IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 2024-1331/A4

NCN: [2024] EWCA Crim 1284

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 19 June 2024

Before:

LADY JUSTICE WHIPPLE DBE
MR JUSTICE BRYAN
HIS HONOUR JUDGE LICKLEY KC
(Sitting as a Judge of the CACD)

REX
V
ANDREW HODGETTS

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MISS I UDOM appeared on behalf of the Appellant

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**J U D G M E N T**

LADY JUSTICE WHIPPLE:

Introduction

1. The appellant was sentenced on 13 March 2024 by His Honour Judge Jonathan Mann KC at Woolwich Crown Court to a term of 27 months imprisonment for two counts of stalking. Count 1 was for stalking involving fear of violence or serious harm or distress under section 4A of the Protection from Harassment Act 1997 and a lead sentence of 27 months imprisonment was imposed on that count. Count 2, for which a concurrent term of three months was imposed, was for the lesser offence of stalking under section 2A of the same statute. The appellant had entered guilty pleas to both counts.
2. The appellant appeals against sentence with the leave of the single judge.

The facts

3. The appellant and one of the complainants, Miss Ran Dai, were in an on/off relationship for about two years. That relationship ended in May 2023. Between 30 May 2023 and 9 January 2024 the appellant stalked Miss Dai (count 1); between 27 November 2023 and 9 January 2024 the appellant stalked Mr Sebastian Arnold, Miss Dai's new partner (count 2). The outline facts are as follows.
4. On 30 May 2023 Miss Dai was in her flat when the buzzer for the communal door sounded. She answered the intercom and someone said there was a delivery for her. She recognised the voice as the appellant's and she told him to go away. However the appellant persisted, repeatedly pressing the buzzer for the next 10 minutes. After the buzzer had stopped Miss Dai heard banging on the door of her flat, meaning that the appellant had gained access to the block of flats and had made his way to her front door.

The appellant banged on her door for about 10 minutes until she called the police. The appellant spoke to one of her neighbours on the intercom and, believing that he was speaking to Miss Dai, he said, "Call the police if you want. I just want to talk to you." The neighbour asked the appellant to leave and eventually he did.

5. The following day at 6.21 am and 6.22 am Miss Dai received four emails from the appellant. Two were sent to her personal email address and two were sent to her work email address. These emails were duplicates containing the same wording which said:

> "I'm really sorry for intruding. I really don't want to be the person beating down your door. I'm sorry for blasting in multiple places. But I have no idea if this is getting through. I should probably stop but I am not of rational mind."

6. On 3 June 2023 at 10.34 am Miss Dai was walking back home to her flat having just met up with Mr Arnold. She noticed the appellant jogging towards her in a direction which was away from her home address. When Miss Dai realised it was the appellant she turned round and walked back the way that she had just come. The appellant caught up with her and tried to speak to her. Miss Dai told the appellant to leave her alone but he persisted and followed her down the road. Miss Dai called Mr Arnold and then met up with him again, with the appellant still following her. The appellant said: "I just want to talk to her", to which Mr Arnold responded: "You've said your piece and now you need to go." The appellant eventually left.

7. During the evening of 10 July 2023, Mr Arnold was at home when he heard a noise as if his letter box was being opened. He opened his front door and recognised the appellant crouching by the front door. Miss Dai was also at that address and when she went to the balcony she saw the appellant crouching behind a bush outside the front of the property. When Mr Arnold spoke to the appellant, the appellant said, "I need to see her, I'm not

very well." He repeated this a couple of times before he was told to leave. Eventually he ran away.

8. On 13 July 2023 Miss Dai received a photo from her neighbour showing that the appellant was outside her address. When Miss Dai looked outside about 45 minutes later the appellant was still there. She called the police before seeing the appellant walk into a neighbour's garden.
9. On 20 July 2023 the appellant was charged with stalking and bail conditions were imposed. This prohibited him from entering the SE26 postcode where Miss Dai lived or directly or indirectly contacting Miss Dai or Mr Arnold.
10. On 17 November 2023 Miss Dai learnt from her neighbours that the appellant had been in her garden three times that week, including that day.
11. On 28 November 2023 in the late evening Miss Dai was at Mr Arnold's house. Mr Arnold went to the front door and was met by the appellant who was crouching by the front door.
12. On 23 December 2023 the appellant attended Mr Arnold's address. On 1 January 2024 Mr Arnold saw the appellant ring on his doorbell camera. The appellant had been outside his address at 1.22 am and appeared to be wearing a black wig.
13. On 3 January 2024 Miss Dai was sitting at a bus stop opposite her home address waiting to be collected by a friend. She saw someone in her front garden. She investigated and saw that it was the appellant. He was hiding in a bush. She called her friend whilst the appellant stood and stared at her. Then he then pulled his hood up and walked away.
14. On 8 January 2024 Miss Dai was at Mr Arnold's address. At 4.10 am Mr Arnold heard a clinking noise on his balcony. He looked out of his bedroom window and saw the appellant on his balcony trying to pick the lock to get into the flat. The police were

called. The appellant climbed onto another balcony and down onto the ground before the police arrived. The appellant was arrested and found to have a screwdriver and lock picks on his person. He had brought a ladder with him to enable him to get onto the balcony.

Sentence

15. The judge had before him a pre-sentence report and an addendum pre-sentence report. The appellant worked as an accountant. He had no previous convictions and there was no established pattern of behaviour. He had moved out of the matrimonial home following his conviction, leaving his wife and young child. He had supportive parents who were willing to accommodate him. He was remorseful and understood the harm caused. The judge also had a report from Dr Farnham, forensic psychiatrist, dated March 2024, which set the appellant's actions in the context of the breakdown of a close relationship, noting that the appellant had some insecure attachment difficulties, had relevant traits of autistic spectrum disorder in terms of difficulty with social communication, and at the time had been suffering from an adjustment disorder with depression from which he had now largely recovered. There were also supportive references from the appellant's father and wife.
16. The judge had heard victim impact statements from each of the complainants as part of the sentencing hearing; those statements referred to the lasting harm inflicted on both complainants.
17. The judge held that this was a high culpability case because there was persistent action over many months which continued even after the appellant was arrested and bailed. It was planned, noting that the appellant had taken a ladder and lock picks to the last

incident. It caused serious distress particularly to Miss Dai who had made considerable changes to her lifestyle. Those features put it in the highest category of harm. Under the guidelines it was within Category B1 with a starting point of two-and-a-half years' imprisonment in a range of one to four years.

18. The judge took account of the fact that the offence was committed in breach of bail, noting that bail had in fact been breached on five occasions. He further noted that there were two complainants. He treated these as aggravating features. The judge referred to the imposition guideline but concluded that the sentence had to be one of immediate custody given the seriousness of the offending.

19. He concluded that the sentence on count 1, which reflected harassment of Miss Dai, would reflect the totality of the offending. The notional sentence after trial would be 36 months' imprisonment, which the judge reduced by 25 per cent to reflect the guilty plea entered at the plea and trial preparation hearing. The resulting term was one of 27 months' imprisonment which was not suspended. A concurrent sentence of three months was imposed for count 2, relating to Mr Arnold. A 10-year restraining order was imposed.

Grounds of appeal

20. By grounds of appeal dated 7 May 2024 the appellant argues that the sentence is manifestly excessive and wrong in principle. The following points are advanced.

    A. The categorisation of high culpability under the guideline was inappropriate on the facts of this case.

    B. The judge should have had regard to the appellant's mental health in accordance with the guideline on sentencing offenders with mental disorders, developmental

disorders or neurological impairments when he came to assess culpability.

C. Alternatively the judge should have had regard to the appellant's mental health as a mitigating factor.

D. Harm should have been categorised as Category 2, not within Category 1. The complainants were not caused very serious distress nor were they caused to make considerable changes to avoid contact with the appellant.

E. Even if the categorisation was correct, the judge arrived at a notional sentence after trial which was simply too high.

F. The seriousness of the offending should not have been increased because it affected two individuals. The offending against Mr Arnold should have been reflected in the sentence of count 2 alone.

G. There was double-counting of the fact that some of the offending took place while the appellant was on bail.

H. Inadequate account was taken of the appellant's mitigation apart from his mental health. His mother was very unwell, he had a young child, he was recovering well from his mental breakdown at the time of this offending, he had previous good character, he had lost his job as a chartered accountant, his marriage was in jeopardy, he was remorseful, there was good reason to believe he would be rehabilitated and would not re-offend.

21. Ms Udom appeared for the appellant on this appeal. On the footing that the sentence should be reduced, she submitted that it could and should be suspended. She said that the imposition guideline favoured that result.

22. We thank Miss Udom for her clear and helpful submissions today. She was subjected to a great number of questions by this court. She admirably kept her course and said all that

could be said for this appellant.

23. The focus of her submissions was first, on the appellant's mental health problems which she argued should have led the judge to conclude that his culpability was reduced, and secondly, on the overall purposes of sentencing and the outcome in this case on its unusual facts.

Discussion

24. We are not persuaded that the judge erred in placing this offending in Category B1 of the relevant guideline. Category B1 applies where there is high culpability and high harm. The judge identified two factors which put this offending into the high culpability category: that the actions were persistent over a long period and the high degree of planning. Those two factors were amply made out on the evidence. That there was a gap in this offending between the summer months and the end of the year when it resumed does not take away from the fact that these actions were indeed persistent over a long period of time and became more extreme as that time went on.

25. It was not established on the evidence that the appellant's mental health served to reduce culpability. Certainly there was evidence that the appellant was suffering an acute emotional disturbance following his break-up with Miss Dai. That led to depressive symptoms and despair which were operative at the time of this offending, according to Dr Farnham. We were shown various extracts from Dr Farnham's report by Ms Udom. We note in particular paragraph 63 which states that “this escalation in behaviour was a manifestation of his deteriorating mental state, with depressive symptoms, arising from the acute manifestations of an adjustment disorder”, as well the appendix which identifies preoccupation and recurrent thoughts as a diagnostic feature of the adjustment disorder

from which the appellant was suffering.

26. Culpability will, however, only be reduced if there is "sufficient connection" between the offender's impairment and the offending behaviour. The questions that a court will want answered in determining that issue focus on whether the defendant's thinking has been impaired rather than simply whether the mental health forms part of the context or explanation for the offending. These points can be seen and are explained in paragraphs 11 and 15 of the guideline on sentencing defendants with mental disorder. We were shown no evidence to suggest that the appellant's thinking was impaired at the time of this offending or that the specific questions posed by paragraph 15 of the guideline should be answered in his favour.

27. The judge was entitled to reject the suggestion that there was a sufficient connection between the offender's mental health and the offending in question. The evidence fell short of that.

28. The judge was also entitled to conclude that the harm was high. The complainants' evidence demonstrated the very serious distress caused to them over a lengthy period. Both of them had suffered real anxiety as a result of the appellant's conduct. Indeed Miss Dai had tried to get away from the appellant on one occasion by changing direction, but the appellant had followed her and caught up with her. Further, there was evidence of lifestyle changes that both complainants had made in an effort to avoid the appellant, most notably the fact that Miss Dai had changed jobs.

29. Accordingly this was offending in Category B1. The starting point was two-and-a-half years' imprisonment in a range of one to four years.

30. The judge's notional sentence after trial was one of three years. The judge did not state in terms that he had taken into account the appellant's mitigation but it is to be inferred that

this was his notional sentence after trial after taking account of both aggravating and mitigating features but before credit for plea. In our view it is on this aspect of the sentence that the appeal should sensibly focus. Certainly there were good reasons to go above the starting point in the category. The facts of this offending were serious and repeated and in and of themselves warranted some uplift. Further, there were two complainants and the judge was entitled to reflect the offending against both of them in the sentence for count 1 as the lead offence with the sentence on count 2 imposed concurrently – after all, the facts underpinning these two counts were very closely connected. The fact that the appellant had breached his bail on multiple occasions in committing these offences was a statutory aggravating factor and was not, on a fair reading of the sentencing remarks, a factor which the judge double-counted. For those reasons, an upwards adjustment above the starting point was justified.

31. However, the appellant also had strong mitigation. The appellant was, as the judge recognised, "emotionally devastated" by his break-up with Miss Dai and was at the time of this offending suffering an emotional breakdown. That was to recognise the evidence of Dr Farnham and to reflect the content of the pre-sentence reports. There was certainly a connection, albeit not one which reduced culpability, between the appellant's mental state and this offending. His mental state by the time of sentence was much improved and there was reason to believe that he would not re-offend. His personal circumstances were compelling: he had family support from his wife and parents, his mother was unwell needing care, his wife had recently given birth to his first child, he had lost his job as an accountant and his successful career was in jeopardy; he was now subject to professional disciplinary processes. He had expressed remorse for his actions and had offered an apology to the complainants. This offending apart, he was a man of good character.

32. In our judgment the aggravation could not be said to outweigh the mitigating factors. At most the aggravating factors cancelled out the positive effect of the mitigation so as to balance them. We conclude that the correct notional sentence after trial and before credit for plea should have been around two-and-a-half years or 30 months. The judge's figure of 36 months was too long. The difference of six months is meaningful in the context of this relatively short sentence. The appellant was entitled to a reduction of 25 per cent to reflect his guilty plea. That results in a sentence of 22 months.
33. We therefore quash the sentence imposed by the judge of 27 months which was manifestly excessive. We substitute in its place a term of 22 months.
34. We have considered carefully whether that shorter sentence should be suspended but, like the judge, we conclude that it should not be. By reference to the factors in the imposition guideline, we conclude that appropriate punishment can only be achieved by immediate custody. Further, the appellant has shown a history of poor compliance with courts orders and he has presented a risk to the complainants in the recent past. We accept that there is a prospect of rehabilitation and that the defendant has been willing to accept treatment; indeed, he has shown great improvement already. Of course we commend him for that, but even so and even acknowledging the impact of custody on his family, in our judgment this must be a sentence of immediate imprisonment.

Conclusion

35. We allow this appeal, we quash the sentence on count 1 of 27 months and substitute in its place a sentence of 22 months. We do not disturb the sentence on count 4.

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

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