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Neutral Citation No. [2024] EWCA Crim 116

IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202302604/A3



Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 26 January 2024

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE GRIFFITHS

HER HONOUR JUDGE ANGELA RAFFERTY KC
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988

REX
V

SAMUEL RICHFIELD

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MR J POLNAY appeared on behalf of the Attorney General.

MR S DYBLE appeared on behalf of the Offender.

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of a Reference by His Majesty's Solicitor General for leave to refer sentences to this Court, which the Solicitor General considers to be unduly lenient. On 18 May 2023, at what was then a pre-trial and preparation hearing, Mr Richfield, who is the respondent to this application, pleaded guilty to one indictment, to putting a person in fear of violence by harassment, contrary to section 4(1) of the Protection from Harassment Act 1997. Those offences occurred between August and October 2021.
2. On the same occasion, he pleaded guilty to another indictment, which contained counts for arson being reckless as to whether life was endangered, contrary to sections 1, 2 and 3 of the Criminal Damage Act 1971, four counts of assault on an emergency worker, contrary to section 39 of the Criminal Justice Act 1988 and section 1 of the Assault on Emergency Workers Offences Act 2018, possessing a controlled drug of Class A, contrary to section 5(2) of the Misuse of Drugs Act 1971. Those matters occurred on 24 February 2022. On 5 July 2023, he was sentenced to a community order for 3 years with a 40-day rehabilitation activity requirement and a 12 months' mental health treatment requirement, on each count to run concurrently. A restraining order was imposed prohibiting direct or indirect contact with the complainant (whose name it is not necessary to give) in relation to the harassment matter. Although Mr Richfield had pleaded guilty at the pre-trial preparation hearing, it was common ground that in the particular circumstances of his case, he was entitled to full credit of a third for a plea, this was because there were psychiatric reports being obtained about his fitness to plead for reasons that we will come to later.
3. It is submitted on behalf of the Solicitor General that the sentence imposed on

Mr Richfield is unduly lenient. The judge was wrong to ignore the sentencing guidelines and also to give credit to Mr Richfield for self-induced drug psychosis, which was affecting him at the time of the commission of these offences. It is submitted on behalf of Mr Richfield that a proper aim of sentencing is rehabilitation. Mr Richfield had been drug free, which had part caused his mental disorders, and responded well to supervision which had been imposed for another offence before the sentencing exercise in this matter, and that this was a proper reason for showing that it was in the interests of justice not to follow the sentencing guidelines which cover this sentence. We are very grateful to Mr Polnay and Mr Dyble, for their helpful written and oral submissions, and we will grant leave for the Reference.

4. The respondent, Mr Richfield, is 31 years old. He was born on 20 April 1992. He had a difficult childhood and was diagnosed with ADHD. He took cannabis from the age of 13 and he was then permanently excluded from school. It was apparent from the psychiatric reports that we have seen from Dr Deo that he has intelligence, as well as a charisma. There were reports from Dr Deo which were produced for the purposes of the sentencing. There has been a subsequent report produced in December 2023 since the sentencing exercise, and we will come on to the circumstances giving rise to that.

Harassment

5. It is necessary to set out the circumstances of the harassment offence. Mr Richfield had been in a relationship with the complainant between 2018 and 2020. It broke down due to Mr Richfield's behaviour. On 18 August 2021, he was arrested and interviewed in relation to alleged offences. He was released on police bail with a condition not to contact the complainant. On 21 August 2021, the complainant became aware of a video which Mr Richfield had published on his TikTok account. He was shown dressed all in

black, setting fire to various items and watching them burn. The video's caption was: "Bitch, you should have known I was coming". On 3 October 2021, in the early hours of the morning he emailed the complainant saying: "You beautiful, lovely angel. I want to marry you. Do you remember our first amazing kiss? See you soon and if you're like no way I'm sorry I've leave you be." He then sent further emails on 22 January 2022 to the complainant's new partner, telling him to stay away and that the complainant was bad news. Then he published a live stream during which he made various derogatory and seriously derogatory comments about the complainant and her family. He also published another video on TikTok which said: "You all saw the video I sent was really powerful but true." He accused the complainant of lying about various matters.

6. The complainant produced a victim personal statement which emphasised the effect of the offending on her. She said it was frequently in her thoughts. She had night terrors and trouble sleeping. She had to plan movements and avoid certain places. She had been thrown off balance by seeing him in the street by chance, which had triggered an extreme reaction which had overwhelmed her, and she had ended up in hospital for several days after taking an overdose. The rest of the victim personal statement shows the very serious effect of the offending on the complainant.
7. The second indictment concerns the arson, the assaults on the emergency workers and the possession of cocaine. On the night of 23 and 24 February 2022, Mr Richfield was a guest at a hotel in Colchester and at about 2.05 am in the morning he deliberately set fire to his room. A fire investigation showed that there were three points of ignition, two points on the bed, and rubbish had been set on fire. The fire had spread to a towel, carpet and the bottom of the entrance door. The fire alarm had sounded automatically triggering the sprinkler system. The impact of the fire was significantly reduced by the activation of

that system, but a sprinkler system itself causes damage to the hotel. The whole hotel was evacuated and the information before us suggests there were about 50 guests present. Mr Richfield went on to climb onto the roof of the hotel and then began to throw tiles onto the ground below. He then fell off the roof and broke his femur. Overall, the damage was about £42,000 and there was business interruption loss of some £18,000.

8. Mr Richfield's room was described as totally gutted by fire, although Mr Dyble has pointed out that not the whole room was destroyed. We have seen photographs and can make our own assessment about that, which does show extensive damage but not a complete gutting. Whilst the fire had not spread from the room, there was water damage to the room below and police and paramedics attended. It was while those police and paramedics attended that Mr Richfield assaulted a paramedic, Nicole Soames, who was attempting to treat him, and he twisted her collar and kicked her in the chest. She suffered reddening to the neck, and we have seen the photographs. Ms Soames reported that her anxiety had gone through the roof. Working at night had been very difficult for her and got her stressed and anxious.
9. Mr Richfield told police, "Just kill me. I know you're going to light me on fire". It is right to report that he was in the middle of a psychotic episode, to which we will return later. He kicked at PC Tidmarsh with his right leg and caught her in her abdomen and said: "That little bitch". He spat in the face of PC Robertson, who was wearing glasses and he spat in the face of PC Polly. The spittle, which contained blood, went into her eye and she required a drug test in hospital.
10. In due course, Mr Richfield's hotel room was searched, and a small amount of cocaine was found. He was arrested and was compulsory detained in a mental hospital.
11. A report was obtained from Dr Deo, a consultant forensic psychologist. Dr Deo

reported that Mr Richfield believed he had experienced drug-induced psychosis in the past and he had been the subject of two compulsory hospital admissions, in August 2021 and February 2022, after this offence, so far as the second admission was concerned. Dr Deo said that Mr Richfield was highly likely to have been experiencing acute psychotic symptoms at the time of the commission of the alleged offences, noting his previous diagnosis of psychotic episodes, which appeared to be related to drug use, and that Dr Mundempilly described him as having suffered from a drug-induced psychosis, with a long-standing history of illicit drug use including the use of cannabis, cocaine and various other drugs. Dr Deo concluded: “Given the information available to me, it is likely that the offences occurred in the context of voluntary intoxication with illicit drugs. This led to his developing a psychotic episode which impacted upon his actions at the material times. The psychotic episode was a transient psychotic state which did not endure. If his use of illicit drugs did materially alter his mental state, he was in my opinion capable of curtailing such use. He would have been aware of the risks associated with drug use, ie that there was the potential to alter his mental state.”

12. Dr Deo concluded that the alleged offences occurred as a result of intoxication deriving from voluntary substance misuse. There seems to be an absence of evidence to suggest that he has an enduring mental illness.

13. Dr Deo said: “I make no formal mental health recommendations. In the instance that this man pleads guilty or is found guilty at a later date, he would most likely benefit from interventions aimed at helping him abstain from the use of illicit substances, as these have clearly been shown to be detrimental to his mental health, and increase his chance of engaging in risky behaviours/potential offending.”

14. A pre-sentence report was obtained which assessed Mr Richfield as posing a low risk of reconviction and a low risk of serious recidivism. However, his risk of causing serious harm to the public was assessed as high. It was noted that he had made good progress on his suspended sentence for dangerous driving. We will come back to that. It was recorded that he had complied with his current sentence date, attended as instructed 33 appointments out of 37 offered, completed nine of his 20 rehabilitation activity requirement dates by engaging with a personal well-being forward service and an employment and training service. He had expressed a willingness to engage with supervision and work with a partnership.
15. The probation officer assessed Mr Richfield's risk as manageable and recommended a community order. There were character references that were also placed before the court.

The sentencing

16. At the adjourned pre-trial preliminary hearing, after his plea of guilty, the sentence was adjourned for the reports to be obtained and he was sentenced on 5 July. The judge found that the arson offence fell within category 2B of the Sentencing Guidelines, with a starting point of 4 years and a range of 4 to 10 years. The harassment offence fell within category 1B, with a starting point of 2½ years and a range of 1 to 4 years. The judge then said:

“Bearing in mind totality, which I must, I can't just keep adding on years for you, I need to take a step back and look at the overall proportionate sentence that would be fair for you, and it seems to me that I am coming just about over, or just about within suspended sentence territory. However, a suspended sentence means the maximum supervision you can have in the community is up to two years, and it seems to me that you need more than that, and a longer period of supervision.”

17. The judge considered that this was a case where custody should not be imposed as a

community order could provide sufficient restriction on liberty by way of punishment while addressing rehabilitation. The judge also considered that a community order was the best way of ensuring there was no reoccurrence of offending behaviour. Accordingly, the judge imposed a community order.

Events after sentencing

18. Since the imposition of that sentence, the information now available to the court shows that in fact Mr Richfield refused to take a drug test in August 2023, so literally a month after the sentencing, and then failed a second drug test in August 2023. He had obtained work, but he had started to argue with a manager, and it is impossible, on the information before us, to say whether this was a justified argument or occurred because Mr Richfield was in the process of developing another psychosis because of his drug use. He then spiralled downhill. He was arrested for further offences, and we have been told this morning, they related to malicious communication with a person other than the complainant.

Guidelines

19. So far as is relevant, the Sentencing Act requires judges to follow any relevant offence specific guideline unless it is in the interests of justice not to do so. So far as the arson offence is concerned, there was an argument before us today on behalf of the Solicitor General, to the effect that this fell within category 1 rather than category 2 as the judge had found, and it was submitted that it fell within category 1 on the basis of a high risk of very serious physical and/or psychological harm, because the fire was started in the middle of an occupied hotel. The judge had found a significant risk of serious physical and/or psychological harm. Mr Dyble has pointed to the absence of any relevant evidence on risk from fire investigation experts. It is sufficient to say that, in our

judgment, the judge's assessment of category was correct and that this was a category 2 offence, on the basis that there was a significant value of damage caused and that there was a significant risk of serious physical and/or psychological harm, opposed to a high risk of very serious physical or psychological harm. A category 2B offence has a starting point of 4 years with a category range of 2 to 6 years.

20. In our judgment, there were aggravating factors present which were the fact that this was the setting of the fire in an occupied hotel put multiple lives at risk, and we do not need a fire safety report to make that common sense conclusion from setting the fire in an occupied hotel in the early hours of the morning. It is true, as Mr Dyble pointed out, that Mr Richfield went onto the roof and woke everyone up by starting to throw the tiles from the roof.

21. So far as the harassment is concerned, it was common ground that this was a 1B offence with a starting point of 2 years 6 months and, as we have already indicated, a range of 1 to 4 years. We have also seen the assaulting emergency worker guidelines which refer to high-level community orders but go on to deal with other matters.

This reference

22. We turn then to deal with the issues raised on the Reference. The first question is whether the judge was entitled not to follow the Sentencing Guidelines because it was in the interests of justice to rehabilitate Mr Richfield. A difficulty that Mr Richfield has with this submission is that the judge did not in fact say that she was not following the Sentencing Guidelines or spell out why it would have been in the interests of justice not to follow those sentencing guidelines. In our judgment, it was in the interests of justice to apply the Sentencing Guidelines. The Sentencing Guidelines reflect the harm done to many others by the offending behaviour that Mr Richfield carried out.

23. Further, it is apparent from the sentencing remarks that the judge did give credit for the mental disorder which was suffered by Mr Richfield at the material time, although the judge also said at paragraph 19E of the sentencing remarks:

“At the time that you were admitted to the mental health hospital on the 26th of February [and that was just after the offence] you were assessed as acutely psychotic, and it was thought unlikely to have understood the consequences of your actions. But this was, it must not be forgotten, a drug induced psychosis. Had you not been instilling yourself with nasty, illegal substances, it would never have been as bad as this. So, to some extent you have to take responsibility for what’s happened.”

24. So far as the relevant guideline is concerned for sentencing offenders with mental disorders, developmental disorder or neurological impairments at paragraph 9-15 the courts are required to assess culpability and it is noticed that culpability *may be* reduced if an offender was, at the time of the offence, suffering from an impairment or disorder. The reason that the guideline is in terms of “*may*” rather than *will* is because there are circumstances where illnesses will occur because of self-induced psychosis. In the *Attorney General’s Reference (R v Scott)* [2018] EWCA Crim 1336; [2018] 2 Cr App R(S) 37, at paragraph 26, the Court then said:

“We next turn to consider the mitigation. Mental disorder can be a factor which lowers an offender’s degree of culpability. However, the evidence in this case showed that the offender’s state was an acute drug-induced psychosis as a result of voluntary consumption of unlawful drugs. In these circumstances, where an offender’s state arises as a result of voluntary abuse of drugs, little or no weight should be attached to this factor. It cannot significantly diminish the offender’s culpability.”

25. In our judgment, the judge was wrong to have given what must have been the very substantial reductions that she did to take account of Mr Richfield’s own drug induced psychotic state.

26. In these circumstances, we turn then back to consider the Solicitor General's overarching submission which is that the sentence was simply too low. We agree. In our judgment, if arson is treated as the lead offence and a starting point of 4 years is taken in accordance with the guidelines, there is the aggravating feature in relation to the number of people exposed to risk but there is mitigation available to Mr Richfield. He had attempted to stay drug free. He had complied with the supervision which had been ordered on him, in relation to an offence of dangerous driving, which had been committed on 22 June 2022, and he had been sentenced for that for a period of 6 months' imprisonment suspended for 18 months. There was a real attempt to comply with the terms of the community work that he had been directed to do in terms of rehabilitation activity requirements. It seems to us that aggravating and mitigating factors might be considered to balance themselves out.

27. Turning then to the offence in relation to harassment, in our judgment, the same applies. A starting point of 2½ years after balancing out aggravation and mitigation remains the end of point of 2½ years and, for the assaults on the emergency workers, in our judgment, an appropriate sentence would have been a consecutive sentence of 6 months for the assaults on the emergency workers (there were four separate assaults) which were made concurrent with each other. That would give you a sentence of 4 years, 2½ years and 6 months (7 years) before issues of totality were addressed. These have to be addressed because, as the judge pointed out, you simply cannot continue just adding the matters together.

28. Having regard to the need to keep this sentence proportionate, in our judgment, the total sentence before discount for plea for mitigation would be one of 5 years (some 60 months). Given that Mr Richfield was entitled to full credit for a third for his plea, that

would mean a sentence of 40 months, which was 3 years 4 months. So for all those reasons, we allow the Reference, and we will impose a sentence of 3 years 4 months in relation to the arson count, and then we will impose concurrent sentences of 2½ years in relation to the harassment offence, and 6 months in relation to the assaults on the emergency workers, giving an overall sentence of 3 years 4 months. We will impose no separate penalty in relation to the drug matters. It is apparent, from all the evidence that we have seen, that Mr Richfield has the capability of becoming a useful member of society, and that was what the judge was attempting to achieve with her sentence. As it turned out, this failed as appears from paragraph 18 above. It does mean that Mr Richfield now has the opportunity, in prison, of completing the education that he denied himself by being excluded from school.

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

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