In the St. Helena Court of Appeal

Citation: SHCA 1/2020

Criminal

In the matter of an appeal against sentence

Appellant

Colin Henry

Judgment on appeal against sentence

Heard on 23rd January 2020

Before: Sir John Saunders, President; HHJ R Mayo, Member; and HHJ L Drummond, Member

1. On 25th November 2019 the Appellant pleaded guilty at the St. Helena Supreme Court before the Chief Justice to offences of wounding with intent to resist arrest and escape from lawful custody. He had originally been charged with other offences to which he had pleaded not guilty and which were not proceeded with by the prosecution. The offence of wounding with intent to resist arrest was added as an alternative to an offence of wounding with intent to do grievous bodily harm shortly before the trial and a plea of guilty to that charge in addition to a plea of guilty to the escape charge were accepted by the prosecution. The Appellant was sentenced to a total of 7 years imprisonment made up of 6 years for the offence of wounding with intent to resist arrest and a further one year consecutive for the offence of escape from lawful custody.

2. In arriving at his sentences the Judge made a discount of 25 % from his starting point to reflect the fact of the early pleas and there is no complaint about that.

3. **The brief facts:** In the early hours of 27th February 2019 police officers were called to a disturbance at the Appellant's house in Trapp Cott by the Appellant's then partner. There were two young children who were also present. They could be heard crying over the phone. By the time the police arrived on the scene at about 1 am the violence had ceased but the police, quite correctly as the Chief Justice said, decided to check on the welfare of the children before leaving. There were two police officers, one male and one female. The Appellant objected to the police entering the property and demanded to know what they were doing. In the words of the Chief Justice, the Appellant 'went berserk'. He was drunk. He went into the kitchen; armed himself with a large knife and attacked the male officer. Both officers attempted to disarm the Appellant. In the course of the struggle, PC Morrison, the male officer, received a knife wound to the head which bled profusely and the female officer, PC Stevens, narrowly avoided injury from the knife. The Appellant was disarmed and taken to the police vehicle still struggling. There had been two children in the house at the time of these events who were distressed by what had happened. On the way to the police station, the police car met an ambulance which had been summoned to the scene. Both vehicles stopped as they passed and the Appellant seized his opportunity to escape. He ran down the road and began to climb over a roadside wall. He was prevented from falling by being hauled back by police officers and members of the ambulance crew who put themselves at risk of being dragged over with the Appellant. Fortunately the wound to PC Morrison was only a minor one which did not take long to heal but the effect on the police of their experience was a serious one which will continue to affect them in their service as police officers.

4. The Chief Justice, as he was bound to do, referred to the Sentencing Guidelines of England and Wales. There is no specific guideline for offences of wounding with intent to resist arrest but the Judge referred to the guideline for offences of wounding with intent to cause grievous bodily harm. The Chief Justice was, in our judgment, correct to do so as is made clear in the decision of the Court of Appeal of England and Wales in R-v-Hayward [2014] EWCA Crim 2006. That decision has recently been followed by the Court of Appeal in the case of R -v- Allard [2019] EWCA Crim 1075. Parliament has imposed the same maximum sentence for the two offences which indicates that an intention to resist arrest is to be equated with an intent to cause really serious harm. The

Chief Justice found that this was a category 2 offence. While he doesn't say so expressly he presumably did so on the basis of lesser harm and greater culpability. The injuries caused were not at a high level of severity. Culpability on the other hand was high taking into account the seizure and use of a large knife to escape the police in a dwelling house, with all the risks entailed in that, and when children were on the premises. In our judgment the Chief Justice was correct: this was a category 2 offence.

5. The range of sentence for category 2 offences is 5-9 years with a starting point of 6 years. To assist the Chief Justice in deciding where the starting point within the bracket should be, he was referred to the case of Craig William Smith [2018] EWCA Crim 2393. The Chief Justice decided that the facts of the instant case were significantly more serious than the facts in Smith. It is argued on behalf of the Appellant that he was wrong to reach that conclusion. We will return to that later. Taking into account the previous convictions of the Appellant including one old conviction for wounding with a knife the Chief Justice reached a starting point of 8 years.

6. On the charge of unlawful escape the Chief Justice concluded that there had to be a consecutive custodial sentence, bearing in mind all the circumstances. He took a starting point of 16 months after a trial reaching a sentence of 12 months after the discount for plea.

7. The grounds of appeal are that the starting point of 8 years was too high for the offence. One of the reasons it is said to be too high is because insufficient allowance has been made for the lack of intention to inflict very serious injury. While we accept that, where there is both an intention to inflict very serious injury and an intent to evade arrest, the starting point will be higher than when only one is proved, that does not mean that a starting point within the bracket is not appropriate for an offence of intention to evade arrest even though there was no intention to cause grievous bodily harm. We were referred to the case of R-v-Talbot 2012 EWCA 2322 where both intents could be inferred.

8. The Chief Justice decided when reaching his starting point that the instant case was significantly more serious than the case of Smith where a starting point of 6 years had been taken. The reason for that he said was that the Appellant wielded a knife with a blade a foot long in

circumstances where anyone would have been aware of the very serious risk that created. In Smith the Defendant charged at a police officer in his house with a serrated steak knife in his hand. The officer raised his hand to defend himself and the knife struck his hand near the base of the thumb causing pain. The knife in the instant case was bigger and the injury more serious. It is difficult to determine from the reports the precise nature of the attack by Smith but there are clearly similarities on the facts.

9. The appeal in Smith was dismissed so there is no indication from the Court of Appeal what sentence they would have imposed, but the sentence was described as severe. It is normally not of great assistance to consider in any detail similarities or differences in particular cases but in this case the Chief Justice obviously did consider that case and did conclude that it was significantly less serious.

10. The further points of appeal relate to the sentence for the escape. Here no point is taken as to the length of the sentence per se. Rather it is argued that the sentence should have been concurrent as it was all part of the wounding and if that argument fails that insufficient regard has been paid to totality. In support of the argument that the sentence should be concurrent as both counts were part of the same escape reliance is place on the case of Tiwary [2011] EWCA Crim 836. The facts of that case are somewhat different. It relates to a Defendant who was in custody at a hospital on his way to the police station. He took the opportunity while there to run away. In order to get away he had to get past a nurse who got in his way. He barged into her pushing her to the ground. He was initially sentenced to 21 months for the escape offence and 4 months consecutive for the assault. The Court of Appeal, in allowing the appeal, said that the 4 months should have run concurrently because it was all part of the same incident. That is rather different from this case where the wounding had taken place in the house; the Appellant had been apprehended and put into a car and, on his way to the police station, took advantage of the car stopping to run away.

11. In our judgment as a matter of sentencing principle there is nothing wrong with making the two sentences consecutive.

12. Finally it is argued that in reaching the final sentences more consideration should have been given to the issue of totality. The Judge was obliged when totaling the consecutive sentences together to take a final look to see whether the total sentence as made up of consecutive sentences is too long overall. The Judge indicated that he had done that in reaching the figure of 16 months as the appropriate starting point for the escape. That may mean that he would have passed a longer sentence had that offence been alone on the indictment.

13. Taking all these matters into account we have concluded that while high, the sentence was not manifestly excessive. A starting point of 8 years reflects the serious nature of the attack which could have caused very serious injury. While the physical injuries were relatively minor the effect of this attack will no doubt live with the police officers for a long time. The courts have to pass long sentences where police officers are attacked while carrying out their duties. Everything must be done to discourage others from behaving in the same way.

14. We do think that the facts of Smith and this case are not that dissimilar but it is difficult to obtain much guidance from a case where an appeal against sentence has been dismissed and no matter of principle is involved. While we have considered that point, in the end we do not attach any significant weight to it.

15. As we have already said we find nothing wrong with making the sentence for escape consecutive provided the Judge does as the Chief Justice did in this case and considers the totality of the sentence which is arrived at. While it can be argued that the discount for totality was applied at the wrong stage we are not convinced that this has made any difference in practice. We also consider that the discount for plea was generous for the offence of escape.

16. Taking all those matters into account and having considered the arguments for the Appellant which have been well presented we dismiss the appeal. The sentence was severe but not manifestly excessive and was within the margin for discretion of the trial Judge.