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**IN THE COURT OF APPEAL**
**CRIMINAL DIVISION**

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 5 June 2019

**B e f o r e**:

**LADY JUSTICE NICOLA DAVIES DBE**

**MR JUSTICE MARTIN SPENCER**

**HIS HONOUR JUDGE PICTON**

**R E G I N A**

v

**STEVEN ALEXANDER HARRIS**

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**Mr Simon Gladwell** appeared on behalf of the **Appellant**

**J U D G M E N T**
(Approved)

**MR JUSTICE MARTIN SPENCER**:

1. The appellant appeals with leave of the single judge against the sentence of two years' imprisonment imposed at Ipswich Crown Court on 15th February 2019 for an offence of inflicting grievous bodily harm contrary to section 20 of the Offences Against the Person Act 1861.
2. The basis of the appeal is that the learned judge took too high a starting point, taking into account the content of the basis of plea and the mitigation including the evidence of mental health issues; alternatively, that a suspended sentence could have been imposed. However, today Mr Gladwell has not pursued the argument that a suspended sentence could have been imposed and has concentrated on the argument that there was insufficient account taken by the learned judge of the significant provocation which led to the commission of this offence. I shall return to that.
3. The offence arose out of events that occurred on 24th February 2018 in the vicinity of The Swan public house. The complainant, aged about 50, was a regular drinker at The Swan and had met up there with a neighbour at about 6.00-6.30 pm. He had consumed several alcoholic drinks. The appellant was one of three builders who also attended the pub, and they were engaging in horseplay, fighting between themselves and wrestling each other to the floor. The appellant and the complainant got into an argument. The bar lady thought that the appellant seemed a bit more aggressive towards the complainant in the way he was talking and using his body language and they left the pub. The complainant's neighbour went outside for a cigarette, and he saw the appellant throwing punches at the complainant (although the judge sentenced on the basis of one punch only) and the complainant fell to the ground. The appellant, born on 6th October 1989 and then aged 28, was much the younger man.

4. When the complainant fell to the ground, his neighbour heard a thud as the complainant's head hit the pavement. He went to the complainant's assistance, called 999, and summoned an ambulance. He described the complainant as being semiconscious, not making much sense.
5. The bar lady said that after the incident the appellant and his group were hanging around for a while. They did not seem to be bothered or concerned about what had happened to the complainant.
6. The complainant had in fact sustained a very serious head injury. There was a fracture to the occipital bone at the back of the skull which extended into the base of the skull and there were contusions to the front and temporal lobes of the brain, as well as traumatic subarachnoid bleeding. He had a 6x6 cm bruise to the back of the head, a 3x10 cm bruise to his forehead and a 0.5 cm cut to the inside of his top upper lip, together with grazes to both elbows. He has been left with alteration of his senses and in particular his sense of taste, and his confidence and speech have been affected. To a certain extent these have been life-changing injuries for the complainant.
7. The appellant submitted a basis of plea, which was accepted, as follows:
    1. Mr Harris was provoked by the victim repeating several times he was going to kill him.
    2. Although Mr Harris was not aware of it at the time, CCTV from earlier in the evening (approximately 30 minutes earlier) shows the victim with a bar stool attempting to hit Mr Harris's friend (while Mr Harris and his friend were play-fighting). It appears that the victim is stopped by someone from actually striking Mr Harris's friend.
    3. Mr Harris approached the victim and used a single punch to hit him, in order to

prevent the victim from doing anything to him. The victim regrettably hit his head on the ground as a result.

4. Mr Harris has previously been threatened by a man with a knife, when he told the man to leave alone a group of three girls that the man was verbally abusing. This occurred in about 2013 in Mablethorpe in Lincolnshire. He immediately telephoned the police to report this but nothing came of it. He was conscious of this previous event at the time of the current incident.
5. Having today seen the CCTV and received legal advice in relation to the legal definition of self-defence Mr Harris accepts that his actions were not necessary in all the circumstances, because there was distance between him and the victim, and he could have moved away.
6. Mr Harris accepts that he should have taken different steps in all the circumstances, and regrets the injuries that were caused to the victim.

8. The learned judge had before him and took into account a pre-sentence report prepared in relation to another matter which referred to the appellant having a history of alcohol misuse and mental health issues. About two months after the incident, the appellant had in fact been detained under section 3 of the Mental Health Act 1983.
9. In relation to the history of alcohol misuse, Mr Gladwell has told us today how Mr Harris has acknowledged alcohol to be and to have been a problem and how he is addressing those issues whilst serving his sentence. We are, of course, very glad to hear about that.
10. Sentencing the appellant, the learned judge referred to the appellant's previous convictions, which included a conditional discharge for battery in 2009 and offences under the Police Act 1996 in 2010 and again in 2018 - the 2018 offence being the subsequent one in respect of which the pre-sentence report had been prepared. The

appellant has also been cautioned for violence.

11. The sentencing judge accepted that there had been provocation in the complainant's behaviour, but found that this was not a case of extreme provocation. He accepted that it could only be proved that one blow had been struck. He noted that, despite the appellant's mental health issues and the history of offending while intoxicated, he continued to drink considerable quantities of beer, suggesting that he did not share the concerns of others in relation to his mental health. The learned judge referred to the Sentencing Guidelines, categorised this as a category 2 case involving greater harm because of the seriousness of the injury in the context of the offence, but lower culpability, with a starting point of 18 months and a range of 3 years. That categorisation of the offence is agreed.

12. He took into account the following aggravating factors: the appellant's previous convictions, the fact that the appellant was under the influence of alcohol at the time he committed the offence, the fact that this was an offence committed in a public place and the timing of the offence, where others were present. He considered that these factors raised the sentence from the starting point of 18 months to 30 months, which he then reduced by 20% to take account of the appellant's plea of guilty, thereby reducing the sentence to 24 months. In all the circumstances of the case, he did not consider it was possible to suspend the sentence.

13. In our judgment -- and so much is conceded -- an immediate sentence of imprisonment was merited. The previous convictions were indeed a seriously aggravating feature and the victim suffered a substantial injury which could easily have proved fatal. In our judgment the learned judge was entitled to take the view that appropriate punishment could only be achieved by immediate custody.

14. The burden of Mr Gladwell's submissions, for which we are grateful and which were very well presented, was that the starting point before discount for plea of 30 months' imprisonment was too high an addition from the starting point of 18 months by reference to the particular aggravating factors. He said that too much account was taken of the fact that this was an offence committed in a public place with others present.
15. He submitted that, furthermore, there had been insufficient account taken of the agreed basis of plea and in particular the first ground, namely that Mr Harris was provoked by the victim repeating several times he was going to kill him.
16. In our judgment, for the reasons stated by Mr Gladwell, the uplift to 30 months was indeed too high. We consider a reasonable uplift for the aggravating features would have been to around 25 months, which could then have been reduced to 24 months for the mitigating factors before the discount for plea was taken. In those circumstances we substitute for the sentence of 24 months a sentence of 20 months. To that extent this appeal is allowed.



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