

Regina v Myron Newsome

[2019] EWCA Crim 639

Before: Lord Justice Bean Mrs Justice Cheema-Grubb DBE and His Honour Judge
Aubrey QC (Sitting as a Judge of the Court of Appeal Criminal Division)

Wednesday 6th March 2019

Representation

Mr R P Donoghue appeared on behalf of the Appellant.

Judgment

Wednesday 6th March 2019 Lord Justice Bean:

I shall ask His Honour Judge Aubrey QC to give the judgment of the court.

His Honour Judge Aubrey QC:

1 The appellant is now 29 years of age. He appeals against sentence by leave of the single judge.

2 On 18th April 2018, having pleaded guilty before the magistrates' court, the appellant was committed for sentence, pursuant to section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 in respect of two offences of assault by beating and one offence of breach of a restraining order.

3 On 9th May 2018, in the Crown Court at Leeds, the appellant was sentenced as follows: for assault by beating, three months' imprisonment; for a further assault by beating, three months' imprisonment consecutive; and for breach of the restraining order, seven months' imprisonment consecutive. The total sentence was, thus, one of thirteen months' imprisonment. The court record states that for all the offences the appellant was committed to the Crown Court pursuant to section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 , which would limit the Crown Court powers of sentences to those of the magistrates' court. The court will return to that issue later in this judgment

4 By reason of the commission of the offences, the appellant was in breach of a suspended sentence imposed on 12th September 2017. That sentence was a total of nineteen months' imprisonment suspended for eighteen months, with a rehabilitation activity programme and an unpaid work requirement of 150 hours. The offences for which the appellant received that sentence were as follows:

assault occasioning actual bodily harm, seven months' imprisonment; possession of an offensive weapon, five months' imprisonment; and possession of a controlled drug of Class B, seven days' imprisonment. All of those sentences were ordered to run concurrently with each other, but consecutively to a sentence of twelve months' imprisonment imposed for an offence of dangerous driving. For an offence of failing to stop a vehicle on being required to do so, no separate penalty was imposed. The appellant was disqualified from driving for two years and ordered to take an extended re-test.

5 On 9th May 2018, the learned judge ordered the activation of the sentence of nineteen months' imprisonment and ordered the same to run consecutively to the sentence of thirteen months' imprisonment.

6 The appellant was also in breach of a community order with an unpaid work requirement of 75 hours imposed in the Crown Court at Leeds on 2nd February 2018. The community order was revoked on 9th May 2018 and for two offences of criminal damage, two offences of assault by bearing and possession of a controlled drug of Class B, the appellant was sentenced to three months' imprisonment, which was ordered to run consecutively to the sentences above. The total sentence was, thus, one of 35 months' imprisonment.

7 The brief facts are these. The appellant was in a relationship with Mica Sykes for around twelve months. They had a child together and Ms Sykes also had a child from another relationship. The appellant had a number of convictions against Ms Sykes and there was a restraining order in place, following an assault upon her which prevented any contact with her. In December 2016 the terms of the order were made more onerous following the reporting of numerous matters. Those terms were: not to contact Ms Sykes in any way whatsoever, not to be violent towards her, or to attend her home address.

8 On 21st February 2018, the appellant went to the home address of Ms Sykes in Huddersfield and knocked on the front door. Ms Sykes opened the door, thinking it was her sister. She was immediately punched in the face by the appellant, causing her to be dazed. The appellant shouted at her, accusing her of having another relationship. He made his way into the house. As he did so, Ms Sykes ran outside into a neighbour's house for help. The appellant chased after her and cornered her in the neighbour's garden. He started to hit her on her face and head. Having seen what was happening through a bedroom window, the neighbour, Mr Core, went outside and told the appellant to calm down and to leave Ms Sykes alone. The appellant then turned on Mr Core. There was a scuffle between the two men which resulted in the appellant punching Mr Core to the face. There was some further violence issued by the appellant towards Ms Sykes in the form of punching her in the head and face. The appellant then left, saying "Watch me take your kids". Ms Sykes was left with a cut to her nose and cheek area. Mr Core had reddening and bruising to his face and forehead.

9 When arrested, the appellant denied the offences. In interview, he exercised

his right of silence.

10 There was a Victim Personal Statement before the court which spoke of the victim's depression and fear, and of having to look over shoulder when she went out.

11 Those offences for which the appellant fell to be sentenced placed him in breach of the suspended sentence which had been imposed on 12th September 2017. The brief facts of those were that on 20th February 2016 the appellant was alerted to a group of 13 to 14 year old children knocking on doors in his locality and in one case throwing a pebble at his window. The appellant and another male gave chase to the children. The appellant was armed with a piece of wood. It was a chair or table leg. He grabbed one of the girls, held her by the throat and he hit her with the wood to her elbow and stomach area. He demanded that she inform him of the names and addresses of the others involved. One of the children who got away alerted his mother who confronted the appellant and informed the police. A small amount of cannabis was seized from the appellant upon his arrest a couple of hours later.

12 Whilst on bail, on the afternoon of 3rd April 2017, the appellant refused to stop his motor vehicle for the police. There followed a lengthy chase in which the appellant drove on the wrong side of the road, contravened road signs and red traffic lights and drove at excessive speeds in a residential area. He then collided with other vehicles and caused some damage to a police vehicle.

13 The final set of offences related to that which occurred on 9th June 2017, for which the appellant was sentenced to a community order on 2nd February 2018 – some eighteen days before the offences committed upon Ms Sykes. Those offences were, thus, committed during the currency of that community order. The facts are that on 9th June 2017 the appellant had gone looking again for Ms Sykes in a street in Huddersfield. He repeatedly knocked on various doors and shouted "Where's Mica?" "Tell me now, or I'll knock you out". He pushed the male occupant of one of the houses out of the way and knocked him into a wall. The male was holding his 2 year old son. Having realised that Ms Sykes was not there, the appellant went to another neighbouring house and kicked at the front door while shouting "Mica" repeatedly. The lady occupant of that house opened the door and the appellant pushed it on to her. She was able to push him out, but he picked up a child's scooter and skateboard from the garden and smashed the living room windows with them, causing damage of some £900.

14 The appellant was arrested. He was found to be in possession of a small amount of cannabis. He caused some criminal damage to a police cell when he was in custody, by throwing his food against the wall.

15 The appellant was aged 28 at the date of sentence. He had fourteen previous convictions and in particular had previous convictions for offences of battery in 2013, 2014, 2016 and 2017. He also had previous convictions for offences of

harassment and the possession of an offensive weapon. On 21st March 2018, he received a total sentence of eighteen weeks' imprisonment for criminal damage and breach of a restraining order. Those offences were committed on 2nd April 2017 and 30th March 2017. It is to be noted that those offences did not place the appellant in breach of the suspended sentence imposed on 12th September 2017, because the sentence of eighteen weeks' imprisonment was, of course, served after the imposition of the suspended sentence.

16 There was a pre-sentence report before the court which, in fact, had been prepared in respect of earlier proceedings. It assessed the appellant as being at medium risk of general re-offending, a high risk of harm to the public and a medium risk of harm to past and future intimate partners. A breach report confirmed that the appellant had completed 85 hours of his 150 hours unpaid work requirement, leaving 65 hours outstanding.

17 In passing sentence the learned judge observed that the appellant had a significant record, including particularly over the last three years a number of convictions in connection with his relationship with Ms Sykes. He was in breach of the suspended sentence order that had been imposed on 12th September 2017. The judge stated that the law said that, unless it would be unjust so to do, the court had to activate that sentence. The appellant had also committed further offences on 21st February 2018, very shortly after the imposition of a community order, when he was given a further chance on 2nd February 2018. The judge stated that there was no realistic possibility of avoiding sending the appellant to serve that sentence of nineteen months' imprisonment and so it was activated in full.

18 The judge said that the appellant had also pleaded guilty before the magistrates to the two section 39 assaults and breach of the restraining order. Those were serious matters, he stated. Having regard to the guilty pleas, the sentences on the section 39 assaults were three months on each, but they were separate assaults and the sentences were ordered to run consecutively.

19 The breach of the restraining order, the judge stated, was a category 1 offence, because, according to the Victim Personal Statement, significant psychological harm had been caused. The culpability level was B, as there were neither A nor C categories present. With credit for the guilty plea, that was reduced to a sentence of seven months' imprisonment, which was ordered to run consecutively to the sentences of six months' and nineteen months' imprisonment.

20 The community order imposed on 2nd February 2018 was revoked and the appellant was re-sentenced to three months' imprisonment, which was ordered to run consecutively. Thus, the total sentence was one of 35 months' imprisonment.

21 Written and focused oral submissions have been advanced on the appellant's

behalf by Mr Donoghue. It is submitted that the sentence was manifestly excessive as insufficient regard was paid to: first, the 85 hours of unpaid work already completed by the appellant under the suspended sentence order when deciding to activate the suspended term of imprisonment in full; and secondly, the issue of totality.

22 We have been reminded of a number of authorities in respect of the submissions made as to the activation in full of the suspended sentence of nineteen months' imprisonment. It is established on those authorities that, normally, when activating a suspended sentence, it will be appropriate to reduce the custodial term to reflect compliance with an associated requirement of the suspended sentence order, in particular an unpaid work requirement. The governing provisions are to be found in Schedule 12 to the Criminal Justice Act 2003 . Paragraph 8(2) provides that where the offender is convicted of a further offence during the operational period, the court must make an order that the suspended sentence is to take effect, with or without a reduction in the custodial period, unless it would be unjust to do so in all the circumstances, including the extent to which the offender has complied with the community requirements of the suspended sentence and including the facts of the subsequent offence.

23 We have also reminded ourselves of the guideline then in force at the time of sentencing and the principle that when deciding whether to activate the full sentence or activate a reduced part of it, the extent to which the requirements have been complied with will be very relevant to this decision. Each case is, of course, fact specific and matters such as these are now governed by the definitive guideline issued by the Sentencing Council which was not in force at the time of these offences and the date of sentence in respect of breach offences which apply to all offenders aged over 18 who are to be sentenced on or after 1st October 2018. Those guidelines require the court to assess and consider the level of compliance or otherwise and relate the same to activation of the suspended sentence in full or at a reduced level

24 We are persuaded that the learned judge should have made some reduction in the custodial term upon activation of the suspended sentence to reflect the fact that over half of the hours had been completed. He was right, however, in our judgment, to take the view that it was an aggravating feature that there had been repeated breaches of court orders.

25 There remains the sentence of seven months' imprisonment that was imposed for the breach of the restraining order. That offence was committed to the Crown Court pursuant to section 6 of the 2000 Act, and thus the Crown Court's powers were restricted to those of the magistrates' court.

26 Further submissions are made in respect of the imposition of consecutive sentences for the offences that had been committed to the Crown Court for sentence, but also in respect of the breach of the suspended sentence and also

the breach of the community order.

27 The Definitive Guideline on Offences taken into Consideration and Totality issued by the Sentencing Council states that a sentencing court should pass a total sentence which reflects all the offending behaviour but which also ensures that the overall is just and proportionate in all the circumstances. Further guidance is given as to the imposition of concurrent and consecutive sentences.

28 The appellant frequently breached court orders. He had a bad record and he had committed a number of offences upon Ms Sykes. All those factors were relevant and indeed aggravating factors. Each case is fact specific. The ultimate issue for this court is whether the total sentence was manifestly excessive.

29 Looking at the matter in the round, we are persuaded that it is. We think that the proper outcome would have been a reduction of the custodial period of the suspended sentence order from nineteen months to twelve months. We also reduce the sentence for the breach of the restraining order from seven months' imprisonment to four months' imprisonment.

30 We therefore quash the sentence imposed by the learned judge in respect of the breach of the restraining order and we substitute for it a sentence of four months' imprisonment.

31 In respect of the activation of the suspended sentence of nineteen months' imprisonment, we activate twelve months. We do so by making all the sentences concurrent with each other but consecutive to the other sentences. The total sentence, thus, is one of 25 months' imprisonment.

32 Accordingly, and to the extent we have indicated, the appeal against sentence is allowed.