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No: 201901077 C4

**IN THE COURTS MARTIAL APPEAL COURT**

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 8 May 2019

**B e f o r e:**

**LADY JUSTICE HALLETT DBE**

**(VICE PRESIDENT OF THE CACD)**

**MRS JUSTICE SIMLER**

**MR JUSTICE ANDREW BAKER**

**R E G I N A**

**v**

**PELEKI SADOLE**

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**Mr J Wright** appeared on behalf of the **Appellant**

**Mr D Edwards** appeared on behalf of the **Service Prosecuting Authority**

## **J U D G M E N T**

(Draft for approval)

### 1. THE VICE PRESIDENT:

#### Background

2. The appellant pleaded guilty to two charges of battery and one charge of assault occasioning actual bodily harm to a fellow trainee in the Navy. He was sentenced at his Court Martial to a total of 6 months' service detention, comprising 2 months' detention on charge 1; 1 month's detention on charge 2; and 3 months' detention on charge 3, ordered to run consecutively, coupled with a compensation order of £3,000 to the complainant.

#### The facts

3. The first battery occurred on the afternoon of 29 September 2018. The appellant; the complainant, Engineering Technician Daryl Craig; and others had all been drinking in the mess. The appellant asked the complainant to change the song to which he was listening, Mr Craig refused, whereupon the appellant grabbed his face with one hand and with his other hand put his fingers over Mr Craig's eyes and scraped downwards, causing a minor scratch. He then spat on Mr Craig. The incident was not reported because the appellant apologised to the complainant.

4. However, on 11 October 2018, in the early hours of the morning, the appellant and the complainant had again been drinking with others. Mr Craig asked two colleagues to be quiet because people were trying to sleep. The appellant walked up to him and punched him in the face, causing a bloody nose. Again, he apologised and again Mr Craig did not report the offence.

5. On 18 October 2018, in the early hours of the morning, the parties had been drinking once more. The complainant was looking for his mobile telephone, the appellant approached him, told him to go back to bed and when the complainant refused, the appellant punched him to the face. Mr Craig suffered a wound which was closed with 12 sutures externally and two internal dissolvable sutures. We have been provided with a colour photograph this morning showing a permanent and obvious, albeit small, scar above the upper lip.

6. Mr Craig has provided a statement detailing the effect the offences had upon him. His anxiety was exacerbated by the third attack. For a while he felt so low he considered self-harming. The injury to his mouth did not heal immediately because of an infection. He has had to repeat part of his training course because of time spent receiving medical attention. He was also concerned on the impact of his reporting the offences on other members of the course, some of whom were friends of the appellant.

7. The appellant was aged 33 at the time of sentence. He enlisted in the Navy on 11 February 2018. His service completed to the date of sentence was 1 year and 29 days. He had no decorations or medals by that time, but he had also had no military or civilian convictions or cautions recorded and no formal disciplinary entries made against him.

#### References

8. At the Court Martial, character references were provided to the Board from Warrant Officer Pope, the appellant's Divisional Officer. He recommended the appellant be retained in the Navy and described him as courteous, polite and helpful. Chief Petty Officer Robertson, who succeeded Warrant Officer Pope as the appellant's Divisional Officer, is also of the view that the appellant can be an asset to the Navy and he too recommended the appellant be retained. Warrant Officer Power has received no negative reports upon the appellant and supported his retention. Leading Physical Trainer Fentum, the appellant's rugby manager and coach, described the appellant as hard working and "with an incredible attitude towards working as a team". The appellant never questions decisions, is always respectful and never shows signs of aggression in Mr Fentum's presence. Mr Fentum described him as a credit to the team. Engineering Technician Hayes was the appellant's class leader and he was of the view that these offences were totally out of character. He said the appellant is generally a kind and caring individual, always ready to support and help others and was a valued member of his class.

9. In a pre-sentence report dated 8 March 2019, the author noted the appellant had taken responsibility for his offending and expressed remorse. In the light of the importance of the role of alcohol in the offences, the appellant had attended an alcohol awareness briefing and had stopped drinking. The author considered whether family bereavements, as well as the ill health of the appellant's wife, may have been contributory factors to his increased alcohol use. He was assessed as posing a low risk of reconviction. The author also put forward the possibility, of suspending any period of detention.

#### The grounds of appeal

10. Mr Jeremy Wright, on behalf of the appellant, argued several grounds of appeal. First, he disagreed with the Assistant Judge Advocate General's categorisation of the offence as falling within category 2 of the Definitive Sentencing guideline for assault. Before the Board both the prosecution and defence submitted that the offence fell within category 3 and Mr Wright maintained that was the appropriate category given the level of the injury involved.

11. Second, Mr Wright criticised the Board for rejecting any suggestion of provocation in relation to charges 1 and 2. In so doing, he claimed the Board failed to take into account the evidence of the witness Mr Cavanagh that the complainant could be guilty of a loud and aggressive manner when in drink and that in his view this may have provoked the appellant.. The appellant also suggested in interview that the complainant had made disrespectful comments about his religion.

12. Third, Mr Wright argued that the period of detention was simply too long and, in any event, in the light of the appellant's previous good character and his personal mitigation, should have been suspended. The effect of an immediate period of detention has been to delay his first posting, which was due to take place on 1 April. Furthermore, it has had a financial effect upon him in that during a period of service detention he receives an allowance rather than his salary. The appellant is the sole provider for three dependents: his wife and two children, who live in his homeland of Fiji. From his usual net pay of £1,350 per month, he sends £900 home to pay their rent. If the amount of compensation was correct (which Mr Wright did not accept), the financial effect of the sentence in total is approximately £8,000, which is a large sum of money to someone of his means.

13. Fourth, Mr Wright argued that albeit the appellant committed three offences against the same complainant, they were committed within a short period of time by someone who had never previously resorted to violence. They may be explained by his drinking to excess to overcome his recent bereavements and by some degree of provocation. The appellant was not used to drinking but found himself in a heavy drinking culture. He now appreciates that his drinking became a problem and has taken steps to tackle it.

14. Fifth, Mr Wright informed us that the appellant's success on the training course shows that when he is not in drink he has a great deal to offer. He won the Captain's Prize as the best overall trainee and the Class Prize awarded by his fellow trainees to the most popular on the course. He is generally considered to be a calm and non-aggressive person when sober, even by the complainant. The complainant accepts that the appellant is now genuinely remorseful and states that they remain friends.

15. For all those reasons, Mr Wright invited us to find that the sentence of 6 months was excessive and/or should have been suspended.

### Response

16. On behalf of the Service Prosecuting Authority, Mr Edwards explained that whilst a sentence of detention involves a loss of liberty, it is very different from a period of imprisonment, particularly where, as here, the appellant will be retained in the service. The appellant has been detained in A Company at the Military Corrective Training Centre. The centre trains detainees to improve their efficiency, discipline and morale, so that on their release and return to service they become effective servicemen and women.

17. Mr Edwards rejected the assertion that the Board wrongly rejected any element of provocation. The evidence

of provocation was weak. There was none in relation to the third charge and the only suggestion came from the statement of Mr Cavanagh. He claimed that on the second occasion, he had a heated debate with the complainant which became loud and the complainant told Mr Cavanagh to shut up. This was followed by the appellant punching Craig to the face. Both the complainant and another witness, Mr ET (ME) Gannon, described this assault as being unprovoked and no basis of plea was ever tendered to suggest otherwise.

## Conclusions

18. The sentence was not excessive or wrong in principle. The total sentence imposed of 6 months' service detention was for three offences: two of battery and one of assault occasioning actual bodily harm on the same complainant. The Definitive Guideline provides the starting point and range of sentences for but one offence. We reject the suggestion that the Board should have followed the submissions of the parties on categorisation. The Board's categorisation of the offences was correct. In which case, the starting point for a category 2 assault occasioning actual bodily harm standing alone is 6 months. The offences of battery were then rightly met with consecutive sentences, albeit the Board has reduced the ultimate sentence to reflect the principle of totality.

19. Every time the appellant assaulted Mr Craig he caused an injury, albeit it was only on the last occasion that the injury was permanent. The appellant obviously appreciated on each occasion that he had overreacted because he apologised on each occasion. Yet he continued to drink to excess and to assault the complainant. If there was any provocation, it was trivial.

20. In our view, the offences were all significant in a service context and in the context of people attending a training course. Given the repetition of the offences and the injuries caused, they merited a period of immediate detention.

21. A period of service detention is not the same as a period of imprisonment: it does not carry the same stigma and if the serviceman or woman is to be retained in the service, as this appellant is, it means that they will receive training to assist them in their future career. The regime at an MCTC is akin to general military training and not to a term of imprisonment. Furthermore, if he serves at most 4 months, he will not be liable to serve the remaining 2 months on licence and he will not be subject to recall.

22. The ultimate issue for us is whether the overall sentence of 6 months' service detention combined with the compensation order was excessive.

23. In our judgment, it was not. We accept that it is most unfortunate that the appellant has started a promising career in the Navy in this fashion and that the consequences for him have been significant. But they could have been far worse had the Navy and the Court Martial Board not borne in mind his powerful mitigation.

24. For all those reasons, we must dismiss the appeal, but we express the hope that those who have supported the appellant are correct and he does eventually prove to be an asset to the Navy.

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Lower Ground, 18- 22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk

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