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No: 201901965/A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 23 August 2019

B e f o r e:

MR JUSTICE JEREMY BAKER

MRS JUSTICE McGOWAN DBE

R E G I N A

v

DANNY BLACKFORD

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Mr W Rose appeared on behalf of the **Appellant**

J U D G M E N T
(Approved Judgment)

MR JUSTICE JEREMY BAKER:

1. On 29 April 2019, Danny Blackford, who is 36 years of age and having been convicted by a jury of offences of blackmail and assault occasioning actual bodily harm, was sentenced to a total of 15 months' imprisonment, comprising 15 months in respect of the blackmail and six months concurrent in respect of the assault.
2. He now appeals against sentence with permission of the single judge.

Circumstances of the offences

3. The offences took place on the morning of 12 July 2018 at the complainant's farm in Churchstanton after the appellant and a friend of his attended the farm where the complainant was working. The appellant shouted over to the complainant that he owed him £30 for having looked after his partner's horse. However the complainant told him that he would not pay him until he had returned the bridle which the horse had been wearing and which belonged to his partner.
4. At this the appellant approached the complainant and knocked a board which the complainant had in his hands causing it to fall to the ground. The appellant repeated that the complainant owed him £30 and used both hands to shove the complainant's shoulders, causing him to stumble backwards. The appellant continued to approach the complainant in an aggressive manner, who tried to escape through a gateway. However the appellant slammed the gate shut to prevent him doing so and said to the complainant: "You're going to pay me that fucking money, else I'll cause you a load of shit on this farm."
5. The appellant continued to shout at the complainant who became so upset that he said that he would pay him the money. The complainant then went to extract the £30 from a bag which was strapped to his waist. However, before he was able to do so, the appellant struck him to the face with his fist, causing the complainant to fall backwards onto the ground, the back of his head impacting with force onto the concrete surface. This caused the appellant to lose consciousness and another individual who was present summoned the emergency services. By the time they arrived, the appellant had taken £30 from the bag and the complainant had regained consciousness. Before being taken to hospital the appellant apologised to the complainant.

6. In subsequent police interviews the appellant claimed that he had struck the complainant because he thought the complainant was intending to remove a knife from his bag.
7. As a result of the assault the complainant's teeth cut through his lips, his dentures were broken and there was bruising to his face and there was a wound to the back of his head. Following his release from hospital, the complainant suffered from concussive headaches for a period of about five weeks and he has been left with an area of numbness on his face and scarring to the back of his head where his hair does not regrow. The complainant has also suffered from psychological injury including depression and anxiety which has led to lack of sleep and an avoidance of locations where he might encounter the appellant.

The appellant

8. The appellant has no previous convictions and there was before the court a significant number of letters from people who knew the appellant and who attested to the positive side of his character, including his commitment to hard work and reliability. There was also a letter from the appellant setting out his family commitments, including the stress he had been under at the time of the offences arising from his wife's serious ill health and his business difficulties.
9. In the pre-sentence report, although it was stated that the appellant's behaviour appeared to be out of character, the author was also of the opinion that "This behaviour is an overreaction triggered by Mr Blackford's perception of being disrespected and he has allowed his pride to lead his reactions. The offending appears to be motivated by a desire to intimidate and control the victim to gain what he claims was owed to him."

Sentencing remarks

10. In the course of his sentencing remarks, the judge stated that:

"At the conclusion of the trial I described you as arrogant and a bully and I consider that that remains an accurate description of your behaviour that day in July of last year."

Grounds of appeal

11. In his grounds of appeal, Mr Rose acknowledges that offences of blackmail normally result in the imposition of a significant period of immediate custody, but submits that the facts of this case are such that given the appellant's lack of previous convictions and the detrimental effect of his incarceration upon his family, the length of the period of custody is too long and ought to have been suspended.

Discussion

12. In our judgment, Mr Rose, to whom we are grateful for his succinct and cogent

submissions, was right to acknowledge that offences of blackmail normally result in the imposition of a significant period of immediate custody. On the other hand, it is of course necessary for any sentencing court to consider carefully the particular facts of the individual offence of blackmail as it can arise in a wide variety of circumstances, some more serious than others.

13. In the present case, we acknowledge that the incident out of which this offence arose was of relatively short duration, the threat involved was nonspecific in nature and related to money which the appellant considered was owed to him by the complainant. On the other hand, the incident also involved not only aggressive behaviour by the appellant, but thereafter the use of a significant degree of physical violence to the complainant.
14. In our judgment, although the judge in the present case chose to reflect the criminality arising out of the entirety of the incident by imposing the longer period of imprisonment on the offence of blackmail, whilst imposing a shorter and concurrent period of imprisonment for the offence of assault, he could equally have imposed a longer period of imprisonment on the offence of assault and a shorter and concurrent period of imprisonment on the offence of blackmail.
15. If this course had been adopted then we consider that under the relevant sentencing guidelines for offences of assault occasioning actual bodily harm this was a Category 1 offence; greater harm being indicated by the injury which was serious in the context of the offence (indeed we observe that it is not unusual for assaults in such circumstances as these to give rise either to life-threatening or fatal injury), whilst higher culpability was indicated by the appellant having deliberately caused more harm than was necessary in the commission of the offence. Therefore, the appropriate starting point for the offence of assault was one of 18 months' imprisonment with a category range of between one and three years. Moreover, the ongoing effect of the assault upon the complainant would have justified an increase from the appropriate starting point within the category range.
16. We of course acknowledge that it was necessary for the judge to take into account not only the appellant's lack of previous convictions and the mitigation arising from matters which are set out in the documentation before us, including the stresses under which the appellant was labouring at the time of the incident and the inevitably detrimental effect which his loss of liberty will have upon the appellant's family. However in our judgment, the determination by the judge of the period of 15 months' imprisonment adequately took into account the mitigation available to the appellant and we consider that given the nature of the incident out of which these offences arose the judge was justified in considering that appropriate punishment could only be achieved by immediate custody.

Conclusion

17. In these circumstances and looking at the whole of the criminality as disclosed by the appellant's offending arising out of the incident, we do not consider that the total sentence imposed upon him in this case was either manifestly excessive or wrong in principle. Accordingly, the appeal must be dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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