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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Case No: 202101028/A4

Neutral Citation No: [2021] EWCA Crim 814



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 19 May 2021

Before:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE SPENCER

THE RECORDER OF SHEFFIELD

HIS HONOUR JUDGE JEREMY RICHARDSON QC

(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REGINA

V

JOHN GARRATT

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MR O GLASGOW appeared on behalf of the Attorney General

MR J CALDWELL appeared on behalf of the Offender

J U D G M E N T

(Approved)

LADY JUSTICE NICOLA DAVIES:

1. This is an application by Her Majesty's Attorney General under section 36 of the Criminal Justice Act 1988 for leave to refer to this court a sentence which he considers to be unduly lenient. The offender is John Garratt. He is aged 37.
2. On 15 March 2021 in the Crown Court at Portsmouth, following a trial, the offender was convicted of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861. On 15 March 2021 he was sentenced to 39 months' imprisonment by the trial judge, His Honour Judge Timothy Mousley QC. A restraining order prohibiting contact with Christopher Bryant, Kayleigh Scott and/or the children of Christopher Bryant was imposed for five years. A victim surcharge was applied.
3. We grant leave.

The facts

4. On the afternoon of 14 April 2020, Christopher Bryant, a parcel delivery driver, was driving along Burlington Road, Portsmouth when he came across a vehicle parked in the middle of the road. The driver of the parked vehicle was Claire Smith, the offender's partner. Mr Bryant was unable to pass the vehicle. An argument ensued between himself and Miss Smith.
5. The offender appeared from an address in the same road and became involved in the argument. He said to Mr Bryant: "Get out of the car. I'll smash your head in." Mr Bryant moved his vehicle along the road and continued to deliver parcels. He was followed by Mr Garratt, as Mr Bryant continued to carry his parcels the offender headbutted him, as a result he fell to the ground. When on the ground the offender punched Mr Bryant to the face at least three times, before returning to his address.
6. Mr Bryant was taken to hospital where he was found to have sustained a fractured right eye socket and a fractured right cheekbone. He underwent facial surgery which involved the insertion of two metal plates on the right side of his face to aid the repair and recovery of the fractures. He was discharged from hospital on 30 April 2020 and continued to be assessed as an outpatient.
7. Following the incident, police officers went to the offender's address where they spoke to Miss Smith. She said that the perpetrator was her brother Leigh but that he had left the scene. The offender was complicit in this lie. Some hours later the police returned and arrested the offender. They located some notes in his bedroom, the contents of which read: "Be light on details of him being hit say Leigh pushed him away and he came back with his head and was threatening to pull a knife and threatened to smash the car. So Leigh threw 3 punches and he went down and Leigh walked. Adam said he got previous for violence and weapons." It was accepted that the writing on the note was that of Miss Smith.
8. When interviewed, the offender provided a prepared statement which included the

following:

“I was involved in an altercation with a DPD driver on 14.04.20. He was extremely rude abusive and aggressive towards my partner Claire Smith and me. He even drove his car at speed towards Claire - just making contact with her leg. At one point he lunged towards me with his head. I put my head against his and pushed him backwards. He was continually threatening me. I decided to put him on the floor so I could get away. I went over and got him on the floor. I used my hands to push/keep him down - twice. I believe my actions were in self-defence. I would never have intended to hurt the male concerned - despite his horrendous behaviour towards Claire and myself. I wanted to go back inside.”

9. The offender was subsequently charged with the offence of grievous bodily harm with intent. On 16 July 2020 the offender approached Mr Bryant in the street and offered him £200 to drop the charges.
10. At trial, the indictment included an alternative count of unlawfully inflicting grievous bodily harm. The offender gave evidence and said that he had acted in lawful defence of himself and Miss Smith. He said that he had told his instructing solicitor that he had punched Mr Bryant twice but that his solicitor had decided to write “push” in the prepared statement. The prosecution called the solicitor in rebuttal who confirmed that the written words reflected the instructions given by the offender.
11. In a statement dated 15 April 2020, Mr Bryant (a key worker) stated that due to his injuries he would be unable to work for some time. He was suffering considerable pain. In a Victim Impact Statement made some two weeks later, Mr Bryant stated that the assault had impacted upon him physically, emotionally and financially. He is self-employed, he was unable to work and this was causing financial difficulties for himself and his family. The injuries were restricting the opening of his eye and at the time of making the statement he was able only to eat soft food.
12. As to the offender and previous convictions, between 2002 and 2010 the offender was before the court on eight occasions for 12 offences. They included theft by shoplifting, using threatening, abusive and insulting words or behaviour and offences relating to the taking of motor vehicles. On 13 March 2018, for possession of a knife or sharp pointed article in a public place, the offender was sentenced to 14 days’ imprisonment suspended for 18 months. Prior to the sentence passed by HHJ Timothy Mousley QC, the offender had not served a sentence of imprisonment.
13. Before the sentencing court were letters from the offender’s family and friends. The offender had worked for many years as a member of the maintenance team for Network Rail. His manager had also written describing the offender as a model employee. All the letters spoke positively and well of the offender’s character generally and as a family man. They provided information about his background. A letter from his general medical practice identified a history of anxiety and depression.

14. In sentencing the offender, the judge did not identify the categorisation of the offending within the definitive Guideline. However, it appears to be Category 3 as he took as a starting point a sentence of four years' imprisonment and identified the appropriate range. Critically, the judge considered that at the time of the assault the offender lost control of himself. The judge took account of two facts: namely that the offender subsequently attempted to "pay off" Mr Bryant and at trial blamed his solicitor for making up the version of events which he gave to the police. The judge regarded the offender's previous convictions as being of some relevance, but did not regard them as being as serious as the index offence. The judge accepted that this was an isolated incident. He referred to the testimonials before the court which indicated that such behaviour was out of character for this offender. The judge noted that in the past the offender has experienced difficulties with his mental health. The judge reduced the sentence to reflect the fact that conditions in the prison estate because of Coronavirus are particularly grave and he took account of the effect of an immediate custodial sentence upon the young family of the offender. Accordingly, he reduced the sentence from four years to 39 months.

The submissions made on behalf of the Solicitor General

15. Relying upon the definitive Guideline, it is contended on behalf of the Solicitor General that a sentence significantly higher than 39 months was merited for the following reasons:
- i. The factors indicating harm and culpability indicating a starting point in Category 2 of the Guidelines rather than Category 3.
 - ii. Insufficient weight was given to the presence of several aggravating factors which included premeditation. It is accepted there was not significant premeditation.
 - iii. Too much weight was placed on the mitigating factors.
 - iv. A total sentence of 39 months' imprisonment did not reflect the overall seriousness of the case.

The respondent's submissions

16. It is accepted on behalf of the respondent offender that the sentence passed was lenient. The essence of the submission made is that the sentence was not unduly lenient. It is said that the judge was correct in assessing the case to fall within Category 3; the Crown had conceded that greater harm was not made out. The use of the respondent's head as a weapon indicating greater culpability was negated by a "greater degree of provocation than normally expected" and "lack of premeditation". The prosecution witnesses described the assault and departure of the offender as being over within a matter of 30 seconds.
17. As to the factors increasing seriousness, the location and timing of the offence is said to be limited. The ongoing effect on the victim is also limited by reason of the fact that the statement made by the victim were at most some two weeks after the incident. Evidence was given to the court by a witness that the victim returned to work approximately seven to ten days after the incident. As to the offer to Mr Bryant of £200, this was said to have arisen spontaneously in a friendly conversation; it was never repeated. As to the absence

of recent relevant convictions, the unchallenged evidence of the offender was that his last conviction, the 2018 conviction, involved the carrying of a folding knife used at work after work hours.

18. The judge, having observed the respondent during the trial, noted that he was ashamed of his actions. On the offender's behalf it is contended that the testimonials evidenced the change in his life, the effect of family upon him and his need to support them. The result of a custodial sentence would be the loss of his employment, his children are young and one has health issues. It was undisputed that a period of custody would have a serious emotional effect upon his two young children.

Discussion and conclusion

19. This offence took place in the afternoon on a residential road where it was witnessed by members of the public. Whatever the nature of the argument between the victim and Miss Smith, nothing could justify the conduct of the offender. Mr Bryant had walked away from the exchange of words between himself and Miss Smith and was going about his duties delivering parcels. The offender chose to follow him and, using his head as a weapon, headbutted the victim with such force that he fell to the floor. The offender also punched him at least three times in the face when he was on the floor. The force of the assault was such that the victim sustained two serious fractures to his face which required surgery. The Crown accepted that the nature of the injuries sustained within the context of this offence did not indicate greater harm.
20. In considering the definitive Guideline, we regard the headbutt as indicating higher culpability. It is contended that there was provocation but the sentencing remarks of the judge do not indicate the judge found there was particular provocation. The judge, an experienced trial judge, had presided over the four-day trial. He had a sense and feel for the case which this court can and should properly take account of. The judge found and stated that the offender had lost control, we note that that loss of control was shortly followed by the headbutt. In such circumstances we understand why it was that the judge identified a lack of premeditation.
21. Having considered all the circumstances of this offending, we have concluded that it would fall at the lower end of Category 2 or on the cusp of Categories 2 and 3 of the Guideline which we find would provide a starting point of five years. Present were aggravating features, namely the location and timing (in the street in broad daylight, in a residential area), the ongoing effect upon the victim, the attempts by the offender to mislead the police and blame another. We accept that there was considerable personal mitigation and have concluded that the aggravating factors are balanced by the mitigating factors.
22. The starting point being five years, we note the reduction of nine months which was allowed by the judge to reflect Covid and the effect which an immediate custodial sentence would have on the young family of this offender. We accept such a reduction and accordingly would reduce such a sentence to one of four years and three months.
23. Having so found, we have looked again at the sentence of 39 months. We accept that it is

a lenient sentence, but having considered all the circumstances of this case we are unable to conclude that it is unduly lenient.

24. Accordingly, and for the reasons given, we do not allow this reference.
25. Finally, in imposing a restraining order the judge did not refer to the statutory provision under which it was issued. In the court record sheet it states it was issued pursuant to section 5 of the Protection from Harassment Act 1997. The offender's conviction took place on 15 March 2021. As of that date the relevant provision of section 5 of the 1997 Act had been repealed by the Sentencing Code, which applies to offences for which the conviction was on or after 1 December 2020. However, paragraph 4 of Schedule 27 of the Sentencing Act 2020 states that:

“A reference (express or implied) to a provision repealed by this Act, if contained in—

(a) a document, or

(b) a statutory provision that is not amended by this Act, is to be read (so far as the context permits), as respects an offence of which the offender is convicted on or after the commencement date, as being or (according to the context) including a reference to the corresponding provision of the Sentencing Code.”

It follows that the restraining order was a valid order pursuant to these Transitional and Saving Provisions.

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

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