

**[2020] EWCA Crim 572**

No: 202000025/A1

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

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 24 April 2020

**(VIRTUAL COURT)**  
**B e f o r e:**  
**LADY JUSTICE CARR DBE**

**MR JUSTICE GOOSE**

**RECORDER OF WESTMINSTER**  
**(HER HONOUR JUDGE DEBORAH TAYLOR)**

**(Sitting as a Judge of the CACD)**

**R E G I N A**

**v**

**ISHAK ALI**

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Furnival Street, London EC4A 1JS, Tel No: 020 7404 1400 Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)  
(Official Shorthand Writers to the Court)

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**NON-COUNSEL APPLICATION**  
**J U D G M E N T**

## LADY JUSTICE CARR:

### Introduction

1. This is a renewed application for leave to appeal against sentence. Following his earlier guilty pleas the applicant, now 34 years old, was sentenced at Leeds Crown Court on 12 December 2019 to a total of 38 months' imprisonment together with an indefinite restraining order on the following offences: controlling or coercive behaviour in an intimate or family relationship, contrary to section 76(1) of the Serious Crime Act 2015; assault by beating, contrary to section 39 of the Criminal Justice Act 1988 (two counts); criminal damage (under £5,000), contrary to sections 1(1) and 4 of the Criminal Damage Act 1971 (two counts) and taking a conveyance without authority, contrary to section 12 of the Theft Act 1968. He was also sentenced for the summary offences of driving a motor vehicle otherwise than in accordance with a licence and using a motor vehicle on a road without third party insurance.

### The Facts

2. The facts are set out in the full summary of the Criminal Appeal Office and it is not necessary for us to rehearse them in any detail. In broad overview only, this offending arose in the context of the applicant's relationship with Sara Phillips, which commenced in 2016 and lasted 3 years. Between July 2016 and October 2017 the applicant was imprisoned for unrelated (though violent) offences. During this period the applicant became nasty and paranoid. Upon his release from prison he behaved towards Ms Phillips in a manner that was jealous and controlling. He would call her constantly at work and when she was with family and friends. He did not like her speaking to anyone else. He used emotional blackmail to isolate her. He would also get angry and aggressive towards her and her son, to the point where she was fearful that he would use physical violence against her. On one occasion he spat in her face. He then took two knives which he said he wanted to use (apparently on himself) and threw a telephone that Ms Phillips was using against the wall. Immediately after that he went outside and picked a fight with a neighbour whom he pushed, causing him to fall into a wall. He kicked Ms Phillips' car windscreen whilst she was driving and threw objects around the house. On one occasion he drove her car away without her consent, with no licence or insurance, when she refused to take him back to her address.
3. The applicant had eight previous convictions for 14 offences between 1999 and 2019, both convictions including relevant convictions of section 47 (two) and section 20 (two) assaults, battery, affray, possessing an offensive weapon in a public place, threatening behaviour and criminal damage.

### Grounds of Appeal

4. For the applicant it is submitted that this was a category 2A case and the court erred in assessing it as category 1A. There was no evidence it is said, apart from the victim impact statement, as to the effect on the complainant, and there was no evidence of significant psychological harm. It is also suggested that it might have been appropriate to suspend the sentence as there was a realistic prospect of rehabilitation. The applicant indicated he would comply with the rehabilitation activity requirement that was on offer.

Finally, there is a suggestion that the Judge afforded inadequate credit for the applicant's guilty plea on count 5 (criminal damage) to which he had pleaded earlier than he did on the other offences.

Analysis

5. When refusing leave the Single Judge said this:
  - i. "The controlling or coercive behaviour offence was higher culpability A based on your persistent action over a prolonged period. The offence was category 1 harm based on the psychological impact on the complainant. Her victim impact statement explains that she was humiliated by you, she became isolated from friends and family, her relationship with her son broke down and she has lost confidence in her work.
  - ii. A category 1A offence has a starting point of 30 months' imprisonment with a range of 1-4 years. Having regard to the other offences and your relevant previous convictions for assault and other violent offences, the judge was entitled to adjust the starting point upwards to 36 months before credit for your guilty pleas. The overall sentence was within the guidelines, proportionate and just."
6. We have reviewed the merits of this application independently and afresh. We agree with the remarks of the Single Judge and conclude, as she did, that it is not properly arguable that the overall sentence was manifestly excessive. In particular, the Judge was fully entitled to conclude that this was category 1A not 2A offending for the purpose of the Sentencing Council Guideline for Intimidatory Offences. Ms Phillips' victim personal statement speaks eloquently of the effect of the offending on her both at the time and continuing. She felt that she could not contact her family and friends, she was humiliated, unhappy and felt very alone. She was terrified when he was violent and feared violence on many occasions. Her work life was disrupted. She is now a different person, wary of going out and ensuring all doors at home and in the car are locked. It is apparent from all this that the categorisation at level 1 was not based simply on the question of significant psychological harm: there was also (justified) fear of violence on many occasions - a separate category 1 feature. The applicant's previous convictions were then rightly treated as aggravating features, as was the fact that the applicant was subject to a community order at the time of some of the offending. The Judge took into account the mitigation available to the applicant, including his unhappy background and the contents of the pre-sentence report. Due credit for the applicant's guilty plea on count 5 of one-third was expressly afforded but in any event, given that the sentence imposed on count 5 was concurrent and not consecutive, the alleged error makes no difference to the overall outcome. A term of 38 months' imprisonment was not disproportionate to the totality of the applicant's offending. Suspension in these circumstances was not an option.
7. For these reasons, the application is dismissed.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: [rcj@epiqglobal.co.uk](mailto:rcj@epiqglobal.co.uk)