IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 31

No. 202302930 A4

Royal Courts of Justice

Tuesday, 16 January 2024

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE CHOUDHURY
HER HONOUR JUDGE ANGELA RAFFERTY KC

REX

v

STEVEN ARTHUR CONNOLLY

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Mr N Soppitt appeared on behalf of the Appellant.
The Crown were not represented.

J U D G M E N T

MR JUSTICE CHOUDHURY:

1 The appellant, who is now aged 37, pleaded guilty at the first opportunity to possession of a bladed article (count 1) and affray (count 2). On 9 August 2023, in the Crown Court at Teesside before HHJ Hatton, the appellant was sentenced to 28 months' imprisonment on count 1- and 24-months' imprisonment on count 2, to run concurrently. The appellant appeals against the total sentence of 28 months' imprisonment with the leave of the single judge.

2 The background to this matter can be briefly stated as follows. At around 2 a.m. on 10 June 2023 the appellant attended at an address in Hartlepool which is occupied by the complainant, Ms Pounder, and her two children. The appellant had been in a relationship with Ms Pounder for about three years. They have a child together but had separated around two months earlier. Ms Pounder's cousin, Anthony Pounder, was also present at the time as well as another friend. The appellant banged on the front door. When Mr Pounder opened the door, with the complainant standing behind him, they saw the appellant standing there holding an axe. About a week earlier, the appellant had sent the complainant a picture of an axe on social media, with the words, "I'll come round and there will be a big problem." The complainant closed the door whilst Mr Pounder stayed outside to try to fend off the appellant. The appellant started shouting and punching the outside wall and hitting it with the axe. The appellant tried to enter the property but was prevented from doing so by Mr Pounder. The appellant then left the property but entered a neighbour's garden, knocking over a bin in the process and hitting it with the axe. The appellant then began to pace up and down the street, shouting, "Just you wait," and "Wait until I get in that house."

3 This incident, which also included the appellant goading Mr Pounder into fighting with him, lasted for about 30 minutes. Officers were called to the scene. When they arrived, they found the axe handle in the street and the axe head, which had snapped off, in the complainant's garden. When arrested, the appellant said, "I haven't made threats to assault her. I made threats to assault her cousin."

4 In sentencing the appellant, the judge found that this was "undoubtedly a terrifying experience for all who witnessed it". The judge noted that the combination of the two offences made the matter particularly serious. Applying the relevant guidelines, he found that the bladed article offence fell within Category 1A as serious alarm or distress has been caused. The starting point for such an offence is 18 months' imprisonment with a range of one year to 30 months. (The judge referred to a range of up to two years which appears to have been a slip). As to the affray, this was also found to be a Category 1A offence with a starting point of two years and a range of 18 months to 33 months.

5 The Judge then took account of the previous convictions. It was noted that the appellant had been convicted of affray in 2005 which, the judge acknowledged, "was a long time ago". The affray involved the use of a metal pole. There was a further caution for affray in 2008. The judge also mentioned a more recent conviction, namely that in 2021, for threatening to destroy or damage property. There again, the appellant had turned up at the property of an ex-partner. On that occasion, he was threatening to cause damage to motor vehicles. The judge considered that those offences "considerably aggravate the offending", and that the appellant had "learned nothing" from his previous experiences of the court system.

6 The judge concluded that in these circumstances the notional sentence before discount for plea for both offences after trial would be 42 months' imprisonment. Applying the discount of one-third for plea resulted in a sentence of 28 months for each offence. These were ordered to run concurrently. The sentence on count 2 was subsequently altered under the slip rule to 24 months, the judge having been alerted to the fact that the maximum sentence

for affray was 36 months and not five years, as he had believed. The judge also added that even if the sentence had been at a level that could be suspended, his view was that appropriate punishment could only be achieved by immediate custody. This was because of a poor history of non-compliance with court orders and the absence of any realistic prospect of rehabilitation in the light of his antecedents.

7 Leave to appeal has been granted on two grounds: (i) the notional sentence before discount for plea was too high; and (ii) the judge failed to take sufficient account of the fact that the majority of the Appellant's previous offending had occurred more than 17 years ago.

8 Mr Soppit, who appears for the appellant, as he did below, submits that the category range amply accommodates the aggravating features of the case, and that whilst totality would entitle the judge to increase the lead sentence to take account of the overall criminality involved in the two offences, an increase to 24 months from the starting point and 12 months over the upper end of the range for a Category 1A offence resulted in a sentence that was manifestly excessive.

9 We agree with those submissions. Given that the two offences arose out of the same set of events the judge was entitled to impose concurrent sentences. Applying totality principles, the judge was also entitled to increase the sentence for each offence (or for the lead offence) to take account of overall criminality involved. However, we do not consider that the circumstances of this case warranted an increase in the notional sentence before discount for plea to one that, in the case of count 1, exceeded the starting point by 24 months and the upper end of the category range by 12 months.

10 Judges are entitled, having considered the aggravating factors and totality, to move outside the identified category range, but will do so bearing in mind the maximum sentence for the offence (which should, ordinarily, be reserved for the most serious offending of its type) and that the category ranges are intended to cover a wide variety of scenarios. To depart so substantially from the starting points and the category range would require considerable justification, which is not present here. The starting point of 18 months for a Category 1A bladed article offence already assumes use to cause serious alarm and distress, which is also a factor indicating a higher harm for the affray. The various aggravating factors, including intoxication and the recent 2019 conviction, would warrant a significant uplift which would be offset to some extent by the mitigation stemming from the appellant's ADHD. Even allowing for a further uplift to take account of the overall criminality involved in the two offences, could only take one up to the top of the range but not beyond.

11 The judge's notional sentence for affray was the very maximum that could be imposed for that offence. Whilst the offending was serious and did cause considerable distress to those who witnessed it, the appellant's behaviour cannot be said to be the most serious of its kind. Indeed, the judge's initial notional sentence for affray of 42 months, which is 18 months lower than the wrongly assumed maximum sentence of five years, supports the view that it was not the most serious offending of its kind.

12 In our judgment, taking account of all the relevant factors, the notional sentence of 30 months for the bladed article offence (i.e.at the upper end of the range for a Category 1A bladed article offence), and 30 months for the affray (i.e. just below the upper end of the range for affray) would properly account for the overall degree of criminality involved. The resulting sentence after discount for plea would be 20 months which, in our judgment, would be a just and appropriate sentence in all of the circumstances.

13 Accordingly, the sentences of 28 months on count 1 and 24 months on count 2 are both quashed and replaced with a sentence of 20 months on each concurrent. The appeal is

allowed to this extent.

14 Whilst this brings the sentence within the realms of suspension, we agree with the judge that suspension would not be appropriate in this case. This was serious offending which came only a few months after a conviction for a not-dissimilar offence outside the home of another ex-partner. Although we note that the appellant has made and continues to make good progress in prison, the seriousness of the offending in the face of such a recent conviction renders suspension inappropriate.

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