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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202302004/A2
[2023] EWCA Crim 965



Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 28 July 2023

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE JEREMY BAKER

SIR ROBIN SPENCER

REX

V

MARIA SAVASTANO

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MR C HUDSON appeared on behalf of the Appellant.

J U D G M E N T

1. SIR ROBIN SPENCER: This is an appeal against sentence, brought by leave of single judge.
2. On 15 June 2023, in the Crown Court at Preston, the appellant, who is now 42 years old, was sentenced by HHJ Mathieson to a term of 5 months' imprisonment, for an offence of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861. She had originally been charged with unlawful wounding, contrary to section 20 of the Act, but on 24 March 2023, in advance of a trial which would otherwise have taken place, she entered a guilty plea to the alternative offence of section 47 assault. The case had then been adjourned for the preparation of a pre-sentence report.
3. The sole, or certainly principal, ground of appeal is that the sentence of imprisonment should have been suspended. We say at the outset that we are grateful to Mr Hudson for his written and oral submissions and, if we may say so, for the compassion he has shown in the way in which he has gone the extra mile in looking after the appellant's interests in relation to domestic matters, as we shall explain.
4. The offence was committed on 11 May 2020, nearly 3 years before the appellant was sentenced. The victim of the offence was a police officer. The offence arose from an unpleasant domestic incident at the appellant's then home in Blackpool. The appellant and her partner were living at that address with two young children and also with the appellant's much older daughter. The two children were very young, 2 and 4, at the time. The 22-year-old daughter living with them had what was clearly a tempestuous and volatile relationship with her mother and there had been a history of the police being

called out by the daughter to domestic incidents at the property. That was the background to the offence on 11 May, when the police responded to a report of a further domestic incident.

5. PC Dala attended, in company with an NHS employee, Claire Bennett, who was an advocate educator specialising in domestic violence. When they arrived at the house that lunchtime, they found the 22-year-old daughter outside in her dressing gown, looking upset and tearful. She explained that her mother, the appellant, had locked her out of the house and would not let anybody in. The appellant was inside the property. PC Dala could hear her saying: “What have you fucking done, you slut?”

6. There was a porch area before reaching the front door. PC Dala entered the porch and found the front door closed. Speaking to the appellant through the closed door which was glazed with frosted glass, he explained that there had been a report that someone had been assaulted and demanded that the door be opened or he would have to kick it in. The appellant shouted, apparently at her daughter: “Get away, you're not coming in. Look what you've fucking done”. The appellant, who was in her dressing gown, then came out into the porch and lurched towards the police officer, with arms outstretched and palms open, and pushed him out of the porch. He stumbled back but steadied his footing. The appellant went for him again, with arms outstretched. He pushed her back into the hallway in an attempt to prevent any further assault and told her he was arresting her for assault on the police.

7. This clearly enraged the appellant further. The officer described her as incandescent

with range. She gritted her teeth, looked the officer in the eye and struck him several times to the back of the head with a TV remote control. The NHS employee described her raining blows on the police officer's head.

8. In order to restrain her, the officer forced the appellant against the wall in the hallway with his forearm across her chest. The appellant then bit down onto the officer's right forearm for 2 or 3 seconds, clenching her teeth around his arm . She did so with sufficient force to penetrate the skin and cause a wound. The officer managed to push her away. He was still trying to effect an arrest. The appellant told him she was pregnant. She retreated for a short time into the property and then returned with a Staffordshire bull terrier which she was holding by the collar.
9. Eventually, with the assistance of other officers who had arrived, the appellant was arrested and handcuffed. As she was escorted to a police vehicle, she continued to abuse the officer in question in obscene terms. He was naturally concerned that she had bitten him, bearing in mind that this was taking place in the early stages of the pandemic when Covid was at its height. He asked the appellant whether she had any symptoms of the Covid virus, to which she replied: “Yes, I'll fucking cough on you”.
10. The officer sustained a nasty bite wound to his arm. We have seen the photographs. His forearm swelled up around the wound like a lump. He describes the bite as going deep into the muscle tissue. It was very tender and sore, and the wound was weeping for almost a week. He was immediately taken that day to the Accident & Emergency Department of the local hospital in Blackpool and then subsequently treated at a local

medical centre as an urgent case. He was prescribed a course of strong antibiotics followed by an accelerated course of injections to protect against hepatitis. He was understandably very concerned about the risk of infection from Coronavirus or otherwise.

11. The appellant, as we have indicated, was charged with section 20 wounding and the case was sent to the Crown Court for trial. The appellant served a lengthy defence statement challenging much of the police officer's account. For example, she contended that she had bitten him only because she was struggling to breathe when he had his forearm across her throat. She bit him to force him to release his grip so she could breathe again. However, the account of the police officer, which was very different, was supported by the NHS worker who had been present and witnessed the incident.

12. At the PTPH hearing on 13 January 2021, she entered a not guilty plea to the count of section 20 wounding and the case was adjourned for trial to 6 September 2022, some 20 months ahead. As we understand it, this delay was partly because she was then pregnant, or had recently given birth. There was also a problem because of the court delays owing to the pandemic. There were then further complications because of the Bar action. In the result the trial could not go ahead on the date that had been fixed. It was adjourned again to 21 March 2023 for a pre-trial review, which the appellant failed to attend through lack of funds. The case was listed again before Judge Mathieson on 24 March 2023 and it was on that occasion that the appellant entered her guilty plea to the section 47 assault. There was no basis of plea relied upon when she entered that guilty plea.

13. The appellant had only one previous conviction, dating back to 2008, for producing a controlled drug of Class C, for which she had made been made the subject of a community order. There was a pre-sentence report. By then, as we say, the appellant had a further child. When interviewed by the probation officer the appellant expressed no remorse for what she had done, despite the passage of time and despite her guilty plea. She said that she had only bitten the officer because she felt threatened; indeed, she went as far as to say she would do it again if she found herself in a similar situation. The probation officer noted that she expressed significant hostility toward the officer, telling the probation officer: "If I could have got my hands into his beard, I would have ripped it off". She expressed similar hostility towards the other officers who had attended in order to arrest her, saying that if she had not been handcuffed at the time of her arrest she would have "torn the face off" the female officer who was present. The pre-sentence report observed that these comments were of significant concern and fitted into a bigger picture of entrenched hostile attitudes towards the police. She was still denying threatening to cough on the officers, saying that it was only bravado if she had said something to that effect. The report acknowledged that a sentence of imprisonment would be in the court's mind, but recommended, in the alternative should it be possible, a community-based sentence.

14. In passing sentence, the judge referred to the passages in the pre-sentence report which indicated the appellant's complete lack of remorse. We note that, during the course of his sentencing remarks, when he referred to the comments she had made about ripping off the officer's beard, she nodded, as if still approving of what she had said she would do. In his submissions this morning, Mr Hudson has been able to tell us that the

appellant was certainly belligerent in court towards the judge when he was passing sentence.

15. The judge took the view that it was a category B2 offence under the relevant Sentencing Council guideline, with a starting point of 9 months' custody and a range of up to 18 months. He had no doubt at all that the offence crossed the custody threshold. The only question was whether the sentence of imprisonment could be suspended. The judge considered a number of mitigating factors. In particular, there was the long delay which was due in part to her pregnancy and the birth of the new baby and the other matters to which we have referred. The judge identified and weighed up the competing factors under the suspended sentence guideline for and against suspension. He had regard to the impact of an immediate custodial sentence on others, in particular, those who would have to look after the children, but he expressed the hope that arrangements had already been put in place. One of the points Mr Hudson has made to us in writing and again in his oral submissions is that in fact no such arrangements had been made. The appellant arrived at court in company with two of the three young children under 8 years of age, with no arrangements having been made at all for how they would be looked after in the event of her receiving a custodial sentence that day.

16. The judge considered whether there was a realistic prospect of rehabilitation. He was satisfied there was not, having regard to her entrenched hostility towards the police and lack of remorse referred to in the pre-sentence report. He considered that she presented a risk of danger to police officers going about their lawful duty. He was satisfied that appropriate punishment could only be achieved by the imposition of an immediate

custodial sentence. From the guideline starting point of 9 months, the judge reduced the sentence to 5 months' imprisonment to reflect such personal mitigation as there was, in particular the delay and her eventual guilty plea.

17. On behalf of the appellant, Mr Hudson submits that the judge should have suspended the sentence and that he failed to take into account several matters.
18. First and principally, he submits that the appellant was, and is, the sole carer for three young children. She has been separated from the children since her incarceration and indeed we are told she has had no contact at all with them, which we understand to mean not even phone contact. Contrary to the judge's expectation, arrangements had not in fact been made for the children but were soon put in place. We have been told that the current position is that the three children, under the age of 8, are living with the appellant's former partner at his sister's address. The information has been updated helpfully in a further probation report and by conversations Mr Hudson has had with the author of that report. There are no particular concerns about the welfare of the children. There is, however, a very unfortunate history of bad blood between the appellant and her ex-partner, to the extent that he is currently on bail for an allegation of domestic abuse towards her, with a condition that he should not approach her.
19. The second matter relied upon in the grounds of appeal is that the appellant had only one previous unrelated conviction and that was many years ago.
20. Third, there was a very lengthy delay in her being sentenced, nearly 3 years. During that

time, she had committed no further offence. It is said that the judge ignored that in concluding that she was beyond rehabilitation.

21. Finally it is said that the appellant's personal mitigation was not sufficiently reflected even by the reduction in the length of the sentence that the judge made.
22. It is submitted that all these points should have been reflected by suspending the sentence in all the circumstances, having regard also to the guilty plea.
23. In his written submissions, Mr Hudson drew attention to the well-known authorities on the approach to sentencing mothers of young children, in particular the case of R v Petherick [2012] EWCA Crim 2214; [2013] 1 Cr App R(S) 116, and also to the more recent decision of this Court in R v Rescorl [2021] EWCA Crim 2005, in which, amongst other things, the Vice-President of the Court of Appeal (Criminal Division), Holroyde LJ, stressed the importance of carers for children not relying on their own failure to make proper care arrangements, which may result in their children having to be taken into the care of the local authority, as a reason for not imposing an immediate custodial sentence, where such a sentence is necessary.
24. We have considered the up-to-date information provided to us. Although the appellant has expressed concern about the standard of the father's care of the children, we are satisfied that this is being monitored closely by the relevant authorities, in particular the family's social worker. It is clear that there is a background to this case which is likely to exercise the family court in one way or another.

25. The appellant herself still has a local authority tenancy in the Middleton area of Manchester which is not at risk despite her sentence. The tenancy will still be available to her. There is a problem with that address in that the locks would have to be changed if she goes back there with the children because otherwise there would be a risk that her ex-partner might come into the property. So things are not straightforward. In fact, the appellant is now eligible for home detention curfew. That seems to have been postponed hitherto in part because of the uncertainty surrounding the accommodation she would go to on release.

26. We are grateful to Mr Hudson for his written and oral submissions. However, we are not persuaded that the judge was wrong to impose an immediate custodial sentence rather than a suspended sentence. This was a serious offence of its kind, involving an assault on a police officer carrying out his duty. That was an aggravating factor, which under the guideline would have justified a significant increase from the starting point of 9 months' custody. It was also an aggravating factor that the appellant's 2-year-old child was present in the house and must have witnessed at least some of the incident although there is no mention of the other child who apparently would have been somewhere in the house at the time. There was, of course, mitigation in the lack of any previous conviction for violence, in the delay and in the fact that the appellant was the primary carer for three young children. The judge did not specify the level of credit he was affording for her late guilty plea, but she would not have been entitled to more than 20 per cent at most. In our view, the sentence of 5 months, substantially reduced from a starting point of 9 months under the guideline, amply reflected all the available mitigation.

27. We note that the judge worked through the exercise of weighing up the factors for and against suspension by reference to the Sentencing Council guideline.
28. In favour of suspension was the impact that immediate custody would have on the children and on those having to look after the children in the appellant's absence. The judge was entitled to take the view that the prospects of rehabilitation were undermined by her continuing attitude of hostility towards the police and her lack of remorse. There was no other strong personal mitigation apart from the delay.
29. The factors against suspension were the risk of further violence towards the police. This was tempered by the fact that in the intervening 3 years there had been no repetition. The principal factor militating against suspension was the judge's conclusion that appropriate punishment could only be achieved by immediate custody. It is well-known that in the case of assaults on police officers this has generally been the position historically. The seriousness of this particular assault, with the additional risk to health during the pandemic from a bite wound, fully justified the judge's conclusion that only immediate custody would afford appropriate punishment. As this Court has regularly emphasised, and as the guideline makes clear, it is for the sentencing judge to weigh the competing factors. It is not a question of numbers. Here the judge was entitled to conclude that the need for appropriate punishment outweighed the mitigating factors.
30. We therefore are quite satisfied that, despite Mr Hudson's able and attractive submissions, the sentence the judge imposed was neither manifestly excessive nor wrong in principle. The appeal must therefore be dismissed.

31. We note, again, that the appellant has already served the equivalent of 3 months of her 5-month sentence, and will soon, no doubt, be not merely eligible for home detention curfew but able to take advantage of that once the housing arrangements have been made. We are quite sure that a managed return to the community under the auspices of the prison service in conjunction with the probation service and social workers for the family is much the best way forward in her interests and in the interests of the family generally. We trust that she will receive the necessary support on her release to effect a speedy reunion with her children in whatever form is appropriate.

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

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