IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Couts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT SNARESBROOK
(MR RECORDER BARNETT) [T20217727]

Case No 2023/03688/A4
2024

Friday 27 September

Neutral Citation No: [2024] EWCA Crim 1160

B e f o r e:

LORD JUSTICE STUART-SMITH

MR JUSTICE DOVE

MR JUSTICE MARTIN SPENCER

R E X

- v -

SPENCER KEITH IONTTON

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Miss C Purnell appeared on behalf of the Appellant

J U D G M E N T

Friday 27 September 2024

LORD JUSTICE STUART-SMITH: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. The appellant, Spencer Iontton, appeals with the leave of the single judge against a sentence of seven years' imprisonment imposed in the Crown Court at Snaresbrook by Mr Recorder Barnett on 27 September 2023 for a single offence of causing grievous bodily harm with intent.

2. The victim is the appellant's own son, Thomas. He and the appellant were in dispute about a sum of money owed to Thomas. On 17 August 2021, Thomas, who is a scaffolder, pulled into a yard at Theobald's Park Road in a scaffolding lorry. The appellant approached the passenger door and opened it. There was a confrontation between father and son. The appellant went back to his vehicle and returned with a bottle containing petrol. It was a water bottle with a mouthpiece. Father and son continued to argue. The appellant sprayed some of the petrol onto his son's clothing. It would appear that the argument continued. Thomas got back into the cab of the lorry. The appellant went back to his car and returned, threatening his son with a cigarette lighter. He said: "Do you know what this is?" Thomas replied: "Go on then". At this point the appellant struck the lighter and the petrol on his son's clothes ignited. Thomas jumped from the cab and ran, but quickly realised that this was fanning the flames. He threw himself to the ground and the fire was extinguished. The appellant had, on previous occasions, threatened his son with expressions such as: "I'll break your legs and I'll kill you".

3. Thomas Iontton suffered second degree burns which affected five per cent of his body

surface. He was treated with skin grafts and has been left with unsightly scarring. Although his physical recovery has been relatively good, he has suffered significant mental ill health. In his Victim Personal Statement he states:

> "Since this happened to me, my mental health has been so bad that I have recently been diagnosed with PTSD. Living with PTSD as a result of this incident is a daily struggle for me. I can't sleep and when I do sleep, I get nightmares. I have been put on antidepressants and other drugs to try to ease my nightmares, depression and anxiety. It was such a struggle just trying to get help with my mental health after what happened. It took eight months to get help as I just kept getting referred and referred and I have only recently been able to get therapy. Therapy is very difficult as I have to relive what happened.
>
> I am reminded of what happened every single day. Whenever I look at the scars on my hand or my leg I remember it. Every time I graze the scars I remember. The scars on my hand are always visible. I will have to live with the scarring for the rest of my life.
>
> Since this incident my family has been completely divided and I feel like I have lost half my family. Losing so much of my family support has only made my mental health worse. I now suffer from extreme social anxiety which affects my life on a daily basis.
>
> Before this happened, I was a scaffolder. I was both physically and mentally unable to work for so many months and took a massive financial hit from not being able to work.
>
> I will never be the same from that day. This completely flipped my world."

4. It was agreed at the sentencing hearing that for the purpose of the sentencing guideline this offence fell within category A for culpability and category 2 for harm. This gives a starting point of seven years' custody and a sentencing range of six to ten years.

5. The Recorder took as his starting point eight years, having considered the circumstances of the offence, which he reduced to seven years to take into account both the mitigating factors and the discount for the appellant's plea of guilty, which he said should be "ten per

cent or thereabouts". Ten per cent of eight years (96 months) is 9.6 months, which would reduce the sentence to 86.4 months, which would leave a reduction of only a further 2.4 months for the mitigating factors.

6. On 23 November 2022 there had been a hearing at which the appellant had sought a *Goodyear* indication. The position was that the appellant had not been in a position to give an indication of plea until in receipt of a joint psychiatric report. For reasons outside the appellant's control, the psychiatrists had been unable to discuss the case and draw up their joint report until 18 November 2022. This addressed the appellant's mental state at the time of the offence, and in particular whether he had been capable of forming the necessary specific intent so as to be guilty of section 18, rather than section 20 of the 1861 Act. The conclusion of the psychiatrists was as follows:

> "We agree that [the appellant] has a documented history of depression and generalised anxiety disorder, but that his mental health symptoms were not at a level of severity at the material time that would have impacted on his mens rea.
>
> We agree that he was alcohol-dependent and that he misused both prescribed and non-prescribed drugs.
>
> We agree that at the material time, [the appellant] was heavily intoxicated with a combination of a large quantity of alcohol and other substances including Co-codamol (opiate-based pain-killer), Mirtazapine (sedating antidepressant), Zopiclone (sleeping tablet) and cocaine.
>
> We agree that such a combination of substances would have impaired his perception and/or judgement.
>
> We agree that his consumption of alcohol and other substances was voluntary, and that although he would have known the effect that alcohol would have on him, he may not have known the degree to which the combination of alcohol and the other substances he consumed would have impaired his judgement or perception.
>
> We agree that alcohol can lead to disinhibition (i.e. reduced ability to exert conscious control) of behaviour and to a reduced ability to control temper, and that these effects could be

> enhanced by the effects of the other substances he had consumed.
>
> Following our discussion, we agree that at the material time [the appellant's] ability to form a specific intent was reduced, but that it was not completely absent."

7. The conclusion of the joint report cleared the way for the appellant to plead guilty to the section 18 offence. He had never contested his culpability generally, and would always have pleaded either to a section 20 or a section 18 offence.

8. This was acknowledged by the learned Recorder at the hearing on 23 November 2022, when he said:

> "So far as a *Goodyear* indication is concerned, I think my general position is that if he wishes to plead guilty then he should do so and that may assist him in due course in the usual way. I can help you to a limited extent in that I am somewhat sympathetic to the proposition that he should be entitled to more than the minimum discount for a plea at this late stage. I am not prepared to go any further than that but I do think there is something in what you have said about the way in which the case has been prepared and late coming to Court and he should be encouraged to plead guilty even at this late stage. So I would be prepared to give him more than ten per cent. I do not wish to commit myself at this stage as to the extent of that but I have concerns about whether or not I am in a position to sentence or would be in a position to sentence even if he pleads guilty today."

9. Unfortunately, at the sentencing hearing on 27 September 2023 the learned Recorder had forgotten his indication. He said:

> "I then have to give you discount for your plea of guilty, which is ten per cent or thereabouts. I do not want to get into a long debate about whether or not I said anything on the last occasion. **I frankly do not remember saying anything**."

10. In our judgment this was unfortunate. Given what the Recorder had said on the previous occasion and the reasoning behind that, and despite the fact that the Recorder had given only a general indication and had expressly not committed himself to any particular figure in excess of ten per cent, we consider that the discount for the guilty plea should have been more than ten per cent.

11. However, we do not lose sight of the fact that the appellant could have pleaded guilty at the stage of the plea and trial preparation hearing, but chose to roll the dice by waiting to see what the psychiatrists said, albeit on the advice of his lawyers. In those circumstances we do not accept the submission that the discount should be as high as 25 per cent. In our view the discount should have been 15 per cent.

12. In addition, however, there was some significant mitigation to take into account, as has been set out by Miss Purnell in her most helpful Advice on Appeal. First, the appellant is aged 51 and has no relevant previous convictions. Second, he has expressed genuine remorse. In relation to this, we have read the highly articulate letter of remorse written by the appellant and the comment of the author who prepared the pre-sentence report:

> "It was evident from speaking to [the appellant] that he bitterly regrets what he did to harm his son.
>
> He has written a letter to the Court which expresses his regret and shame. He takes full responsibility for his actions, looking for an explanation as to how he could harm someone he loved so much in this way."

Third, he has some mental disorder which is not linked to the commission of the offence. Finally, the appellant has demonstrated the significant and determined steps he has taken to address his addiction and offending behaviour.

13. In relation to this last point, we note the impressive progress which the appellant has made whilst in custody. This has included: cognitive behavioural therapy for his anxiety and depression; a Sycamore Tree Accredited Course which leads to an NVQ focusing on understanding the impact of crime on victims; the completion of in-cell packs focusing on offending behaviour, victim awareness and taking responsibility; the successful completion of sessions on depression and substance use; the completion of work packs on anger and criticism, alcohol, stress management and offending behaviour and thinking; attendance and successful engagement with four psychology group sessions focused on understanding and living with ADHD; and completion of a Mindfulness Course with the occupational therapy team. In addition, the appellant has completed training to become a listener as part of the work of the Samaritans at His Majesty's Prison Pentonville. The supporting officer states that the scheme has been "very fortunate to have Spencer as a listener".

14. We have also been particularly impressed by the letter from Mr Tom McGowan, a vocational instructor who attests to the appellant's work as part of the biohazard cleaning team at the prison.

15. We consider that these references and achievements show that the appellant has done all in his power to atone for this offence and to achieve an understanding of the factors which led to its commission. For this we consider that he deserves significant credit.

16. Giving leave to appeal, the single judge said:

> "I consider it arguable that in light of (i) the date of service of the joint report which, arguably, was necessary for the appellant to make his (late) decision regarding his plea, (ii) what the judge said when declining to give a *Goodyear* indication and (iii) the appellant's mitigation, the sentence was

> wrong in principle and/or manifestly excessive.
>
> The appellant must understand that although I have concluded there are properly arguable submissions which justify granting permission to appeal, that decision does not in any way indicate the likely outcome of this case. The Full Court may well determine that this sentence, given the gravity of the offending, was entirely justified."

17. In our judgment, the gravity of the offence, which we do not overlook, fully justified the starting point being raised by the learned Recorder to eight years, before consideration of mitigation and discount for the guilty plea. However, we also consider that the subsequent reduction of 12 months gave inadequate consideration to these factors. In our judgment, the mitigating factors alone merited a reduction of 12 months. The resulting sentence of seven years' imprisonment should then have been discounted by a further 15 per cent to take account of the guilty plea. This would give a sentence of approximately six years' imprisonment.

18. Accordingly, we quash the sentence of seven years' imprisonment and we substitute a sentence of six years' imprisonment.

19. To that extent this appeal against sentence is allowed.

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