Judicial Communications Office

7 June 2021

Summary of Judgment

The Court of Appeal[1] today reduced the sentence imposed on a 24 year old woman convicted of glassing another woman in a nightclub by six months to one of one years' imprisonment. It said that offenders who use gratuitous violence by injuring others by glassing them in the face must expect deterrent custodial sentences to stop or powerfully discourage such violence but that the starting point selected by the trial judge had been too high in the circumstances of the case.

Background

Shana Wilson ("the applicant") pleaded guilty to one count of unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1981 ("OAPA"), and was sentenced on 20 April 2021 to 18 months' imprisonment. The facts of the case were that she got into a confrontation with DM ("the injured party") in a Belfast nightclub on 7 September 2019 following which she pushed a pint glass which had been in her hand into the injured party's face. The applicant ran into the men's toilets but was later apprehended by security staff. The injured party received five stitches to a wound below her right eye and several wounds to her forehead with were secured with paper stitches.

When interviewed by police the applicant denied hitting the injured party with a pint glass, claiming to have gone to the men's toilets because she was scared and had not seen what had happened. The applicant pleaded not guilty at arraignment to one count of wounding with intent contrary to section 18 of the OAPA. Following consultations between counsel for the defence and prosecution, the applicant was arraigned in respect of a new count of wounding contrary to section 20 of OAPA and the section 18 wounding with intent count was "left on the books" by the prosecution.

The trial judge identified the following aggravating factors:

- Use of a glass as a weapon;
- Consumption of a significant amount of alcohol; and
- The impact on the victim.

The trial judge also accepted the following mitigating factors:

- No previous convictions;
- Single blow; and
- Has exhibited remorse.

The trial judge concluded that had the applicant contested the charge and been convicted, the minimum term of imprisonment she would have imposed would have been two and a half years. Allowing appropriate discount for the plea of guilty and the mitigating factors raised by the defence, the trial judge reduced the sentence to one of 18 months imprisonment.

[1] The panel was Lord Justice Treacy, Lord Justice Maguire and Mr Justice Horner. Lord Justice Treacy delivered the judgment of the Court.

Grounds for Appeal

The applicant sought leave to appeal against sentence on the grounds that the trial judge was wrong in principle in finding that the offence called for a deterrent sentence; the starting point of two and a half years was manifestly excessive; the trial judge should have found that the circumstances of the case were exceptional so that the sentence could be suspended; and the trial judge should have taken into account the effect of the Covid-19 pandemic on the sentence.

Was the trial judge wrong in finding that the offence called for a deterrent sentence?

The Court first considered whether the trial judge should have suspended the sentence. Article 23 of the Criminal Justice (NI) Order 1996 created a requirement that a judge find exceptional circumstances before imposing a suspended sentence upon a defendant. Although this provision has never been brought into force, the NI Court of Appeal has held that where a court would normally be required to pass an immediate custodial sentence (for example because of the need for deterrence or to mark society's condemnation of certain behaviour) then it should carefully enquire into the circumstances of the offence to see whether a suspended sentence could be imposed. Where a deterrent sentence is required previous good character and circumstances of individual personal mitigation are of comparatively little weight. Also, where a deterrent sentence is imposed it should only be suspended in highly exceptional circumstances as a matter of good sentencing policy.

In the present case the Court commented:

> "The use of gratuitous violence by offenders is a persistent feature of many of the cases that come before the criminal courts. Those who injure others by glassing them in the face will suffer condign punishment. The fact that offenders are young or female is no reason why they should not be punished severely when they behave in such a vicious and abhorrent manner. The need for deterrent sentences to stop or powerfully discourage such violence is obvious."

The Court considered it was simply unrealistic to contend that a deterrent sentence in this case was not justified and that the court should have imposed a suspended sentence or probation. It wanted to make it unmistakeably clear that offences of section 20 OAPA wounding by glassing in the face will generally require deterrent custodial sentences which should only be suspended where the court finds exceptional circumstances.

Whether the sentence is manifestly excessive?

The Court agreed with the aggravating features identified by the trial judge. It noted that the injured party had suffered a degree of permanent facial scarring as well as a psychological impact on her everyday life. She expresses fear that the applicant will make contact with her, describes suffering from recurring nightmares and insomnia and taking medication for mental health problems that have exacerbated since the assault. The Court also noted the mitigating features accepted by the trial judge including the remorse exhibited by the applicant but said this has to be set against the background that in her police interview on the following day she positively denied having assaulted anyone with a glass and claimed she went into the men's toilets because she thought "they" were going to attack her. The applicant sought to put forward the fact that she herself had been the victim of a different glassing incident two years previously as a reason for extending sympathy towards her and which might explain why she lashed out as she did. The Court agreed with the prosecution that it could also be said that someone who had been subject to

this kind of attack in the past would have had more reason than the average person to appreciate how dangerous striking another person with a glass could be. It also noted that the applicant did not have a particular personal problem which led to the commission of the offence and one which would have called for rehabilitation for the future protection of the public. She was assessed by the Probation Service as a low likelihood of reoffending.

The Court then considered what effect the Covid-19 pandemic should have had on the sentence. It noted that the trial judge had afforded the applicant more than a one third reduction from her starting point of 30 months to the final sentence of 18 months. It said the trial judge did not explicitly mention the effect of the pandemic on the sentence nor was it specifically raised in defence counsel's written submissions. The Court noted, however, that it had been established in *R v Stewart* [2020] NICA 62 that no automatic discount applies simply because of prison conditions.

The Court, however, considered that the starting point of 30 months after a contest in this case was too high having regard to the aggravating and mitigating features:

> "Having for reasons of deterrence and condign punishment settled on a custodial option as the only appropriate outcome the judge still has to arrive at a just and proportionate custodial term that reflects all the relevant elements of the case. It is important to remember that the fact that immediate imprisonment will follow from behaviour of this kind is in itself part of the deterrence the court seeks to impose. The court should avoid the risk of imposing unduly long sentences where they have already directed immediate custody to reflect the seriousness of the conduct they wish to deter."

The Court considered that in the circumstances of this case an appropriate starting point after a contest taking account of the aggravating and mitigating factors, save for the plea, would have been around 18 months. It said the trial judge allowed more than one third reduction from her starting point and that, on balance, it too would allow one third reduction to take account of the applicant's early guilty plea. This results in an overall sentence of one year's imprisonment which would be divided equally between custody and licence.

In conclusion, the Court said that offenders who use gratuitous violence by injuring others by glassing them in the face must expect stiff prison terms: "Drink is no excuse" but is an aggravating feature:

> "Part of the function of the court is to protect the public and one of the means by which we attempt to achieve that goal is by imposing deterrent periods of imprisonment particularly for offences of the kind committed in this case. We emphasise that offences of section 20 wounding by glassing in the face will generally require deterrent custodial sentence. Such sentences should only be suspended where the court finds exceptional circumstance. Being young of whatever sex, having a clear record, holding down a job, striking only one blow or being drunk are not exceptional circumstances."

NOTES TO EDITORS

Judicial Communications Office

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (https://judiciaryni.uk).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lord Chief Justice's Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
E-mail: Alison.Houston@courtsni.gov.uk