Regina
v
Aaron Lee Clare

Court of Appeal Criminal Division

[2019] EWCA Crim 973

Before: Lady Justice Rafferty DBE Mrs Justice McGowan DBE Recorder of Cardiff (Her Honour Judge Eleri Rees)

Tuesday, 14 May 2019

Representation

Mr G Holme appeared on behalf of the Appellant.

Judgment

Recorder of Cardiff:

1. On 21 January 2019, in the Crown Court at Reading, the appellant pleaded guilty to inflicting grievous bodily harm, contrary to section 20 of the Offences Against the Person Act 1861 and he was sentenced to a term of 3 years and 7 months' imprisonment. The prosecution offered no evidence on count 1, an offence of inflicting grievous bodily with in intent (section 18).

2. He appeals against sentence by leave of the single judge.

3. At around midnight, on 5 August 2018, the appellant entered the Honeypot Gentlemen's Club in Maidenhead, Berkshire. The victim, Vasile Morit, said that during the following hours the appellant looked towards him in an intimidating way although there was no other interaction between them.

4. At approximately 3.30 am Vasile Morit left the club alone in order to have a cigarette, then attempted to re-enter the club at the same time as the appellant was leaving the club. The appellant blocked his path and Vasile Morit placed his hand on the appellant's shoulder in order to move past him. The appellant then pushed Vasile Morit backwards into the road and punched him once to the face.

5. Mr Morit immediately collapsed to the ground. He subsequently got to his feet and telephoned the police to report the offence. He then saw the appellant walking away from the scene and shouted for him to stop, but the appellant ran away at speed.

6. The appellant was originally identified by the CCTV and was eventually arrested at his home.

7. The appellant was interviewed by the police on 21 August 2018 and made no comment towards questions asked.

8. The appellant, at 30 years of age, had 20 convictions for 32 offences including two offences against the person and three public order offences. At the time of committing this offence he was subject to a community order.

9. The judge indicated that the appellant would receive only limited credit for the plea entered on day of trial. The judge described this as an unprovoked attack which had left the victim fractures to the nose and both orbital sockets. She had read the victim impact statements and seen photographs of the injuries. As a result of the attack the victim had been left with a deep laceration to the nose, broken nose, fractured sinuses and eye socket fractures. He had attended numerous hospital appointments at Maxillofacial and Ophthalmology Units and was awaiting further surgery. He was unable to smell or taste and suffered continuing pain.

10. Having regard to the Sentencing Guidelines, the judge found that the injuries were serious in the context of the offence. She said the appellant was a powerfully built man and because of the appellant's previous offending he must have appreciated his own strength. Even if there were no particular factors which placed the offending in the high culpability range, there were other factors that increased the seriousness, namely the appellant's previous convictions, the time and location of the offence, the ongoing effect on the victim and the fact that the appellant had been under the influence of alcohol when he committed the offence. Finally, the appellant had been subject to a community order for assaulting the police officer at the time of this offence.

11. In mitigation, the appellant was a father of three young children. In 2017 the appellant himself had been the victim of an attack which had left him in a coma and for which there were potential ongoing problems for him. He should therefore know only too well the effects of such violence. The judge noted that there had been a period of 3 years when the appellant had remained out of trouble, there were no issues in relation to drugs, the appellant's problems controlling himself and his temper when he was in drink.

12. The judge concluded, having regard to everything she had heard, this was a category 1 case which has a starting point of 3 years and a range of 2 years and 6 months to 4 years' imprisonment. She decided that the appropriate sentence after trial would be one of 4 years' imprisonment. A reduction of 10% was applied to reflect the appellant's guilty plea on day of trial, the sentence therefore was one of 3 years 7 months' imprisonment. The judge revoked the community order that was in place but imposed no other penalty in its place.

13. The grounds of appeal are that the judge erred in placing this within category 1 of the Definitive Guideline and in adopting the top of the range, that is 4 years thereby arriving at a sentence which was manifestly excessive. It is submitted that this offence should have been placed within category 3, which provides a starting point of 18 months with a range of 1 to 3 years. It is also submitted that although serious, those injuries were not serious in the context of an offence of inflicting grievous bodily harm.

14. We disagree. The fractures to the nose, sinuses and eye sockets were potentially life changing. They had deprived the victim of a sense of smell and taste and involved a significant number of medical appointments,

intervention and the prospect of further surgery. It was far from clear that he will ever recover fully.

15. The judge acknowledged that there was an absence of those factors which would indicate higher culpability. Although the judge described the appellant as powerfully built, she did not approach the punch with the use of a weapon. The guideline includes the fact there was a single blow as one of the factors indicating lower culpability.

16. There were a number of aggravating factors including the appellant's previous convictions for violence. This was unprovoked and alcohol fuelled violence outside a nightclub in the early hours of the morning.

17. The overlap between the ranges of sentence for category 1 and 2 reflects the fact that individual circumstances of a particular case may not fall neatly within one or the other. For our part, we conclude that this was a category 2 case, but the aggravating factors justify the sentencing at the top of that range. Alternatively, if the combination of aggravating factors justified placing it in category 1 there would be double counting if those factors were allowed on to move it to the top of that range.

18. We therefore conclude that the starting point should have been one of 3 years and allowing 10% credit for the late plea reduce that to a term of 32 months' imprisonment. We therefore allow the appeal by substituting a term of 2 years and 8 months for that of 3 years and 7 months.