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No: 201804000/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 28 February 2019

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE KING

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

R E G I N A
v
JACK MAPSTONE

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Mr J Atkinson appeared on behalf of the **Applicant**

J U D G M E N T
(As Approved by the Court)

1. LORD JUSTICE DAVIS: On 17 July 2018, at the Crown Court at Lewes, the applicant pleaded guilty on the day of trial to a count of causing grievous bodily harm with intent. He was sentenced to an extended sentence of twelve-and-a-half years, comprising 7 years and 6 months by way of custodial element and 5 years by way of extended licence. In addition, a restraining order was made. The judge directed that no separate penalty be entered on an alternative count of causing grievous bodily harm which was count 3.

2. The challenge in the present case is not to the custodial sentence but to the imposition of an extended sentence.

3. Very briefly put, the applicant had, on his 21st birthday (31 January 2018), been drinking alcohol and taking illicit drugs. He was at that time in a relationship with a young woman called Louise Smith. He was at her premises. Her young son was also present, although fortunately the young son was asleep through all the events that ensued.

4. On that particular occasion the applicant became very angry, primarily it seems through jealousy, and then attacked Ms Smith. He tried to strangle her and told her he was going to kill her. He kept on hitting her. During the course of the assault he punched her, kneed her and kicked her and at one stage used a mobile phone as a kind of weapon in order to hit her. At one stage he dragged her to the mirror and said words to the effect: "This is what you made me do to your face". He carried on with the assault until eventually he desisted and telephoned his mother and an ambulance was called.

5. The photographs taken at the time showed the appalling nature of the injuries on Ms Smith. In the result, she had fractures to both eye sockets, a fracture to the nose and

there were lacerations and extensive bruising. There were also, it seems, problems thereafter with double vision.

6. The judge had a psychiatric report which alluded to the depressive history of this applicant and also had a very detailed pre-sentence report which indicated a finding of dangerousness and a recommendation of an extended sentence. The judge in terms accepted the reasoning and conclusion of the probation officer set out in the pre-sentence report.

7. What is now said on behalf of the applicant is that the judge was wrong to impose an extended sentence. It is said that he was not justified in drawing a conclusion of dangerousness and at all events, if he was, he should have exercised his discretion and imposed only a determinate term. Points raised are, amongst other things, that the applicant had no previous convictions, that he was relatively young at the time and that he had the capacity to mature and change his ways. Further, he had shown real remorse and all the indications are that he has taken steps to address the underlying causes of his offending.

8. As the pre-sentence report itself had noted, the offending, "at first sight appears somewhat spontaneous". But the pre-sentence report goes on to give a number of reasons why what might appear to be the position on first examination was not so on more detailed analysis. The pre-sentence report went into the background history of the applicant, which we need not set out here, and forms a conclusion of there being a high risk of serious harm, in particular to future partners of the applicant. Of course, the judge was not bound to follow the recommendations and reasonings of the pre-sentence report. In this case the judge chose to accept them. We can see no basis for saying that

the judge was not entitled to accept the reasoning and conclusions of the probation officer. It was well within the proper range of reasonable evaluation to do so.

9. As to the alternative suggestion that even if the finding of dangerousness was justified the judge should have refrained from imposing an extended sentence, that was a matter for the discretion of the judge. Indeed, his acceptance of what the probation officer said gave every justification from him then proceeding to pose an extended sentence. In the circumstances, we must refuse this renewed application.

10. However, there is one technical point with regard to the sentence which does need correction and for which limited purpose we grant leave to appeal. The judge imposed no separate penalty on the alternative count of inflicting grievous bodily harm. In view of the plea of guilt to the section 18 offence, that particular count, in effect, fell away. It strictly should not have attracted an indication of no separate penalty and the appropriate direction to be substituted is that that count can be left to lie on the file.

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