IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202301295/A5
NCN: [2023] EWCA Crim 911

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 9 June 2023

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE CHOUDHURY

MR JUSTICE CONSTABLE

REX

V

RAJESH PATEL

MS A NELSON appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE CONSTABLE:

Introduction

1. On 24 March 2023 in the Crown Court at Leicester, the appellant pleaded guilty upon re-arraignment to one count of making a threat to kill, contrary to section 15 of the Offences Against the Person Act 1861, for which he was sentenced by Mr Recorder Hallam ("the judge") to 2 years' imprisonment and one count of assault occasioning

actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861, for which he was sentenced to 16 months' imprisonment to run concurrently. Counts 3, strangulation, and count 4, controlling or coercive behaviour in an intimate family relationship, were ordered to remain on file. The total sentence was therefore 2 years' imprisonment.

2. The appellant appeals against sentence by leave of the single justice. The thrust of the appeal, advanced ably by Ms Nelson both in writing and orally today on behalf of the appellant, is that the judge adopted too high a starting point, failed to give sufficient regard to the basis of plea and double counted aggravating features.

The Facts

3. The appellant and the complainant had been in a relationship for around 2 years. During the afternoon of 20 September 2022 the pair argued over a glass of milk at their home address. The complainant had expressed the view that a woman had the right to say “no” to things, like getting a glass of milk for a man. In her witness statement, she described how the appellant went quiet and muttered something. When asked to repeat it the appellant said: “Don't say ‘no’ to me ever”. The appellant then came across to the bed to the complainant, launched at her and attacked her.

4. The accepted basis of plea was that the appellant assaulted the complainant by pushing her twice, hitting her in the head with a rubber swimming shoe and pulling at her necklace. The appellant also threatened to kill her and then himself. The complainant left the address and went to the appellant's mother's home. The appellant's mother accompanied the complainant back to the appellant and had a conversation with the couple before leaving them. In the early hours of the morning, the complainant left the

property and made her way to the nearest police station, arriving outside at 5.00 am. The station was locked so she telephoned 999 and spoke to the operator for around 25 minutes. At 8.30 that morning the appellant was arrested.

5. In her victim impact statement, the complainant paints a vivid and distressing picture of how the attack left her in the grip of fear. She describes how she honestly believed that the appellant was going to kill her and how the attack has destroyed all her trust and belief in life. The complainant explains how she has panic attacks in the house, cannot sleep in the room that she shared with the appellant and has become completely isolated. She said she does not even go to the shops because she is scared to go outside, checks all the locks on her property and is scared to open her windows. As a result of the appellant's conduct, she constantly carries a panic alarm and describes a significant emotional, physical and financial impact on her life.

The Sentence

6. The judge described the facts. He observed how the offences were serious in themselves, serious because this was in the context of domestic violence and serious because the appellant had done it before. This was a reference to the appellant's previous conviction for battery of a previous partner in 2016. This was one of a number of previous convictions which included other relevant offences of using racially threatening words or behaviour to cause harassment, alarm or distress. The judge stated that the fact that these offences took place in a domestic context automatically served as an aggravating feature and the fact that the appellant had a previous conviction for domestic violence was a profoundly aggravating feature.
7. Recognising that the offences for which the appellant was being sentenced arose out

of the same incident, the judge considered it was appropriate to impose concurrent rather than consecutive sentences. He said he would treat the assault occasioning actual bodily harm as an aggravating feature of the threats to kill and imposed a sentence for threats to kill that was reflective of the overall criminality that fell to be sentenced. He placed both offences within category 2B within the respective Guidelines for assault and for threats to kill. Category 2B for threat to kill has a starting point of 1 year, within a range of 26 weeks to 2 years 6 months. Category 2B for assault has a starting point of 36 weeks with a range from a high-level community order to 1 year and 6 months. He stated that if he was sentencing for the assault occasioning actual bodily harm alone, an appropriate sentence would be 16 or 18 months and, for the threat to kill, 21 months. He had therefore placed both categories at or towards the top of the relevant category. Considering totality, he considered that, after trial, the appropriate sentence would have been a 29 or 30-month sentence, from which he deducted a credit of 15 per cent for a guilty plea to arrive at 2 years.

The Appeal

8. The first limb of the grounds advanced on appeal is that the starting point for each was too high. Taking the threat to kill first, Ms Nelson argues that the conduct comprised a single threat and although it was accompanied by a low level of violence, it was not such that a victim would consider the threat likely to be carried out. As such, she argued that it should be at the bottom of the range 2B.
9. We disagree. There was evidence before the judge from the complainant who stated, in terms, what her state of mind was when subjected to the appellant's attack. The judge was more than entitled to take that at face value and to conclude that she genuinely feared

for her life. As such, she was not just entitled to, but correct to, consider a starting point towards the higher end of the category range. Ms Nelson argued orally today that the use of a weapon (such as a knife) is the sort of imminent violence required for the top level of category 2. That, in our view, is not tenable. A visible weapon is referred to specifically in relation to category A, higher culpability. Similarly, in our view, the duration of the attack as a whole was not such a limited duration so as to warrant categorisation in the lower culpability range.

10. As to assault occasioning actual bodily harm, we again reject as untenable the suggestion that a starting point of 16 months was too high. It is said that none of the higher culpability factors arise but that, in our view, is not correct. The appellant accepts that he used a rubber swimming shoe when hitting the complainant on the head; that was being used as a weapon. Moreover, given the effect of the attacks on the complainant, it might be thought he was fortunate that the judge did not categorise harm as more than minor psychological distress, as he would have been entitled to. It was undoubtedly correct, in our view, to categorise the assault, considered alone, at the top end of category 2B.
11. The second limb of the appeal is that the judge failed to have sufficient regard to the basis of plea, in that his reference to the defendant being a controlling presence and the complainant's isolation from her family reflect consideration of matters either not proceeded with or not forming part of the agreed basis of plea. Ms Nelson realistically recognised today that this may be a somewhat ambitious submission. It is important to make clear that a sentencing judge is entitled to consider matters of context within which the offending sat, as indeed he was required to do when considering the Guideline specifically on domestic abuse. As that Guideline points out, the domestic context of offending behaviour makes the offending more serious because it represents a violation

of trust and security that normally exists between people in an intimate or family relationship. It also points out that domestic abuse is rarely a one-off instance, and it is the cumulative and interlinked physical, psychological, emotional or financial abuse that has a particular damaging effect on the victims and those around them. It is precisely for these reasons that, even when the offending for which a sentence is being passed is limited to one particular incident and a decision has been taken to allow offences relating to the wider relationship to lie on the file, it is entirely permissible for the sentencing judge to consider the broader context unless that is positively inconsistent with an accepted basis of plea. Indeed, this is necessary in order to consider the extent of the aggravation resulting from the domestic abuse which ought to be recognised in accordance with that Guideline.

12. The final ground advanced is that the judge double counted. It is submitted by Ms Nelson first, that the judge ought to have concluded that only one of the aggravating factors listed in the Domestic Abuse Guideline was present and that the judge was wrong to conclude that the domestic element was a significant aggravating feature in the present case. Secondly, it is argued that it was wrong to use physical violence both to uplift the threat to kill sentence and to increase the culpability level when categorising the offending and also by using the threat to kill as the main offence. As to the first point, it is simply not right that only one of the aggravating features listed within the Guideline was present. There was (i) a clear abuse of trust and power; (ii) the complainant was forced to leave her home and (iii) a proven history of previous domestic violence. On any view, the combination of domestic violence, which included a previous conviction for offending against a previous partner notwithstanding attending a relevant rehabilitative courses was, as the judge said, profoundly aggravating. This is so even

where, as Ms Nelson pointed out today, the violence on a previous occasion was more minor.

13. As to the second point, as we have described, placing the threat to kill offence starting point were it being sentenced alone and after a trial at around 21 months, was more than justified. A final sentence of 29 to 30 months after aggravation and taking totality into account before a credit for guilty plea plainly gave a significant discount for totality and resulted in a sentence which is not manifestly excessive. Accordingly, the appeal is dismissed.