DBE

MR JUSTICE CONSTABLE

REX

V
DANIEL WATSON

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MR D CALDER appeared on behalf of the Appellant.

J U D G M E N T

LORD JUSTICE COULSON:

Introduction

1. The appellant is now aged 31. On 2 November 2022, at the Crown Court at Manchester, he pleaded guilty upon re-arraignment to one count of unlawful wounding contrary to section 20. On 2 December 2022 he was sentenced by Mr Recorder Shafi KC to 28 months' imprisonment. He appeals against that sentence with leave of the single judge.

The Facts

2. The appellant and Bianca Carroll had previously been in a relationship for over 8 years. They had a 4-year-old son together. They separated in the summer of 2021. In June 2022 they rekindled their friendship. On the evening of 28 June 2022, the appellant and two friends were spending the evening drinking at Ms Carroll's house.

3. At around 10.30 that night the appellant suddenly became angry. He threw his drink in Ms Carroll's face. As she put up her hand to swipe away the liquid, she was struck on the right side of her face by a glass thrown by the appellant. This caused a significant cut in the area of her right ear. When Ms Carroll asked why the appellant had thrown the glass, he told her: "You deserve it".

4. In the days thereafter, the appellant told Ms Carroll that she had "better not" call the police. However, she did report the incident to the police. The appellant then sent her a number of offensive messages, calling her "a slag" and "a scumbag". One message ended with the words: "Why what if a few stitches can't heal it. Behave." In fact, the 3cm laceration on the side of Ms Carroll's face was the subject of surgery and has left a permanent scar.

5. The appellant pleaded guilty pursuant to a basis of plea. That stated that he did not intend the glass to make contact with Ms Carroll and did not therefore intend to cause her injury.

The Sentencing Exercise

6. The learned Recorder said in terms that he sentenced the appellant by reference to his basis of plea. By reference to the Sentencing Guidelines, he said that this was a medium culpability offence with harm in category 2. That gave a starting point of 2 years' custody and a range from 1 to 3 years' custody. The learned Recorder then identified various aggravating factors, such as the appellant's previous convictions for violence and a recent offence of sending malicious communications to Ms Carroll. There was also the domestic setting of the incident.

7. In all the circumstances, the Recorder identified the notional sentence after trial of 3 years. Giving credit for the plea, that reduced the term to one of 28 months' custody.

The Appeal

8. Mr Calder's written advice takes a variety of points about the sentencing exercise.

However, in his clear and crisp submissions this morning, Mr Calder's principal criticism was that the judge failed to have proper regard to the basis of plea. In particular, Mr Calder pointed out that the judge was wrong to say: "I am told there was no intent to cause injury although that is inherent within an offence contrary to section 20".

9. Mr Calder rightly makes the point that the section 20 offence involves a lack of intent to cause really serious injury but, in this case, there was not only a lack of intent to cause really serious harm, but a lack of intent to cause any harm *at all*. We accept that the judge's observation was wrong. The question for us is whether the starting point that the judge took, whether for that or for any other reason, was too high in consequence.

10. When giving leave to appeal, the single judge said this:

> "The appellant should understand that granting permission has not been an easy decision: this was a highly dangerous act on his part which has had long-term consequences, and the Full Court may well say that the sentence is not to be faulted."

For reasons which we shall explain, the single judge's prediction has proved entirely accurate.

Analysis

11. In our view, there is no doubt that this was a category B2 case. Category B medium culpability arose because, in accordance with the Guidelines, there was the use of a weapon (in this case, the glass). We do not accept Mr Calder's submission that, because the basis of plea indicated a lack of intent, the categorisation should instead have been category C. That is not what the Guidelines say. Category C is only applicable if no weapon had been used. In addition, it is doubtful whether this assault could be described as impulsive or spontaneous, which is another indication of category C, because the assault with the glass followed the initial throwing of the drink. In this way, to the extent that lack of intent is relevant at all, it will be reflected by way of a possible downward adjustment within the recommended range.

12. There is no dispute that harm was plainly within category 2, because of the permanent scarring to Ms Carroll's face.

13. The recommended range for a category B2 offence is 1 to 3 years with a starting point of 2 years. The next thing to do is consider the aggravating and mitigating factors. There were numerous aggravating factors. In our view, those took this case to the top of the recommended range, if not beyond that top limit of 3 years. Those aggravating factors were that this was an offence aggravated by alcohol; it took place in a domestic setting; and the appellant had previous convictions for violence. More significantly, he had a previous conviction for sending malicious communications to Ms Carroll. Moreover, at the time that he threw the glass, he was the subject of a community order for the offence

of sending Ms Carroll those malicious communications. He had, it is accepted, a poor record of compliance with previous court orders.

14. In our view, a further significant aggravating factor can be found in the appellant's reactions after the assault. He told Ms Carroll that she deserved the injury that led to the permanent scarring. He tried to get her not to report the matter to the police and even after she had done so, he sent her offensive messages and told her that it was nothing that a few stitches would not heal.

15. In all those circumstances, a notional term before considering the mitigating factors of 3 years (and probably more) would have been amply justified.

16. Turning to the mitigating factors, we deal first with the lack of intent. We accept Mr Calder's submission that, depending on the circumstances, that can make a significant difference to the sentencing exercise, because it can reduce culpability within the category of the Guidelines. Of course, the extent to which it makes a difference will always turn on the facts. In our view, in this case, it did not make a significant difference. This was a relatively small room with a number of people in. The appellant had just deliberately thrown a drink at Ms Carroll. To then throw a glass in her direction, even if he did not intend to hit her was, as the judge correctly said, "an incredibly reckless thing to do". Thus, the fact that the applicant's action here was "incredibly reckless" rather than deliberate, did not, in our view, justify any or any significant downward adjustment in the notional starting point.

17. As to the other mitigating factors, although it was suggested to the sentencing judge that the appellant had wanted to apologise to Ms Carroll and that he was ashamed, there is no evidence of any of that and we are bound to say that the appellant's post-incident communications paint a very different picture.

18. Accordingly, in our view, this was a case with numerous and serious aggravating factors and very little by way of mitigation. Such cases tend to find themselves at the top of or beyond the recommended range. We consider that such was the case here. Accordingly, we consider that the judge's 3 year starting point was justified. It was not manifestly excessive. Since Mr Calder's measured attack on the sentence is limited to the criticism of the starting point, it follows that for the reasons that we have given, this appeal against sentence is refused. However, we would not want to end this case without again expressing our gratitude to Mr Calder and his extremely clear and concise submissions.

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

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