

Neutral Citation No: [2020] NICC 15

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

**Ref:
2020NICC15**

ICOS 20/039826

Delivered: 30/07/2020

**IN THE CROWN COURT IN NORTHERN IRELAND
SITTING AT BELFAST**

R

-v-

PAULINE BURNS

**His Honour Judge McFarland
Recorder of Belfast**

[1] Burns was born on the 29th August 1963 and is 56 years of age. She has pleaded guilty to one count of common assault committed on the 4th April 2020.

[2] At 6 pm on that evening, a lady was getting into her car to drive to her father's home to deliver food to her father who was self-isolating due to the Covid-19 restrictions. Burns, who is known in that locality of Belfast, approached her. She was in an intoxicated state and asked the lady for a hug, which was refused, and then Burns starting shouting at the lady using profane language and spitting into her face. The lady was a cleaner at a local Hospital, and therefore a key worker in the current pandemic. As well as her caring responsibilities for her father, she has three young children. She was very concerned about her condition given the uncertainty about the disease spread by Covid-19 virus. Fortunately, she did not become infected.

[3] Burns was arrested on the 5th April 2020 at her hostel address. She admitted knowing the lady and being drunk, but could not remember asking for a hug, although she said that she would do that, and did not remember spitting in her face.

[4] Burns was produced before the District Judge on the 6th April 2020 and was released on bail but because she came to police attention a short time later she has been remanded back into custody and has remained there since. She was committed for trial on the 8th July 2020, and was arraigned this morning and pleaded guilty.

[5] The police and prosecution are to be commended for the speed with which they have processed this case, albeit a relatively straightforward one. They still labour under a very outdated statutory scheme for bringing cases before the Crown Court and those who are charged with the responsibility for law reform should reflect on why Northern Ireland does not have a modern and efficient system for progressing all cases into the Crown Court, particularly cases of this type that need rapid action to bring reassurance to the public.

[6] Burns has an appalling criminal record. She has over 200 convictions all of which have been dealt with in the Magistrates' Court. The convictions focus on her disorderly conduct on the street and drunkenness. She has 37 convictions for disorderly behaviour and 57 for assault. There are numerous instances of breach of bail, breach of probation orders and breach of suspended sentences. In 2019 she received short prison sentences in June and October, and she received a 4 month sentence in February 2020, with this offence occurring just after her period of remission had expired.

[7] A report has been provided from Dr Paul, a consultant psychiatrist. Burns has had a very difficult childhood. She was one of nine siblings, five of whom have died due to alcohol related issues. There is an extensive history of alcoholism throughout the extended family. Her mother died when she was ten, and she was fostered by her older sister, and has been largely living alone since fourteen. Her life for the last 15 - 20 years has been a revolving door between prison and hostels. Dr Paul confirms that her history is consistent with a polysubstance and alcohol dependence. A prognosis for abstinence from alcohol is very poor, and uncertainty about housing arrangements when she is at large is such that the chances of her engaging in a meaningful way with community based addiction services are low.

[8] The aggravating factors are her criminal record and the nature of the assault, being spits directly aimed at the face and the fact that it was committed on the public street when the defendant was drunk. This incident took place two weeks into the restrictions placed on the community concerning Covid-19, and her actions would have been motivated by an intention to cause fear of serious harm, including the transmission of Covid-19. This fear would have extended to infection of the victim's family, given the highly contagious nature of this disease. In mitigation I take into account the plea of guilty and the overall background of the defendant, including her current addiction.

[9] The defendant has asked that I proceed to sentence her today without a pre-sentence report. I agree that such a report would not add a lot to the sentencing exercise. There is no doubt that the defendant requires some assistance to defeat her addiction, but the imposition of any community order is not a realistic option. The report of Dr Paul does provide some useful background and opinion.

[10] The offence of common assault is normally dealt with in the Magistrates' Court where the maximum sentence is six months. In the Crown Court the

maximum sentence is two years. The guidance issued to District Judges is largely based on the resulting injuries with the focus on physical as opposed to psychological injury, although what is categorized as a motiveless assault, as in this case, falls to be dealt with at the top of the range. Spitting, is equated to head-butting, biting and attempted strangulation, and is an aggravating factor.

[11] The English Sentencing Council published a consultation concerning the offence of assault on the 16th April 2020. The draft document states that high culpability will be evidenced by an intention to cause serious harm, including disease transmission. Harm is categorized at three levels, no or little physical harm or distress; minor physical or psychological harm or distress; and more than minor physical or psychological harm or distress. The aggravating factors include previous convictions, spitting or coughing, and the offence being committed when drunk.

[12] Although this is a consultation document in draft form, it refers to a large extent to well established factors which judges take into account day and daily in this jurisdiction.

[13] The current Covid-19 emergency has created an entirely new experience for the community. The public have become exposed to a virulent and highly contagious virus, with a significant risk of death. The efforts taken to combat it have resulted in a massive economic toll on the community, and significant sacrifices have been made by many individuals. The uncertainty about the disease has naturally led to widespread fear within the community at a level that is unprecedented.

[14] Although this situation is novel, courts have dealt with cases of this type before. Fears about the transmission of the HIV virus have led to robust sentences. In **R -v- P** [2006] EWCA Crim 2599 a sentence of 32 months was imposed, after a plea to s20 malicious assault causing really serious harm, on a woman who had the disease and infected a man after unprotected sexual intercourse. In **R -v- Rowe** [2018] EWCA Crim 2688 a deliberate campaign of multiple infections resulted in a life sentence for a s18 grievous bodily harm with intent offence. These examples relate to much more serious offences.

[15] As for the current Covid-19 crisis, there are some examples of sentencing in England. At Bournemouth Crown Court (**R -v- Gallichan** (unreported 15 May 2020)) the male defendant received a sentence of 8 months after pleading guilty to spitting at police officers and at Lewes Crown Court (**R -v- Clarkson-Rose** (unreported 10 June 2020)) the female defendant received a sentence of 6 months, again after a plea, for spitting at police officers and a nurse. These offences were committed against public service workers.

[16] At any time spitting into another person's face is a serious matter, but given the current Covid-19 it must be met with a robust penalty. This will mean, in almost every circumstance an immediate prison sentence. There is a need for a strong deterrent message to be sent so that those who would in any way be tempted to act

in this way will desist. It is also necessary to reassure the public, and in particular those working on the front line providing service and protection to others.

[17] Given the nature of this assault and aggravated by the circumstances and by her criminal record, the appropriate sentence, after a contest would have been 15 months. Taking into account her plea of guilty, and her co-operation in allowing this matter to be dealt with expeditiously, I will reduce this by 40% in accordance with the current guidance set out in the case of **R -v- Beggs** [2020] NICC 9.

[18] The sentence will be 9 months. There will be an Offender Levy of £25, but no compensation order, as the defendant is not in a position to discharge it.