

In the St. Helena Court of Appeal

Citation: SHCA 2/2019

Criminal

In the matter of an appeal against sentence

Appellant

Brandon Bone

Judgment on appeal

Heard on 17th January 2019

Before: Sir John Saunders, President; HHJ R Mayo, Member; and HHJ L Drummond, Member

1. On 26th October 2018 the appellant was sentenced to a total sentence of 86 months imprisonment by the Chief Justice. That sentence was made up as follows: 80 months imprisonment for an offence of assault to rob and 6 months consecutive for 2 offences of using a false instrument. The appellant had originally been sentenced to 160 hours community service for the offences of using a false instrument but the appellant had gone on to commit the offence of assault with intent to rob and so the Chief Justice revoked those orders and re-sentenced him. That was the appropriate course to take in our judgment.
2. On 24th March 2018 in the early hours of the morning the appellant attacked a woman walking on her own in the Mule Yard area of Jamestown. At the time of the attack the woman was a teenager preparing for her A levels. The appellant attacked her from behind and carried her to a secluded area where the two of them fell to the ground. The woman fell face down with the appellant on top of her. Fortunately she was rescued by one of her friends who had been walking a little way behind and the appellant ran off. She estimates that the appellant was on top of her for a period of 20 seconds although such estimates are very difficult to give.

3. The victim suffered physical injury. She sustained bruising to her jaw which resulted in her being unable to chew or fully open her mouth for some period of time. She suffered a type 1 dislocation of the left shoulder with a lesion of the tendon to the shoulder. Both of these physical injuries required some time to heal during which period the victim would have suffered significant discomfort. The physical injuries disrupted her exam preparation because of the pain she was suffering.
4. In addition the victim has suffered psychologically. We have read a victim impact statement which graphically sets out the lasting effects of this attack. She was terrified at the time it happened; fearing for her life and she has had recurring nightmares reminding her of these events. She says that she no longer feels like a normal girl and doesn't feel safe. The psychological injury she suffered was understandably substantial.
5. The appellant pleaded guilty to assault with intent to rob and that plea has been accepted, although the fear that the victim must have had was that she was going to be raped.
6. This was treated by the Chief Justice as a serious assault and in our judgment he was right to take that view. He concluded, and we agree, that the offence was aggravated by the location and the timing of the offence and the fact that the appellant was under the influence of alcohol when he committed it. We should also add that it is clear that he targeted a young woman walking alone at night.
7. The offence was further aggravated by the fact that the appellant has a bad record. He is 28 years of age. He has 9 convictions comprising 12 separate offences. The victims of these offences have normally been women. He has convictions for sexual assaults, for one of which, in 2012, he was sentenced to 4 years' imprisonment. As we have already said this offence was committed shortly after the appellant had been sentenced to community service.
8. The author of the pre-sentence report assessed that the appellant presented a high risk of serious harm to the general public but particularly to females. The Chief Justice agreed with that assessment but did not consider it necessary in all the circumstances to impose a sentence of life imprisonment.
9. There were some encouraging signs in reports before the court. The appellant was expressing remorse for what he had done. The probation

officer assessed that remorse as genuine. The appellant had written letters to the court and victim expressing regret for what he had done.

10. The appellant was taking steps in prison on his own initiative to address his alcohol problems which it was clear contributed to his offending. He had agreed to participate in an alcohol awareness programme which will continue during his prison sentence.
11. One of the grounds of appeal is that the Judge was wrong to take a starting point outside the sentencing guidelines for England and Wales. It was agreed between the prosecution and defence that the guidelines suggest a starting point of 3-8 years for this offence. The Chief Justice took a starting point of 10 years. As we were unsure of the status of the guidelines in St. Helena we have invited submissions on that topic and have been assisted with submissions on this topic not only from the defence but also the Solicitor General.
12. Courts in England and Wales are required to have regard to the sentencing guidelines. This requirement was introduced by s. 172(1) of the Criminal Justice Act 2003. The relevant part of that subsection reads as follows: 'Every court must in sentencing an offender have regard to any guidelines which are relevant to the offender's case'. That was later repealed and replaced by s. 125(1) of the Coroners and Justice Act 2009 which is in somewhat different terms. While s. 125(1) was repealed for the purposes of the law in England and Wales it was not repealed for St. Helena. By the English (Application) Ordinance 2005 all Acts of Parliament in force in England as of 1 January 2006 apply to St. Helena subject to other provisions of the Ordinance. One of the other provisions is s.3(2) which states 'the adopted English Law applies to St Helena only in so far as it is applicable and suitable to local circumstances, and subject to such modifications, adaptations, qualifications and exceptions as local circumstances render necessary.' It is argued by the Solicitor General that the guidelines are generally unsuitable to local circumstances and they are therefore not incorporated into St Helena law. However it is clear that the Supreme Court do take the guidelines into account but make such allowance to reflect local conditions and local legislation as is necessary. That seems to us to be inconsistent with the basis of the Solicitor General's submission that the guidelines are so unsuitable for local conditions that they are not incorporated into St Helena law.

13. Sentencing Guidelines are designed to try and achieve consistency in sentences. Consistency in sentencing is important to achieve fairness between defendants. Without reference to guidelines it is more difficult to achieve consistency in sentencing. There are offences in St Helena where the maximum sentences are different to England and Wales or the statutory wording describing the offences is different. The only actual example which has been quoted to us is causing death by dangerous driving where the maximum sentence is less in St Helena. In that case clearly the starting points would need to be adjusted but the factors which need to be considered in deciding sentence as set out in the guidelines may assist the Judge. In our judgment s.172 of the Criminal Justice Act 2003 is still part of St Helena law and the effect of s.3(2) is not such as to exclude the guidelines from St Helena law. Of course the guidelines will need to be adapted to reflect local conditions and local legislation. It follows that we agree with the practice in St. Helena of having regard to those guidelines. It is important that it is remembered that, even in England and Wales, the Sentencing Guidelines are only to be regarded as guidelines. That is even more significant in St. Helena where there are differences in the legislation. Different crimes may have different impacts in St Helena to England and Wales and be regarded by the public in different lights. That needs to be reflected in the sentences passed. So it will be necessary to adapt the guidelines to fit in with local conditions.
14. Where the guidelines are taken into account but are varied to reflect local conditions, the Judge should make it clear what variations he is making and why.
15. The Chief Justice did that in this case. He said this: *'Even accepting that we have to have regard to those guidelines I have to assess whether this is a case where I should regard myself as constrained by the guidelines or whether my duty to impose a sentence to protect members of the community here on St Helena supersedes those guidelines. Given my assessment of the danger you present to members of the community I am in no doubt whatsoever that my duty to impose a sentence to protect members of the public prevails. And for all the reasons given I therefore intend to impose a sentence which exceeds the guidelines suggested by the Courts in England and Wales.'*
16. The sentencing guidelines for England and Wales are drafted on the basis of the sentencing law as it exists in England and Wales. S.142(1) of the

Criminal Justice Act 2003 provides as the purposes of sentencing: punishment of offenders; the reduction of crime (including by deterrence); the reform and rehabilitation of offenders; the protection of the public and the making of reparation by offenders to persons affected by their offences. It follows therefore that protection of the public is a factor which is reflected in the guideline. Where the offence is a serious one, as assault with intent to rob or robbery are, protection of the public will have been in the mind of the Council when the guideline was prepared and will have been reflected in the starting points.

17. Public protection is an important consideration for any sentencer but, are there any particular local circumstances which require greater protection for the public from this type of offence in St. Helena than in England and Wales? If there are the Chief Justice has not specified what they are. It would not be open, for example, to a Judge in Manchester to go outside the guidelines because he felt that people of Manchester deserved greater protection than other parts of England and Wales unless there was some special local feature that justified it.
18. We have therefore concluded that, on the material that we have seen, there was no justification for going outside the guidelines. We do consider that the aggravating features justified a starting point at the top of the bracket to reflect the circumstances of the offence and the appellant's previous convictions. In reducing our starting point from the very top of the bracket we have taken into account the evidence of remorse and the steps that the appellant is taking to control his drinking.
19. We also do not consider there was anything wrong in the Judge imposing concurrent sentences of 6 months instead of the community service orders. It would have been open to the Judge to pass consecutive sentences for each of the offences and we consider that he did have sufficient regard to totality in reaching the overall sentence.
20. We have decided that in all the circumstances the appropriate starting point for the offence of assault with intent to rob was 7 years. We reduce it by one third to reflect the plea of guilty entered by the appellant at the earliest opportunity. That reduces 7 years to 56 months. The 6 months sentence consecutive for the two offences of using a false instrument was in our judgment entirely appropriate. That makes a total of 62 months which is 5 years and 2 months. Time spent in custody will count towards that sentence.

21.To that extent this appeal is allowed.