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NEUTRAL CITATION NO: [2024] EWCA Crim 1216

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT NEWCASTLE
UPON TYNE
MISS RECORDER NOLAN 10U30217922

CASE NO 202402148/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 3 October 2024

Before:

LORD JUSTICE WARBY

MR JUSTICE MARTIN SPENCER

HIS HONOUR JUDGE DREW KC
(Sitting as a Judge of the CACD)

REX
V
CURTIS PEARSON

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MS R KELLY appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1. On 29 May 2024, in the Crown Court at Newcastle, the appellant, Curtis Pearson, was sentenced by Recorder G Nolan to a term of imprisonment of 25 months for offences of intentional strangulation and assault committed on 9 September 2022, and a further 3 months consecutive for breach of a suspended sentence which had been imposed on 9 May 2022. In addition, the learned Recorder imposed a 10-year restraining order, prohibiting the appellant from (a) contacting Cacey Orrick directly or indirectly, including via third parties and social media, unless done through the Family Court or CAFCASS for the sole purpose of child contact matters; (b) entering Morpeth; (c) entering any building he knows or suspects that Cacey Orrick resides in, works in or frequents (the onus being on Curtis Pearson to remove himself from any building in the event of a chance encounter).

2. By his notice of appeal, supported by grounds of appeal drafted by counsel, the appellant sought leave to appeal against the length of the sentence of imprisonment and against the second of the prohibitions contained in the restraining order, namely the prohibition against entering Morpeth.

3. This matter was considered by the single judge (Sir Nigel Davis) on the papers. He refused leave to appeal against the term of imprisonment but granted leave to appeal in relation to the appellant's complaint in relation to the restraining order, stating that he did not consider that the 10-year prohibition against entering Morpeth to be necessary or proportionate. The appellant does not renew his application for leave to appeal against the term of imprisonment, and we are therefore only concerned with the appeal against

the restraining order.

4. Sentencing the appellant, the learned Recorder stated that he would make the restraining order in the terms sought by the Crown, taking the view that:

> "… the order is necessary to protect the victim of your offence from your conduct and conduct which amounts to harassment or will cause fear or violence, and I include within that all of the conditions the Crown seeks including your prohibition on going to Morpeth."

This was against a background of the victim (Ms Orrick) stating in her victim personal statement, dated 22 April 2024, that she had been unable to take her child to baby groups, that she lives in fear of the appellant, that she has difficulty sleeping at night and suffers from intensely vivid flashbacks. The appellant had strangled Ms Orrick, who was aged only 18, on 9 September 2022, when her baby (aged only 3 weeks old) was in her arms. Having attempted to strangle her, he then struck her on the head twice. He denied the offences and claimed that Ms Orrick had been aggressive and had demonstrated no remorse whatsoever.

5. In her grounds of appeal Ms Kelly, who has represented the appellant today and for whose submissions we are very grateful, referred to the submissions she had made before the court below, namely that the prohibition is not proportionate because Morpeth is a large area and the boundary between Morpeth and the surrounding villages is uncertain. This prohibition would, she submitted, unnecessarily restrict the applicant's employment as a labourer, as he may be required to attend projects in Morpeth. She supplemented

that submission by submitting that it would also thereby inhibit his rehabilitation. She submitted that prohibition (b) was not necessary as prohibitions (a) and (c) could safely protect Ms Orrick from the applicant. She further helpfully reminds the court of the general principles governing restraining orders derived from *R v Khellaf* [2016] EWCA Crim 1297. First, the court should consider the views of the person to be protected. Second, the court should only impose a restraining order if it is necessary. Third, the terms and duration of the order must be proportionate to the harm which it seeks to protect. Fourth, particular care should be taken when children are involved to ensure that the order does not make it impossible for contact to take place between a parent and child where such contact is otherwise appropriate.

6. We do consider that paragraph (b) of the restraining order lacks precision in relation to the geographical ambit of the prohibition. As Ms Kelly has submitted to us today, were you to search, for example, the village of Amble, which lies 14.7 miles away from Morpeth, that would give a postal area of Morpeth and so arguably Morpeth could be said to include Amble at that distance.

7. We consider that this geographical uncertainty can be resolved by defining Morpeth as the area defined by the parish boundary of Morpeth, as expressed by Northumberland County Council. That also coincides with the area delineated as Morpeth when one carries out a search of Morpeth on Google Maps.

8. Apart from that and subject to the length of the prohibition to which we shall return in a moment, we do consider that the restriction is and remains a necessary condition. In her

victim personal statement Ms Orrick stated:

> "I have not been able to take my baby, Harley, to any baby groups in order to socialise, or even leave the house on my own independently with him, and I have always depended on my Mam just to feel safe. The constant breaches of the strict court bail conditions imposed have caused me to suffer socially and I have had minimum interactions with friends and family. Whenever I did go out in public, I often felt like I was putting myself and my son's safety at risk which has then caused me to relive the feeling of fearing for our lives."

9. We are informed by Ms Kelly, and we accept, that breaches of bail which came before the Magistrates' Court were not in fact found to have been proved. However, the more relevant aspect of that passage from Ms Orrick's victim personal statement is the way that she feels and perceives herself to be at risk and, given the nature of the offence, we consider that a restraining order which addresses her perception and feelings in relation to that is a necessary condition. In our judgment, Ms Orrick is entitled to feel safe in her own town and to know that there is a remedy available to her should she see the appellant in Morpeth.

10. Returning then to the length of this particular prohibition, we do consider that the 10-year prohibition is too long and therefore disproportionate on that ground. We therefore reduce the period applicable to paragraph (b) of the restraining order to a period of 5 years, and so to these limited extents that is a redefining of what is meant by "Morpeth" in paragraph (b) and a reduction of the prohibition from 10 years to 5 years in respect of that particular part of the restraining order, the appeal is allowed.

11. Finally, when sentencing the appellant, the learned Recorder stated that the appellant

would be given credit for time spent on electronically monitored curfew and that this would be calculated administratively. The Crown Court was in fact required by section 325(4) of the Sentencing Code to specify, in open court, the number of days to be credited towards sentence in respect of the period spent on qualifying curfew calculated in accordance with the provisions of section 325. For the purposes of this hearing today, the parties have agreed that the period of qualifying curfew is 400 days and that the appellant is therefore entitled to 200 days of credit towards his sentence. We therefore make a declaration to that effect.

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

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