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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT CAMBRIDGE

HIS HONOUR JUDGE SEELY 35NT2032622

CASE NO 202304231/A1

NCN:[2024] EWCA Crim 996

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday, 31 July 2024

Before:

LORD JUSTICE BEAN
MRS JUSTICE FARBEY DBE
HER HONOUR JUDGE MUNRO KC
(Sitting as a Judge of the CACD)

REX
V
JAIGANESH ASHOK-KUMAR

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MR J DEIN KC appeared on behalf of the Appellant

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 21 June 2023, in the Crown Court at Cambridge before His Honour Judge Seely, the applicant, then aged 45, was convicted of four offences perpetrated against his wife. On 28 September 2023 the judge imposed the following sentences: on count 1, assault occasioning actual bodily harm: an extended sentence of seven years comprising a custodial term of four years and an extended period of licence of three years, which was made consecutive to count 2; count 2, controlling or coercive behaviour in an intimate or family relationship: two years' imprisonment; count 3, intentional strangulation: two years' imprisonment concurrent to count 2; count 4, intentional suffocation: two years' imprisonment concurrent to count 2. The overall sentence therefore comprised a total custodial term of six years and an extended period of licence of three years.
2. The applicant applies for leave to appeal against sentence. The application has been referred to the full court by the single judge who also granted an extension of time of 39 days. We have today heard helpful submissions from Mr Jeremy Dein KC on behalf of the applicant and we have also considered the Respondent's Notice and submissions which accompanied it.

The facts

3. The applicant and the victim had been married for over 20 years. Count 1 related to a specific occasion when the applicant had caused a wound to the victim's right buttock. The prosecution case was that the applicant had repeatedly hit the victim. He had used a rolling pin and then kneed her in the buttock area causing the skin to break.
4. Count 2 related to controlling or coercive behaviour by the applicant towards the victim between 29 December 2015 and 3 December 2022. That behaviour included the

applicant waking the victim at 4.00 am, setting times by which the domestic chores had to be completed and threatening the victim with water-boarding if she took longer than the allotted time. The applicant also accused the victim of deliberately missing a call from a local councillor which caused him to beat the victim on the back with a rolling pin. The applicant made the victim fetch a cotton ball to wipe a coffee stain which the applicant then made the victim swallow. The applicant on occasion told the victim to "fetch the towel" which had been associated with water-boarding. During an episode of violence the applicant had kneed the victim in the area of her vagina. The applicant also tracked the victim's mobile devices meaning that she feared for her general safety.

5. Count 3 related to an occasion when the applicant had been water-boarding the victim. He placed a towel over the victim's face and wrapped it around her neck so that it restricted her breathing.
6. Count 4 related to an occasion when the applicant had submerged the victim in an ice bath either by holding her head or by using his foot on the victim's neck to hold her under the water.

Sentencing remarks

7. As the judge noted in his sentencing remarks, the victim gave police an account of the offences which formed the basis of the prosecution case but during her evidence at trial she sought to change her account in an attempt to exculpate the applicant. The prosecution were given leave to cross-examine her as a hostile witness.
8. It is not necessary for us to reach detailed conclusions as to why she wanted to exculpate the applicant but, as the judge emphasised in his sentencing remarks, the jury were sure of the applicant's guilt on all four counts. There was independent photographic evidence before the jury of physical injuries. We have seen, for example, a photograph of the

necrotising wound to her buttock that formed the subject of count 1. The judge described this injury as "appalling". We agree.

9. In relation to count 1 the judge applied the relevant sentencing guideline. On the basis of the prolonged, persistent and premeditated nature of the assault, he concluded that the applicant's culpability fell within level A (i.e. high) culpability. Given the severity of the injury he concluded that the offence fell within Category 1 harm. The starting point for a Category 1A offence is two years six months and the category range is one year six months to four years' imprisonment.
10. The judge regarded the offence as falling at the top of the category range even before consideration of aggravating factors. He noted that the offence was significantly aggravated by the domestic context, the history of violence and abuse towards the victim, and her degradation. The judge dealt with mitigation in relation to all four offences at once rather than dealing with it in relation to each offence. He noted that the sole significant mitigating factor was the applicant's lack of previous convictions.
11. The judge considered the question of whether the applicant was dangerous within the statutory provisions governing the imposition of extended sentences. He concluded that the applicant satisfied the statutory criteria for dangerousness and that he should exercise his discretion to impose an extended licence period in relation to count 1 on the grounds that it was necessary to protect the public, and specifically the applicant's wife, from the risk of serious harm in the future. He imposed an extended licence period of three years so that the total sentence on count 1 was seven years, comprising a custodial period of four years and the three-year extended licence period.
12. We pause here to note that by virtue of section 281(5) of the Sentencing Act 2020 the term of an extended sentence must not exceed the maximum term of imprisonment with

which the offence is punishable. The extended sentence on count 1 exceeded this limit because the maximum sentence for the offence of assault occasioning actual bodily harm is five years. The sentence in relation to count 1 was unlawful. We shall return to count 1 in due course.

13. Returning to the judge's sentencing remarks, in relation to count 2 the judge applied the sentencing guideline for coercive or controlling behaviour. He took the view that the offence fell within Category A culpability because the applicant had undertaken multiple acts and was guilty of persistent activity over a prolonged period. As for harm, he concluded it was a Category 1 offence because the victim had been put in fear of violence on many occasions. The starting point for a Category 1A offence is two-and-a-half years. The category range is one to four years. The judge found that there were no discrete aggravating factors but that it was a serious offence of its kind. The judge concluded that there should be a consecutive element as between counts 1 and 2. Given the extended sentence passed on count 1, he made the sentence on count 1 consecutive to the sentence on count 2.

14. Turning to counts 3 and 4, which concern respectively intentional strangulation and intentional suffocation, the judge noted that there were no applicable sentencing guidelines in force. It seemed to him that the appropriate sentence on each of those two counts was one of two years with each sentence to run concurrently with count 2.

Grounds of appeal

15. In his written and oral submissions, Mr Dein advances three principal grounds of appeal. Under ground 1, he submits that the sentence imposed on count 1 was wrong in principle because the extended sentence exceeded the five-year maximum sentence for the offence of assault occasioning actual bodily harm. Under ground 2, he submits that the judge

erred in concluding that the applicant should be treated as dangerous and should not have exercised his discretion to impose an extended sentence. Under ground 3, Mr Dein submits that the overall sentence was manifestly excessive. We shall deal with each of these grounds in turn.

16. In relation to ground 1, as we have already mentioned, it was unlawful for the judge to impose an extended sentence that exceeded the statutory maximum sentence for the offence. The sentence on count 1 cannot stand and we must correct it. We shall return to the appropriate sentence in due course.
17. Under ground 2, Mr Dein emphasises that the applicant was a 45-year-old man of previous good character. The instances of violence on the indictment occurred over a period of six months within the context of a 22-year marriage, albeit that the coercive and controlling behaviour was said to have happened over a longer period. Mr Dein points out that this is not a case where there is a background of frequent call outs of the police. He submits that in these circumstances public protection and the protection of the victim would be served by a standard determinate sentence.
18. We reject those submissions. The judge had conducted the trial so that he was in the best position to assess the evidence. He had the benefit of a detailed pre-sentence report. The author of the report concluded that the applicant posed a very high risk of serious harm to his wife. There was ample evidence to support that conclusion.
19. The pre-sentence report concluded that there was a low risk of serious harm to others. However, it is not and could not be suggested that the test of “significant risk to members of the public” under section 280(1)(b) of the Sentencing Act is not apposite in the context of risk to one person. The offences of which the applicant was convicted unarguably demonstrate a sustained pattern of abusive and dangerous behaviour towards the victim.

In our judgment the judge was unarguably entitled to conclude both that the applicant satisfied the dangerousness criteria and that an extended licence period was necessary.

This ground of appeal is not arguable.

20. Under ground 3, Mr Dein submits that the sentences on counts 2 to 4 should have been concurrent with the sentence on count 1. In support of this submission he contends that the conduct in counts 2, 3 and 4 inevitably played a part in the determination of dangerousness. In light of the overlapping conduct in the different counts, the setting of the custodial term at four years for count 1 had reflected the general background which underlay the other counts. The judge had fallen into the error of double counting such that the consecutive element of the sentence was manifestly excessive.
21. In our judgment it is not arguable that the judge fell into any error of approach by imposing an extended sentence consecutively to a standard sentence of imprisonment. As a matter of law, as Mr Dein accepts, he was entitled to do so. We are in no doubt that there were particular reasons for doing so in this case.
22. We do not accept that the different offences on the indictment reflect such overlapping conduct that the judge was bound to impose concurrent sentences on all counts. The judge was bound to apply the principle of totality but was not thereby prohibited from structuring the sentence in a way that comprised consecutive elements. He was under a duty to impose an overall sentence that reflected the seriousness of the applicant's criminal conduct as a whole. The various counts on the indictment are framed so as to represent different criminal conduct.
23. The overarching guideline on totality states that consecutive sentences will ordinarily be appropriate where the offences are of the same or similar kind but the overall criminality will not sufficiently be reflected by concurrent sentences. The guideline gives the

example of where offences of domestic abuse are, as in the present case, committed against the same individual. This element of ground 3 fails.

24. In addition, under this ground, Mr Dein submits that the judge failed to give proper weight to mitigating factors including the applicant's previous good character, the view of the victim who requested clemency, the various character references and the views of a psychiatrist.
25. The sentencing remarks demonstrate that the judge had in mind that the applicant had no previous convictions. He was not required to regard the character references as carrying weight. Some of the references are from family members who cannot be regarded as impartial. As to the others, the Overarching Guideline on Domestic Abuse states:

"Positive good character – as a general principle of sentencing, a court will take account of an offender's positive good character. However, it is recognised that one of the factors that can allow domestic abuse to continue unnoticed for lengthy periods is the ability of the perpetrator to have a public and a private face. In respect of offences committed within a domestic context, an offender's good character in relation to conduct outside these offences should generally be of no relevance where there is a proven pattern of behaviour."

We are in no doubt that this passage of the guideline applies in this case.

26. We note the applicant's progress in prison but do not regard the prison report as having a material effect on sentence. The report of the psychiatrist does not on the facts of these offences advance the applicant's case. We have given careful consideration to the victim's views, which are movingly expressed, and her request for leniency. We are however bound to apply the law and to allow an appeal only on grounds that show that the judge's sentence was excessive or wrong in principle. This ground of appeal does not do so. It is not arguable that any mitigating factors should have led to a lower sentence.

Conclusion

27. For all these reasons we refuse leave to appeal on grounds 2 and 3. We grant leave to appeal on ground 1 and allow the appeal on the basis that the sentence passed on count 1 was unlawful. The result is that on count 1 we quash the extended sentence of seven years. We substitute an extended sentence of five years, comprising a custodial term of four years and an extended period of licence of one year. The sentence on count 1 will remain consecutive to the sentence on count 2.
28. Finally, we are grateful to the Registrar for drawing our attention to the fact that the victim surcharge order imposed in this case was £190. However, the correct amount that should have been imposed was £120 owing to the period of the offending on count 2. We direct that the court record be amended accordingly.
29. All other elements of the sentence are unchanged. To this limited extent this appeal is allowed. We record our gratitude to Mr Dein for his clear and thorough submissions.

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

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