

In the St. Helena Court of Appeal

Citation: SHCA 1/2022

Criminal

Decision on application for leave to appeal against sentence

Applicant

Robert Sim

-v-

Respondent

Attorney General

Decided 13th March 2022

By Sir John Saunders, President

1. On 11th February 2022 the applicant was sentenced to 32 months imprisonment for an offence of sexual assault. The offence was committed on 6th November 2021. The applicant had pleaded guilty but on a basis that was not acceptable to the prosecution. Accordingly a Newton hearing was held on 25th January. The reason the basis of plea was not acceptable was that the applicant's account was very different from the version of events given by the complainant. The Judge heard evidence from the complainant and the applicant. He was sure that the account given by the complainant was accurate and the account given by the applicant was inaccurate in a number of material ways.
2. In brief the facts found by the Judge were as follows: the complainant and the applicant had been in a relationship for a period of time but, by the time of the offence, it had finished and, to the applicant's knowledge, the complainant had started a new relationship. The Judge found that neither party had intended their relationship to be a lasting one and it had been relatively short lived.

3. In the early hours of the morning of 6th November, when under the influence of alcohol, the applicant let himself into the complainant's room. The Judge accepted that the applicant believed he was entitled to do that but that that belief was unreasonably held. Once inside her room the Judge found that the applicant intended to have sexual intercourse with the complainant but she resisted and eventually the applicant desisted. Before the applicant left, he had removed the sheet from the complainant which was the only covering she had. He had touched and kissed her breasts and had tried to force her legs apart with his legs and hands. Before he left her room the applicant called the complainant dirty.
4. It was accepted at the sentencing hearing and is accepted now that it was appropriate to apply the Sentencing Guidelines of England and Wales. While this is not mandatory in St Helena, the guidelines will normally be followed unless it is inappropriate because of local conditions or characteristics of the island that make the guidelines unsuitable.
5. The Judge decided that applying the sexual assault guidelines, this was a category 1B offence. It is not suggested that was wrong and in my view the Judge was clearly right to do so. The range under that category is 2 to 4 years and the starting point is 2 ½ years.
6. The Judge found the following aggravating features: the abuse after the assault; the time of the assault (the early hours of the morning) and the fact that the applicant was under the influence of alcohol. He found the mitigating features were the applicant's good character and that the offence was out of character.
7. Taking all those matters into account the Judge reached a provisional sentence subject to credit for plea of 3 years. It is argued that that figure is too long. It is maintained that, either the Judge has increased the sentence to reflect the aggravating features by too much, or there was an insufficient reduction on the sentence to reflect the mitigating features found by the Judge.
8. In my view either contention is unarguable. The aggravating features were serious; particularly the time the offence was committed and the fact that the applicant was intoxicated. It is not suggested that the sentence was manifestly excessive and there is no merit in the suggestion that the Judge has made some error of principle in the way he has addressed the aggravating and mitigating factors.

9. The final part of the sentencing exercise was what reduction to give to reflect the applicant's plea of guilty. A plea of guilty at the first opportunity would attract a discount of one third. That does not apply where there has been Newton hearing where it is up to the Judge to decide how much credit to give. He is in the best position to do so because he has heard the evidence.
10. I have been helpfully referred by the applicant to the decisions of the Court of Appeal for England and Wales in *Oosthuizen* [2005] EWCA 1978 which makes clear that a reduction in sentence for remorse should be allowed separately from a discount for plea and at a different stage; and *Caley* [2013] 2 Cr App R(S) 47 which sets out the general principles applicable to credit for plea and points out that the reasons for it are largely pragmatic. Early pleas save time and money and allow other cases to be heard and, make it unnecessary for victims to have to relive the offences by giving evidence.
11. It is suggested that the Judge did not follow those authorities in that he reduced the credit for plea to reflect a lack of insight and remorse for the offence in the applicant. That argument is based on the following passage in the sentencing remarks:
 12. 'Applying the guidelines I start the sentence at 3 years' imprisonment. I turn now to credit for your guilty plea. In some circumstances on Newton hearings the credit for a guilty plea can disappear entirely. In this case you had your victim come to court to be cross-examined and relive her ordeal at your hands. By virtue of your denials as to the facts at court, and repeated to the probation officer, it is clear that you have no insight into the consequences of your offending and certainly limited remorse. You are very close to receiving no credit at all but I will allow just over 10%. The sentence will be 32 months' imprisonment. This sentence is too long to be suspended and a non-custodial sentence cannot reflect the seriousness of your offending.'
 13. The principle relevant matter in deciding what credit if any to give for the plea was that the complainant had had to come to court to give evidence and relive her ordeal in the witness box. That in itself in my judgment merited a reduction of the credit for plea to 10%. In a serious case of sexual assault, if the Judge finds against the Defendant on a Newton hearing and in favour of the complainant, there will be few cases where the credit for plea is above 10%. In this case it was in fact 13%.
 14. It is also correct that, in giving the account that he did to the Judge, the applicant did show that he had no insight into the consequences of your offending and limited remorse. The Judge was entitled to remark on it. It was important to do so but it does not mean that he let that affect his calculation of the reduction in credit for plea in so far as the two can be separated.

15. It is not arguable in my judgement that the sentence was too long and that is not seriously argued. Nor is it arguable that there were errors of principle in the way the Judge calculated the sentence. Accordingly I refuse leave to appeal.