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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 5 July 2019

B e f o r e:

LORD JUSTICE GROSS

MRS JUSTICE McGOWAN DBE

MR JUSTICE BUTCHER

R E G I N A
v
LEE PARSONS

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(Official Shorthand Writers to the Court)

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Mr D Baird appeared on behalf of the **Appellant**

J U D G M E N T
(As approved)

MRS JUSTICE McGOWAN:

1. Lee Francis Parsons, who is now aged 52, appeals against sentence by leave of the single judge. On 7 January 2019, he was committed for sentence to the Crown Court at Chelmsford on two matters to which he had pleaded guilty in the Magistrates' Court. The first was the breach of a restraining order, contrary to section 5 of the Protection from Harassment Act 1997, and the second was an offence of harassment without violence, contrary to section 2 of the same act. On the first matter he was sentenced to three years' imprisonment and on the second matter to a term of four months, ordered to run concurrently.

Background

2. There is a long and unattractive history to this matter. The complainant is the appellant's former wife. They had been in a relationship for approximately 20 years and had four children together. The relationship had broken down and during the breakdown the appellant's wife had been physically and mentally abused by him. They had separated and a protective order had been imposed in order to seek to control his behaviour.

3. There is a long history of similar offending:

On 22 October 2014 the appellant was given a community order for two years with supervision, drug rehabilitation and a two years restraining order.

On 3 November 2014 for breach of that restraining order, on two separate occasions, he received a three-month community order with an electronic curfew requirement.

On 2 March 2015, for an offence of battery and breach of a restraining order, he was sentenced to a one year community order, again with drug rehabilitation and supervision requirements.

On 8 October 2015, for four breaches of a restraining order, he received a suspended sentence order of three months' imprisonment suspended for two years, again with rehabilitation activity requirements attached to that order.

On 20 November 2015 for seven breaches of a restraining order he received another suspended sentence order of 16 months' imprisonment suspended for two years and a restraining order for five years was imposed.

On 30 June 2016, again for a breach of a restraining order and commission of another offence during the operational period of the suspended sentence order, he received a total of 24 months' imprisonment.

In addition, he has a caution for harassment against a former business partner in 2014.

4. After the separation his wife made it clear that she did not want contact with the appellant. Things improved and by Summer 2018 she began to feel that it might be appropriate to let the appellant contact her by text in order that they could make arrangements about the children and any outstanding financial commitments he had to the family.

5. By December 2018 she had had enough of the way in which the appellant was behaving and she blocked him from calling her telephone. Between 2 December and 15 December there were approximately 40 messages, in which he tried to contact her. The messages were not threatening but they were persistent. It seems that he had become aware that she had formed another relationship. That made him angry and he started, yet again, on a course of harassing her and persistently attempting to make contact with her. In the course of these attempts he would occasionally offer money and was then abusive when she replied that money would be helpful. He persistently asked her if she would unlock the telephone so he could contact her. He told her that he

had changed and that his time in prison had improved him and he would now behave in a different fashion. He continued to send messages, she did not respond and eventually notified the police.

6. In December 2018 the appellant began to send messages to his daughter. Again, he offered money to the family but in exchange for that money he wanted to know what his former wife was doing and how the relationship with her new partner was going. The messages to his daughter were a combination of requests for information, threats to her in the sense that he said he would never speak to her again, that she did not deserve to be his daughter and insults such as, "your mum's taught you well, you money grabbing bitch".

7. The court had victim personal statements from his former wife and his daughter, which gave evidence of the distress and unhappiness that this conduct had caused them and the concerns that they had that matters might escalate and things would only become worse.

8. In passing sentence, the judge observed, quite rightly in the view of this court, that the appellant had made his ex-wife's life a misery, simply because it made him feel better to upset her and to seek to damage any new relationship that she was about to embark upon. He had then blamed his children for not reporting to him matters about their mother. He caused his daughter great distress and upset. The appellant had been given many chances to address his offending behaviour. He had been made the subject of community orders on many occasions and offered drug rehabilitation treatment and programmes, none of which had done anything to prevent him continuing to behave in this fashion.

9. The sentencing guidelines were considered and applied by the learned judge, although it is right to observe that neither counsel seems to have drawn her attention to the

over-arching principles set out in the domestic abuse guideline which also applied in this case. Looking to the breach offences definitive guideline for the first of these matters, the learned judge assessed culpability as falling into category 1A, that requires a very serious and/or persistent breaches. Clearly there were persistent breaches in this case.

10. In assessing harm to fall into category 1, the breach must have caused very serious harm or distress. It is arguable that the harm and distress, although serious, might not have been categorised as very serious harm. In any event, once that assessment was made, it had to move up from the starting point to take account of the history of offending. Applying the category as the judge found it to be, namely 1A, she took a starting point of two years. That in the view of this court was the right place from which to have started. Having started there, the judge then went on to increase that term to four years based on the appellant's previous convictions.

11. The grounds argue that increase was too great. Further, complaint is made that the arithmetical calculation of the reduction for the guilty pleas was incorrect.

12. The distress and harm caused are, to a significant extent, dependent upon the previous conduct of this appellant. Accordingly, if the impact on the victims of his recent and past conduct is used to put the offending into category 1A, care has to be taken not to use it again to increase the sentence within the range by too much.

13. Accordingly, taking the starting point of two years, whilst there must be a significant increase for this previous offending, to double the sentence on that account was excessive. In our view an increase of 50% was sufficient and appropriate, taking the figure up to three years' imprisonment. It is right to observe that he pleaded guilty at the very first opportunity before the Magistrates' Court and therefore was entitled to a full one-third discount from that sentence, taking it back down to two years.

14. The offence against his daughter was assessed correctly in our view as meriting a six-month term of imprisonment which also had to be reduced by one-third to give full credit for the guilty plea tendered. As the learned judge observed, that would, in principle be served consecutively to the other sentence. She ordered it to run concurrently in order to reflect totality. Given the reduction in sentence, the application of the totality principle does not have the same effect. Accordingly, the four-month term should run consecutively to the term on the first offence, making a total of 28 months' imprisonment.

15. Part of the basis for this appeal was a miscalculation of the credit for the guilty plea. We take this opportunity to make the observation of general application. If counsel, either for the defence or the prosecution, are of the view that a judge in passing sentence has made an arithmetical error in assessing either the period to be offered by way of credit or something of that precise mathematical nature, it is incumbent on counsel to point out that error either at the time or within the slip rule period. This court should not be troubled by cases based simply on mathematical errors which can be corrected without the waste of public resources and the additional anxiety caused to victims and appellants of the matter having to come to this court.

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