

Judicial Communications Office

7 March 2022

COURT DISMISSES APPEAL AGAINST SENTENCE FOR DOMESTIC VIOLENCE OFFENCES

Summary of Judgment

The Court of Appeal¹ today provided guidance in relation to sentencing in cases involving multiple incidents of domestic violence.

Factual Background

On 19 August 2021, Christopher Hughes (“the appellant”) was sentenced to 50 months’ imprisonment for a total of 15 offences (50% to be served in custody and 50% on licence) following a plea of guilty on re-arraignment. The offences comprised: assault occasioning actual bodily harm (x1), common assault (x10), possession of an offensive weapon (x1), attempted criminal damage (x1) and using a motor vehicle without insurance (x1). The sentences imposed were on a mixed consecutive and concurrent basis. There were three substantive sentences made up of 24 months, 18 months and 8 months to comprise all of the offences.

The case arose in a domestic context. The appellant and the complainant had been in a relationship for almost two years, the second year of which was categorised by a catalogue of violence and abuse. The complainant contacted the police on 22 May 2020 to enquire about making a complaint about domestic violence she had suffered from her former partner. The offences spanned ten distinct incidents over a period of approximately a year. The court outlined the incidents in paragraphs [9] – [19] of its judgment.

The appellant

At police interview, the appellant confirmed that he and the complainant had an argumentative relationship but denied assaulting her. He accepted that he had been very spiteful to the complainant and told her a lot of lies but said he never cheated on her. The appellant claimed he only hit the complainant once when he grabbed her by the throat and pushed her. When other evidence was put to the appellant at interview he became angry saying “This is a joke. You can see who is being the vindictive one here.”

The appellant had eight previous criminal convictions including three for common assault and a caution for assault occasioning actual bodily harm. There are pending prosecutions in the Republic of Ireland.

When interviewed for a pre-sentence report, the appellant acknowledged the harm he had caused. He disputed some of the detail of the complainant’s statement but accepted his aggressive behaviour was unacceptable. He volunteered that his “domestically abusive behaviour started off as “light” such as a push to the shoulder but that it escalated.” In relation to the assault occasioning actual bodily harm the appellant said he had not intended to hurt his partner to the extent that he did. He said he frequently grabbed her by the neck and acknowledged kicking and hitting the complainant

¹ The panel was Keegan LCJ, McBride J and McFarland J. Keegan LCJ delivered the judgment of the court.

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as well as the other actions she detailed. The probation officer described the offences as representing an escalation from the previous convictions for common assault and said the appellant “engaged in persistent domestic abuse against his long term partner”. The report said the physical and psychological harm that the appellant caused to complainant was evident from her police interview. The appellant acknowledged that he had caused harm to the victim and expressed regret for that.

Grounds of Appeal

It was contended on behalf of the appellant that the sentence was manifestly excessive as the trial judge chose a starting point which was too high for these offences. It was also submitted that insufficient discount was given for the plea of guilty; the trial judge should have put counsel on notice of the sentence he was thinking of; and that the sentence was out of line with the principle expressed in *R v Mandy O’Toole* [2016] NICA 59.

The trial judge described the behaviour in this case as “an appalling catalogue of abuse of this unfortunate victim.” He considered that sentencing the appellant on the basis of the individual charges would not be an adequate way to deal with the severity of the offending and applied consecutive offences to reach a proper overall sentence. The trial judge said the duration of the conduct, the nature of the behaviour and the high impact it had on the victim were aggravating factors. He also took into account that strangulation was involved.

The trial judge also considered the mitigating factors which he categorised as the guilty plea, the steps taken by the appellant to deal with his emotional and mental health, the fact that his criminal record was not related to the complainant, remorse and difficulties experienced by the appellant in childhood. The trial judge determined the starting point was seven years having taken into account the aggravating factors. Then he decided that there should be a discount of 25%. Given the other mitigating factors the trial judge increased the discount to 40% and arrived at a final sentence of 50 months. The 50 months was made up of three consecutive sentences.

Discussion

The maximum penalties in the Crown Court for the offences committed in this case are:

- Assault occasioning actual bodily harm - seven years
- Common assault - two years
- Criminal Damage - 14 years
- Possession of an offensive weapon – 4 years
- No insurance - six months and/or a level 5 fine.

The majority of the offences in this case arose in the context of a relationship between the appellant and the complainant. The court said this was a relationship which was clearly characterised by violent and controlling behaviour on behalf of the appellant which escalated over the course of one year. Strangulation was used, as was a knife. These aggravating factors were accepted and placed the offending into a category of high culpability. The court said this was also a case where physical harm was occasioned to the complainant although not at the most severe level. In addition, it accepted that there had been a psychological impact on the complainant. Overall, the court considered that this was a case of substantial harm.

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In terms of mitigation, the court noted from the probation report that there was an element of remorse although there was also a minimisation of the assault occasioning actual bodily harm. It said this lessened the extent of the remorse and the extent to which the judge can reflect it in the sentence. The court commented that the trial judge was correct in considering personal circumstances. It also took into account the appellant's personal circumstances but said these are of limited effect in the choice of sentence.

Credit for a guilty plea should come after consideration of aggravating and mitigating factors. The court said the maximum credit was clearly not available to the appellant in this case but he still was entitled to significant credit given the value of a plea and did not see anything wrong with the 25% credit applied. In relation to the discount the appellant did not plead at arraignment and was not in the category of defendants who came forward specifically during the Covid-19 pandemic to have the case dealt with.

The court did not endorse the methodology used by the trial judge to arrive at the final sentence. It said the trial judge should have considered the aggravating and mitigating factors together to reach a starting point prior to discount for a plea. This method would have led the trial judge to think about a range of sentence for this type of multiple offending in which he would find the appropriate sentence after considering aggravating and mitigating factors and discount for the plea. The court agreed that in a case involving multiple offences the judge correctly applied the totality principle in order to reach an appropriate overall sentence:

“The facts of each case may vary significantly. It is therefore unwise to set rigid guidelines as a sentencing judge should have discretion to achieve an appropriate sentence taking into account the particular circumstances, aggravation and mitigation, the need for deterrence and in this case the catalogues of offences.”

The court said it could not see anything wrong in principle with the approach taken by the trial judge who applied three different starting points and grouped offences together. It said the trial judge effectively started with 30 months for the assault occasioning actual bodily harm, 24 months for five common assaults and 12 months for the remaining assaults, the attempted criminal damage and possession of the knife. The court said that, alternatively, the trial judge could have settled on one figure to reflect all of the offences:

“Either way we consider that a sentence before discount for the plea should have been in the region of five years. A discount of 25% was appropriate in this case and so the appropriate sentence was around or just under four years. The learned judge effectively started at five and a half years and reached a sentence just over four years after the plea. We consider that this is within range and not manifestly excessive.”

The court did not consider that the sentence was out of line with *R v Mandy O'Toole* [2016] NICA 59. That case considered the principle that an accused person should not be “especially sentenced” because of exercising their right to go to the Crown Court. The application of this principle depends on the particular facts of a case. The court considered the same applied in this case due to the nature of the offending and multiplicity of charges. It said that prosecutors must actively consider proceeding on indictment in cases concerning sustained domestic abuse to ensure that an appropriate sentence is imposed.

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The court also found no merit in the subsidiary argument that the trial judge should have told counsel what he was thinking of in terms of sentence. It said that counsel had ample opportunity to address the appropriate sentencing range and made written and oral submissions. The defence was therefore placed at no disadvantage at all during the sentencing process.

The court concluded as follows:

“It will be apparent from what we have said that in future perpetrators of sustained domestic violence such as this can expect to obtain higher sentences for this type of offending. Such sentences are a reflection of the growing appreciation of the seriousness of this type of offending, the frequency of it within our society, the repetitive nature of it and the effects on victims. Higher sentencing reflects society’s need to deter this type of behaviour and mark an abhorrence of it. There is also a need for the education of society in general, to understand that this behaviour is not normal, it should not be tolerated, and if it does occur it will result in significant sentences.”

Conclusion

The court concluded that, overall, this was a stiff sentence but that it properly reflected the sustained domestic violence that took place within this relationship. As such the court did not consider the sentence was manifestly excessive and did not interfere with it.

NOTES TO EDITORS

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:

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