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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Thursday, 7 February 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MRS JUSTICE O'FARRELL DBE

HIS HONOUR JUDGE WALL QC
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 OF THE CRIMINAL JUSTICE ACT 1988

R E G I N A
v
DARREN CARL WILLIAMSON

Mr P Jarvis appeared on behalf of the **Attorney General**
Mr L Marklew appeared on behalf of the **Offender**

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J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: On 22 October 2018, in the Crown Court at Worcester, Darren Williamson pleaded guilty to an offence of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861. On 22 November 2018 he was sentenced to 4 years' imprisonment. Her Majesty's Attorney General believes that sentence to be unduly lenient. Accordingly, he applies for leave to refer the sentencing to this court pursuant to section 36 of the Criminal Justice Act 1988.

2. Mr Williamson is now aged 36. As a teenager he was cautioned for offences of assault occasioning actual bodily harm and threatening behaviour. He has however not been convicted of any offence of violence. His only previous convictions were more than a decade ago and were for very different types of offending.

3. In 2014, very sadly, Mr Williamson's wife took her own life, leaving him with the care of two young children both then aged under 10. In the years which followed he was coping with his own distress, caring for his children and working to support them. He was later to say that he had been using cannabis to help him cope and his account was that it was for that reason that in 2016 he was growing cannabis in an outhouse at his home.

4. In late October 2016 someone stole Mr Williamson's crop of cannabis. It is clear that he was very angry and wanted to find out who was responsible. It appears that someone suggested to him that David Ramshaw was the thief (although there is no evidence that he was). Mr Williamson researched online and discovered Mr Ramshaw's address. He went there at about 5.30 pm on 15 November 2016. Mr Ramshaw has a partner and a young child but happened to be alone in his house at the time.

5. A violent incident occurred in which Mr Ramshaw suffered serious injuries. The most serious was a rupture of his spleen. In addition, he sustained a laceration behind his left ear, swelling of the left ear, abrasions to the left side of his head, a very swollen left elbow, abrasions to the right side of his chest, to his right shoulder and around his neck, a distended and bruised abdomen, a large bruise to his left hip, bruises to his scalp and a large contusion over his temple. He was taken to hospital after the incident. Upon arrival at hospital he collapsed and had to be resuscitated. Medical investigation showed that the spleen was so badly damaged that urgent surgical removal was necessary. But for that operation there is a substantial risk that Mr Ramshaw would have died as a result of internal blood loss. We should add that Mr Williamson himself was unscathed in the incident.

6. He was taken to hospital because a friend Mr Tomlinson who had come to the house in answer to a phonecall from Mr Ramshaw found him obviously injured, vomiting, shaking and crying. Whilst Mr Tomlinson, was there, Mr Ramshaw's wife and child returned to the home and saw him in that state. Shortly after the incident Mr Tomlinson spoke on the phone to Mr Williamson. He told him that Mr Ramshaw did not have the stolen cannabis. Mr Williamson was plainly still very angry. In the course of the telephone conversation he used the phrase "when we were smashing the fuck out of your mate". Mr Tomlinson told him that Mr Ramshaw's injuries were such

that it was necessary to call an ambulance and inform the police. Mr Tomlinson's evidence was that Mr Williamson replied to the effect that if Mr Ramshaw knew what was good for him, he would not talk to the police or there would be more of the same.

7. In a statement made some 2 years after the incident, Mr Ramshaw indicated that for about 3 months after his discharge from hospital, he vomited each day. He developed a hernia, as a result of which his stomach was swollen and descended, but doctors took the view that he was too weak to cope with an operation to treat that problem. He suffered from low blood iron as a result of the removal of his spleen. This had caused his nails to fall out. In addition, Mr Ramshaw recorded that he now suffered from depression, withdrew from social life and had been harmed in the conduct of his business, which had inevitably resulted in financial difficulties adding to his depression and anxiety.

8. Mr Ramshaw's account of the incident in which he sustained those injuries was that three men, armed with weapons, came into his home and beat him. He said that Mr Williamson was the main aggressor of the three. Mr Williamson himself was arrested later on the day of the incident. Freshly washed clothes were found in his washing machine. He told the police that he had lost his mobile phone a few weeks earlier and indeed the police have never recovered it. Subsequent investigation of call billing records showed however that Mr Williamson had in fact been continuing to use his phone until very shortly before his arrest.

9. In the course of the investigation Mr Williamson's brother, Kevin Williamson, was also arrested. Both brothers were charged with aggravated burglary, to which they pleaded not guilty. The case was adjourned for trial and came on for hearing on 22 October 2018. On that date, in discussions between counsel, it was proposed that Mr Williamson would plead guilty to a section 18 offence and his brother, Kevin, would plead guilty to an offence of assisting an offender. The indictment was amended to that effect, those guilty pleas were entered and in due course no evidence was offered on the initial charge of aggravated burglary.

10. Mr Williamson's guilty plea was entered on a written basis which we must read in full:

> "The defendant was not intent upon violence when he went to the property. He did not attend there with a weapon and never went inside. Ramshaw reacted by producing a bat, when confronted about the issue of whether he had stolen the defendant's cannabis and that was the catalyst for the violence. The defendant admits repeatedly punching him and manhandling him, whilst lawfully defending himself, but his actions became unlawful when Ramshaw dropped the weapon. Thereafter the defendant admits striking him twice, with the requisite intent, angry at the behaviour that had been shown to him."

11. Although the written basis does not say so, we understand that the case was conducted on the basis that Mr Williamson was there admitting two unlawful blows with the baseball bat at the end of the incident.

12. The prosecution did not accept that basis of plea which is, of course, very far removed from Mr Ramshaw's account. In discussions, the judge before whom the trial had been listed, indicated that he did not think it necessary for there to be a Newton hearing or trial of the issue. The judge who later had conduct of the proceedings interpreted that as the trial judge having taken the view that even if the factual issues were resolved in favour of the prosecution, it would not make a material difference to sentence because the categorisation of the offence under the Sentencing Guidelines would be the same.

13. There had been a change of judge because it was discovered that the judge before whom the case had been listed for trial in fact knew someone connected to Williamson. So it was that the matter came before a different judge for sentencing on 22 November. That judge, understandably, did not feel able to go behind the earlier decision that no Newton hearing was necessary and on the basis which we have indicated also took the view that the categorisation of the offence would be the same on either version of events.

14. There was before the court on 22 November a thorough pre-sentence report. The author of the report indicated that Mr Williamson had given him an account of the incident to the effect that he had "flipped" when Mr Ramshaw came at him with a bat. Mr Williamson had told the probation officer that he could not remember striking Mr Ramshaw with any weapon but he accepted repeated punching with a closed fist. He also said that at one point he had pinned Mr Ramshaw down by kneeling on his stomach, which he suggested may have been the cause of the ruptured spleen. Mr Williamson told the probation officer that he recognised, with the benefit of hindsight, that he had overreacted to his belief or suspicion that Mr Ramshaw had stolen his cannabis crop. He took responsibility for his actions but also attributed some of the blame to Mr Ramshaw. Mr Williamson also spoke to the probation officer about the death of his wife some 2 years before the commission of the offence. The author of the report felt it possible to treat this offence as an aberration, possibly influenced by Mr Williamson's grief at the loss of his wife. He recorded that Mr Williamson is now in a new relationship. We understand that his girlfriend is pregnant with their child.

15. Also before the court were a number of character references in which persons who knew Mr Williamson well, including a retired police officer, spoke highly of him. Mr Williamson himself had written a letter to the court in which he expressed his genuine regret and absolute remorse for his actions. He said in his letter that at the time of the incident he was still struggling massively with the loss of his wife which had given him, as he put it, "a never back down approach to life". He said that at the time he had been walking around with a lot of anger and rage built-up inside him, though he had subsequently come to terms with all that had happened in his life. He said that the passage of time since the incident had taught him to walk away and, if faced with a similar situation again, he would. He repeated his remorse for what he had done. He described that in the time since his arrest he had, as a result of the arrest, lost both his home and employment but had subsequently started his own business by which he was earning enough to care for himself and his children.

16. The prosecution submitted, and the judge accepted, that under the Sentencing Council's Definitive Guideline this case fell within category 1. The judge, as we have noted,

indicated that he understood the previous judge to have decided that a Newton hearing was unnecessary, precisely because it was a category 1 offence even on Mr Williamson's account. For such an offence the guideline indicates a starting point of 12 years' custody and a range from 9 to 16.

17. In mitigation Mr Marklew, then as now appearing on behalf of Mr Williamson, emphasised that the court must proceed on the basis put forward by Mr Williamson. He argued for the offence to be treated as a category 2 offence. He invited the court's attention to the absence of any premeditation, the fact that Mr Williamson had not gone to the property either armed or intent upon violence and that the assault had occurred in the heat of the moment after Mr Williamson himself had been attacked. Mr Marklew also drew attention to the fact that only two unlawful blows were struck, for which Mr Williamson had shown real remorse. He said that the nature of the injuries was not such that it would have been immediately obvious to Mr Williamson that the life of his victim was threatened. On that footing Mr Marklew argued that the fact that Mr Williamson broke off the attack indicated that in general he was not a violent or hot headed person. Mr Marklew referred to the testimonials and to Mr Williamson's own letter and spoke of the difficulty Mr Williamson had had in explaining to his children that having already lost their mother, they would now probably be without him for a time. Mr Marklew further noted that the pre-sentence report was in the favourable terms to which we have referred.

18. In his sentencing remarks the judge referred to Mr Williamson's limited previous convictions, his record of hard work and the loss of his wife. The judge referred to Mr Ramshaw's injuries as having been "life threatening". He said that on the written basis of plea, which he felt bound to accept, the appropriate sentence, after a trial, would have been at the bottom of the category range having regard to the circumstances of the offence. He went on however to note that the guidelines permit a judge to move outside a category range in some cases after considering all aggravating and mitigating factors.

19. In the present case the judge identified three features which he viewed as exceptional circumstances which caused him to move down from category 1 to category 2. Those three features were first, Mr Williamson's positive good character, as shown by the testimonials, coupled with the context of bereavement which may be connected to Mr Williamson's loss of control at the time of the offence. In this regard, the judge noted the probation officer's view that the offence could be viewed as an aberration. The second feature to which the judge pointed was the genuine remorse of Mr Williamson coupled with clear evidence of a change of behaviour on his part, including cessation from drug use. Thirdly, the judge noted the position of the children who, having lost their mother would now, through their father's actions, also be deprived of his company for a time.

20. The judge had indicated that he was prepared to allow 25% credit for the plea. He said that for the reasons he had indicated:

> "... I take the view that the true appropriate sentence after trial would have been one of six years' imprisonment, which is the starting point for

> category 2. I cannot, in all conscience, go any lower than that. That would be an insult to Mr Ramshaw, who has, as I have said, suffered and will continue to suffer for the rest of his life from the consequences of your evening of madness.
>
> Giving you 25 per cent credit, … the sentence in your case will be one of four years' imprisonment."

21. We note that arithmetically a reduction of 25% from the 6 year sentence which the judge had indicated as appropriate after trial would result in a sentence of 4 years 6 months. It seemed therefore that in his sentencing remarks just quoted the judge had fallen into a simple arithmetical error. We are however now informed that after the hearing the judge posted a comment on the Digital Case System in which he indicated that the factors of mitigation which he had mentioned had brought the sentence down to 5 years 4 months' imprisonment not 6 years, so that the credit for the guilty plea resulted in the final sentence of 4 years' custody.

22. On behalf of the Attorney General, Mr Jarvis submits that that sentence was unduly lenient. The case was in category 1 because it involved greater harm due to the severity of the life threatening injuries and higher culpability because of the use of the weapon. In his written submissions Mr Jarvis suggested a further ground on which the case could be regarded as one of greater harm, but correctly did not pursue that in his oral submissions. Because it was a category 1 offence Mr Jarvis submits that the starting point was 12 years, but it was incumbent upon the judge then to move upwards from that starting point to reflect the significant aggravating features that this was an attack upon the victim in his own home, and that it had resulted in long-term physical and emotional harm, though Mr Jarvis rightly noted that care must be taken to avoid double counting that aspect of the injuries which had already placed the case into category 1. It was a further aggravating feature that the violence arose out of Mr Williamson's criminal conduct in cultivating cannabis. Those factors, submits Mr Jarvis, required an upward movement above the guideline starting point. There was then undoubtedly significant mitigation and Mr Jarvis properly recognised that that was so. But, he said, that mitigation was not such as could justify the very substantial reduction which the judge made.

23. On behalf of Mr Williamson, Mr Marklew repeats his submissions in terms of the factors which he relied upon below. Recognising that the judge had placed the case into category 1, he nonetheless submits there was much about it which could fairly be regarded as closer to a category 2 offence. He emphasised the very sad and difficult position of the children, the pregnancy of Mr Williamson's current partner and the exemplary behaviour in prison which is noted in a report prepared for the assistance of this court.

24. Reflecting upon those submissions, we begin by observing that in the absence of any Newton hearing the sentencing judge had to sentence on the factual basis contained in the written basis of plea. We do not know the precise considerations which prompted the trial judge to conclude that no Newton hearing was necessary and we therefore do not criticise that decision. But we feel bound to observe that it was, on the face of it, a

surprising decision: even if the case would inevitably fall into category 1 on either version of events, there was a stark difference between an attack by men who had gone to the house armed with weapons, and an attack in which Mr Williamson had initially done no more than defend himself and had only struck two blows with a weapon which Mr Ramshaw had initially used against him. On the face of it, as we say, that stark difference could be expected to make a difference as to where in the category 1 sentencing range the appropriate sentence would lie. We well understand why Mr Ramshaw has made clear his dissatisfaction with that state of affairs and with the course taken by the sentencing process. However, we emphasise that we must and do consider this application on the basis that the facts were as Mr Williamson asserted. It is for that reason, for example, that the written submission that this was a sustained or repeated assault could not be a proper point, since only two unlawful blows are admitted.

25. We accept the submission of Mr Jarvis that there were the aggravating features which he has mentioned and that those necessitated an initial movement upwards from the guideline starting point. With every respect to the sentencing judge, he said nothing to indicate that he had given appropriate weight to the fact that the origins of this incident lay in Mr Williamson's discovery that someone had stolen the product of his criminal activity.

26. We accept that there were a number of features of mitigation relating both to the circumstances of the offence and to matters of personal mitigation. In particular, Mr Williamson has no relevant or recent previous convictions, he had displayed genuine remorse and made genuine efforts to alter his behaviour. He could be regarded as a man of substantial good character who had worked hard to provide for his family. It would be fair to regard this as an isolated incident and it was an important matter for the court's consideration that Mr Williamson was the sole or primary carer for two young children who have already suffered greatly in their young lives. In addition to those matters there were the three particular features of the case to which the judge drew especial attention in his sentencing remarks.

We readily accept that viewing those matters of mitigation collectively, they are weighty and necessitated a significant reduction from the provisional sentence reached by taking the guideline starting point and considering the aggravating features. But with all respect to the judge, we cannot agree that those mitigating features justified an initial reduction to the very bottom end of the category 1 range and then a further reduction, by reference to the three "exceptional circumstances" to a sentence, after trial, of 5 years 4 months. Sympathy for Mr Williamson's very difficult situation following the death of his wife has to be set in the context of the seriousness of the offending and the harm caused. Shortly put, a sentence which started at 12 years before taking into account the undoubted aggravating features has, in the result, come down as a result of the mitigating features to a sentence after trial of 5 years 4 months. Such a very substantial reduction cannot, in our view, be justified by the mitigation and fell outside the range properly open to the sentencing judge. Making every possible allowance in Mr Williamson's favour, we cannot, in the circumstances of this case, see that the sentence on his own basis of plea could properly have been less than 9 years' imprisonment after trial.

For those reasons we conclude that this sentence was unduly lenient. We are acutely conscious of the ongoing consequences for Mr Williamson's children of his sentence being increased and we have considered anxiously whether we can properly exercise our discretion not to order an increase in the sentence. We are however satisfied that we must increase the sentence. Emphasising yet again that we approach the case on the basis of Mr Williamson's plea, this was nonetheless a serious offence and the sentence imposed below does not amount to just and proportionate punishment in all the circumstances.

For those reasons, we grant Her Majesty's Attorney General leave to refer, and we quash the sentence imposed below. Giving the appropriate credit for the guilty plea, we substitute a sentence of 6 years 9 months' imprisonment.

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

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