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No. 2019/00534/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 23rd May 2019

B e f o r e:

MRS JUSTICE SIMLER DBE

and

THE RECORDER OF NOTTINGHAM
(His Honour Judge Dickinson QC)
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

MICHAEL MORRIS WOOD

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Mr Andrew Stephens appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Thursday 23rd May 2019

MRS JUSTICE SIMLER:

Introduction

1. On 29 January 2019, following a trial in the Crown Court at Lewes before Mr Recorder Van Der Zwart and a jury, the appellant, who is now aged 29, was convicted of one offence of attempting to cause grievous bodily harm with intent. He was sentenced to nine years' imprisonment.

2. The appellant appeals against sentence by leave of the single judge on the ground that the sentence imposed was manifestly excessive because the starting point taken for the offence was too high, or it was wrongly categorised as a category 1 offence within the Definitive Guideline for the complete offence, or because the Recorder failed to take sufficient account of the fact that the offence was not the full offence but was an attempt.

The facts

3. The facts may be summarised as follows. The appellant and members of his family, including his mother and her partner, Mr Bolton, and the appellant's nine year old son, spent the afternoon of 28 June 2017 at a pub in Brighton. Alcohol was consumed by the appellant and Mr Bolton in equal measure. During the course of the afternoon the appellant and Mr Bolton had an argument and the mood changed. As a result, the group left the pub. While on the pavement in Springfield Road, an argument between them escalated into a physical confrontation which was witnessed by members of the public. One witness saw the appellant place Mr Bolton into a headlock, before ramming his head into a parked car. The two men fell to the ground. The appellant was seen to kick Mr Bolton repeatedly while he lay on the ground, and a witness was to say that he was unconscious while some of the kicks were delivered. There were at least six kicks and stamps to Mr Bolton's head and upper body. Another witness saw the appellant punch

Mr Bolton to the face a number of times. Witnesses who saw the attack were fearful of the likely effects upon the victim.

4. When police officers arrived at the scene at 7.22pm, Mr Bolton was unconscious. When he regained consciousness, he did not co-operate with the police. He was seen to be bleeding from the mouth, but the full extent of his injuries was never ascertained and there was no evidence about them. He did not give evidence at trial.

5. The appellant was arrested at the scene. He suffered an epileptic fit during his first interview, which had to be terminated in consequence. In his second interview, he said that he was unable to recall the assault.

6. The appellant was aged 28 at the date of sentence, having been born on 5 April 1990. He had three convictions, all dating back to 2011. They included offences of assault on a constable and destroying property. He had no previous experience of custody.

7. The appellant was sentenced without a pre-sentence report. We are quite satisfied, in light of the seriousness of the offence, that a report was then and remains unnecessary.

8. The judge categorised the offence as category 1 within the Definitive Guideline for the complete section 18 offence of causing grievous bodily harm with intent. He did so on the basis that it was a sustained and repeated assault on a vulnerable victim who was either unconscious or unable to defend himself (both features indicating greater harm), and because the attack involved the use of a shod foot (indicating higher culpability). That meant a starting point of twelve years.

9. Aggravating features were the place, the time of day, and the presence of the appellant's young son.

10. In mitigation, the judge accepted that the previous convictions could be disregarded, that the attack was not planned and erupted on the spur of the moment. Furthermore, the judge accepted that the appellant acted out of character, had epilepsy which resulted in fits from time to time, and was the sole carer for his son from whom he would be separated in consequence of a sentence of imprisonment. Further, he made additional allowance for the absence of evidence of really serious harm actually caused, although he observed that the jury by their verdict found that the appellant intended to cause really serious harm. He passed the sentence of nine years' imprisonment to which we have already referred.

The appeal

11. In written submissions, Mr Stephens contends that the elements relied on by the judge as leading to an assessment of greater harm are not made out in this case. Mr Bolton was unconscious for a time, but not necessarily throughout the attack, and the attack itself continued for a few minutes only. It cannot, therefore, be said to have been sustained. More significantly perhaps, he relies on the absence of medical evidence to contend that the harm was less serious in the context of the offence. Furthermore, the appellant was convicted of an offence of attempt, and he submits that insufficient allowance was made of that feature. The result was a starting point that was too high for the offence and a resulting sentence that was manifestly excessive in all the circumstances.

12. We consider there is some force in the points advanced by Mr Stephens on the appellant's behalf. Our reasons follow.

13. There is no guideline for offences of attempting to cause grievous bodily harm with intent.

The usual practice – and one that has been endorsed by this court – is for sentencing judges to consider the guideline relating to the specific offence on the basis that it was complete, and then to apply an appropriate allowance by way of discount for the fact that the offence was an attempt. That was the approach adopted by the judge in this case. In general, attempted offences usually carry a lesser sentence than those imposed for the commission of the full offence (although that is not necessarily and always the case).

14. Here the Recorder presided over the trial and heard all the evidence. He was, therefore, in the best place to assess the harm and culpability involved. There is, as we have indicated, no dispute that higher culpability featured here. We consider the Recorder was also entitled to conclude there was greater harm in the particular vulnerability of the victim, who was unconscious while the appellant delivered at least some of the kicks, and given the sustained nature of the attack. Moreover, there can be little doubt, given the nature of the attack, that serious harm was intended, albeit not ultimately inflicted. Accordingly, the conclusion that the offence fell within category 1 was open to the Recorder and we cannot in those circumstances criticise a starting point of 12 years' custody.

15. An increase above the starting point to reflect the aggravating factors identified by the Recorder is, in our judgment, outweighed by the fact that this was an isolated incident, with violence out of character for the appellant, and the attack erupted on the spur of the moment, without premeditation or planning, as a result of a consensual fight.

16. It was then necessary fully to reflect the fact that this was an attempt and not the completed offence. It is here that we see force in Mr Stephens' submissions. The attempted offence did not result in grievous bodily harm, and we do not consider that this fact was adequately reflected in the sentence passed. While there was bleeding to Mr Bolton's face and a loss of consciousness

for some minutes, he was thereafter on his feet and assisted into an ambulance. Beyond that, the Recorder said that he had no evidence of injuries sustained.

17. There are also, of course, matters of personal mitigation that were properly to be factored into the sentence. Those include: the absence of recent relevant convictions; that the appellant suffered with epilepsy, which would mean a custodial sentence would bear more harshly on him; and, significantly, that he was the principal carer for his young son from whom he would be separated for a significant length of time by any custodial sentence.

18. We consider that in all the circumstances, having first made due allowance for the factors reducing seriousness, then for the fact that this was an attempt in which no serious injury was caused, and finally for the factors of personal mitigation in this case, the least sentence that should have been passed is one of six years' imprisonment.

19. The sentence of nine years' imprisonment is, therefore, quashed and for it is substituted a sentence of six years' imprisonment. To that extent only, this appeal is allowed.
