Neutral Citation Number: [2024] EWCA Crim 1157

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT STAFFORD
HER HONOUR JUDGE HOBSON 21CL2150123

CASE NO 202400250/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 10 September 2024

Before:
LORD JUSTICE SINGH

MRS JUSTICE MAY

MR JUSTICE GRIFFITHS

REX
V
TIMOTHY WILLIAM BODLE (AKA MORRIS)

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MS R PENNINGTON appeared on behalf of the Appellant.

J U D G M E N T
(Approved)

LORD JUSTICE SINGH:

Introduction

1. This is an appeal against sentence brought with the leave of the single judge. On 27 October 2023, in the Crown Court at Stafford, the appellant pleaded guilty to two offences. The first count was an offence of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861. The second count was an offence of intentional strangulation, contrary to section 75A(1) and (5) of the Serious Crime Act 2015. There was a third count, alleging common assault, which was ordered to lie on the file in the usual terms. It has no bearing on the present appeal, so we say nothing more about it.

2. On 10 January 2024, the appellant was sentenced by HHJ Hobson to a sentence of 12 months' imprisonment on count 1, and a sentence of 27 months' imprisonment, made concurrent, on count 2. That made a total sentence of 27 months' imprisonment. An appropriate statutory surcharge order was imposed.

The Facts

3. The complainant was the appellant's partner of 9 years. They had four children aged between 18 months and 7 years. The eldest child (a daughter) was 11 years old. She was the appellant's child and the stepchild of the complainant. At the time of the incident, the complainant was pregnant. The baby was due in May 2024 and we were informed was in fact born in April 2024.

4. On 23 September 2023, the complainant and the appellant had been out with friends.

The complainant had become involved in an argument with the mother of a child who attended the same school as her own daughter. When the complainant and the appellant returned home, they argued about what had occurred earlier in the evening and were both shouting at each other in the kitchen. The two older daughters (aged 7 and 11) were present. The complainant's next recollection was being on the floor in the living room. The appellant was on top of her and had one hand on her throat. She was unable to get him off. The appellant then bit her cheek (the subject of count 1). The eldest daughter had to intervene to get the appellant off her mother. The complainant's shirt was ripped during the course of that incident.

5. The police were called. They attended the address and noted the presence of the children, who were upset. The officers saw the injuries to the complainant. The appellant's brother was also present; he had been minding the children while the couple had been out.

6. The appellant was arrested. In interview, he stated that he had consumed 8 pints and a shot. He said he was intoxicated but not drunk. He said he was an alcoholic and therefore had a higher threshold for alcohol. He said that he did not recall assaulting the complainant and had no recollection of the events after they got home. He did not dispute assaulting her and causing the injuries, he just could not remember doing so.

7. In her statement, the complainant said that she would be ending her relationship with the appellant because of the incident. She described being very upset and fearing that he would return to the property and become angry and violent again.

The Sentencing Process

8. The maximum sentence for the offence of intentional strangulation is 5 years' imprisonment. There is as yet no Definitive Guideline on this offence, but this Court has given guidance in *R v Cook* [2023] EWCA 452 (see in particular paragraph 16 to 18 in the judgment of William Davis LJ). As he indicated in paragraph 16, the starting point for such an offence will normally be 18 months' custody. This Court also considered *Cook* in *R v Borsodi* [2023] EWCA 899, where Bryan J said that *Cook*, at paragraph 16, does not have the effect that there have to be exceptional circumstances before there can be a suspended sentence order in such cases (see his judgment at [17] to [18]).

9. The appellant was aged 36 at the date of sentence. He had five convictions for eight offences between January 2004 and July 2008. These included common assault in 2004 and battery in 2008. He had not previously served a custodial sentence.

10. In his sentencing remarks, the judge said that the offence was particularly serious because there was strangulation and because young children were present (aged 7 and 11). He noted that there were these aggravating features: the attack took place in the victim's own home and the offender was under the influence of alcohol. Further, he has previous convictions for violence, including against a former partner, although the judge accepted that these were a long time ago. The judge said these factors pushed the sentence up from a starting point of 18 months as recommended in *Cook*. Further, the judge bore in mind that she had to sentence for the separate offence in count 2. Of course she had to bear in mind the principle of totality.

11. In mitigation, the judge accepted that the appellant had never been in custody before and had taken steps to reduce his drinking. He had a job and was in a relationship with the children. The judge said that if she had been sentencing for the offence of strangulation alone, the sentence, after trial, would have been one of 2 years 6 months' imprisonment but having regard to the second offence, for which there would be a concurrent sentence, the sentence, after trial, would have been one of 3 years' imprisonment. Giving the appropriate discount of 25 per cent for a guilty plea at the plea and trial preparation hearing, that resulted in a sentence, as we have said, of 27 months' imprisonment.

12. Like the judge, we have seen the pre-sentence report. As directed by the single judge when granting leave to appeal, there are in fact two progress reports which have been prepared for the benefit of this Court dated 13 August and 19 August 2024. We note in particular, that the second report states that the appellant still fails to acknowledge the serious nature of the offence as he does not believe he should have been prosecuted for it. The report states that he has shown no remorse for his actions since arriving at HMP Stoke Heath. However, he has displayed emotion for his own predicament. The author of the report observes that the appellant can be highly manipulative and infer things to suit his own narrative. That said, Ms Pennington, on behalf of the appellant, when reminded of the contents of that progress report, submitted to this Court that he did plead guilty, as is clear from the court records, and she submits on his behalf that he does feel genuine remorse and, in particular, wishes to rebuild his relationship with his children as soon as possible.

13. We have taken into account everything that has been filed with the Court, in particular,

we should emphasise that this includes recent documents which were filed by the appellant's solicitors on 5 September 2024. These include a transcription of a telephone call with the appellant, in which he accepts full responsibility for his actions, he apologises for his actions and insists that he wishes to be a better parent and person. We have also seen a letter from a consultant psychiatrist dated 29 May 2023, which has been shown to us by Ms Pennington to draw attention to the diagnosis of Attention Deficit Hyperactivity Disorder.

Grounds of Appeal

14. In advancing the grounds of appeal, Ms Pennington submits that the judge selected too high a starting point after trial (that is 3 years' imprisonment). Second, she submits that the facts of the offence do not merit a sentence of the length imposed. Third, she submits that the court did not attach sufficient weight to the judgment in *Borsodi*. Fourth, she submits that the judge did not attach sufficient weight to the mitigation that was available to the appellant. In particular, she has emphasised before us, that the appellant had made efforts to address his offending, before sentence was passed, that he had stable accommodation and employment at that time, that he had a baby who was due to be born, and has now been born, as we have said in April 2024, and that he wishes to reinstate as soon as possible a good relationship with all of the children.

15. In her written grounds of appeal, Ms Pennington had submitted that the strangulation was short-lived and the defendant had voluntarily desisted. In oral submissions before us, she clarified that she now accepts that the defendant did not voluntarily desist from the strangulation but nevertheless she maintains her submission that the incident was short-

lived.

Our Assessment

16. Despite the eloquent and helpful submissions made by Ms Pennington, we are unable to conclude that the sentence in this case was wrong in principle or manifestly excessive. It could be regarded as being severe but that is because that was merited in the circumstances of this case. In our judgment, the judge was entitled to conclude that the aggravating and mitigating factors in this case should lead to a notional sentence, after trial, of 3 years' imprisonment. There were two offences for which sentence had to be passed, although it was important to avoid double counting and to observe the principle of totality. The biting incident (subject of count 2) was nasty in its own right. The judge correctly passed a concurrent sentence for that but the overall sentence therefore had to reflect the gravity of the offending taken as a whole. We are satisfied that the judge had in mind and observed the principle of totality. The fact that the offences took place in the victim's home and in the presence of young children, one of whom had to pull the appellant off their mother, made these offences particularly serious. The judge gave appropriate credit for the guilty plea, about which no complaint is or could be made. The resulting sentence was therefore above 2 years' imprisonment. It was not capable of being suspended, as had been urged upon the judge and to some extent has been urged upon this Court. In all the circumstances, we have reached the clear conclusion that the total sentence of 27 months was not manifestly excessive. Accordingly, this appeal is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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