Neutral Citation Number: [2019] EWCA Crim 2202

Case No: 201901487/A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM WOLVERHAMPTON CROWN COURT
HHJ Nawaz
T20177055

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/12/2019

Before:

THE RIGHT HONOURABLE THE LORD BURNETT OF MALDON
LORD CHIEF JUSTICE OF ENGLAND AND WALES
THE HONOURABLE MR JUSTICE SWEENEY
and
SIR RODERICK EVANS

- -

Between:

BRENDAN PATRICK McCARTHY	**Appellant**
- and -	
REGINA	**Respondent**

- -
- -

Mr A D Smith QC (instructed by **Angel and Co. Solicitors**) for the **Appellant**
Mr J Hankin QC (instructed by **Crown Prosecution Service**) for the **Respondent**

Hearing dates: 10 October 2019

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Approved Judgment

The Rt Hon The Lord Burnett of Maldon:

Introduction

1. This is an appeal against sentence by leave of the single judge. It involves consideration of the extent to which the consent of the victims of offences of causing grievous bodily harm with intent, which were committed by the appellant in the course of carrying out body modification procedures on customers of his then business, is relevant to sentence and, if so, to what extent.

2. On 12 February 2019, nearly a year after the failure of his interlocutory appeal against a ruling (itself made on 6 October 2017) that the customers' consent could provide no defence to the charges that he faced, the appellant (who is aged 50 and was of effective previous good character) pleaded guilty to three offences of causing grievous bodily harm with intent (Counts 1-3). Thereafter, on 21 March 2019, in the Crown Court at Wolverhampton, he was sentenced by HHJ Nawaz to 40 months' imprisonment concurrent on each Count, making a total of 40 months' imprisonment. In addition, an Order was made for the forfeiture of all surgical items and medications that had been seized during the investigation of the offences.

The facts

3. The facts are summarised in the judgment of this Court in the interlocutory appeal: see [2018] EWCA Crim 560 at [6] – [20].

4. For present purposes it is sufficient to record that for many years the appellant was the proprietor of a body piercing and tattooing business in Wolverhampton, where he, and the premises that he used, were registered for those purposes with the local authority.

5. The appellant also ran a body modification business from the same premises, trading under the name Dr Evil's Body Modification Emporium, where he carried out unregulated surgical procedures on customers for money. In preparation, he had done no more than attend some short courses. He had no medical qualifications that equipped him to make any judgments about the mental health of his customers, to carry out such procedures, or to deal with any adverse consequences.

6. The three offences were said to be samples and related to procedures that the appellant had carried out in the period between July 2012 and July 2015. The prosecution was content to accept that each of the customers consented to their procedure being performed, or at least that it was not possible to disprove that fact.

7. Count 2 involved the use of a scalpel on 23 July 2012, without anaesthetic, to split the tongue of an unknown female customer to produce an effect like that enjoyed by reptiles.

8. Count 3 involved the removal of a nipple on 16 August 2012 of an unknown male customer, also without anaesthetic.

9. Count 1, involved the complete removal of Ezechiel Lott's left ear on 23 July 2015, again without anaesthetic. Mr Lott had signed a consent form in which the appellant described himself as a "qualified modification artist" and in which Mr Lott confirmed that he was aware of the risks, had chosen to have the procedure done of his own free

will, and that he would "not hold the artist responsible in any way for any problems or medical conditions that may arise" from the procedure. The consent form also promised that the environment for the procedure was clean and sterile to a high standard, and that the customer would be educated in how to take care of their modification before they left the premises.

10. There was uncontroversial prosecution evidence from a consultant plastic surgeon, an ear nose and throat consultant, and a consultant psychiatrist, to the combined effect that:

i. To perform any cosmetic surgery in the United Kingdom the doctor concerned must, by statute, be listed on a Specialist Register held by the General Medical Council. The GMC has issued guidelines and rules to the effect that, before a procedure is carried out, the surgeon must meet the patient on at least two occasions; must explain the potential complications and risks; and must allow a two-week cooling off period before surgery is performed to enable a patient to change their mind.
ii. In addition, cosmetic surgeons will be on the lookout for potential psychiatric or psychological problems, such as Body Dysmorphic Disorder, and will, if necessary, refer the patient for psychiatric or psychological assessment before deciding whether to conduct the relevant procedure.
iii. In all cases proper informed consent would be obtained and recorded in approved forms.
iv. In any event, tongue splitting would never be done by a reputable surgeon, whether for aesthetic or any other purposes. There are also particular risks associated with the procedure. The tongue will bleed very heavily; it is liable to swell up; it will be hard to keep sterile; there is an ever-present risk of infection; and creating a forked tongue has the potential for an adverse effect on both speech and feeding.
v. Likewise, a plastic surgeon would not remove a nipple for aesthetic reasons, only for medical reasons.
vi. Removal of the external structure of an ear (the pinna – which catches sound and funnels it into the ear canal), whether partial or total, would never be done by a surgeon for aesthetic reasons, only for medical reasons and under sterile conditions in an operating theatre. Removal causes much bleeding and, given that the ear canal carries a lot of bacteria, there is an enhanced risk of infection which would need to be addressed in follow-up appointments. The removal could cause closing of the ear canal (which would be difficult to reverse) and could result in moderate to severe conductive hearing loss which could be irreversible. Extensive excision could also potentially cause injury to the facial nerve with the possibility of consequent facial paralysis, together with practical difficulties in relation to the wearing of glasses or use of a hearing aid.
vii. Whilst photographs showed that the ear procedure on Mr Lott had been done quite well, in the sense that the skin edge had been cleanly cut, the stitching was not done to the standard of a plastic surgeon.

11. In July 2015 there was a complaint to Wolverhampton City Council in relation to the removal of Mr Lott's left ear, and that the appellant was untrained and unlicensed.

The investigation which followed ultimately led to the discovery of evidence of the three offences.

12. The appellant was arrested in December 2015. He made no comment in interview, but his arrest brought his conduct of body modification procedures to an end.

13. Examination of the appellant's business premises revealed the presence of the prescription only medicines Adrenaline and Lidocaine. Evidence of the use of expired products was also found, together with the use of non-safety sharps in breach of an EU Directive, and sterilised items without a date of sterilisation on the packaging. There were also inappropriate environmental facilities and evidence of non-medical products being used for skin and environmental decontamination, with no assurance that they would work. The environment was cluttered. It could not be cleaned properly and was not conducive to infection prevention requirements. There was inadequate storage of sterile items with a consequent high risk of contamination. The majority of the sterile and single use equipment had passed its expiry date, and there were no sterile gowns and masks. There was an advertisement in the window of the premises for services including subdermal and transdermal implants, tongue splits, pixie ear pointing, and ear lobe repair or reconstruction.

14. The appellant's prosecution is thought to be the first of an individual for the performance of body modification procedures.

15. In the interlocutory appeal, this Court concluded, at [45], that there was no reason why body modification should be placed in a special category of exemption from the general rule that the consent of an individual to injury provides no defence to the person who inflicts the injury if the conduct causes actual bodily harm, let alone if (as here) it causes grievous bodily harm.

16. Equally, at [3], this Court observed that it was striking that HHJ Nawaz's ruling had not provoked any guilty pleas, despite the fact that counsel then appearing for the appellant had accepted that if the ruling was upheld no defence could be put before the jury.

17. On 24 May 2018, two months after the decision of this Court on the interlocutory appeal, the case was listed for mention in the Crown Court, whereupon the Appellant sacked his lawyers. He then sought advice from Mr Andrew Smith QC, who has represented him since. As we have already indicated, it was not until 12 February 2019 that the Appellant entered his guilty pleas.

18. Although Mr Lott did not make a witness statement and declined, when seen by DC Collis on 13 February 2019, to make a Victim Personal Statement, he was content for the officer to record in a witness statement of her own what he had said to her. That included that he had thought that his ear removal procedure was legal and that the appellant was appropriately qualified to carry it out; that if he had known that it was illegal he would not have had it done; but that he had had no problems or complications to date. He said that he was pleased that the correct legal position was now known to the body modification world, and that he supported the safeguarding of the public by the mounting of the prosecution of the appellant.

The sentencing hearing

19. There was a Pre-Sentence Report before the court on 21 March 2019. It indicated that the appellant had mistakenly believed at the time that, in carrying out body modification procedures with consent, he was not committing any offence. However, the appellant had now come to terms with the fact that he had been in the wrong. The full realisation of which had been a considerable blow to him. He was deeply remorseful as a result, albeit that he disputed the prosecution evidence that his equipment was not sterile. In the result, the author recorded, the appellant no longer considered it safe or reasonable to carry out such procedures, and his contrite approach had enabled him to take responsibility and to learn from his experience. He was assessed as presenting a very low risk of re-offending.

20. The author of the report concluded that there were issues of public concern as to the level of injury caused and about the extent of the consent in Mr Lott's case, which suggested that the starting point should be custody. However, the appellant's acceptance of wrongdoing, his remorse and his capacity to learn from his flawed thinking could allow the court to consider stepping back from immediate custody and include up to 15 days of Rehabilitation Activity Requirement and up to 80 hours of unpaid work in a non-custodial sentence.

21. There were four character references before the court, all written in May 2018. Between them, they spoke well of the appellant and the way in which he had carried out body modification procedures. One of them described him as still "*the best body modification artist in the UK*".

22. Mr Lott's comments, as recorded by DC Collis, were summarised in the Opening.

23. In the Prosecution Opening Note for Sentence, Mr Jonas Hankin QC submitted that whilst the offences fell into Category 2 of the relevant Guideline (greater harm and lower culpability|), in the unusual circumstances of the case, the court might consider it appropriate to adjust the starting point of 6 years' custody downwards, or to move outside the identified category range of five to nine years' custody. Nevertheless, it was submitted, there were strong grounds for passing an immediate custodial sentence in order to deter others from performing unlawful body modification procedures. In addition, he underlined:

    i) that the appellant had performed irreversible surgery without anaesthetic and with profound long-term consequences;

    ii) that really serious injury, even consented to, brought with it the risk of disease or even death, and could impose substantial financial cost on society as a whole;

    iii) that the protections provided to patients of qualified medical practitioners were not available to the appellant's customers;

    iv) that the appellant had unlawfully administered Adrenalin and Lidocaine;

    v) that he had failed to ensure a sterile environment when he operated; and

    vi) that he had performed the procedures for commercial gain.

24. Finally, Mr Hankin made clear that it was not contended that the appellant met the dangerousness criteria.

25. On behalf of the appellant, Mr Smith accepted that the custodial threshold was crossed, particularly on a cumulative basis. However, he argued at Step One in applying the relevant Guideline (determining the offence category), and against the background of the decision of this Court in *Smith* [2016] 1 Cr.App.R. (S.) 8, to the effect that to be "serious in the context of the offence" injuries had to be "significantly above the serious level of harm which is normal for the purposes of section 18", the court should not find that the instant injuries were as serious as that. The more so, it was submitted, as each victim had actively sought and then consented to the procedure that had led to their injury, and body modification had been a hitherto established practice which had been carried out over the previous two decades by a number of practitioners across the United Kingdom. The court should therefore conclude that there was lesser harm. It should find, given the respondent's concession that there was lower culpability, that the offences fell into Category 3, with a starting point of four years' custody and a range of three to five years.

26. As to applying Step Two in the Guideline (starting point and category range) and the aggravating factors advanced by the respondent, Mr Smith submitted that the offences had not been committed for commercial gain in the manner more typically encountered in cases of slavery or fraud, and nor had the appellant realised, at the time of carrying out the procedures, that he was committing a criminal act. There were, it was argued, a number of mitigating factors, namely the fact that appellant had no relevant or recent convictions; that he was genuinely remorseful; that he had taken steps to address his offending behaviour in that he had withdrawn from his business altogether; that there were lapses of time, which were not his fault, of from there to six years from the commission of the offence to the imposition of sentence; and the character references.

27. It was also contended that, if the court did not take the victims' consent into account at Step One, it should do so at Step Two.

28. In the alternative, Mr Smith submitted, by reference to the approach in *Fadairo* [2013] 1 Cr.App.R (S.) 66 at [17], namely that "…in deciding whether it is appropriate to move outside the identified range the judge will take into account both the factors listed in Step One and those listed in Step Two, and other relevant factors, bearing in mind that the list is not exhaustive", the consent of the victims was a very significant factor for which, alone, it was appropriate to move outside the identified category range He referred to section 125 of the Criminal Justice Act 2003 and submitted that it would be contrary to the interests of justice to apply the normal category ranges.

29. As to Step Four (reduction for guilty plea) Mr Smith submitted that the appellant was entitled to a full reduction of one third – given that it had been necessary for him to receive advice in order to understand whether he was (in the terms of the relevant Guideline) "in fact and law" guilty of the offences.

30. Mr Smith submitted that the Guideline on totality applied, and acknowledged that the court would have regard to it.

31. Finally, whilst accepting that the court might conclude that the custodial threshold was passed, Mr Smith submitted that the total notional sentence after trial should be at the bottom of the range for a Category 3 offence; that, after reduction for guilty pleas, the total sentence should be no more than 2 years. The sentence could then be suspended because, applying the relevant Guideline, none of the factors indicating that it would be inappropriate to suspend was present, whereas at least two of the factors indicating that it would be appropriate to suspend were present (namely there was both a realistic prospect of rehabilitation and strong personal mitigation); and that, if engaged, the need for deterrence was not determinative of whether any custodial sentence should be suspended.

32. In passing sentence the judge rehearsed the facts and indicated that he would treat the appellant as a man of effective good character, who had a good reputation in his industry, and who was genuinely remorseful. That could be gathered from the fact that he had relinquished control of his business, which could not have been easy, and was involved in organising conferences and the like to warn others of the dangers of being involved and getting themselves into the sort of trouble that he had. The appellant, the judge noted, was also a father and about to remarry, and it had been submitted on his behalf that there was no prospect of repetition and little, if any, need for a deterrent element in the sentence imposed.

33. Having summarised the submissions on both sides, the judge concluded that, in each instance, the injury had been serious in the context of the offence charged, and whilst there had been discussion as to whether (given the use of a knife) there was also higher culpability, he would proceed on the basis of lower culpability – as the use of the knife was inbuilt into the type of activity that was relied on by the prosecution He decided each offence fell into Category 2. That provided a category range of five to nine years' custody with a starting point of six years. However, the Guideline was based upon one offence, whereas here there were three. Equally, whilst the offences were not committed in public and did not involve public disorder, and were thus very different from many other cases, they were nonetheless serious. The injury in each case was irreversible and there were serious potential long-term consequences in relation to the victims in Count 1 (via potential for loss of hearing) and Count 2 (via the inherent danger of speech being affected).

34. Against that background the judge concluded that the custodial threshold was crossed in relation to each offence, the more so when their combination was considered. There was, he said, a need for deterrence by sending the clear message to those who engage in body modification procedures, (who performed surgery when unqualified) that custodial sentences will result because they expose others to clear danger and the risk of fatal consequences. Underlining that he kept in mind the mitigation advanced, the principle of totality, and the passage of time since the commission of the offences. The judge concluded that the least total notional sentence after trial, allowing for all the factors in the appellant's favour, would have been one of five years' imprisonment. He allowed a full one third reduction for the guilty pleas. He agreed that the appellant was not a dangerous offender.

35. It was against that background that the judge imposed the concurrent sentence of 40 months imprisonment.

Grounds of Appeal & submissions

36. On behalf of the appellant, Mr Smith advanced submissions in support of the following Grounds of Appeal:

1. The judge erred in determining that the offending was so serious that only an immediate sentence of imprisonment was justified.
2. The judge should not have characterised the harm caused as "greater harm" for the purposes of the Guideline.
3. Insufficient, if any, weight was attached to the fact that each of the individuals had consented to the procedures.
4. Too great an emphasis was placed on the need for deterrence.
5. The judge failed to conduct an adequate assessment of the additional factors pointing towards a suspended sentence, and the imposition of an immediate sentence was wrong in principle, given that:
   a) The appellant had pleaded guilty;
   b) The appellant had demonstrated significant remorse;
   c) The appellant posed a low risk of future re-offending;
   d) There was a realistic prospect of rehabilitation;
   e) The appellant was of effective good character and his offending was out of character.
   f) The appellant had strong personal mitigation;
   g) The offending took place a number of years before sentence.
6. In the alternative, for the same reasons, the sentence was too long.

37. As to "greater harm", Mr Smith referred to *Smith* (above) and submitted that none of the injuries met the test for being "serious in the context of the offence". The judge should therefore have concluded that each of the offences involved "lesser harm" and that thus that each fell into Category 3.

38. Mr Smith recognised that the Guideline in relation to offences of causing grievous bodily harm makes no reference to consent, but submitted that, in this case, the judge should have taken consent into account in the appellant's favour whether, as submitted at the sentencing hearing, at Step One, at Step Two, or thereafter by moving the sentence below the Category 3 range of three to five years' custody. The consent of the customers, accepted by the prosecution, was a significant distinguishing feature between this case and the generality of other offending prosecuted as causing grievous bodily harm with intent. There was no unprovoked violence and there was no suggestion that the appellant had sought out or encouraged anyone to have the various procedures performed.

39. As to deterrence, Mr Smith submitted that the body modification world was a small one and that this Court's judgment in the interlocutory appeal had sent the necessary clear message that body modification procedures were illegal. Equally, there was no need to deter the appellant - who had voluntarily withdrawn from any involvement in such procedures since his arrest in December 2015. Therefore, the judge had placed too great an emphasis on the need for deterrence.

40. As to the ultimate sentence, Mr Smith argued that a fair balancing of the aggravating factors (such as they were) and the many mitigating factors should have reduced the

sentence to an overall notional sentence after trial of no more than three years' custody, that the full discount for plea which was awarded should then have reduced the sentence to no more than two years' and that the sentences should then have been suspended.

41. Mr Smith was reminded by the court of the observation at [3] of the interlocutory appeal judgment that it was striking that HHJ Nawaz's original ruling (in October 2017) had not provoked guilty pleas and of the facts that (a) the appellant failed to plead guilty at the hearing (in May 2018) two months after judgment in the interlocutory appeal and (b) that it was not until February 2019 that the appellant finally pleaded guilty. He was unable to support the judge's conclusion that a full discount of a third was justified.

42. On behalf of the respondent, Mr Hankin argued, in accordance with the Prosecution Opening Note for Sentence, that the overall sentence imposed on the appellant was neither wrong in principle nor manifestly excessive.

Discussion

43. This was a difficult sentencing exercise, which the judge approached with conspicuous care. The judge was obliged to have regard to the Definitive Guideline applicable to causing grievous bodily harm with intent but it was not drafted to cater for circumstances in which an injury was inflicted with consent.

44. As we have indicated, it is not disputed that the custodial threshold was crossed. Equally, the judge was clearly correct that the appellant was not a dangerous offender.

45. The first question is whether the judge was correct to conclude that the various injuries were "serious in the context" of offences of causing grievous bodily harm with intent. We have no doubt that the judge was correct to reach that conclusion in relation to Count 1 (the removal of Mr Lott's left ear) and Count 2 (the splitting of the unknown woman's tongue), but are not persuaded that he was entitled to reach that conclusion in relation to Count 3 (the removal of the unknown man's nipple). However, for reasons that will become apparent, that makes no difference to the outcome of the appeal.

46. The next question is whether the judge should have taken into account, in the appellant's favour, the fact that each of the victims consented to the procedure that was carried out on them and, if so, whether the judge gave enough weight to that fact.

47. It is unsurprising that the relevant Guideline makes no reference to consent. The cases in which it will arise on sentence for causing grievous harm with intent are likely to be extremely rare.

48. In the interlocutory appeal judgment, at [45], the Court concluded:

> "In short, we see no good reason why body modification should be placed in a special category of exemption from the general rule that the consent of an individual to injury provides no defence to the person who inflicts that injury if the violence

> causes actual bodily harm or more serious injury……The appellant's argument envisages consent to surgical treatment providing a defence to the person performing the surgery whether or not the person is suitability qualified as a doctor, and whether or not there is a medical (including psychological) justification for the surgery. Even were we attracted by that argument, which we are not, such a bold step is one that could only be taken by Parliament".

49. The Court identified the following reasons for reaching that conclusion:

i. There is a general interest of society in limiting the approbation of the law for significant violence, albeit inflicted with consent [39].
ii. There is some need to protect from themselves those who have consented, most particularly because they may be vulnerable or even mentally unwell [39].
iii. Serious injury, even consented to, brings with it the risk of unwanted injury, disease or even death and may impose on society as a whole substantial cost [39].
iv. What the appellant undertook for reward was a series of medical procedures performed for no medical reason [42].
v. The professional and regulatory structure which governs how doctors and other medical professionals practise is there to protect the public [42].
vi. The protections provided to patients, some of which were referred to in the medical evidence before the judge (above), and which include reputable medical practitioners not removing parts of the body simply when asked to do so by the patient, were not available to the appellant's customers or more widely to the customers of those who set themselves up as body modifiers [42/3].
vii. The protection of the public in the context of body modification extends beyond the risks of infection, bungled or poor surgery or an inability to deal with immediate complications, to the protection of those seeking body modification – many of whom will be vulnerable and some of whom will be suffering from an identifiable mental illness [43].
viii. The personal autonomy of his customers did not provide the appellant with a justification for removing body modification from the ambit of the law of assault [44].

50. These considerations lead to the conclusion that the infliction of consensual serious injury is not somehow to be overlooked for sentencing purposes in cases where consent does not afford a defence.

51. All exercises in sentencing, amongst other things, import considerations of harm and culpability. There are two different ways in which consent may come into the picture for the purposes of arriving at a sentence for serious offences of violence (assault occasioning actual bodily harm; wounding or causing grievous bodily harm; or wounding or causing grievous bodily harm with intent).

52. The concept of 'harm' is concerned with factors which extend beyond the objective seriousness of the injury itself, for example by looking at the vulnerability of the victim. Moreover, Victim Personal Statements are designed to inform the court of the impact of the offending. Many of the inevitable consequences of an injury will be obvious or explained by other evidence. In this case the difficulties consequent upon

the loss of the outer ear or of splitting the tongue are examples. That said, the impact of the same physical injury can be very different depending on the victim in question. That is illustrated daily through Victim Personal Statements. Courts regularly see relatively serious injury having a limited impact on a person's general wellbeing and capacity to cope with life; whilst others suffer incapacitating consequences from less serious injury. For example, the impact of scarring or disfigurement can vary enormously from person to person.

53. A serious injury which has been received freely following consent may well import fewer adverse consequences than usually associated with an injury of the same sort. It is at least possible that the injury brings positive feelings of wellbeing. In this way 'harm' may fall to be assesed in a different way from that usually associated with sentencing serious assaults.

54. Culpability is more obviously affected by genuine consent. An attack resulting in serious injury is more culpable than the infliction of the same injury with the genuine consent of the victim.

55. This prosecution made a concession in this case that there was consent from each of the three victims. There is some insight into the quality of that consent given by Mr Lott. In the event of another case of this sort arising we would expect some investigation into the vulnerability of the victim and the real nature of the consent given. If a victim were vulnerable, suffering from mental health problems or the consent given were not genuine when its quality is investigated, that would aggravate rather than mitigate the offending.

56. Given the underlying policy imperative which dictates that consent does not provide a defence to serious assaults of this nature, genuine consent will have an impact on the appropriate sentence but not such as to lead to penalties entirely divorced from cases of the ordinary sort. It is possible that the category of 'harm' will be reduced; but it is more likely that real consent will affect the evaluation of 'culpability' and lead to a reduction in the sentence that would be appropriate in the ordinary course.

57. Pre-meditation is present but it is of a different nature from that genuinely envisaged in the Guideline. A consensual assault of this nature cannot be committed without pre-meditation. Like the judge, we conclude that the use of a knife in these circumstances is part and parcel of the unusual nature of the offending rather than a factor which tells in favour of a finding of higher culpability.

58. Notwithstanding that the appellant had voluntarily ceased the conduct of body modification procedures after his arrest in December 2015, had since stood away from his businesses and instead organised conferences and warned others of the dangers of conducting body modification procedures, and although the interlocutory appeal judgment has had a deterrent impact on the body modification world, it was clearly appropriate that the appellant's sentence contained a deterrent element. Given the sentence imposed there is, in our view, no merit in the submission that too great an emphasis was placed on the need for deterrence.

59. We have already indicated that we consider that the judge was correct to categorise the harm in this case as 'greater harm' for the purpose of the Guideline as regards two of the offences. His approach to categorising culpability as 'lower culpability' took

into account the agreed position that each of the three victims had consented to the assault upon them (with the caveat entered by Mr Lott). We do not accept the submission that the fact of consent should have led to his starting in a different category. The judge then took five years' custody as his starting point, which is the bottom of the range indicated for Category 2 (and the top for Category 3). That reflected his overall view of where this offending should rest in the hierarchy of sentencing for causing grievous bodily harm with intent. We are unpersuaded that the starting point was manifestly excessive, even if other judges might have started a little lower. In giving this appellant the full one third discount for his relatively late guilty pleas, the judge was taking a generous view. In our judgment, the sentence at which he arrived, namely 40 months' imprisonment, was not manifestly excessive.

Conclusion

60. For the reasons we have given, the sentence imposed on the appellant was neither wrong in principle nor manifestly excessive. No question of a suspended sentence could have arisen on the facts of this case.

61. Accordingly, this appeal is dismissed.