No: 201901023/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2019] EWCA Crim 1797

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 4 October 2019

B e f o r e:

LORD JUSTICE FLAUX

MRS JUSTICE McGOWAN DBE

HIS HONOUR JUDGE DEAN QC

(Sitting as a Judge of the CACD)

R E G I N A

v

CHARLES CRANE

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Mr M Hashim appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. MRS JUSTICE McGOWAN: Charles Crane, who is now 38 years of age, appeals against sentence by leave of the single judge.

2. On 4 December 2018, when the case was listed for trial in the Crown Court sitting at Wood Green, the appellant changed his plea to guilty. On 12 February 2019, at the same court before His Honour Judge Perrins, he was sentenced on count 1, inflicting grievous bodily harm contrary to section 20 of the Offences Against the Persons Act 1861, to a term of 4 years' imprisonment; on count 2, assault occasioning actual bodily harm, contrary to section 47 of the same Act, 3 years' imprisonment ordered to run consecutively and on the third allegation of theft, contrary to section 1 of the Theft Act 1968, a term of 10 months' imprisonment ordered to run concurrently. The complainant in each of those counts was the same young woman.

3. The facts of this case are required to be set out in a little detail to explain the sentencing process. The appellant met the complainant when she was 13 years of age and he was about 33. She had been in the care system all her life and over the last few years had been in 18 different care home placements. She had been born with foetal alcohol syndrome. She had the mental age of a 6-year-old and had been repeatedly exploited and sexually abused by others in the past. She was regularly reported to the police as a missing person and all the care homes in the relevant areas tried to monitor her whereabouts and her well-being. Many attempts had been made to separate her and the appellant but those attempts had failed. There were constant reports to the police but she, unsurprisingly, did not co-operate.

4. In due course, in September 2017, a Child Abduction Warning Order was issued. This appellant had been served with that and he had signed the receipt for it. It was believed that he was in breach of that notice on many, many occasions although it had never been possible to bring successful charges against him. Police would attend his bedsit looking for the complainant but she would hide in order to prevent his getting into trouble with the police.

5. Count 1 occurred on 19 May 2018. After college she went to his bedsit arriving in the early evening, about 4 or 5 o'clock. He had expected her to attend earlier and was very angry when she arrived. He grabbed her by the hair and dragged her down a flight of stairs. He went to his neighbour's address and the neighbour sought to intervene and tried to protect the complainant. For his pains the appellant punched the neighbour in the eye. The appellant dragged the complainant back to his room, where he continued to behave in a very angry fashion. She saw a metal hammer in the room and attempted to hide it so that he could not find it and use it. However he did find it and he did use it. He hit her with the metal handle twice over the head. She started to bleed from the wound and he held some clothing to the wound to try to stop the bleeding. She did not seek medical attention at the time and no photographs of the injury were taken on the day.

6. On 22 May 2018 somebody else made a report to the police of the incident following the complainant's return to the care home and her telling somebody there about what had happened. She told the people at the care home that she believed she had broken a finger because he had had forcefully pulled a ring off her left hand. She described the incident and said that as a consequence of it there had been blood all over the walls. When she was spoken to by the police she refused to make a statement. A photograph was taken by a social worker on 10 June and that showed a small, healed scar to her scalp

where the hair had been parted.

7. For reasons which never became clear, on 9 June 2018 the complainant went to the police station and then reported the matter. She has serious learning difficulties and was not in a position to give a coherent account of the lapse of time or indeed the order in which events had occurred.

8. The second count occurred on 10 June; the complainant, believing that because the matter had been reported to the police the appellant would be in custody, went to his address to pick up some of her property. In fact he was there. She told him she was going to leave and go back to the care home. Again, he became aggressive, telling her that she was not allowed to leave. He punched her to the left eye and to her arms and to her body causing bruising. He then demanded sex and they had sexual intercourse on the sofa. She was on her period but was not aware of that. He saw blood on the sofa afterwards and she described him as "going mad" as a consequence. He told her to lick the blood up. He took her knickers and showed them to the neighbours, telling them that she was a slut. He returned to his room and cut her trousers with a pair of scissors whilst she was still wearing them. He then pushed her out onto the street wearing just her bra and the ripped trousers. A member of the public came to her assistance, lent her a cardigan and an ambulance which was nearby came, took her to the North Middlesex Hospital and it was at that stage that the full extent of her injuries was documented.

9. The consultant in the Accident & Emergency Department observed 12 injuries and documented them on three separate body maps. Those injuries are as follows:

1. A swelling to the left eye, which the complainant said had been caused when she was kicked on the ground and/or stamped on the head.
2. A 4 centimetre scratch to the left cheek, which she thought might have occurred when she was thrown to the ground.
3. A 7 centimetre scratch on her right shin which was healing by that stage and which was measured and found to be 1 centimetre wide at its widest. She said that that had occurred when the appellant had taken metal tools and scraped it along her leg the previous weekend.
4. A 2 centimetre x 2 centimetre bruise to the back of her head which was caused when she was kicked or by being stamped on her head which had also occurred on the incident on the 10 June.
5. A linear scar to the left parietal region of the head, about 2 centimetres in length, which she said had been caused when she had been hit by the hammer in the incident on 19 May.

6. A 1.5 centimetre brown bruise on the outer aspect of her upper left arm.

7. A 6 centimetre brown bruise on the posterior aspect of her upper left arm.

8. A circular 1 centimetre x 1 centimetre bruise.

9. Additionally a 1.5 centimetre x 1.5 centimetre bruise.

10. A 2 centimetre x 2 centimetre bruise. All those bruises were understood to have occurred during the incident of the previous weekend (2 and 3 June).

11. An injury to her hand: two scratches on the fourth finger of the left hand which was said to be caused on 10 June when the ring was grabbed from her finger.

12. A 1 centimetre x 1 centimetre bruise to the right ear, which she said was caused by a stamp to her head.

10. The appellant was arrested on 13 June at his home address.

11. At the police station he made the unsolicited comment:

1. "She is a child. I have never been in a relationship with a child. You lot are saying it is a domestic but she's not even allowed to be at mine."

12. When his premises were searched the officers found papers from a pawnbrokers. The items listed were in fact items that the complainant had left at his bedsit. They included a silver chain necklace, earrings and a tablet. It transpired that these items had been pawned at Cash Converters a few days earlier.

13. When the appellant was interviewed about all these matters he denied ever having a hammer and said there had never been one in his room. When it was pointed out to him that a hammer had been found in his flat he changed his account, saying that it may have been a neighbour had come round with his tools in order to assist him, hanging a picture and left the hammer there. When he was then asked if there was any reason why his DNA or fingerprints might be on the hammer, he said he had been helping the neighbour and may very well have touched the hammer. He said the complainant was causing him grief and he wished he had never met her. He did not talk to her, he never rang her and he did not even have her telephone number. He said that he had only met her beforehand on two previous occasions. He denied that they had ever had sex. He denied that they had been in a relationship for about a year, saying that he had been in prison and she was nothing to do with him. He denied inflicting the injuries, said the allegations were disturbing and denied having seen her for a long time. He denied that it was he who had cut her clothes or pushed her out onto the street half dressed.

14. The victim had made a personal victim statement which was before the court.

15. The grounds of appeal, added to by oral argument today and by a supplementary written argument, which we have seen and considered. It is submitted that the offences were incorrectly categorised, that the effects and consequences of the dissocial personality disorder from which the appellant undoubtedly suffers were not fully appreciated and that the sentence in totality was manifestly excessive.

16. The judge in passing sentence conducted a very careful and thorough sentencing exercise. We have read and considered the transcript with some care. He set out the background to this deeply unwholesome relationship and how it was that this appellant exercised an unnatural and unfair degree of pressure upon this very vulnerable young woman.

17. In dealing with count 1, the learned judge found that there was greater harm, on the basis of her vulnerability, the sustained nature of the assault, the higher culpability was substantiated by his use of the weapon and his, again, deliberately targeting a vulnerable victim.

18. Count 2 the judge placed in category 1. Again, there being greater harm as a result of the serious injury, the vulnerability of the victim, the sustained nature of the attack, the deliberate targeting of her and using a shod foot as a weapon to inflict the various injuries.

19. There were in addition, as the learned judge went on to find, statutory aggravating factors applying to both offences: the ongoing effect on the victim, the gratuitous degradation in relation to the second incident and the failure to respond to warnings previously given by the police when concerns had been raised about his behaviour, in particular the order that had been served on him. In addition, the learned judge noticed and made observations about the plain abuse of power, as he described it, that existed in this relationship. It was not apparently in dispute that the theft was a category 3 offence and that had a starting point of 1 year.

20. There were a number of previous convictions which related to drugs matters but, significantly, his list of previous convictions included offences of assault occasioning actual bodily harm and battery relating to another previous partner. The details of those matters were set out in the reports before the court but the learned judge observed that it included pulling that young woman off a bed onto broken glass, punching, slapping and dragging her across the floor. On that occasion he had been dealt with by way of a suspended sentence order which had included a requirement that he attended a Domestic Abuse Programme. It was clear, as the learned judge observed, that there had been intervention and help offered in the past. The learned judge had the benefit of a number of reports. He described the pre-sentence report

as “very full”. That report assessed this appellant as:

1. “... posing a high risk of serious harm to the victim and any potential future romantic or intimate partners, namely of serious physical violence, potentially involving the use of weapons, and psychological abuse, including threats, intimidation and emotional abuse.”

21. He was described in that report as somebody who carried attitudes around male dominance, control and entitlement and further that he trivialised, excused or justified violence against women. He had minimised his domestic abusive behaviour, displaced blame and externalised the causes of his behaviour.

22. The court went on to consider the psychiatric report provided for the court at the request of the defence. That report made it plain that the appellant did suffer some mental health difficulties but that there was no evidence of his suffering from a major mental illness and that so far as the anxiety from which he suffered was concerned, that was linked to his misuse of drugs and alcohol. Significantly the report concluded that there was no evidence of his suffering from any acute mental health issues or crisis at the time of these incidents and there was no causal link between the problems that he had and the offences that he had committed.

23. The learned judge observed that he had pleaded guilty as late as the day of the trial, when he had no doubt realised that the complainant was there and would be giving evidence and as a consequence his chances of acquittal were slim. In those circumstances there was no genuine remorse, but nonetheless the judge decided that he was entitled to 10% credit for his guilty plea. The judge described these incidents as “violent and degrading assaults”, committed on an extremely vulnerable teenager set against a background of exploitation, manipulation and aggression. They had caused long-lasting psychological harm to an already deeply damaged young girl and the court concluded that he was a dangerous man and a continuing risk to women.

24. The starting point for the section 20 offence (count 1) was 54 months in the judge’s view, placing this just above the top of the sentencing range. That was a calculation, in the view of this court, that the learned judge was perfectly entitled to reach given the facts of the offence and its surrounding circumstances. The judge reduced that to a term of 48 months giving credit for the plea. In addition, the judge on count 2 found the starting point was 40 months - again right at the top of the available range, which is where these offences very clearly fell. That too was reduced to 36 months giving credit for the plea. Those sentences were ordered to be served consecutively. For the theft the sentence was 10 months, again affording credit for the late plea but having regard to totality that sentence was ordered to run concurrently. Totality was considered by the judge in relation to the overall sentence.

25. It has been submitted to us today that because there was material to suggest that the defendant had had mental health problems before the incident, and indeed has suffered from them since, that the learned judge at the time of sentencing should have concluded that they bore on his culpability and responsibility for these offences. That is a submission that runs entirely contrary to the medical expert evidence available to the court. There were features of this man’s mental health that were worthy of note. He suffered from depression, anxiety and a personality disorder. He had a dissocial and unstable personality, which caused him to be a risk factor for impulsive or irrational outbursts of violence. However, as the author of the report commented, given that his violence appeared to be more significantly targeted towards women and intimate partners, they were pressing issues around his attitude and thinking towards women and the use of violence to control and dominate them in that context meant that he could not rely upon his mental ill-health (in so far as it was found to exist) to provide any explanation or excuse for the way in which he had behaved. There is a list of reports provided to the court, all of which the judge very carefully considered.

26. In the view of this court, for the totality of offending carried out by this appellant, the sentence cannot be said certainly to be wrong in principle or manifestly excessive. It would not have been wrong for the sentence on the theft to have been ordered to run consecutively. The judge did take that into account and ordered that it should run concurrently because he had specifically considered totality. In the view of

this court the total term of 7 years' imprisonment was richly deserved and cannot be said arguably to be manifestly excessive.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk