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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 784

CASE NO 202100734/A3

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 14 May 2021

LADY JUSTICE MACUR DBE

MR JUSTICE GOSS

MRS JUSTICE FOSTER DBE

REGINA

V

SIMON PAUL PEARSON

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MS C SPEDDING appeared on behalf of the Appellant.

JUDGMENT

1. MR JUSTICE GOSS: On 24 February 2021, having been committed for sentence by the magistrates following his pleas of guilty to two offences of assault occasioning actual bodily harm and two offences of assault by beating on 25 January, the appellant was sentenced in the Crown Court at Bristol to a total period of 3 years and 4 months' imprisonment and made the subject of a restraining order prohibiting contact with the victims for 5 years, which was expressed to commence from the date of release.
2. He now appeals by leave of the single judge. The appeal is confined to challenging the length of the sentences of imprisonment both individually and in their totality. We, however, must also address the terms of the restraining order.
3. The offences were all committed on 22 January 2021, the day on which the appellant was released from a 15-month sentence of imprisonment for an offence of affray. Mr Mark Yeates, who was 51 years old and registered disabled as a result of suffering from osteoporosis and walked with the aid of a stick, was at home, in bed, at around 3.00 pm when he heard the door to his flat open loudly. He got out of bed to investigate and saw the appellant, who had been drinking, in the hallway. Mr Yeates knew him as the brother of a friend of his but he was not someone he would want to see in his flat and he asked him to leave. The appellant, who, according to Mr Yeates, knew of the latter's disability, responded: "Do you want a punch in the head?" Mr Yeates asked him in forthright terms to leave again, to which the appellant responded by punching him to the left side of his head. Mr Yeates fought back but ended up on the floor where the appellant continued to punch him to the head, causing bleeding, and pulled out some of his hair. Mark Yeates was terrified. His partner, Jeanette Cox, returned home from the shops. She had seen the appellant in the garden when she had left the flat earlier. She had asked him what he wanted. He replied: "Who the fuck are you? Fuck off or I'm going to smash your face in." When she returned home she saw the appellant in her flat and Mr Yeates on the floor, bleeding. She tried to call the police, at which point the appellant pushed her, attempting to get her out of the flat and punched her repeatedly in the face.
4. She crouched down on the floor but the appellant persisted, despite attempts by Mr Yeates to get him off his partner. The appellant then hit Ms Cox over the head with a pint glass. The glass did not break. He then hit her again with the glass to the back of her head and the glass smashed.
5. Both victims later attended the local Accident & Emergency Department. Mr Yeates had sustained cuts to his head and face, which bled, and bruising to his hands. Ms Cox had swelling to her face, a black eye, a bleeding wound above her left ear with swelling and cuts to the back of her head. Her victim personal statement, made 3 weeks after the event, described how she felt much less secure, both in and out of her home, than before. She went out much less and was always looking out. In her home she felt panicked when she heard any noise. She also suffered from thumping headaches every other day and had a painful lump on her nose which was made even more uncomfortable by having to wear glasses.
6. For the offence of assaulting Mr Yeates occasioning him actual bodily harm the appellant was

sentenced to 14 months' imprisonment to run consecutively to the sentence for the like offence against Ms Cox, for which he was sentenced to 22 months' imprisonment.

7. That same afternoon the complainants Mr Robert North and his wife, Jacqueline, a couple in their mid-sixties who lived close to the address of Mr Yeates and Ms Cox, were outside cleaning their car. The appellant, with blood and scratches on his face and smelling of alcohol, approached Mrs North and asked her what she was doing. Mrs North felt threatened by the appellant's appearance. He then opened the driver's door of their car and got into the driver's seat. There were no keys in the ignition so he could not go anywhere. Mr North came over and told the appellant to get out. The appellant refused and there was a struggle as Mr North tried to pull him out. When Mr North eventually managed to get him out of the car the appellant pushed him towards a nearby fence and then punched him to the left side of his head. Mr North stumbled but did not fall. Mrs North tried help her husband by getting between the two men. The appellant punched her twice to the head, causing her to fall to the ground. Mr North, having seen this, punched the appellant back. The appellant then punched him three more times. A neighbour came over to assist and they managed to detain the appellant until the police arrived.
8. Mr North sustained pain to his head and cheekbone, and had bruising and swelling which he treated with painkillers. Mrs North had soreness to the right side of her cheekbone and on her left side where she fell to the ground. She also had bruising to her left hand and scrapes to her knees. A dent was caused to their car which they had bought a few months earlier. For each of the offences of assault by beating the appellant was sentenced to 2 months' imprisonment to be served consecutively to the other sentence.
9. The appellant was interviewed the following day. He provided a prepared statement, which he later abandoned and pleaded in the Magistrates' Court.
10. The appellant is 31 years of age and had 19 previous convictions between 2004 and 2019 for 37 offences. His earlier offending included a miscellany of non-violent offences. His later relevant offences included two offences of robbery and one offence of inflicting grievous bodily harm in 2008, for which he was sentenced to a total of 5 years' detention in a young offender institution, affray and criminal damage in 2014 and 2015, and offences of battery in January, July and September 2015 for which he received sentences of imprisonment. In 2019 he was sentenced to 3 months' imprisonment for battery and, later that year, to the 15-month sentence for affray, the sentence to which we have already referred.
11. The pre-sentence report, to which the Recorder referred when sentencing, observed that the appellant had demonstrated a callous disregard for the many individuals he had assaulted almost seeking to blame others and scrutiny of his records confirmed that this was a character trait. He presents a high risk of serious further offending and cannot be managed in the community.
12. Ms Spedding, who represented the appellant in the Crown Court and to whom we are grateful for her written and oral submissions, has leave to appeal against what she submits is a manifestly excessive sentence on the grounds that the notional sentences after trial, which were reduced to afford the appropriate credit for early guilty pleas, were outside the identified

category ranges under the Definitive Guideline or were increased to an excessive level and there was no appropriate reduction to take account of totality. When sentencing, the Recorder indicated that he would give full credit for guilty pleas at the first opportunity and, accepting the suggestions of prosecuting counsel, stated that the offence of assaulting Mark Yeates occasioning actual bodily harm was a category 2 offence under the Definitive Guideline, the same offence against Jeanette Cox was a category 1 offence and the two offences of assault by battery were category 2 offences. However, he then passed sentences on all the offences he deemed to fall within category 2 well above the respective category ranges, making reference to their many aggravating features. He did not state he was moving outside the identified category range as provided for in the guideline, nor did he refer to having considered totality when ordering all the sentences to be served consecutively. Again, on the suggestion of prosecuting counsel, who sought an order for a term of 2 years, he ordered the restraining order to commence on the applicant's release.

13. Although the Recorder did not expressly indicate he was sentencing outside the category ranges, it is obvious that this was his approach to the sentences. We consider that he was right to do so. The assault on Mark Yeates had some of the features of an offence of higher culpability. The appellant clearly intended to commit more serious harm than actually resulted from the offence and a vulnerable victim was targeted. The offence was significantly aggravated by being committed in the victim's home and ended in the presence of his partner, Ms Cox, under the influence of alcohol, on the day of his release from prison and on licence, and by an offender with a history of similar offences of violence. There were no mitigating factors.
14. Similar considerations apply to the case of the assault upon Jeanette Cox. Although she was not disabled, she was subjected to a vicious and sustained assault; in which she was struck more than once on the head with a large glass, which broke, and she suffered significant physical injuries and psychological harm. A sentence at the top of the range was merited.
15. The offences of common assault were, of course, committed in a separate incident upon different victims. Again, they had features that would have justified an elevation to Category 1 of the relevant Guideline. Notional sentences of 3 months were fully justified. Although connected in time the individual offences merited consecutive sentences provided that, in their totality, they were not unjust or disproportionate to the appellant's offending and the harm caused by them. Although the resulting sentence on early guilty pleas was severe, we are not persuaded that it was manifestly excessive and we dismiss the appeal against the sentences of imprisonment.
16. We turn to the terms of the restraining order. It was recorded as imposed pursuant to section 5 of the Protection from Harassment Act 1997. In fact, being a sentence passed in respect of a conviction after 1 December 2020, the Sentencing Code applied and the order should have been recorded as contrary to section 360 of the Sentencing Act 2020 but it was not because the IT system had not been updated. That however does not invalidate the sentence which is saved by the transitional provisions contained in paragraph 4 of schedule 27 to the Sentencing Act. The order itself included this term:
 - a. "This order has effect _ for a period of 5 years from the date of release".

17. Section 359(2) of the Sentencing Act 2020 provides:

"(2) A restraining order may have effect—
 (a) for a period specified in the order, or
 (b) until further order."

18. Although the provision might not, therefore, prohibit a delay in the start of the order, we share the concerns of the Registrar, to whom we are grateful for raising this issue, that the commencement of the order may not have been specified so that it is clearly ascertainable and might lead to uncertainty and difficulties in relation to enforcement. It is an established principle that restraining orders, whose purpose is to prohibit particular conduct with a view to protecting a victim of an offence and prevent further offences, must be drafted in clear and precise terms so that there is no doubt as to what the defendant is prohibited from doing: *R v Debnath* [2006] 2 Cr App R(S) 25.

19. It is not known when the appellant will be released from custody so no commencement date is identified. Anyone looking at the order would be unable to ascertain from it whether the appellant was or remained subject to the order. They would appear to be reliant on information obtained from the Prison Service. Further, if the appellant were to be granted day release or other temporary release from sentence it is unclear whether the 5-year term of the order would commence then or only on his conditional release on licence at the half-way point, or, possibly, final unconditional release at the end of the full term. In addition, it would appear that if the order only commences on his release the appellant is, until then, not subject to the prohibition against contacting the complainants.

20. Accordingly we would add to the principles set out in *Debnath* an additional requirement that the period specified in the order be clearly identified. There is always the power for an order to be varied, if necessary by extension of the term, on application. In these circumstances, we amend the order made in the court below by substituting a term that the order has effect for a term of 5 years from the date of sentence (24 February 2021) and direct the correction of the record sheet by substituting that the order is imposed pursuant to section 360 of the Sentencing Act 2020. To that limited extent only this appeal is allowed.