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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT NORWICH

MS RECORDER FITCHES 37CJ1906623

CASE NO 202401149/A5

[2024] EWCA Crim 1207

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 3 September 2024

Before:  
LORD JUSTICE MALES

MRS JUSTICE MAY

MR JUSTICE BRYAN

REX  
V  
DARYL HOOD

MR R POLLINGTON appeared on behalf of the Appellant.

**A P P R O V E D J U D G M E N T**

**MR JUSTICE BRYAN:**

1. On 28 November 2023, having pleaded guilty before Norwich Magistrates' Court, on 30 October the appellant (then aged 54) was committed for sentence, pursuant to section 14 of the Sentencing Act 2020, in respect of an offence of possession of a controlled drug of Class B (amphetamine), intentional strangulation and engaging in controlling/coercive behaviour in an intimate/family relationship and pursuant to section 20 of the Sentencing Act 2020 in respect of the offence of common assault and obstructing a constable in the execution of their duty.
2. On 20 March 2024, in the Crown Court at Norwich (Ms Recorder Fitches), the appellant was sentenced to 28 months' imprisonment in respect of the offence of intentional strangulation, 21 months' imprisonment, consecutive, in respect of the offence of engaging in controlling/coercive behaviour, 4 weeks' imprisonment concurrent in respect of the offence of possession of drugs and 4 weeks' imprisonment concurrent in respect of the offence of common assault, and no separate penalty in respect of the offence of obstructing a constable in the execution of his duty. A total sentence of 49 months' imprisonment, full credit for guilty pleas having been given. Other orders may have included a restraining order for a period of 10 years.
3. The appellant appeals against sentence with the permission of the single judge.
4. Turning to the circumstances of the appellant's offending. Olive Hood was the appellant's 82-year-old mother. She acted as her husband's sole carer as he was bed-bound. At the time of the offences her grandson (Jason West) was living at the address temporarily. The appellant had also lived at the property intermittently but he did not have a key to it. The appellant had caused his mother a number of issues over the years, partly due to his substance misuse. He had previously used heroin and was also known to use cannabis and crack cocaine. The appellant had spent time in prison but always returned to the address upon release. He did not have a bank account of his own and so his monthly benefit payments were paid into his mother's account. Olive Hood's daughter would withdraw the money and give the appellant £500 with the remaining £280 kept for his board and keep. Despite this, the appellant would often borrow money from his mother to purchase drugs.
5. In September 2023, Olive Hood was in the kitchen washing up when the appellant entered. The appellant is a tall and strong 54-year-old whilst his mother is 82-years-old and his frail and thin, weighing less than 7 stone. He came to his mother, grabbed her with one hand by the throat and held his other hand out like a fist, pointing towards her. She thought he was going to hit her. He was swearing and shouting at her, saying he wanted his "fucking money". He grabbed her so tightly to the throat that (in her words):

“I thought it was the end. I could breathe but it was really uncomfortable and I couldn’t believe it had come to this.” She pushed him away as much as she was able to and gave him some money so that he would clear off. She stated that he had threatened her in such a way that she had no choice but to give him the money so he would leave, which he then did.

6. Subsequently, at approximately 10 o’clock on 27 October 2023, Olive Hood was in the living room with her husband, when the appellant entered and asked her about her winter fuel payment of £150 that she had received. He shouted that he wanted the money. Concerned about his previous violence towards her, Olive Hood went and got the cash for him. As the appellant walked towards the back door he was challenged by Jason West. This resulted in a physical confrontation where the appellant threatened violence towards Jason West. The appellant eventually left. Olive Hood described being frightened of the appellant and said her bedroom and Jason Wood’s room had bolts on them to prevent him entering.
7. On 28 October 2023, Jason West called the police after the appellant attempted to enter the address again. When they arrived, they saw the appellant flicking and igniting a lighter. His clothes were wet and there were two petrol canisters under a chair he was sitting on. Despite numerous requests he refused to put the lighter down and resisted arrest when the officers tried to apply the handcuffs with PAVA spray being deployed to control him. He was found in possession of a small quantity of amphetamine.
8. The appellant had 21 convictions for 60 offences spanning from 17 March 2000 to 29 April 2014. His relevant convictions included offences of common assault (2001 x2, 2010 x2), robbery (2002), affray (2002), possession of a controlled drug of Class C (2005), possession of a controlled drug of Class B (2005), resist / obstruct a constable (2006), possession of an offensive weapon (2006), battery (2006 x3, 2007 x2), possession of a bladed article in a public place (2007), arson (2008), and breach of a non-molestation order (2010) .
9. There was a pre-sentence report before the court. In relation to his behaviour towards his mother, the appellant stated that he deeply regretted it, and when discussing what motivated his behaviour he acknowledged that he would have been under the influence of drugs at the time, stating that: “When there’s money there people change completely because it is money. I needed the money.” Discussing the harm he had caused his mother he stated: “I feel remorse. I feel gutted. I shouldn’t have put my parents through this. I shouldn’t have put them through being scared.” The author of the pre-sentence report identified the difficulties in his relationship with his parents and aggressive behaviour which appeared to be linked to feelings of rejection and childhood trauma but he had taken limited responsibility for his actions at times and tended to hold his parents to

account for what he believed to be their failures rather than his own, the offending being, in the author's view, evidence of the appellant's poor thinking skills, a lack of consideration of the consequences of his behaviour when under the influence of drugs. The risk of serious harm to his family members, in the form of physical and emotional harm due to violence upon his release (assuming he was homeless and relapsed into drug misuse) was assessed as quickly escalating to high.

10. In her sentencing remarks, and with regard to the offence of intentional strangulation, the Learned Recorder noted the maximum sentence of 5 years' imprisonment and referred to the guidance in the leading case of *R v Cook* [2023] EWCA Crim 452, and a starting point of 18 months' imprisonment. She then identified as aggravating factors the appellant's history of previous violence to the victim, necessitating a protective order, the offending occurring in the victim's home, that he was under the influence of drugs, that his victim was vulnerable due to her age, the offending was in a domestic context and the fact that the offence was committed for financial gain, all requiring a significant increase from the starting point. In terms of personal mitigation, she had regard to the pre-sentence report and noted he suffered from childhood trauma and reported abuse in a domestic context and had been addicted to drugs all his adult life. She noted that whilst this did, to some extent, explain some of the difficulties he had faced, this did not make the offending any less serious. She accepted that the appellant had, whilst sober, expressed remorse and she stated that she would make a downward adjustment, identifying that sentence after trial would have been one of 42 months' (3 years 6 months' imprisonment) reduced to 28 months after full credit for plea.
11. In relation to the controlling and coercive behaviour, the Learned Recorder imposed a consecutive sentence given the different offending and the fact it took place over many months. She categorised the offending as Culpability A, being offending persisted in over a prolonged period and identified that the persistent demands, threats and aggression amounted to conduct intended to maximise fear and distress in order to secure the handing over of the money, and harm Category 1 causing the appellant's mother to fear violence on many occasions and causing her very serious alarm or distress. Category A1 having a starting point of 2 years 6 months' imprisonment with a range of 1 to 4 years' imprisonment. The Learned Judge then identified the aggravating factors of previous convictions with a history of violence in a domestic context and that his victim was vulnerable due to his age, with the same mitigating factors being identified. The Learned Recorder took the appropriate sentence to be 32 months (2 years 8 months') imprisonment had there been a contested trial, 21 months after full credit to be served consecutively.
12. She identified the common assault against the appellant's nephew as Culpability B (lesser culpability) and harm Category 3, with a starting point of a Band C fine, range of

discharge to a low-level community order, with the aggravating factors that it was committed in a domestic context while under the influence of drugs and the same mitigating factors, passing a sentence, having regard to totality of 4 weeks' imprisonment concurrent. Having regard to totality, no separate penalty was imposed in respect of the obstructing of a constable. So far as the possession of amphetamine was concerned, this was Category 2 offending with a starting point of a Band B fine and a range discharge to 26 weeks' custody with no aggravating factors and the same mitigating factors. The Learned Judge having regard to totality passed a sentence of 4 weeks' imprisonment concurrent.

13. The appellate grounds of appeal are:

- (1) That the starting point in relation to the controlling/coercive behaviour was too high and manifestly excessive and/or
- (2) That the starting point in respect of the offence of intentional strangulation was too high and manifestly excessive and/or
- (3) That the Learned Recorder had not properly considered totality and the facts of the case in ordering consecutive sentences for the above sentences and, as such, was manifestly excessive.

14. We are grateful to Mr Pollington for the quality of his written and oral submissions before us.

15. Where the appellant makes reference to the "starting point", we in fact understand this to be a reference to the notional sentence reached at trial, after having regard to the aggravating and mitigating factors from the initial starting point before the full credit for guilty plea which was then given.

16. So far as the offence of controlling and coercive behaviour, we do not consider that there is any substance in this ground of appeal. We are satisfied this was Category A1 offending which, having regard to the aggravating and mitigating factors identified, justified a sentence at trial of 32 months (2 years' 8 months) which is only 2 months above the starting point notwithstanding the aggravating factors of the appellant's previous convictions, showing a history of violence in a domestic context and the victim being vulnerable due to her age, which significantly outweighed the available mitigation. The sentence passed by the Learned Recorder of 20 months' imprisonment after full credit (rounded down) was not manifestly excessive.

17. However, we consider there is more substance in the ground of appeal in relation to intentional strangulation, having regard to the guidance in *R v Cook* and the facts of the offending in that case and in the present case. In *R v Cook*, a starting point of 18 months' imprisonment was identified which, after a substantial uplift, to reflect some similar

aggravating factors as those in the present case, resulted in a sentence before mitigation of 30 months' imprisonment. This is to be contrasted with the present case where the Learned Recorder arrived at a sentence of 42 months after mitigation.

18. Every case ultimately turns on its own particular facts and the aggravating and mitigating factors in the particular case. Intentional strangulation is however always a serious offence. Thankfully, it appears that in the present case the victim was able to breathe throughout and was able to push the appellant away notwithstanding the inequality of age and strength. Nevertheless, any strangulation can quickly result in death, due to the various processes that are in play. There were also serious aggravating factors in the present case, as identified by the Learned Recorder, which justified and required a very substantial uplift from a starting point before a modest downward adjustment to reflect the available mitigation. We consider the sentence at trial of 42 months, after taking account of mitigation, was manifestly excessive. Having regard to the aggravating and mitigating factors in the present case, we consider that a sentence at trial of 30 months' imprisonment (20 months' imprisonment after credit) would have been appropriate.
19. The Learned Judge was clearly entitled to pass consecutive sentences for what were two serious separate offences and there can be no complaint in respect of the sentences passed in respect of the remaining offences.
20. It is then necessary to consider totality. We consider that the imposition of concurrent sentences in respect of the three further separate offences, as the Learned Recorder imposed, ensures an overall sentence that is just and proportionate.
21. Accordingly, we quash the sentence of 28 months' imprisonment in respect of the intentional strangulation and substitute a sentence of 20 months' imprisonment in respect of that offence. All other sentences remain unchanged. The total sentence is therefore now one of 41 months' imprisonment (that is 3 years and 5 months' imprisonment).
22. To that extent, the appeal against sentence is allowed.