Neutral Citation Number: [2022] EWCA Crim 1019

IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM
THE CROWN COURT AT CARLISLE

Case No: 202201398 A1

Royal Courts of Justice
The Strand, London
WC2A 2LL

12 July 2022

Before:

LORD JUSTICE STUART-SMITH

MRS JUSTICE CUTTS DBE

THE RECORDER OF WOLVERHAMPTON
(His Honour Judge Michael Chambers QC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

Between:

R E G I N A

- v –

JOHN IAN PULLIN

Mr A Richardson appeared on behalf of the **Attorney General**
Mr S Harkin appeared on behalf of the **Offender**

Approved Judgment

LORD JUSTICE STUART-SMITH:

1. This is an application on behalf of Her Majesty's Solicitor General, under section 36 of the Criminal Justice Act 1988, for leave to refer to this court a sentence which he considers to be unduly lenient. For reasons which will become apparent, we grant leave.

2. The Solicitor General is represented on this Reference by Mr Richardson, who did not represent the Crown in the court below.

3. On 4th April 2022, in the Crown Court at Carlisle, in the course of the Plea and Trial Preparation Hearing, the offender, John Ian Pullin, pleaded guilty to the following offences, and on 8th April 2022 he was sentenced as follows: on Count 1, Attempting to cause grievous bodily harm with intent, contrary to section 1(1) of the Criminal Attempts Act 1981, to three years' imprisonment; on each of Counts 2 and 3, Assault by beating, contrary to section 39 of the Criminal Justice Act 1988, to concurrent terms of four months' imprisonment; on Count 4, Damaging property, contrary to section 1(1) of the Criminal Damage Act 1971, no separate penalty was imposed; and on Count 5, Breach of a criminal behaviour order, contrary to section 339(1) and (2) of the Sentencing Act 2020, to a consecutive term of eight months' imprisonment. The total sentence imposed, therefore, was one of three years and eight months' imprisonment. Various ancillary orders were made.

The Facts

4. On 7th June 2021, in the Crown Court at Carlisle, Mr Pullin was made subject to a Criminal Behaviour Order when he was sentenced for offences of assault by beating, threatening behaviour with intent to cause fear of violence, and two offences of assault by beating of an emergency worker, amongst other matters. The Criminal Behaviour Order was made for a period of three years. It included a prohibition to prevent Mr Pullin from entering Workington town centre, including Murray Road.

5. At about 4.45 pm on 3rd March 2022, Kerrie-Ann Roe-Baron was walking towards Workington train station, wheeling a suitcase along with her and wearing headphones. She turned on to Murray Road and saw the Mr Pullin running straight towards her. They were unknown to each other. She jumped out of his way to avoid being knocked over. She removed her headphones. Mr Pullin accused her of trying to trip him up. He became very aggressive, shouting and swearing, causing Miss Roe-Baron to become worried for her safety. Mr Pullin threatened to "reshape [her] jaw", which understandably caused Miss Roe-Baron further concern. She said nothing for fear of provoking him. At some stage, Mr Pullin picked up Miss Roe-Baron's suitcase and threw it into the road before walking past her towards the town centre.

6. In shock, Miss Roe-Baron followed at a distance and telephoned the police. She was still on the phone to the police as they approached Workington bus station. Mr Pullin stood against a wall in front of her. Miss Roe-Baron could see that he was making comments towards her, but she could not hear what he was saying. She told him that she was on the phone to the police and that he would not get away with his earlier behaviour towards her. Witnesses described a heated argument between the two of them, with Mr Pullin talking in an aggressive manner. The next thing Miss Roe-Baron remembers was regaining consciousness, surrounded by police officers. What took place was seen by other witnesses, and was captured on clear CCTV footage.

7. Mr Anthony Hanlon, an employee at Workington bus station, heard Mr Pullin call Miss Roe-Baron a "stupid fucking bitch". CCTV footage shows that he grabbed Miss Roe-Baron by her hair and head and threw her aggressively to the ground. Her head made forceful contact with the tarmac. Mr Hanlon described it as making a "sickening thud". Miss Roe-Baron sought to protect her head with her arms. She remained lying on the ground, apparently unconscious, albeit that her arms can be seen to move at stages as the assault continued. Mr Pullin continued to shout abuse at Miss Roe-Baron. The CCTV footage shows that, having thrown her to the ground, he then picked up Miss Roe-Baron's suitcase and threw it at her head. He then stamped on her head with considerable force. He picked up a mobile telephone that had fallen to the ground, and threw it at Miss Roe-Baron's head, again with a great deal of force. He then tried to stamp on Miss Roe-Baron's head again, but as he did so Mr Hanlon intervened. In consequence, the second stamp does not appear to have made full contact. Those, in brief, were the facts relating to count 1.

8. In response to Mr Hanlon's efforts to intervene, Mr Pullin punched him twice to the face and head, causing his glasses to fall off and be damaged: they lost both lenses. That constituted the facts underlying counts 2 and 4. Another bus station employee, Mr Connor Shaw, tried to intervene. Mr Pullin punched him too (count 3). Mr Shaw was ultimately able to take Mr Pullin to the ground and restrain him until the police arrived. A number of members of the public went to assist Miss Roe-Baron who remained lying on the ground.

9. When the police arrived, Mr Pullin continued to be aggressive and obstructive. He resisted the police officers' attempts to restrain and arrest him.

10. Such was the ferocity of the attack, Mr Hanlon believed that if he had not intervened the Mr Pullin would have killed Miss Roe-Baron. Another eyewitness described that he thought Mr Pullin was "going to murder the female if someone hadn't intervened".

11. Miss Roe-Baron was taken to West Cumberland Hospital where she was treated. She was found to have pain and a stinging sensation to the left side of her temple, and pain around the bridge of her nose, along with swelling. She had a cut to her chin, and pain to her left thumb, which was subsequently found to have been broken. She had a graze and 2 cm lump to the back of her head on the left side. A CT scan showed no intracranial injury, but blood collection under the skin measuring 8 millimetres by 60 millimetres. There was a possible fracture to the nose bone on the right side with a small displacement. She was discharged from hospital several hours later.

12. Mr Pullin was taken to Workington Police Station. He continued to be aggressive towards the police officers. As a result, he was interviewed in his cell. Other than to accuse the police officers of making up lies about him, he remained silent or gave no audible answer to the questions asked of him. He was therefore charged and remanded in police custody.

13. On his first appearance before the magistrates' court, Mr Pullin indicated a plea of guilty to what became Count 5 (breach of the Criminal Behaviour Order), but gave no indication of plea in respect of the other charges he faced.

14. As we have said, the plea and trial preparation hearing took place in the Crown Court on 4th April 2022. At that stage Mr Pullin pleaded guilty to all counts on the indictment. He was therefore entitled to a one-third reduction of any sentence on count 5, and a 25 per cent reduction of any sentence on the other counts on the indictment on account of

his guilty pleas. No pre-sentence report was ordered or requested. So it was that he came to be sentenced by Mr Recorder Shaw four days later, on 8th April 2022.

Antecedents

15. Mr Pullin had 49 sets of previous convictions for 103 offences. They began in July 2001, when he was a youth, with burglary of a dwelling. They include 15 offences against the person, 21 offences against property, 13 public order offences, 12 offences relating to the police, courts or prisons, and 12 drugs offences. In terms of violence, his previous convictions include nine occasions since 20th May 2019 when he has accumulated convictions for 15 offences of assault or battery, including 11 offences of assaulting emergency workers. His last convictions had been on 3rd December 2021. He was on licence in respect of the sentences imposed for those offences when he committed the offences with which we are concerned.

Victim Impact Statements

16. Victim Impact Statements were provided. Miss Roe-Baron provided a Victim Personal Statement dated 8th April 2022 (one month after the offences). She explained that the assault had affected her life in many ways. She had had nightmares for the first two weeks. She could not work at a time when she was just trying to start a business. She found it impossible to use a computer. She had been unable to travel to Cumbria to visit her children because of the injuries she had received to her head. Her thumb was still broken, and she could not use it. She could not even open a can of drink. She had restricted breathing through her left nostril. The waiting time for an appointment with an ear nose and throat specialist is 60 weeks, and so she feared that those problems would be unresolved for a long time. She was suffering from depression and anxiety. She used to like to walk and cycle outside. She is too scared and anxious to do so. She becomes worried when she sees people rushing. She is fearful of men. She becomes anxious and cries when she sees groups of people. She will no longer go out in the dark. She is terrified that she will see Mr Pullin again. She believes that the staff at the bus station saved her life. She has been told by her doctor that she is suffering from post-traumatic stress disorder.

17. In his substantive witness statement, Mr Hanlon described waking up in the night, hearing the sound of Miss Roe-Baron's head hitting the ground.

The Hearing Below

18. Mr Pullin was aged 34 at the time of sentence.

19. The prosecution opening note for sentence identified that the offence in Count 1 was a specified offence for the purpose of the dangerousness provisions. It made reference to the Sentencing Council guideline on grievous bodily harm with intent. The prosecution identified the offence as falling within higher culpability, as it was a persistent assault. It was submitted that the harm fell within level 3. Reference was made to *R v Wood* [2019] EWCA Crim 941 and to the principle that attempted offences generally, although not always, carry a lesser sentence than the completed offence.

20. At the sentencing hearing, it was accepted on behalf of Mr Pullin that there was little mitigation, beyond his guilty pleas. It was submitted that the offending in Count 1 fell within culpability B and that the harm fell within level 3. The Recorder asked: "He does not have a trigger conviction for me to consider dangerousness, does he?" The

defence advocate replied that he did not.

21. In passing sentence, the Recorder described the offence as "brutal", "it was sickening", and that "you are an extremely fortunate young man that you did not kill that woman and thus stand before the court facing a far more grave charge". The Recorder said that Miss Roe-Baron was "rendered unconscious immediately by the severity of [the] impact" of her head against the road and that "mercifully for her she is rendered unconscious immediately by the severity of that impact, such that she is completely unaware of what you then do". He described that throughout the assault Miss Roe-Baron was "utterly helpless, utterly insensate" and described the attack as a "gratuitous assault on a completely defenceless woman lying prone on the ground". The Recorder observed that "It is miraculous that Miss Kerrie-Anne Roe-Baron did not sustain truly horrific injuries as a result of your assault … the fact that she sustained – mercifully – not life changing physical injuries does not of course diminish the psychological trauma that this young woman sustained". He noted that every aspect of Miss Roe-Baron's life had been turned upside down.

22. The Recorder said that he would approach the offence as if it had been completed, and would then make any appropriate reduction to reflect that it was an attempt.

23. He found there to be significant aggravating features, which he considered made it a high culpability case. Those included: the vulnerability of Miss Roe-Baron once she was prone and unconscious on the ground; the assault was sustained and repeated; a weapon was used (the suitcase and the shod foot); and the intention was to cause more serious harm than resulted. There were no lower culpability factors. He found the harm to fall within category 3. It followed from that that a starting point of five years' imprisonment was appropriate. The Recorder reduced that to four years' imprisonment to reflect the fact that it was not the completed offence. He went on to note Mr Pullin's "shocking previous record". He reduced the sentence by 25 per cent for the Mr Pullin's guilty plea, and arrived at a sentence of three years' imprisonment. Concurrent terms of four months' imprisonment were imposed in respect of the two offences of battery, and a consecutive term of eight months' imprisonment was imposed in respect of the breach of the Criminal Behaviour Order. The total sentence was therefore three years and eight months' imprisonment. The victim surcharge was imposed.

The Solicitor General's Submissions

24. On behalf of the Solicitor General, it is submitted that the guideline for causing grievous bodily harm with intent that has been effective from 1st July 2021 is relevant to Count 1, although Count 1 charges an attempt to commit an offence under section 18, rather than the full offence. It is submitted that there are multiple factors indicating high culpability falling within category A, namely: (a) the obvious vulnerability of the victim, particularly after he had thrown her to the ground, where she was prone and defenceless; (b) the persistence of the attack which continued even after the intervention of Mr Hanlon and Mr Smith; and (c) an element of revenge directed against his victim after she told him that she had called the police and was on the phone to them, albeit that the instinct to exact revenge appears to have occurred in the heat of the moment. As was pointed out in the course of submissions, the more one emphasises the spontaneous nature of the outburst, the more one must recognise the worrying feature that such a spontaneous outburst of serious violence was not merely disproportionate but quite irrational and unprovoked.

25. The Solicitor General categorises Mr Pullin's use of a weapon or weapon equivalent

(in the form of his shod feet, the suitcase, and, we would add, the phone which he threw at his victim's head from a close range) as falling short of qualifying as use of a "highly dangerous weapon or weapon equivalent" within the meaning of the guideline. We agree, although the effect of the combined use of shod feet, the suitcase and the phone are clear indicators of persistence and, separately, of Mr Pullin's intent.

26. In the court below both the prosecution and the defence had addressed the Recorder on the basis that the case fell within harm category 3. The Solicitor General seeks to depart from the concession by prosecuting counsel in the court below and to submit that the case should be regarded as falling within category 2. It is submitted that, adopting the approach laid down by this court in *R v Laverick* [2015] EWCA Crim 1059; [2015] 2 Cr App R(S) 62, and subsequently endorsed by another constitution of this court in *Attorney General's Reference (R v Muthuraja)* [2019] EWCA Crim 1740; [2020] 1 Cr App R(S) 46, inadequate weight was given in the court below to the intended outcome, if the attempt had been brought to its conclusion and the completed offence had been committed.

27. The approach established by those authorities involves identifying what sentence would have been imposed had the offence been completed, and then discounting the sentence level because the attempt has not succeeded. Had that approach been taken, the Solicitor General submits that the completed offence would have fallen within category 2, with some indications that may have fallen within category 1. The submission is that the completed offence would have caused either injury that was "grave" or resulted in "permanent, irreversible injury", falling within category 2, or possibly injury that was "particularly grave or life-threatening", or which causes "long-term effect on the victim's ability to carry out their normal day-to-day activities or on their ability to work", falling within category 1.

28. The submission is supported by reference to the basic facts of the attack; its persistence; the repeated targeting of the victim's head; the use of weapons directed at the victim's head and upper body; the assessment of Mr Hanlon that if he had not intervened, Mr Pullin would have killed Miss Roe-Baron; and the Recorder's assessment, which the Solicitor General endorses, that it was "miraculous" that the victim did not sustain truly horrific injuries or life-changing physical injuries. If, as the Solicitor General submits, the completed offence would have been a category 2 offence, the starting point would have been seven years' custody, with a range from six to ten years. Given the injuries that Mr Pullin in fact inflicted, it is submitted that any reduction to reflect the fact that the offence was not completed should be relatively modest.

29. That is not the end of the exercise. The Solicitor General submits that the existence of multiple factors indicating high culpability should exercise an upward pressure on the appropriate sentence, as should the existence of other aggravating features. The aggravating features identified by the Solicitor General are:

a. The offence was committed whilst on licence;

b. Mr Pullin's extensive previous convictions for violence, albeit at a lower level;

c. The offence was committed in a public place, a busy street in Workington, and it had an effect on those who saw it;

d. The offence was committed whilst Miss Roe-Baron was attempting to

telephone the police regarding the initial incident (if this was not taken into account as part of culpability);

e. The use of a weapon (if not taken into account as part of culpability);

f. Mr Pullin ignored attempts by others to restrain him; and

g. The offences charged as counts 2 to 4.

30. In the face of these multiple aggravating features, Mr Pullin's only real mitigation, the Solicitor General submits, is the fact of his guilty plea before the magistrates and at the PTPH in respect of Count 1.

31. For these reasons the Solicitor General submits that the sentence imposed by the Recorder was unduly lenient.

32. The Solicitor General goes further and submits that this court should make a finding of dangerousness. The offence under Count 1 is a specified offence under section 279 of the Sentencing Act 2000. Had a sentence of four years' imprisonment or more been imposed, the court below should and would have gone on to consider the question of dangerousness. Such a finding could have been made by the Recorder on the facts of this case, even in the absence of a pre-sentence report. The Solicitor General recognises that it is "objectionable for the prosecution to fail to ask for a pre-sentence report in the Crown Court in order to address the issue of dangerousness, only later to suggest that the Court of Appeal should commission and consider such a report to make good its earlier omission": see *R v Johnstone* [2021] EWCA Crim 1683 at [28]. That said, the Solicitor General submits that if the court concludes that the sentence passed by the Recorder was unduly lenient, it would be open to us to make a finding of dangerousness on the facts of this case, and in the absence of a pre-sentence report or any other report. With rather less conviction it is submitted that *Johnstone* can be distinguished on the facts of this case because the question of dangerousness did not apply in the court below, as the Recorder proposed to pass a sentence of less than four years' imprisonment.

Mr Pullin's Submissions

33. Mr Pullin is represented before us, as he was in the court below, by Mr Harkin. He submits that the sentence imposed by the Recorder was not unduly lenient and that if the attempted offence had been completed, it would have fallen within category 3A, with a starting point of five years' custody, and a category range of four to seven years. He submits that there should be a reduction from those figures to reflect the fact that the offence was not committed. He urges the court to look at the overall sentence of three years and eight months' imprisonment, achieved by ordering the sentence on Count 5 to run consecutively, and he submits that that is a fair aggregate sentence to reflect the overall criminality of Mr Pullin's conduct.

34. In making his submissions on categorisation under the guideline, Mr Harkin disputes that Count 1 can properly be regarded as persistent, or as a revenge attack. Accordingly, he rejects the submission that there exist multiple factors indicating high culpability. On this point we find no assistance in Mr Harkin's reference to *R v Xue* [2020] EWCA Crim 587, which is a decision upon its own facts. It provides no useful analogy for present purposes.

35. Turning to the projected completion of the attempted offence, Mr Harkin submits that it cannot be deduced with any certainty that Mr Pullin intended to cause, or would have caused, any more than the basic harm that would place the case in harm category 3. He disputes the suggestion that Mr Pullin would have continued his attack on the victim had Mr Hanlon not intervened. He goes so far as to submit that the shortness of the duration of the attack and the fact that, so it is said, it was committed on impulse, should be treated as mitigating factors to place in the scales along with the acknowledged pleas of guilty.

36. Turning to dangerousness, Mr Harkin accepts that if the court increases the sentence significantly so that the conditions in section 280(1)(e) are met, then the conditions in section 280(1)(a), (b) and (d) are also met. However, he submits that condition (c) is not met because it cannot be determined that there is **<u>significant</u>** risk to members of the public of **<u>serious</u>** harm occasioned by Mr Pullin of further specified offences. He submits that, given the absence of other specified offences in Mr Pullin's antecedents, this court is not in a position to make a finding of dangerousness, without the benefit of a pre-sentence report. In reliance on *Johnstone*, he submits that this court should not now commission such a report. Accordingly, he submits that no finding of dangerousness should be made.

<u>Resolution</u>

37. For the reasons that follow, we are in no doubt at all that the sentence imposed by the Recorder was unduly lenient and should be increased. We note in passing that the Recorder was not, in our judgment, well served by prosecuting counsel in the court below who materially underplayed the real seriousness of this offending. We also note, for the avoidance of any doubt, that we have seen and take into account the two sets of good quality CCTV footage which provide a clear view from two perspectives of this unprovoked and vicious attack. What that CCTV footage demonstrates, beyond argument to the contrary, is that this attack fully justifies the description that it was persistent. Mr Pullin’s determination to continue the attack, even when Mr Hanlon and Mr Smith intervened, is clearly to be seen from both sets of moving images. The ferocity with which Mr Pullin first knocked Miss Roe-Baron to the ground is plain to see, and is evidenced also by Mr Hanlon's description of the noise when her head hit the road surface. She was rendered entirely defenceless, but Mr Pullin then swung her suitcase violently down upon her upper body and head and stamped fully on her head with what appears to be all the force he could muster. Not content with that, he picked up her phone and threw it forcefully and at close range, striking her on the head. He then went to stamp on her head again. The full force of his stamp was only partially deflected by the intervention of Mr Hanlon. It is clear that even after the intervention of Mr Hanlon and Mr Smith, whose courage is to be commended, he was intent on returning to Miss Roe-Baron to try to continue his attack. The CCTV footage is shocking, even for those whose senses may be dulled by the many cases of this general type that come through the courts. It is properly to be described as outrageous conduct from the moment Mr Pullin first attacked Miss Roe-Barron until he was finally restrained and placed in the back of the police van. Most importantly for the purposes of the guideline, it is properly to be described as a persistent attack upon the head of a defenceless woman with the use of shod feet and additional weapons in a determined attack to inflict maximum damage upon his victim.

38. In our view, and taking account of all the evidence, including that from the CCTV, there can be no real doubt that if he had not been prevented from doing so, Mr Pullin would have caused Miss Roe-Baron injury that fell comfortably within and towards the upper

end of the meaning of "grave" for the purposes of category 2. In our judgment, had he not been prevented from doing so, there is a severe risk that he would have inflicted injuries that took the case into category 1. Not without hesitation, however, we conclude that it would not be safe or just to treat this as if it were a category 1 case. We therefore proceed on the basis that had the offence been completed, it would have fallen within category A2. However, as we have just indicated, the evidence supports the conclusion that the level of harm that Mr Pullin intended to inflict, and would have inflicted, was towards the upper end of category 2.

39. With these observations in mind, we turn to assess the proper level of sentence in this case following the guidance provided by *Laverick* and *Muthuraja*. We therefore start by a consideration of what would have been the appropriate sentence had the attempted offence been completed.

40. Category 2A has a starting point of seven years' custody, with a range from six to ten years. The multiple features of culpability, and our assessment of the level of likely and intended harm had the attempt been successful, require significant upward movement from the starting point. In our judgment, these two factors alone would require an increase from the starting point of seven years to at least nine years.

41. A further increase must be exerted by the multiple and serious aggravating features to which we have referred. At this stage the most significant features are: Mr Pullin's appalling record, including his multiple assaults on emergency workers in the immediately preceding period; the fact that he was on licence when he committed these offences; and the fact that he carried out his attack in broad daylight in the presence of many members of the public.

42. Taking the impact of these aggravating features into account, the least notional sentence that would be required in order to reflect the seriousness of offending on Count 1, had the offence been completed, would have been a sentence of ten years' imprisonment. Some reduction should be made for the fact that it was an attempt, rather than the completed offence. In our judgment, the maximum reduction that could properly be made on the facts of this "attempt" would be a reduction of one year, back down to nine years.

43. The Recorder chose to pass concurrent sentences in relation to Counts 2 to 4. He was entitled to do so. But if that course was to be adopted, the significant additional criminality represented by those counts had to be reflected in the sentence for Count 1. The Recorder did not explain how he reached the sentences of four months' imprisonment on each count, but we assume that it was after giving a notional 25 per cent reduction for the guilty plea, which suggests a sentence before reduction for plea of just over five months. The seriousness of those three counts, taken together (Counts 2,3 and 4), should, in our judgment, have led to a sentence on Count 1 of nine and a half years' imprisonment, before reduction for mitigation and totality.

44. There was in truth no mitigation available to Mr Pullin, other than his pleas of guilty. A reduction of 25 per cent applied to a notional sentence on count 1 of nine and a half years' imprisonment leads to a sentence, before any adjustment for totality, of something over seven years and one month's imprisonment.

45. There remains the question of dangerousness. In favour of making such an order is the record of multiple offences of violence in the short period before this serious assault on Miss Roe-Baron, which speaks of a person who is completely out of control and

therefore dangerous. On the other side of the coin, Mr Harkin submits, correctly, that there is the fact that nothing in the previous offending was remotely as serious as the present assault, as shown by the relatively modest sentences imposed on previous occasions.

46. Whilst the instinct to make a finding of dangerousness is strong, this is, in our judgment, a classic case where a pre-sentence report could and should have been called for, with a view to elucidating what caused the violence against Miss Roe-Baron. The question now is whether we should make a finding of dangerousness in the absence of such a pre-sentence report, or should adjourn for the preparation of a report.

47. We have come to the clear view that a finding of dangerousness should be made, even in the absence of a pre-sentence report. It is common ground that since the offence in Count 1 is listed under Schedule 18 to the Sentencing Act 2020, and we are substituting a sentence on Count 1 that is in excess of four years' imprisonment, the procedural requirements are met and that the test to be applied is whether there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences by Mr Pullin. In our judgment, the test is plainly met. Mr Pullin's previous convictions for offences of violence are not of the same order of seriousness as the offence under count 1, but they demonstrate an unrestrained disposition to the use of unjustifiable violence on a regular basis. What Count 1 demonstrates is not merely that Mr Pullin's complete lack of restraint continues, but, in addition, that he is capable of extreme violence that is as irrational as it is extreme. The test for dangerousness deals in risk and, in our judgment, Mr Pullin's antecedents and the facts of Count 1, taken in the context of the other offences committed at the same time, demonstrate a significant risk that he will resort to serious, irrational and unrestrained violence again, and in doing so will cause serious physical or psychological injury to one or more people.

48. We should make clear that we have reached our decision on dangerousness without regard to the terms of the prison report that has been provided. That said, we are entitled to have regard to the terms of the report. On doing so, the report only serves to confirm the views that we have already expressed.

49. This is not an offence that requires or justifies a life sentence. At the same time, the risk posed by Mr Pullin is such that a determinate sentence is not, in our judgment, sufficient to protect the public. We therefore propose to impose an extended sentence on Count 1, comprising a custodial term of seven years and one month, and an extended licence period of four years.

50. Turning to the question of totality, there is no criticism of the Recorder's sentence of eight months' imprisonment on count 5 – nor could there be, given the clear and serious breach of the terms of the Criminal Behaviour Order barring him from the centre of Workington, which led directly to his encounter with his victim and the offences with which we have been concerned.

51. Without adjustment for totality, the aggregate sentences on counts 1 and 5, before reductions for the guilty plea, would now be ten and a half years' imprisonment (nine and a half on count 1 and one year on count 5). Given the substantial increase that we direct on Count 1, and the protective effect of the extended licence period, we take the view that it is possible to make the sentence on count 5 concurrent with the other sentences. The effect of the increase on Count 1 is both to reflect a much higher level of criminality than appears from the sentences passed by the court below and to provide

suitable and sufficient protection for the future.

52. In summary, for the reasons we have given, we consider that the sentence that should properly have been imposed on Count 1 was an extended sentence, comprising a custodial term of seven years and one month, with an extended licence period of four years. The other elements of the sentence imposed by the court below will remain as before, save that the sentence on count 5 shall be concurrent and not consecutive.

53. The effect of the increased aggregate sentence is that Mr Pullin will now serve two-thirds of the sentence before being eligible for release on licence.