

[2019] EWCA Crim 1850
No: 201903450/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 15 October 2019

B e f o r e:

LORD JUSTICE HICKINBOTTOM

MR JUSTICE GOOSE

SIR RODERICK EVANS

R E G I N A

v

KYLIE LOUISE PECK

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Mr K Missouri appeared on behalf of the **Appellant**

J U D G M E N T
(APPROVED)

1. MR JUSTICE GOOSE: In this application for permission to appeal sentence by Kylie Peck who is aged 26, the single ground of appeal is that her sentence of 18 months' imprisonment should have been suspended. This application for permission to appeal and, if granted, the appeal itself, have been referred to this Court by the Registrar.
2. We grant leave to appeal sentence.
3. On 1 August 2019 in the Crown Court at Southampton before His Honour Judge Henry, the appellant was convicted of unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861. She was acquitted of affray and the more serious charge of wounding with intent, contrary to section 18 of the 1861 Act.
4. The offence which gave rise to the appellant's conviction included four other defendants who pleaded guilty. Danielle Peck and Kirsty Peck were also sentenced by His Honour Judge Henry for an offence of affray. Danielle Peck was sentenced to 9 months' imprisonment suspended for 24 months. Kirsty Peck was sentenced to a Community Order for 18 months. Stuart House and Charlie Attrill were sentenced by a different judge for the offences of affray and possession of an article with a blade. Stuart House also pleaded guilty to a separate offence of possession of an offensive weapon and Charlie Attrill pleaded guilty to possession of a class A drug. Both were sentenced to 12 months' imprisonment suspended for 18 months.
5. The events which led to the appellant's conviction may be shortly stated. Late in the evening of 21 October 2018, the complainant was celebrating her birthday at the Ice House Public House where she worked; the complainant was the daughter of the landlady. The appellant's sister, Kirsty Peck and her partner Stuart House tried to gain entry when the public house was closing. They were refused entry. A disturbance developed between them and others in the public house which led to some minor injuries being caused to them. Kirsty Peck had left her handbag and mobile phone in the public house.
6. When they returned to their home, where the appellant was with her partner Charlie Attrill, their complaints led to a return visit by Stuart House, Charlie Attrill, Danielle Peck and the appellant. House and Attrill each took a knife which they were later to wave at different people outside the public house. No injury was caused to them or by them. The incident became more serious as Danielle Peck ran towards the complainant and launched herself onto her, causing them both to fall to the ground. The complainant had not been acting aggressively before she was attacked. Both women were on the ground with the complainant on top. At this point the appellant, who had taken with her an empty bottle of wine and a ceramic mug, joined in the fighting. She was later to admit that she took the bottle and ceramic mug with her ready to use if needed, although at trial she maintained that her intention was to defend herself or another. That was rejected by the jury.

7. The appellant grabbed the complainant's hair and attempted to kick her. When the complainant tried to get up the appellant moved forward and in a swift motion pushed the wine bottle into the complainant's face causing an incised wound across her face, including both eyelids and the bridge of her nose. The bottle had already been broken before it was used, although not with intention by this appellant.
8. The complainant later underwent surgery during which it was found that both eyelids had been lacerated and, to the right eye, the eyeball had been lacerated also. The cut had gone through the eyelid. She was fortunate to have retained sight in that eye, but has been left with significant scarring. We have seen a photograph showing the complainant's injuries shortly after the incident and more recent images showing significant permanent facial scarring. In the complainant's Victim Personal Statement, dated 1 March 2019, she describes feeling permanently disfigured with one eye looking larger than the other and an eyelid that does not close properly. This causes day-to-day difficulties with both cleaning and the application of cosmetics. The complainant described that the incident had had a profoundly negative effect upon her life. In a further Victim Personal Statement dated 15 July 2019, the complainant described that she had moved away from the Ice House Public House and no longer worked there because of the anxiety she continued to feel whilst there.
9. The appellant who was born on 29 March 1993 was of previous good character, save for a caution for shoplifting in 2009. In sentencing the appellant, the judge took into account the psychiatric report from Dr Bekoe, dated 22 July 2019. Although Dr Bekoe expressed in his report his opinion upon criminal liability, which was disregarded by the judge, there was significant evidence of mental disorders relevant to the issue of sentencing. Dr Bekoe found that the appellant suffered from emotionally unstable personality disorder, panic disorder, mixed anxiety and depressive disorder and pathological grief. These co-morbid disorders were likely to manifest themselves in emotional instability or moods swings, impulsive behaviour, anxiety, panic attacks, depression and also deliberate self-harm. They were associated with a long history of traumatic experiences and adversities going back to her childhood.
10. In a Pre-Sentence Report dated 22 August 2019, the appellant's relationship history and risk assessment were clearly described. The appellant has two children, now aged nine and four, but is separated from their respective fathers such that she is the principle carer. In 2016 the appellant became pregnant with another child but experienced problems during the pregnancy. Her child was born prematurely and died after four months. The bereavement had a profound impact on the appellant and her eldest child who receives counselling to assist her.
11. At the time of sentence on 30 August 2019, after the judge had obtained the reports, the

appellant was four-and-a-half months pregnant. There were concerns for her mental wellbeing during the course of the pregnancy after the events of 2016.

12. The pre-sentence report concluded that the appellant posed as a low risk of re-conviction and of committing serious offences. The recommendation within the report was for a non-custodial sentence.
13. In sentencing the appellant, the judge concluded that the offence of section 20 wounding fell within Category 1 of the Assault Guideline because it involved the use of a weapon taken to the scene and had caused serious injuries in the context of the offence. There was no criticism of the categorisation of the offence by the appellant. Under the guideline, the starting point adopted by the judge was three years' imprisonment. The judge appropriately took into account the fact that the appellant was essentially of good character, was the principle carer of her two young children and was pregnant with another child. Further, the judge also took into account the psychiatric report and the likely effect upon the appellant of a sentence of imprisonment having to be served. In reaching a sentence of 18 months' imprisonment the judge properly discounted the starting point to reflect the significant mitigating features of the case. However, he declined to suspend the sentence, taking the view that the appropriate sentence in all the circumstances was an immediate sentence of imprisonment.
14. We have reflected carefully upon the sentence of imprisonment imposed by the judge on this appellant, to be served immediately and not suspended. There can be no criticism of the sentence of 18 months' imprisonment and the appellant makes no challenge in respect of it. It is with some hesitation therefore that this court would seek to interfere with the sentence of a trial judge who was well placed to assess the evidence and the harm caused to the complainant. However, the judge appeared to have decided not to suspend the sentence before he had arrived at the custodial term; this is obverse to the correct stepped approach where the decision upon suspending a sentence is made after the term is fixed. By deciding not to suspend the sentence before determining the custodial term, this does not follow the process required in the Imposition Guideline.
15. We are persuaded that this sentence should, with respect to the Judge, have been suspended. The Imposition of Community and Custodial Sentences Guideline compellingly points in favour of a suspended sentence, rather than one which is immediate. In assessing the factors which would make it inappropriate to suspend the sentence, the appellant does not present as a risk or danger to the public, nor does she have a history of poor compliance with court orders. The factors in favour of suspending a sentence are that there is a realistic prospect of rehabilitation, the appellant being aged 26 and effectively of good character. Further, there is strong personal mitigation with immediate custody resulting in significant harmful impact upon others, in particular her two young children. They are living in less than ideal circumstances separated from each other. We have also been told by her counsel, Mr Missouri that she is imminently to lose

the family home, which is rented local authority accommodation, due to her current absence and inability to pay the rent. To these factors should be added the observation that the appellant is now six months pregnant and has significant mental disorders as identified within the psychiatric report.

16. The only question is whether this offence means that only a custodial sentence can be justified. We are sympathetic to the conclusion of the judge, that the use of a bottle which was already broken and pushed into the face of the victim will normally lead to an immediate term of imprisonment. This was a serious section 20 offence with serious consequences for the victim. However, the factors pointing away from an immediate term of imprisonment are compelling. We are persuaded that in this case the appellant's sentence of 18 months' imprisonment should have been suspended. The Imposition Guideline, properly applied, points clearly towards a suspended sentence.
17. Accordingly, we allow this appeal against sentence and suspend the 18 months' imprisonment for a period of two years. There will be a Rehabilitation Activity Requirement of up to 45 days, as recommended within the Pre-Sentence Report. Although the report suggested a four-month curfew, we take into account that the appellant has now served six weeks in custody, such that we decline to impose this curfew requirement suggested within the report. Therefore, we quash the sentence of 18 months' imprisonment to be served immediately and in its place, impose a sentence of 18 months' imprisonment suspended for two years, with a rehabilitation activity requirement of up to 45 days. To that extent, this appeal against sentence is allowed.

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