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IN THE COURT OF APPEAL

CRIMINAL DIVISION

**[2023] EWCA Crim 1538**



No. 202301988 A3

Royal Courts of Justice

Wednesday, 1 November 2023

Before:

LADY JUSTICE THIRLWALL  
LORD JUSTICE POPPLEWELL  
MR JUSTICE JAY

REX

V

PAUL CROFT

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MR M. WILSON appeared on behalf of the Appellant.

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**J U D G M E N T**

LORD JUSTICE POPPLEWELL:

- 1 On 16 May 2023, in the Crown Court at Caernarfon, the appellant (then aged 51) pleaded guilty to being the owner of a dog which caused injury while dangerously out of control in a public place, contrary to s.3(1) and (4) of the Dangerous Dogs Act 1991. He was sentenced to 17 months' imprisonment suspended for two years, with various ancillary orders. He appeals against the length of the custodial term of the sentence with leave of the single judge.
- 2 At 5.30 pm on Tuesday 14 June 2022 Mr and Mrs Cunnington were walking their seven-month-old Cockapoo puppy along Lord Street in Blaenau Ffestinoig when they saw the appellant. He appeared intoxicated and was holding a large dog on a lead which barked aggressively towards the Cunningtons' puppy. It was a Belgian Malinois cross-breed. Just under two hours later, the Cunningtons were returning from their walk when they saw the appellant's dog again. It was not on a lead and the appellant was not in sight. The appellant's dog attacked the Cunningtons' puppy. It held the puppy in its mouth and shook it like a puppet. The attack lasted some time, during which Mr Cunningham received a bite to his hand in his unsuccessful attempts to rescue the puppy from the jaws of the larger dog. Eventually a neighbour intervened and grabbed the dog by the neck until it dropped the puppy. The police were called and they found the appellant asleep on the middle of the path some way off. He was snoring loudly and difficult to arouse. Once awake the appellant confirmed that he was the owner of the dog. Another woman had earlier in the afternoon warned the appellant that he should put the dog on a lead.
- 3 The puppy required surgery and suffered additional puncture wounds. It made a full recovery in due course. Mr Cunnington's hand required a tetanus injection. Mr and Mrs Cunnington felt traumatised by the incident for some time.
- 4 The appellant had 20 convictions for 64 offences. None involved dogs. The instant offence occurred during the operational period of a suspended sentence of 20 weeks' imprisonment suspended for 18 months, imposed at Merseyside Magistrates' Court for the offences of having a knife in a public place and battery. By the time the appellant came to be sentenced for the dog offence, 16 weeks of that 20-week sentence had been activated by North West Wales Magistrates' Court by an order made on 8 September 2022 when sentencing for another offence, harassment, committed during the operational period.
- 5 The judge when sentencing had regard to the relevant Sentencing Council Guideline. As agreed by prosecution and defence, he treated the offence as involving culpability category B by reason of the lack of safety and control measures where an incident could reasonably be foreseen; and harm category 2 by reason of the injuries to the puppy and Mr Cunnington. The Guideline gives a starting point for that category of six months with a range of up to 12 months. The judge identified as aggravating features: first, previous convictions; second, the sustained nature of the attack; third, that the reason the dog was out of control was the appellant's ingestion of alcohol; fourth, the injuries to the puppy as well as Mr Cunnington; and fifth, the offence being committed during the operational period of a suspended sentence. He said that those aggravating features took the offending outside the category range and that a sentence after trial would have been 20 months. He applied a discount of 15 per cent for the guilty plea in reaching a sentence of 17 months. No criticism is made of the amount of credit for the guilty plea.
- 6 The single ground of appeal is that there was no justification for going beyond the 12-month period as the appropriate sentence after a trial, and accordingly the sentence was manifestly excessive. We agree. The suspended sentence had already been activated to the extent considered appropriate by the North West Wales Magistrates, which was all but four weeks

of it, and the commission of this offence during the operational period did not warrant any significant further uplift. The aggravating features identified justified moving to the top of the bracket, but not beyond. Had the judge taken the appropriate sentence after a trial as 12 months, he would have reduced it to 10 months, rounding down slightly, in giving 15 per cent credit for plea.

- 7 Accordingly, we will quash the custodial term of the sentence of 17 months and replace it with a term of 10 months. In all other respects, including the suspension and ancillary orders, the sentence remains unaffected. To that extent, the appeal is allowed.

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**CERTIFICATE**

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This transcript has been approved by the Judge.