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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202104119/A2
NCN: [2022] EWCA Crim 190



Royal Courts of Justice
Sitting at Cardiff Crown Court
The Law Courts
Cathays Park
Cardiff
CF10 3PG

Thursday 3 February 2022

LADY JUSTICE NICOLA DAVIES DBE
MRS JUSTICE JEFFORD DBE
MRS JUSTICE THORNTON DBE

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

REGINA
V
STEPHEN JAY GIBBS

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)

THE ATTORNEY GENERAL and MISS S PRZYBLYSKA on behalf of the Attorney General
MR D GOODEN appeared on behalf of the Offender

J U D G M E N T

LADY JUSTICE NICOLA DAVIES:

1. This is an application by Her Majesty's Attorney General pursuant to Section 36 of the Criminal Justice Act 1988 for permission to refer a sentence to this court on the basis that it is unduly lenient. We grant permission.
2. On 6 December 2021, for the offence of attempted murder, the offender was sentenced to an extended sentence of 18 years comprising 13 years imprisonment with an extended licence period of five years pursuant to Section 279 of the Sentencing Act 2020 ('the 2020 Act'). A restraining order of indefinite duration prohibiting direct or indirect contact with the victim as well as approaching her house, place of employment or place of education, was imposed.
3. The offender was charged on an indictment alleging one count of attempted murder with an alternative count of wounding with intent to do grievous bodily harm. On 1 March 2021, he pleaded guilty at a plea and trial preparation hearing to the alternative count of wounding with intent. He pleaded not guilty to attempted murder. On 13 September 2021 at Cardiff Crown Court the case was listed for trial. Before the jury were sworn, the offender pleaded guilty to attempted murder. On 6 December 2021 at Merthyr Tydfil Crown Court, the offender was sentenced for the offence of attempted murder.

Facts

4. The offender and the victim were in a long-term relationship living together in Barry. At the time of the offence he was 45 and she was 49.
5. On the night of 30 January 2021, neighbours heard a woman screaming at the victim's house. Emergency services were called. The police found the victim lying in the back garden. She had suffered stab and slash wounds to her face and head and sustained a broken right shoulder. The victim told the police the offender had attacked her.
6. The offender was found in his car later that night, the kitchen knife was on the front passenger seat. The car was examined and a tracking device bearing the offender's fingerprints was found. It appears that he secretly installed it to monitor the victim's whereabouts.
7. The offender was arrested and interviewed under caution the following evening. He admitted attacking the victim but said that he had not meant to kill her.

8. When sufficiently recovered, the victim told the police that when she won the national lottery in 2017, it altered the balance of her relationship with the offender. Arguments between them worsened, particularly when they had been drinking alcohol. By the end of 2020, she had decided that the relationship would end. The offender had believed that the victim was having an affair with a male school friend.
9. On the day of the offence, the offender started drinking wine at about 2pm. The victim went out to run an errand and returned home at around 7:30pm. It was the offender's belief that she had been seeing the old school friend. The victim told the offender that their relationship was over.
10. The offender lost his temper and grabbed the victim by the throat. He slammed her into the wall, which caused her broken shoulder. The offender put the victim in a headlock and began to choke her. She freed herself, ran to the front door but the offender caught up with her and dragged her back in. The offender said that he took a large knife from the kitchen saying he would cut his own throat. She tried to seize the knife to stop the offender from hurting himself, but he turned on her. Thereafter, she had little recollection of what ensued. The victim found herself on the ground. She remembered the knife going into her eye. She thought she was going to die.
11. CCTV footage at the house shows part of the attack. When the footage begins, the offender and victim are outside the house, they can be seen grappling, the offender has the victim against a wall. She attempts to move away and he drags her along the ground by her hair to the kitchen door. The victim lies on the ground and the offender goes into the kitchen. In the kitchen, not shown on CCTV, he obtains a kitchen knife, with a blade some eight to nine inches in length. The offender returns outside, crouches over the victim, sits on her chest and attacks her face with a knife in a stabbing motion. He returns into the house leaving the victim bleeding on the ground. The offender drives away from the house a few minutes later. Before he does so, he walks past the victim's prone body. Having left, the offender telephones a friend and states that he has stabbed the victim, saying that he had found out that she had been unfaithful and lost it. He said "I think I've killed her" and said that he had taken an overdose. He also telephoned his brother and said that he had stabbed the victim and thought that he had killed her.
12. Medical examination of the victim revealed that she had been stabbed her in the face seven times. A number of facial fractures resulted where the blade came into contact with her facial bones. She also sustained a broken nose. One of the stab wounds was close to the victim's eye, another to the temple area. All wounds measured between two and three centimetres. The victim has been left with blurred or double vision in her right eye, one of her eyelids droops. Facial scarring has resulted together with numbness on the left side of her face, particularly to the left cheek and lip. In a Victim Impact Statement in September 2021, nine months after the attack, the victim stated that she had 75% vision in her right eye and limited movement in her right arm. She stated that she knew she would never

fully recover emotionally or physically from what occurred. The attack ruined her confidence, causing her to become withdrawn and being scared of being on her own.

13. At the date of the sentencing hearing, the offender had four previous convictions for seven offences. Relevant to his sentence is a conviction in 2005 of causing grievous bodily harm with intent and an attempted offence in the same terms. The offender was sentenced to a 10 year extended sentence comprising a six year custodial term and a four year extension period. A concurrent term of two years imprisonment was imposed in respect of the attempt. The facts of the 2005 offence were similar. The offender was in a relationship for many years with a woman X and they lived together. X had a son from a previous relationship. The relationship between X and the offender deteriorated, he became violent and she decided to leave. X returned to the house in order to collect some of her son's belongings. She was accompanied by her mother and her son, aged six. The son went into the house to collect his belongings. The offender arrived and stabbed the son six times with a kitchen knife. He approached the car in which X was sitting, smashed the window and slashed at her with the knife, cutting her leg. X and her son managed to get away. Thereafter the offender drove to a multi-storey carpark, taking another kitchen knife with him where he stabbed himself and jumped off the building in an attempt to kill himself.
14. The author of the Pre-Sentence Report prepared for the sentencing hearing assessed the issue of the offender's dangerousness. The author stated that on the night of the offence, the offender was unable to control the frustration and anger he felt towards the victim and lost control. There were similarities between the 2005 offence against his former partner and the index offence. The offender was under the influence of alcohol on both occasions. In each case, the attack was the result of a build up of frustration and anger focused on his partner which reached a point where the offender could not control his aggression and he became violent. A kitchen knife was used as a weapon on each occasion. The author assessed the offender as presenting a high risk of serious harm but limited that risk to a long-term intimate relationship. He also noted that the offender presented a high risk of harm to himself.
15. A psychiatric report was prepared for the sentencing hearing. The doctor concluded that the offender did not present with any features of serious mental illness or personality disorder. Identified was a clear history of chronic and extensive use of substances and alcohol. Drugs played no part in the index offence. When in custody, the offender has presented with symptoms of depression and engaged in self-harm in the initial period of remand. The doctor stated that the offender did not require treatment in a psychiatric setting, his needs could be provided by the mental health inreach team.
16. In addressing the judge, prosecuting counsel identified the categorisation of the offending as Category C culpability and Category 3 harm. A categorisation agreed by the defence. The judge queried the categorisation of harm, raising the issue of whether it was Category

2. Prosecuting counsel accepted it could be Category 2 and referred to “an element of permanence about the injuries.”
17. The judge noted that the offending did not come within the provisions of the Sentencing Code in respect of an automatic life sentence, the only life sentence available to the court was under Section 285 of the 2020 Act. In considering whether he should impose a life sentence, the judge was of the view that the categorisation of the offending was such that he did not consider the imposition of a life sentence to be appropriate but he did conclude that an extended sentence under Section 279 of the 2020 Act was appropriate. In addition to the Pre-Sentence Report, the judge took account of the positive references submitted on behalf of the offender.
18. As to the categorisation of harm, the judge stated that he had some hesitation as to whether it could properly be argued that Category 2 was appropriate bearing in mind the Victim Impact Statement but stated that “looking at the overall picture” he would accept the submission of counsel, namely that this was a Category 3 offence. Within the relevant Guidelines, a Category 3 offence has a starting point of 10 years custody, the range being 7 to 15 years. The judge identified the aggravating features as the offending taking place in the victim’s home, the fact that the offender left and drove away and the previous convictions for similar behaviour. We note that the judge did not identify as an aggravating factor the pausing in the attack by the offender whereby he left, picked up a kitchen knife, returned and thereafter carried out an attack on the face of the victim using the knife.
19. As to the issues of dangerousness, the judge concluded that because of the offender’s previous convictions and the nature of the attack, he did pose a significant risk to members of the public of serious harm, which would be occasioned by the commission by the offender of the other specified offences, as such the issue of the offender’s dangerousness was made out. The judge concluded that an extended sentence would address the risk which the offender represented and would protect the public. Credit of 10% for the guilty plea was given.

Submissions

20. Her Majesty’s Attorney General accepts that an extended sentence was reasonable and takes no issue with an extension period of five years. In essence, the submission made by the Attorney General is that the harm was incorrectly categorised by prosecuting counsel at the sentencing hearing. This was Category 2 harm. A distinction is drawn between the categorisation of harm in the Guideline for Attempted Murder and the Guideline for the Section 18 Offences Against the Person Act 1861 offence. Category 3 in the Attempted Murder Guideline can encompass harm that is not serious. The Section 18 offence is committed only where serious harm is caused. Thus, Category 3 encompasses harm that is serious but is not particularly grave, life threatening or irreversible. Prosecution counsel

appears to have misapprehended the scope of the lowest category of harm in the Attempted Murder Guideline and that led to the imposition of an unduly lenient sentence.

21. It is the Attorney General's contention that the harm caused was serious given the nature and extent of the injuries and notes that the offender pleaded guilty to the Section 18 offence at the plea and trial preparation hearing, an acknowledgement of the seriousness of harm.
22. The Attorney General submits that the starting point taken should have been that for a 2C categorisation namely 20 years and the sentence thereafter increased to reflect the aggravating factors which were the offender's intoxication, the location of the offence in the home and his failure to call an ambulance before walking past the victim's body. Particular reliance is placed on the offender's actions in pausing the attack to go to another area of the property to arm himself before returning to continue the attack with a knife and inflict further serious injury and his previous conviction for a similar attack on a partner and her young son.
23. On behalf of the offender, it is accepted that there was facial scarring injury to the eye, fracturing of the shoulder and some psychological damage. Mr Gooden accepted that the injuries could be described as serious and that on one interpretation a higher category of harm would be appropriate. That said, this was an experienced judge who carefully considered the issues relevant to sentence.

Discussion and conclusion

24. This was a sustained and terrifying attack upon a defenceless victim in her own home. The offender commenced the attack, and having inflicted some injury, paused to enter the kitchen where he picked up a kitchen knife. The offender returned outside to where the victim was lying on the ground and stabbed her seven times in the face. Photographs demonstrate the nature and extent of the facial injuries.
25. The issue which forms the basis of this referral is the categorisation of harm within the Attempted Murder Guideline. No issue is taken with the judge's finding of dangerousness.
26. Within the Attempted Murder Guideline, there are three categorisations of harm:

“Category 1

- Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment

- Offence results in a permanent, irreversible injury or psychological condition which has a substantial long term effect on the victim's ability to carry out their normal day to day activities or on their ability to work

Category 2

Serious physical or psychological harm not in Category 1

Category 3

All other cases”

27. We note the consultation paper which preceded this Guideline, which observes that:

“Category 1 provides for similar injury types as in the GBH harm model, with life changing and permanent injuries attracting the highest categorisation. Category 2 provides for serious injuries which will include those without a lasting impact. Category 3 provides for all other harm, which will be of a less serious and non-permanent nature.”

28. We agree with the submission made by the Attorney General that Category 3 in the Attempted Murder Guideline covers a different range of harm to that contained in Category 3 of the Section 18 Guideline. The Section 18 Guideline is committed only when serious harm is caused and that must be reflected in Category 3. Conversely, attempted murder may be committed when no physical or psychological harm is caused. Consequently, the lowest category can include harm that is not serious.

29. The victim was stabbed seven times in the face when the offender was sitting on her chest and thus in close proximity to her head. She suffered a number of facial fractures where the blade was in contact with her facial bones. A fractured nose also resulted. One of the stab wounds was very close to her eye as a result of which, she has been left with blurred vision in her right eye, her eyelid droops and there is numbness over the left side of her face. She complains of having periods of double vision in the eye, particularly when she is tired and also suffers from eye watering and repeated blinking of the eye. It is clear from her Victim Personal Statement that however resilient or strong the victim is, the attack has had long term emotional and physical consequences.

30. Given the nature and extent of the injuries coupled with the terrifying nature of the assault which has resulted in consequences for the victim which go beyond the physical, it was reasonable for the judge to raise the question of whether the harm fell within Category 2. We are satisfied that prosecuting counsel was wrong to place the harm sustained by the victim in Category 3. In our judgement, the harm suffered is serious,

both in terms of its physical and psychological manifestation. It is clear that the stance taken by counsel affected the judge's final determination that Category 3 was appropriate. We have concluded that this incorrect categorisation has resulted in the imposition of a sentence which was unduly lenient.

31. Given the finding of this court as to Category 2 harm and the fact that we have concluded that the sentence passed by the judge was unduly lenient, the first issue which would have arisen for determination is whether a life sentence should be imposed under Section 285 of the 2020 Act. The Attorney General has stated that that the extended sentence is reasonable and appropriate in this case, a view with which we concur. We are satisfied that an extended sentence is required. We note the significant increase in sentence which results from a 2C categorisation, namely a starting point of 20 years custody which is double the starting point of the 3C categorisation. Further the category range is 15 to 25 years custody. In our judgement, such a sentencing range will provide the protection to the public which is required.
32. In sentencing the offender, we take a starting point of 20 years custody. We increase that to 23 years to reflect the aggravating factors, namely the offender's intoxication at the time of the offence, the location of the offence in the home, the offender's actions in pausing the attack to enter another area of the property and arm himself with a kitchen knife before returning to continue the attack and inflict serious injury, the offender's failure to call an ambulance, leaving the victim alone and bleeding, and the 2005 conviction for a similar attack on a previous partner and her young son. We reduce the custodial element of the sentence by 10% to reflect credit. Accordingly the custodial element of the extended sentence is one of 20 years and 7 months. The extended licence period is 5 years. This results in an extended sentence of 25 years and 7 months in total.
33. Accordingly, we quash the extended sentence comprising a custodial term of 13 years and an extended licence period of 5 years and impose an extended sentence comprising a custodial term of 20 years and 7 months and an extended licence period of 5 years.
34. The offender will serve 2/3rds of the custodial period of 20 years and 7 months' imprisonment, before the Parole Board will consider whether it is safe to release him and if so on what terms. Once released, he will serve on licence any part of the custodial period which remains and will then be subject to an extended licence for a further period of 5 years. If, when he is subject to licence, he commits another offence or fails to comply with the terms of his licence, he will be liable to be recalled to custody and to serve part or all of the remaining term in custody. Credit is to be given for days spent on remand.
35. Accordingly and for the reasons given this reference is allowed.

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