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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1555
CASE NO 202302654/A1



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 5 December 2023

Before:

LADY JUSTICE WHIPPLE DBE

MRS JUSTICE McGOWAN DBE

HER HONOUR JUDGE MORELAND
(Sitting as a Judge of the CACD)

REX

V

RAYMOND ALEXANDER McLAREN

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MR D REILLY (SOLICITOR ADVOCATE) appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE WHIPPLE:

1. On 7 July 2023, in the Crown Court at Portsmouth, before Mr Recorder Brown, the appellant, who was then aged 63, was sentenced, following a guilty plea, to 7 years' imprisonment for a single count of wounding with intent under s 18 of the Offences Against the Person Act 1861. He now appeals against sentence with the leave of the single judge.

The Facts

2. The appellant was married to Helen McLaren, and they had been together for around 30 years. Helen had expressed her desire to separate from the appellant. The appellant had been struggling to cope with this decision and had been turning to drink in an attempt to do so.
3. On 26 December 2022, the two shared an evening meal. The appellant asked Helen whether they could get back together but she said "no". She subsequently described hearing the appellant in the kitchen, and when she went to check on the situation, she found the appellant with a knife. Alarmed that he would harm himself, she told the appellant that he would never see his children or grandchildren again, but the appellant replied, "It's not me who's not going to see them, it's you" in a very calm manner. The appellant thereafter came at Helen with the knife. She backed off into the dining room and the appellant struck out with the knife causing injuries to her left arm and to her left breast. She fled to a neighbour's house where she collapsed. The emergency services were called. She was rushed to Southampton General Hospital, where an examination revealed two stab wounds, a 5-centimetre stab wound to her left arm and a 2-centimetre stab wound to the left nipple. She underwent emergency surgery, and during this process

she was found to have a 1-centimetre laceration to her left ventricle and a blood clot around the heart. The laceration was repaired and the pericardial and left plural cavities of the heart were washed out. She was discharged from hospital on 3 January 2023.

4. The appellant was subsequently arrested by the police in the dining room of his house. The appellant was described by police officers then as being “quite calm”. On arrival at the police station, the appellant was said to have commented, “I’ve done the crime, I’ll do the time”.
5. The appellant was interviewed by the police, and, in interview, he declined to answer any of the questions that had been put to him.
6. He was 63 years old when he was sentenced. His date of birth is 29 December 1959. He has six convictions for nine offences spanning from March 1979 to March 1998, including convictions for two offences against the person, for which he was fined in 1980, and conditionally discharged in 1988.

Sentence

7. The Recorder noted the background to this offending. There was a wider background of domestic abuse, although nothing on the scale of the events as they unfolded on 26 December 2022. It was common ground that the offence was medium culpability in category B. It was harm category 1 under the s 18 guideline. That provided a starting point of 7 years in a range of 6 to 10 years’ imprisonment. Although the appellant had previous convictions, the Recorder noted that they were old and of very different character, so that they did not serve to aggravate this offending. However, the fact that this offending was in a domestic setting was an aggravating factor, as was the background of domestic abuse.

8. The Recorder noted the personal mitigation in the form of the appellant's otherwise good character, supported by a large number of character references and positive prison reports. The Recorder referred to the appellant's state of mind at the time of this offence, which was to refer to his emotional turmoil at the breakdown of his marriage. The Recorder also noted that the appellant had taken steps since then to address his drinking and abusive behaviour.
9. The Recorder arrived at a notional sentence, after trial, of 8 years. He then turned to the credit to be given for the guilty plea. That plea was entered about a month before trial. The judge indicated that credit of 12.5 per cent would, in the circumstances, be given. The resulting sentence was 7 years' imprisonment.

Grounds of Appeal

10. By his written grounds of appeal, Mr Reilly, who represented the appellant at his sentencing hearing, as before us, advances two grounds of appeal. He says, first, that the Recorder applied too great an increase to the starting point to reflect aggravating factors, alternatively took insufficient account of the mitigation so that the notional sentence after trial of 8 years was excessive. Secondly, the Recorder failed to give sufficient credit to reflect the guilty plea, noting that the plea was first indicated much earlier and in the event was entered on 23 May 2023 because there had been problems in obtaining a court hearing in advance of then. The consequence was that the resulting sentence of 7 years was quite simply too long.
11. In his oral submissions, Mr Reilly recognised that there were aggravating features but he stressed the unusual extent of the mitigation available in this case. He emphasised the support this appellant has from family and from friends, and the prison reports are

impressive. He says that the Recorder should not have taken the notional starting point of 8 years, but rather he should have balanced the mitigating factors against the aggravating factors and arrived at a figure of 7 years before credit, if not something even lower than that. Mr Reilly also suggested that the credit for plea of 12.5% was insufficient and that credit should have been something closer to 20 per cent, given that the plea was indicated in good time before trial.

12. We are grateful to Mr Reilly for his helpful submissions.

Discussion

13. This was a category B1 offence. The start point was indeed 7 years under the guideline. The Recorder referred expressly to the domestic context of this offending and to the history of abuse. These are significant aggravating features. We might add to that the appellant's reliance on alcohol, not just generally but on the evening in question, because he had consumed 3 pints of lager before these events occurred, which is further aggravation. The appellant recognised that he was drinking too much at the time, which was one of the reasons for the relationship coming to an end.

14. Against that, there was personal mitigation. This was recognised by the Recorder. Certainly, the appellant was a man of effective good character. It goes further than that, he was of positive good character, in some ways evidenced by the many supporting statements received on his behalf, including from Helen. The prison reports provided to this Court, as to the sentencing judge, speak of significant efforts made by the appellant while in prison to make the best of it. He has taken steps to address his alcohol issues and is to be commended for that. But we are not able to accept, if it is suggested, that the appellant was in any way provoked, or that his emotional state provides mitigation for his

offending. Further, the submission that he has demonstrated remorse is, to some extent at least, undermined by the contents of the pre-sentence report, in which he stated that he remembered nothing about these events and thought he must have stabbed Helen accidentally during a struggle on the floor, a struggle which Helen says never took place. The view of the author of that pre-sentence report was that the appellant had not, at least at that time, taken full responsibility for his offence. His remorse is said to be more truly expressed through the family letters of support for him and his own letter to the Court on sentence.

15. In our judgment, the Recorder was entitled to take the view that the aggravating features outweighed the mitigating features. He was entitled to arrive at a notional sentence after trial of 8 years, and we are unpersuaded of the first ground.

16. As to the credit for guilty plea, the plea was only entered relatively shortly before trial. The trial was set for 26 June 2023 and the plea was entered on 23 May 2023. There had been an earlier offer to plead to a s 20 but that offer was unsurprisingly rejected by the Crown; it might be thought that the offer significantly underestimated the gravity of this offending. There had also been some earlier suggestion that a plea to the s 18 might be forthcoming on a basis of plea which basis was never forthcoming. It was not until 23 May 2023 that an unequivocal plea of guilty to the s 18 offence was offered. In the circumstances, we consider that 12.5 per cent credit for plea was certainly within the range open to the sentencing Recorder, and it was not wrong in principle. We are not therefore persuaded of ground 2.

17. We stand back to consider overall whether there is anything wrong with the sentence of 7 years' imprisonment. Helen was very severely injured in this attack, with a knife, in her own home, by an abusive partner, who failed to take full responsibility for his actions.

Our conclusion is that 7 years' imprisonment is not, in these circumstances, manifestly excessive or wrong in principle.

Conclusion

18. We dismiss this appeal.

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