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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT NEWCASTLE UPON TYNE
(HIS HONOUR JUDGE EDWARD LEGARD) [10U10050523]

Neutral Citation Number: [2025] EWCA Crim 119

Case No 2024/04409/A1

Friday 31 January 2025

B e f o r e:

LORD JUSTICE LEWIS
MR JUSTICE ANDREW BAKER
MRS JUSTICE YIP DBE

R EX

- v -

DAVID MOORE

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Mr S Routledge appeared on behalf of the Appellant

J U D G M E N T

LORD JUSTICE LEWIS: I shall ask Mrs Justice Yip to give the judgment of the court.

MRS JUSTICE YIP:

1. On 15 November 2024, in the Crown Court at Newcastle Upon Tyne, the appellant (now aged 33) was sentenced to 21 months' imprisonment for an offence of inflicting grievous bodily harm, contrary to section 20 of the Offences against the Person Act 1861.

2. He now appeals against that sentence with the leave of the single judge.

3. The appellant was aged 32 at the date of the offence. He had 14 convictions for 26 offences spanning from August 2002 to May 2021. His relevant convictions included two offences against the person and three public order offences, albeit they were of some age.

4. The offence occurred on the night of 12 October 2023 outside a public house in Amble, Northumberland. The appellant and the victim, Leon Taylor, were known to each other through their families. Mr Taylor was significantly older than the appellant. The appellant was seen to approach Mr Taylor and to make a jabbing motion with his hand. Mr Taylor, who appeared unsteady on his feet, stepped back and put his hands out in front of him. The appellant continued to gesticulate towards him. As Mr Taylor turned away, the appellant struck him with one blow, causing Mr Taylor to fall backwards and to strike his head on the road surface. He sustained three separate skull fractures and suffered a bleed on the brain. He was rendered unconscious.

5. After Mr Taylor had fallen, the appellant tried to help him. He dragged Mr Taylor onto the footpath and ran into the pub to obtain help.

6. Mr Taylor was taken to hospital. He did not require surgery, but did have a blood

transfusion. Mr Taylor did not make a statement about the incident and has never provided a Victim Personal Statement.

7. The appellant was arrested the following day. When interviewed by the police, he made no comment.

8. The appellant entered his guilty plea at the plea and trial preparation hearing, which entitled him to 25 per cent credit. Sentence was adjourned for the preparation of a pre-sentence report.

9. The pre-sentence report was available when the appellant appeared for sentence on 2 August 2024. The appellant told the author of the pre-sentence report that he had been struggling to cope with the death of his brother who died from a drug overdose. Mr Taylor had told him that a man he believed to be responsible had been bragging about his involvement in the death of the appellant's brother. This was given as the reason for the offence, which the appellant accepted was unexpected and unprovoked. The author of the report assessed the appellant to be remorseful, but with limited insight into the consequences of violent offending.

10. The author of the pre-sentence report acknowledged that a term of immediate imprisonment may be viewed as the most commensurate sentencing option, but proposed that if the court was open to considering an alternative to immediate custody, appropriate requirements could include a rehabilitation activity requirement and attendance on a Thinking Skills Programme.

11. Sentence was adjourned so that the appellant could be assessed for suitability for a mental health treatment requirement in the event of a disposal that did not involve immediate

imprisonment. The supplementary report confirmed that a mental health treatment requirement would be available.

12. The matter was then relisted on 30 August 2024. On that date His Honour Judge Prince adjourned the case for an up to date medical report on Mr Taylor and for confirmation of representations by the defence that Mr Taylor bore the appellant no ill-will and did not want to see him go to prison.

13. On 15 November 2024, the matter was listed before His Honour Judge Edward Legard. The directions of His Honour Judge Prince had not been actioned and there was no further information available to the court. The prosecution applied for an adjournment. That application was supported by the defence, but the judge did not agree. Instead, he said that he would proceed on the basis that Mr Taylor had made a full recovery and bore the appellant no ill-will. He then proceeded to sentence.

14. The judge assessed the offence as falling within category 2B in the relevant sentence guideline. Although a single blow, it was an act of unprovoked violence against a defenceless and unsuspecting older man. The injuries were grave, even within the context of a section 20 offence. It was aggravated by being committed under the influence of alcohol. The judge said that, after taking account of all matters, the appropriate sentence after trial was 28 months' imprisonment, to which he applied 25 per cent credit for the guilty plea. He considered whether the sentence should be suspended, taking account of the matters raised in the pre-sentence report and in mitigation. He found that the appellant displayed a worrying lack of insight and self-awareness, although he accepted that there was a degree of remorse.

15. The judge had regard to the guideline on the imposition of custodial sentences. Ultimately, he concluded that appropriate punishment could not be achieved were the

sentence to be suspended. The judge said:

> "Offences of drunken unprovoked violence of this severity, which result in serious injury, will almost inevitably attract an immediate custodial sentence. The circumstances in which a sentence can be suspended in such cases are likely to be exceptional. It is a sad fact that in the majority of these cases it is not those who commit the offence that suffer the most, but those that they leave behind and their dependants."

16. By his grounds of appeal, the appellant contends:

(1) That the starting point adopted by the judge was too high;

(2) That the judge failed sufficiently to reduce the sentence to reflect factors reducing seriousness or personal mitigation; and

(3) That the sentence could and should have been suspended.

17. In succinct submissions, Mr Routledge, who appeared on behalf of the appellant today, as he did before the sentencing judge, relied on the following factors: that this was a single blow; that it was a short-lived incident; and that the appellant gave assistance immediately afterwards. Mr Routledge realistically accepted that there were some aggravating factors, namely, the appellant's previous convictions, although he stressed the age of those convictions, and the fact that the appellant was in drink at the time. But Mr Routledge maintained that there was strong mitigation. In summary, he suggested that the factors in favour of suspension of the sentence outweighed those that counted against suspension. His ultimate submission was that this was a sentence that ought to have been suspended because the factors in favour of suspension tipped the balance that way.

18. Mr Routledge further relied on the history of the case. He submitted that the progress of the case demonstrated that a suspended sentence was in the mind of other judges, including His Honour Judge Prince. Mr Routledge suggests that His Honour Judge Prince clearly had in mind that a suspended sentence may be appropriate if the material he requested when he adjourned the hearing was favourable. Mr Routledge indicates that he had interpreted His Honour Judge Edward Legard's indication as to the basis on which he would sentence as meaning that the sentence would be suspended. With hindsight, he thinks that he should have pressed for an adjournment.

19. We do not think that Mr Routledge ought to be concerned about that. The prosecution did seek an adjournment, and he supported the application. The judge decided that it was unnecessary to adjourn because he was prepared to sentence on a basis that was as favourable as it could be in relation to Mr Taylor's current condition and feelings towards the appellant. The appellant would not have gained any advantage from an adjournment.

20. We accept that the appellant may have gained the impression that alternatives to immediate custody were at least being seriously considered. However, realistically, it is not suggested that he was given any expectation that he would not receive an immediate custodial sentence. The author of the pre-sentence report had clearly and appropriately acknowledged that the court may well feel an immediate custodial sentence was the only commensurate sentence. The adjournments to obtain further information may have given the appellant hope of a suspended sentence, but at no stage were any promises made. We are not convinced that His Honour Judge Prince did in fact have a suspended sentence in mind when he adjourned for further information about Mr Taylor. We find it unsurprising that he considered that there should be updated information about Mr Taylor before sentence, since that might have affected the categorisation of the offence.

21. When he came to sentence at the adjourned hearing, the judge was required to make his own assessment, having regard to the information before him and to the relevant sentencing guidelines. In our judgment, he applied the guidelines properly. He was entitled to find that this was a category B2 case for the reasons he gave, and Mr Routledge does not submit otherwise. That resulted in a starting point of two years' custody, and a range of one to three years.

22. The appellant was not of good character. He had some relevant previous convictions – in particular, the offence of battery committed in 2018, when he was well into adulthood. The offence was aggravated by being committed in drink. It was a wholly unprovoked attack committed in a public street. The victim was visibly unsteady on his feet, and the risk of him falling into the road was an obvious one.

23. There was some mitigation, but it was nothing out of the ordinary. It was for the judge to weigh the aggravating and mitigating factors. We cannot say that he erred in the balance he struck. He arrived at a sentence that was reasonably open to him, after proper application of the sentencing guideline to the facts of the case.

24. The judge then had regard to the guideline on the imposition of custodial sentences. He decided in the exercise of his discretion that appropriate punishment could only be achieved through the imposition of an immediate custodial sentence. He explained why he took that view. That decision was one that was reasonably open to him.

25. In all the circumstances, this appeal against sentence is dismissed.

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