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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/01995/A4
NCN: [2022] EWCA Crim 1346



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 6th October 2022

B e f o r e:

THE VIC- PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE DOVE

MR JUSTICE KERR

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E X

- v -

MICHAEL GEORGE EDWARDS JONES

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr N Hearn appeared on behalf of the Attorney General

Mr I Goldsack appeared on behalf of the Offender

J U D G M E N T

Thursday 6th October 2022

LORD JUSTICE HOLROYDE:

1. Michael Jones, to whom we shall refer as "the offender", pleaded guilty to an offence of wounding his partner, "Ms C", with intent to do her grievous bodily harm. On 6th June 2022, in the Crown Court at Sheffield, he was sentenced to six years' imprisonment.
2. His Majesty's Solicitor General believes that sentence to be unduly lenient. Application is accordingly made, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case to this court so that the sentencing may be reviewed.
3. The offender (now aged 40) had been living with Ms C for over a year. There had been difficulties in their relationship, particularly when the offender had been drinking. The police had been called to the home on a previous occasion when he had assaulted Ms C by strangling her. On that occasion she did not wish to make any formal complaint, and there was no prosecution.
4. The present offence was committed in the early hours of 8th February 2022. It is necessary to give a little detail about the facts. The offender was drunk and angry. He ordered Ms C to leave the house. She began to do so, but the offender knocked her to the floor, straddled her, pinned her arms with his knees and repeatedly slapped and punched her in the face. He told her that his life was over and so was hers. He said that when he had finished with her, no one would find her and no one would care. She begged him to let her go, but he continued his assault. He said that he would send Ms C to join her deceased mother.
5. The offender then held a cushion over Ms C's face whilst still pinning her down. She struggled to breathe. He repeated this action five or six times. He then armed himself with a large knife from the kitchen, again straddled her and placed the knife point against her chest. He made her hold the knife handle, with his hands over hers, and told her that they would play truth or dare: he would ask questions, and if she gave the wrong answers he would push the knife into her. He did not in fact wound her at that stage, but she felt the knife point pressing into her. The offender then told Ms C that he would take her upstairs, tie her to the bed and stab her in different positions to see which one would kill her. Ms C managed to crawl into the kitchen, but he prevented her from leaving and then stabbed her in the abdomen.
6. The offender called for an ambulance. He claimed that Ms C had fallen onto a knife. When the emergency services attended, the offender was still present. He had, however, washed the knife.
7. In addition to the stab wound, Ms C suffered cuts and bruises to her face and arms, and a laceration to her nose, which required stitches. She underwent an emergency laparotomy to repair the wound to her abdomen. She remained in a critical care unit for some days.
8. The offender made no comment in interview. At his first appearance in a magistrates' court, he indicated a not guilty plea. His representatives noted on the relevant form an issue as to whether Ms C's injury was self-inflicted. They had concerns about the offender's mental state, and in due course a report was prepared by a consultant forensic psychiatrist, Dr Vandenabeele.
9. When he appeared in the Crown Court, the offender pleaded guilty. Sentence was adjourned. No pre-sentence report was ordered by the court.

10. At the sentencing hearing, Ms C read out a Victim Personal Statement which had been written about three months after the offence. She said that during the assault she had thought she would die. She noted as a particularly terrifying feature that the offender had remained calm and composed throughout. She was in continuing pain and discomfort from her injuries and had a long scar from the laparotomy. She had constant intrusive memories of the assault and had difficulty sleeping. She no longer felt safe, was fearful in male company, avoided socialising, and could no longer travel in the course of her employment because she felt unable to spend a night away from her home.

11. The offender had been sentenced on four previous occasions for a total of six offences. These included two offences of battery of a former female partner, for which he received a short prison sentence in 2015. Other offences had also been committed in a domestic context. The most recent conviction, in December 2019, involved an offence of damage committed in the course of a row with his then partner, and in the presence of her 14 year old daughter. The offender had been made subject to a community order for that offence. The order had expired only a short time before the present offence.

12. The judge considered Dr Vandabeele's report. It showed that the offender had a history of depression and had on occasions been prescribed antidepressant medication. He also reported a history of drug use from a young age, which had continued for a number of years. The offender had attempted suicide by an overdose in June 2021. Dr Vandabeele did not find that the offender suffered from a functional mental illness, but took the view that, both at the time of the offence and currently, the offender was suffering from a likely condition of adult Attention Deficit Hyperactivity Disorder, and should be considered at least psychologically dependent on alcohol. The offender's intoxication at the material time would likely have "added a further element of impulsivity and disinhibition". It was the doctor's opinion, at paragraph 16.12 of his report, that "[the offender's] risk of re-offending may possibly be reduced by interventions addressing the likely diagnosis of adult ADHD and his dependency on alcohol".

13. The judge also read character references, which spoke of the offender's good work record and the more caring and helpful side of his character, and a letter in which the offender expressed his remorse and indicated that he had for the first time come to acknowledge his alcohol dependency and his mental health problems. The offender said that he wished to take advantage of any help and professional guidance that he could obtain in prison.

14. The judge considered the Sentencing Council's definitive guideline for offences contrary to section 18 of the 1861 Act. He placed the case into culpability category A, on the grounds that it involved the use of a highly dangerous weapon and that it was a prolonged assault. He assessed harm as coming at the upper end of category 2. He identified as aggravating features the domestic setting and the previous convictions for domestic violence. He took into account the character references and accepted that there were a number of mitigating factors, namely genuine remorse; some understanding by the offender of the impact of the offence on Ms C; an awareness of the impact of his alcohol addiction; and a determination to address it. The judge observed:

"I also take account of the fact that the psychiatric report reveals that there is potential cause. Work can be done on the causes of those triggers and also on the interventions to help to prevent anything like this occurring again."

15. The judge concluded that the appropriate sentence, before giving credit for the guilty plea, would have been eight years' imprisonment. He reduced that by 25 per cent to reflect the plea, and so imposed the sentence of six years' imprisonment, to which we have referred. He also made an indefinite restraining order to protect Ms C.

16. This court has been assisted by two pre-appeal reports prepared by probation officers. The author of the first, who had been able to interview the offender in prison, states that the offender has quickly attained enhanced status, has received no adverse adjudication, and has been recorded as doing good work. The offender expressed his motivation to engage in work to address his abusive and violent behaviour in the context of an intimate relationship, although, unfortunately, there are substantial waiting lists for the courses which he should undertake.

17. In the later report, specifically directed to the issue of dangerousness, the author concludes that the offender presents a high risk of serious harm towards Ms C and future partners.

18. On behalf of the Solicitor General, Mr Hearn submits that the sentence was unduly lenient. He does not challenge the judge's categorisation of the offence, but submits that the guideline starting point required a substantial initial upwards adjustment to reflect the presence of multiple culpability A factors and the high level of category 2 harm. It then required a further upwards adjustment to reflect the balance of aggravating and mitigating factors. The aggravating factors included not only those specifically mentioned by the judge, but also the particularly cruel threats which formed part of the prolonged assault. In addition, and notwithstanding that this point had not specifically been raised by prosecuting counsel below, Mr Hearn submits that the judge should have found the offender to be dangerous and should have imposed an extended sentence under section 279 of the Sentencing Code.

19. On behalf of the offender, Mr Goldsack, who represented him throughout the proceedings below, submits that the judge did take account of all relevant aggravating and mitigating factors, and that the sentence to which he came was an appropriate one in all the circumstances. Mr Goldsack concedes that the offender may not have been able to complain about a somewhat higher sentence, but submits that the sentence was not unduly lenient. He points out that although the court was entitled to take account of the surrounding circumstances, the actual offence for which the offender fell to be sentenced was the wounding alone.

20. We are grateful to both counsel for their very clear and helpful submissions. Having reflected on them, we have reached the following conclusions. We agree with the judge as to the categorisation of the offence. However, it fell into category A culpability because three of the factors listed in the guideline were present: not only the two identified by the judge, but also the fact that the offender had repeatedly held the cushion against Ms C's face. The use of what the guideline summarises as "strangulation/suffocation/asphyxiation" is a high culpability factor which must be given appropriate weight, even when other high culpability factors are also present. It is a particularly serious form of assault which is likely to, and in this case did, cause the victim to experience great terror and to fear death as she struggled to breathe. Further, as the judge rightly found, the level of harm caused was at the upper end of the category 2 range. In those circumstances, we accept Mr Hearn's submission that it was necessary to move substantially upwards from the starting point before considering aggravating and mitigating factors.

21. Although the judge referred to the domestic setting of the offence, he did not refer to the Sentencing Council's overarching principles guideline relating to domestic abuse. This

makes clear, at paragraph 7, that the domestic context of offending behaviour makes the offending more serious, because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship. With that in mind, and having regard to the previous convictions for offences of violence towards a partner, we take the view that the aggravating factors somewhat outweighed the mitigating factors. A further upwards adjustment from the starting point was accordingly necessary.

22. For those reasons, and with respect to the judge, we are satisfied that a sentence of eight years' imprisonment, before reduction for guilty plea, did not adequately reflect the seriousness of the offence. An appropriate sentence could not have been less than ten years' imprisonment, before a reduction of 25 per cent to reflect the guilty plea.

23. In addition, this was a case in which it was clearly necessary to consider dangerousness. The circumstances of the offence, set in the context of previous domestic violence, plainly called for consideration of the risk to any former or future partners. That need was reinforced by the feature of the assault to which Ms C refers, namely, the fact that the offender, although drunk, appeared to be calm and in control throughout.

24. Although a psychiatric report was available, it was not directed to the issue of dangerousness. In those circumstances, the court should have required the assistance of a pre-sentence report specifically directed to this issue, as this court now does. It should be noted that both the offence-specific guideline at step 5, and the domestic abuse guideline at paragraph 14, remind the court of the application of the dangerous offender provisions. It is unfortunate that this issue does not appear to have been considered in the court below.

25. In our judgment, having regard to the circumstances of the offence, the relevant previous convictions, the evidence of Dr Vandenebee, and the contents now of the pre-appeal reports, there is at present a significant risk to members of the public – in particular, future partners – that the offender will cause serious harm by the commission of further specified offences. We recognise and commend the offender's expressed motivation to obtain help with his alcohol dependency and mental health problems, and we wish him success in that aim. But his own good intentions are not sufficient in the circumstances of this case to negate the risk. Further, it cannot, in our view, be said that imprisonment for a significant period will of itself sufficiently reduce the risk, even taking into account the fact that the offender would not be eligible for release on licence until he has served two-thirds of the custodial term.

26. We therefore accept the submission that an extended sentence, pursuant to section 279 of the Sentencing Code is necessary and appropriate.

27. For those reasons, we grant leave to refer. We quash the sentence below as unduly lenient. We substitute for it an extended sentence of ten and a half years, comprising a custodial term of seven years six months, and an extended licence period of three years. The restraining order made below remains in force.

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
