Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: RP/00002/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4th November 2019	**On 02nd December 2019**

Before

UPPER TRIBUNAL JUDGE RIMINGTON
UPPER TRIBUNAL JUDGE BLUNDELL

Between

H Y M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Trevelyan, Counsel, instructed by D&A Solicitors
For the Respondent: Mr E Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the determination of First-tier Tribunal Judge Henderson promulgated on 5th June 2019. It is asserted that the judge was required and failed, inter alia, to consider whether the appellant had rebutted the presumption that he represented a danger to the community in accordance with Section 72 of the Nationality, Immigration and Asylum Act 2002.

2. The appellant is an Iranian national born on 27th February 1986 and entered the United Kingdom on 5th May 2010. He claimed asylum which was initially refused and then allowed on appeal. On 25th August 2015 the appellant applied for indefinite leave to remain but in June 2015 he had been charged with possession of a knife and two counts of assault occasioning actual bodily harm which led to a conviction with a sentence of four years' imprisonment given on 7th July 2016.

3. On 16th September 2016 the respondent made a decision to deport the appellant and he was served with a notice under Section 72 of the Nationality, Immigration and Asylum Act 2002 which the appellant challenged under Section 72(6).

4. The respondent served notification of intention to revoke the appellant's refugee status on 17th May 2017 and the appellant served further representations in June 2017 and September 2017. In addition, there were also representations and comments from UNHCR dated 16th November 2017.

5. On 20th December 2017 the respondent revoked the appellant's refugee status. That decision was appealed under Section 82(1)(c) of the 2002 Act.

6. At the hearing in the First-tier Tribunal, before Judge Henderson, it was confirmed that deportation was not being pursued by the respondent and the respondent accepted the appellant's claim against removal under Article 3 of the European Convention on Human Rights. The respondent also accepted that the appellant suffered with mental health issues, namely schizoaffective disorder and depression. The matter of revocation of protection was, however, being pursued.

7. Judge Henderson recorded at paragraph 7 of his determination the details of the appellant's conviction in 2011 of Actual Bodily Harm, affray and wounding which led to a total sentence of twelve months. The appellant had armed himself with two bladed articles and stabbed one person and assaulted another. The OASys Report noted that the alcohol was assessed as a 'disinhibitor' in the offence.

8. At paragraphs 8 to 11 the judge recorded details of the offence committed in June 2015.

> *"8. In June 2015 the appellant had been charged with possession of a knife and two counts of assault occasioning actual bodily harm (ABH). The appellant had ordered a pizza by phone. When the pizza arrived, the appellant rang to complain that the pizza was cold and uncut. The appellant then took the pizza back to the shop and asked for a refund. The appellant says that when he got there a staff member came up from behind the counter and kicked him while another restrained him. He says that the member of staff who kicked him also threatened to kill him. The appellant says that he pushed the person*

restraining him away and then ran out of the shop and called the police. The appellant denied being in possession of a knife or any bladed weapon. The appellant accepted that he had been drinking alcohol and that he had not taken his relevant medication on the day of the offence.

9. *The appellant pleaded 'not guilty' to the offences, but was convicted by the jury at his trial. This led a sentence of four years' imprisonment given on 7 July 2016. The appellant had been released from prison on 4 April 2018, but was on licence till 3 April 2020 (the expiry date of his sentence).*

10. *These convictions were confirmed by a PNC printout and were not disputed by the appellant, though he did not accept that he had committed the offences in 2015.*

11. *The following are extracts from the Judge's sentencing remarks on 7 July 2016:*

- *the Judge noted that no application was made for an adjournment to undertake a report into the appellant's mental health or for a pre-sentence report;*
- *the Judge noted the appellant's previous convictions for violence including the use of knives in 2011 and the sentence of 12 months, which was regarded as an aggravating feature in this sentencing;*
- *it was noted that the appellant had armed himself deliberately with a knife, which he had concealed up his sleeve when he left his home address and had been drinking, although the Judge stated 'drink really is immaterial to these events';*
- *the jury had rejected the appellant's evidence that he had not been carrying a knife and had been attacked by the employees in the pizza shop."*

9. The judge also recorded that during the course of his imprisonment a quarrel resulted whereby the appellant threw a cup of water in a prison nurse's face. The appellant denied the assault, but details of the incident are recorded on the OASys Report.

10. The Secretary of State's reasons decision was set out which noted the medical evidence submitted with regard to the appellant's ongoing mental health condition and his treatment in the UK for schizoaffective disorder. It was noted that the respondent was not seeking to pursue the deportation order of September 2016.

11. The judge recorded at paragraph 24 that the sole issue before the Tribunal related to whether the appellant was able to rebut the presumption imposed by Section 72 of the 2002 Act that he had committed a particularly serious crime and was a danger to the community and it was agreed that the focus of the

appeal was the technical issue of whether the respondent was entitled to revoke the appellant's refugee status and thereafter impose a shorter period of leave with more restrictive conditions upon him.

12. The judge recorded the following:

(i) The OASys assessment was carried out on 4th May 2018 by the appellant's probation officer. The report recorded the offences for which he was sentenced in 2016 and that the injuries to the victims were superficial but had been caused by a knife or blade and there was no long-term physical damage to the two victims but there would be emotional harm.

(ii) The report noted the appellant had been convicted of an offence involving violence in 2011.

(iii) Since his release in April 2018 the appellant had lived with his partner and her mother and there were no further incidents of violent behaviour reported. He had been with his partner for four and a half years and she was supportive emotionally and financially.

(iv) The appellant was unemployed. There were no problems regarding his work and he had completed a victim awareness programme, level 1 certificate in construction skills, entry level award in ESOL skills for life and RAPT courses. He also had a level 2 in plumbing and a diploma in gas engineering.

(v) When convicted in 2011, alcohol was assessed as a disinhibitor and also referred to in the index offences in 2015/16. The appellant had stopped drinking alcohol. A referral was to be made to the Drugs, Alcohol and Wellbeing Service to help him in the community with maintaining his abstinence from alcohol.

(vi) The report noted the appellant's mental health issues, depression and schizoaffective disorder and they were controlled by medication, olanzapine. The appellant had made several suicide attempts and had not taken his medication on the day of the index offence and this could have been a contributing factor. The assessment was that the appellant's emotional wellbeing was linked to risk of serious harm, risk to self and others and also linked to offending behaviour.

(vii) It was recorded that there were concerns regarding the incident in November 2017 in prison with regard to the appellant's ability to control his disruptive behaviour.

(viii) The judge set out the assessment in the report of the risk of serious harm to the general public as follows:

> "43. *The report assessed the risk of serious harm to the general public from the appellant. It was noted there could be a risk if the appellant felt disrespected agreed or threatened. There was no information available to suggest that the appellant would harm females, but there may be a risk if he felt aggrieved or threatened*

by them. There was also a risk to staff in custody again if the appellant felt belittled or disrespected. The nature of the risks would be violence including weapons. His offending could indirectly cause emotional suffering to the victim as well as to witnesses of any such offence. There was also a risk if the appellant did not regularly take his prescribed medication for his mental health issues. There would also be a risk of the appellant harming himself. The risk would also be increased fi the appellant resumed drinking alcohol.

44. The report noted the positive factors were that the appellant had a good relationship with his partner and her mother, living in a stable environment and this had a stable effect on his behaviour generally. The appellant was under medical supervision and also reported regularly to his probation officer for supervision sessions. Factors that may inhibit change in the appellant's behaviour were: his repeated denial of the index offence; relapse into alcohol misuse; impulsive behaviour; failure to take prescribed medication and lack of consequential thinking.

45. The level of risk as regards the appellant was assessed as 'medium risk' to the general public in the community and also to staff in custody, but as 'low risk' with regard to children, known adults or other prisoners. There were concerns about suicide risk self-harm and control issues."

13. The judge specifically noted that the appellant gave evidence that he had not drunk alcohol for three years, had undertaken various courses and that the appellant stated that he had learnt to be part of the community and to feel sorry for his victims.

14. The judge found both the witnesses, the appellant's partner and mother, to be credible (paragraph 60) and accepted the content of the OASys Report, which was not challenged. Specifically, at paragraph 62 the judge concluded:

> *"62. I find that the appellant has been rehabilitated to a large extent through his diligence in pursuing educational and other opportunities and in recognising the adverse effect of alcohol upon his behaviour. I must note, however, that the OASys report does state that there are key factors which underlie the continuance of the appellant's rehabilitation; namely the medication for his medical condition; his abstinence from alcohol and his relationship with his partner. If any or all of these factors were altered, this could lead to a risk of reoffending and consequently to potential harm to the community. The OASys report assessed the risk to the community at large from the appellant as 'medium'."*

15. Having found that the crime was "particularly serious" with reference to Section 72, the judge turned to consider whether the appellant had rebutted the presumption that he was a danger to the community:

> *"66. I next consider, whether the appellant has rebutted the presumption that he is a danger to the community. I have accepted the appellant's evidence with regard to rehabilitation and I note that he has not re-offended since his release in April 2018. However, I cannot disregard the factors noted in the OASys report as key to the appellant's ongoing rehabilitation. If the appellant were to cease taking his medication and/or to recommence drinking alcohol, the situation could change. It is relevant that the index offence in 2015 and the incident in prison in 2017 were both committed at a time when the appellant was not able to take his medication. Further, the appellant's relationship with his partner is currently strong but if this were to change, this could be detrimental to the appellant's behaviour, which in turn could lead to his reoffending.*
>
> *67. The decision in this case is a difficult one. I accept that the appellant has made real and genuine strides towards rehabilitation, but I must also accept that this is based on circumstances which could change. If there were changes, there could then be risk to the community. The UNHCR notes that the danger must be 'very serious'. However that is not the wording in either Article 33(2) or section 72 both of which refer to 'a danger to the community'. On that basis I find that the appellant has not rebutted the statutory presumption in section 72."*

16. The grounds of appeal contended that the judge made positive findings in the appellant's favour that he had made real and genuine strides in respect of his rehabilitation, he enjoyed a strong relationship with his partner, who had attended the hearing, and he had ceased consuming alcohol and was taking his prescription medication but the judge found that "if there were changes, there could then be risk to the community". The judge considered that the appellant was not currently a danger to the community but nevertheless found that he had not rebutted the statutory presumption and dismissed the appeal. It was submitted that such an approach was an error of law as it was perverse and no reasonable judge properly instructing himself on the law could come to that conclusion because of the possibility of future changes in his circumstances which were in no way suggested by the evidence.

17. As the judge had accepted the evidence of both the appellant and his partner there was no evidential justification for considering that their relationship might deteriorate, the appellant would resume consuming alcohol and/or the appellant would cease taking his medication.

18. It was submitted that the judge engaged in impermissible speculation as to the appellant's future circumstances and in doing so whether it would ever be possible that he could present a danger to the community, which was not the test which the judge had to apply.

19. At the hearing before us Mr Trevelyan repeated that the judge made a series of positive findings and noted that the judge did not consider that the appellant

currently represented a risk and the judge's approach to the current situation was not challenged. When looking to the future risk or a real risk of repetition the decision simply found itself entirely unencumbered by the evidence. A real risk must be substantial and when the judge looked into the future it became entirely speculative. The judge had not taken into account that the appellant was on licence until April 2020 and there were positive changes which had existed for a long period of time. The long-term change achieved had not been taken into account. The determination did not consider how, if there were a change, it might impact on the question of dangerousness. If there was a change, he may be dangerous but it was required to consider it cumulatively and the concept of rehabilitation was disregarded. The judge was unconstrained by the evidence of the case and looking at the OASys Report and the context, there had been very positive steps taken. There was no reason and no evidence that he had not changed.

20. Mr Tufan submitted that the appellant had committed a very serious crime and in 2011 had committed a similar offence in 2015; there was a further infraction while he was in prison. The appellant was required to rebut the presumption that he constituted a danger to the community and there was simply no evidence that he had rebutted that presumption. There was an OASys Report but nothing else, such as a social report or expert report, merely the evidence of the appellant, who did not appear to accept responsibility or show remorse. He remained a danger to the community.

21. Mr Trevelyan submitted that the judge appeared to accept that there was no risk at present but it is what the judge considered with regard to the future and there was no rationale to support what she had said about her speculation of the future. The findings in regard to remorse and rehabilitation were unchallenged findings of fact in the appellant's favour.

Analysis

22. Having concluded at the hearing that the decision of the FtT fell to be set aside, we asked the advocates whether we should remake the decision on the material available. Both were content for us to do so, and neither sought to make any additional submissions at this stage. We give our reasoning below.

23. In essence, the appellant challenged the judge's finding that the appellant was a danger to the community as supported by inadequate reasoning, having ignored the positive findings made in respect of the appellant and having speculated into the future.

24. Section 72 of the Nationality, Immigration and Asylum Act sets out as follows:

> *"(1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).*

(2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is -

(a) convicted in the United Kingdom of an offence, and

(b) sentenced to a period of imprisonment of at least two years.

(3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if -

(a) he is convicted outside the United Kingdom of an offence,

(b) he is sentenced to a period of imprisonment of at least two years, and

(c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence.

…

(6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.

(7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence -

(a) is pending, or

(b) could be brought (disregarding the possibility of appeal out of time with leave).

...

(9) Subsection (10) applies where -

(a) a person appeals under section 82 of this Act or under section 2 of the Special Immigration Appeals Commission Act 1997 (c. 68) wholly or partly on the ground mentioned in section 84(1)(a) or (3)(a) of this Act (breach of the United Kingdom's obligations under the Refugee Convention), and

(b) the Secretary of State issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).

(10) The Tribunal or Commission hearing the appeal -

(a) must begin substantive deliberation on the appeal by considering the certificate, and

(b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).

(10A) Subsection (10) also applies in relation to the Upper Tribunal when it acts under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

(11) For the purposes of this section -

(a) 'the Refugee Convention' means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and

(b) a reference to a person who is sentenced to a period of imprisonment of at least two years -

(i) does not include a reference to a person who receives a suspended sentence (unless a court subsequently orders that the sentence or any part of it is to take effect),

(ia) does not include a reference to a person who is sentenced to a period of imprisonment of at least two years only by virtue of being sentenced to consecutive sentences which amount in aggregate to more than two years,

(ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and

(iii) includes a reference to a person who is sentenced to imprisonment or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years)."

25. As held in EN *(Serbia) [2009] EWCA Civ 630*, Article 33(2) imposes two requirements on a state wishing to refoule a refugee under Section 72 of the Nationality, Immigration and Asylum Act. There must be a conviction by a final judgment of a particularly serious crime and the appellant must constitute a danger to the community.

26. At paragraph 45 Laws LJ stated:

> *"So far as 'danger to the community' is concerned, the danger must be real, but if a person is convicted of a particularly serious crime, and there is a real risk of its repetition, he is likely to constitute a danger to the community."*

And at paragraph 66 it was found with regards the burden of proof:

> *"In practice, once the state has established that a person has been convicted of what is on the face of it a particularly serious crime, it will be for him to show either that it was not in fact particularly serious, because of mitigating factors associated with its commission, or that because there is no danger of its repetition he does not constitute a danger to the community."*

27. In essence, the duty of the judge was to decide whether the convictions were for particularly serious crimes and whether the appellant was a danger to the community. As can be seen from the determination and the grounds of appeal, it was accepted that the appellant had been convicted of a particularly serious crime. We do find, however, a tension in the findings of the judge.

28. The judge recognised that the OASys Report identified the key factors which underlay the continuance of his rehabilitation, namely the medication for his medical condition and his abstinence from alcohol and his relationship with his partner. The judge also referred to the appellant being "rehabilitated to a large extent through his diligence in pursuing educational and other opportunities and in recognising the adverse effect of alcohol upon his behaviour." There was specific acceptance of the evidence of his genuine strides towards rehabilitation but the judge's limited consideration of the OASys Report failed to explain why the judge concluded the presumption had not been rebutted. Specifically, at paragraph 45 the judge cursorily described the level of risk to the general public and the community and to staff in custody as being "medium risk" without further analysis. At paragraph 62 again the judge referred to "the OASys Report assessed the risk to the community at large from the appellant as 'medium'" without more. In particular, we note that the judge referred to the OASys Report assessing the risk to the community at large from the appellant as 'medium' but in fact this was specifically in relation to the risk of harm to the public. The judge did not weigh the factors of the evidence, which he accepted, properly against the factors in the OASys Report and thus, his conclusions appeared to be speculative and contradictory. As such, we find the reasoning to be inadequate and an error of law and we set aside the judgment in relation to the finding as to whether the appellant is a danger to the community and revisit those findings. We remake the decision.

29. The appellant was convicted of an assault in 2011 and was again convicted following an incident in June 2015 (as described above). This latter incident also involved a knife when he threatened a member of the public.

30. We have considered the OASys report carefully. This made a detailed analysis of the circumstances of the appellant. As pointed out by Mr Tufan there was no social worker's report nor any other expert report.

31. The OASys Report identified that the appellant failed to take responsibility for the possession of a blade or article of inflicting a wound on either victim (Section 2.11). When considering the "pattern of offending" the OASys Report identified that Mr Y M lacked consequential thinking and did not know how to control his impulsive behaviour. That is an extant and ongoing finding. At 2.14 the author of the report, a probation provider, found with reference to existing circumstances:

> *"It is my assessment that Mr Y M lacks control over his behaviour. It appears that alcohol was a contributing factor to the offence. It is therefore my assessment*

that offence analysis is linked to serious risk of harm, risk to the individual and other risks."

The OASys Report identified that his attitude to employment presented no problems and there was a suitability of accommodation and that he had completed courses in prison and had no literacy issues. Again, at 7.5 there was an observation that there were "problems in regard to recklessness and risk-taking behaviour".

32. In relation to alcohol misuse, at section 9 of the report it was observed that Mr Y M "presents open and willing to work with an alcohol worker to help him maintain his desistance to alcohol. A referral will be made to the Drugs, Alcohol and Wellbeing (DAWS) to assist Mr Y M in the community with his desistance of the substance". It was identified that the alcohol misuse is linked to his offending behaviour.

33. Although the evidence was given before the First-tier Tribunal that he had decided not to partake of drink in the future the appellant had only recently been released from prison on 4th April 2018 and this, we conclude was too short a period, bearing in mind the comments in respect of his reckless behaviour to establish no current risk. Indeed, at section 11 of the OASys report, the appellant's thinking and behaviour impulsivity, aggressive/controlling behaviour, temper control and ability to recognise problems and problem-solving skills were all considered to be problematic. That we note is post the courses undertaken in prison. He was released in on 4th April 2018. In particular, at section 11 thinking and behaviour was linked to offending behaviour and linked to a risk of serious harm, risk to the individual and other risks. There was a reference at Section 13 that the appellant stated he was collecting his own prescription but there was also identification within the report itself that the appellant had failed, on the day of the index offence in 2015, to take his medication which could have been a contributing factor.

34. At page 26 of the report areas of concern under "analysis of offences", were considered to be "alcohol misuse", "emotional wellbeing" and "thinking and behaviour".

35. In the classification of serious harm screening at section R2, page 28, specifically at R4.2, control issues/disruptive behaviour were identified as a risk and the OASys Violence Predictor set out as follows:

OVP 1 year % score 12

OVP 2 year % score 21

OVP risk of reoffending low.

36. As we identified during the proceedings, the identification of a low risk does not mean no risk. When assessing the risk of serious harm at R10.3 on page 35 it was identified that there were a series of triggers such as the appellant not

taking his medication, consuming alcohol to disinhibit his impulsive behaviour, where he felt aggrieved and in these situations, he was assessed as posing a medium risk of harm and had potential to cause serious harm and specifically: "Nevertheless his risk is not deemed imminent at present. However, if a situation occurs that Mr Y M feels he has no control over his risk would become imminent immediately." This we conclude was ongoing.

37. There were factors identified which were likely to reduce the risk such as appearing willing to engage with internal and external agencies, his attitude to employment, training and education, his attitude to address alcohol and his attitude to medication. There were also identified the external protective factors such as family, stable accommodation and offender management and the fact that he was on licence, which would facilitate to control his behaviour.

38. These, however, were considered to be factors likely to *reduce* the risk and did not confirm that there would be no risk or indeed confirm that these factors would obviate the existing risk.

39. The report identified that "the offender has a potential to cause serious harm but is *unlikely* to do so unless there is a change in circumstances, for example, failure to take medication, loss of accommodation, relationship breakdown, drug or alcohol misuse". He was specifically identified as being a medium risk of serious harm in the community and a medium risk in custody because of the incidents in prison. The current situation identified once again that his thinking and behaviour were contributory factors to whether he was a risk and the OGRS3 probability of proven offending identified in year 1 as being a 25 to 40% risk and in year 2 low.

40. The appellant was diagnosed with a mental disorder whilst he was in Iran in 2010 and again in the UK in 2011 and has been undergoing treatment since prior to his offending behaviour. His medical notes record that he was diagnosed with and treated for schizoaffective disorder and depression as long ago as June 2012. He experiences auditory hallucinations and, according to Dr A Toor Specialist Registrar to Consultant Psychiatrist, on 22 September 2014 was on Olanzapine and denied 'any thoughts of harming self or others'. That pre-dated the index offence and underlines the concerns of the OASys report.

41. We would also observe that the partner has been in his life for four and a half years, which predates the latest conviction following the incident in June 2015. His partner was 'shocked' when he was arrested in relation to his 'current offence' [2015] and she could 'never have imagined what was going to happen'. She considered that he had taken numerous rehabilitative courses in prison and subsequently a course as a Light Vehicle Inspection Technician. She observed he continued to visit his doctor and collect his medication and visited his probation officer. Clearly, she found his behaviour unpredictable. This significantly reduces the weight to be attached to the witness' well-meaning.

42. The statement of his partner's mother dated 1st April 2019 confirmed she had known him since 2013 and was 'certain that H is not a danger to British society as he is fully rehabilitated'. This was a very limited statement and little weight can be attached to it.

43. Three further witnesses gave written letters, the first of which, DP, described the partner's description of the appellant and his gifts to her, the second MS, described him as 'peaceful' and WR described him, again in April 2017 as 'just another ordinary boy'. None showed an in-depth knowledge of the appellant and the contribution was therefore of limited value.

44. The courses undertaken with regards rehabilitation are laudable but as identified in the OASys report, education and training and employability were not considered to be a risk factor and nor were financial issues or relationship difficulties. As pointed out in *RY (Sri Lanka) v Secretary of State [2016] EWCA Civ 81*, passing an extended driving test did not necessarily mean that the person, in that case, convicted of dangerous driving was no longer a risk.

45. On remaking our decision as to whether the appellant is a danger to the community, we have considered the evidence overall but placed particular emphasis on the OASys Report, which was undertaken as recently as 26th April 2018. We identify that the OVP probability of proven violent-type reoffending in year 1 was classified as 12% and in year 2 as 21%: although it was identified as low with the risk of serious harm as being medium, we consider this to be cogent evidence that the appellant, despite his evidence and that of his fiancée and her mother as to his rehabilitation, still remained a current danger to the community, particularly in the light of his thinking and behaviour. The risk as set out was substantial in that it was more than minor or trivial and was indeed quantified as higher in the second year. One of the factors to reduce risk was his attitude to medication. The medical evidence demonstrates the appellant was being treated well before his 2015 offence and whilst he was in prison when a further incident occurred. The factors noted in the OASys Report are significant factors which determined his behaviour and we are not persuaded that they cannot operate individually or that the positive aspects to his rehabilitation have been demonstrated to outweigh the critical nature of the report.

46. It is for the appellant to rebut the presumption that he is a danger to the community, and we are not persuaded that he has done so. Overall in the light of the current concerns expressed by the full and detailed analysis in the OASys report and taking the evidence holistically, we do not find that the appellant has discharged the burden of proof.

47. We are thus obliged to dismiss the appeal under Section 72(10) of the 2002 Act.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Helen Rimington* Date 29th November 2019

Upper Tribunal Judge Rimington