IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2024/00400/A5
[2024] EWCA Crim 406

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 14th February 2024

B e f o r e:

VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE TURNER

MR JUSTICE BRYAN

R E X

- v -

THOMAS CHRISTOPHER BOND

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Mr A Beevers appeared on behalf of the Appellant

J U D G M E N T

Wednesday 14th February 2024

LORD JUSTICE HOLROYDE: I shall ask Mr Justice Turner to give the judgment of the court.

MR JUSTICE TURNER:

1. On 31st October 2023, the appellant (then aged 30) pleaded guilty before Wigan Magistrates' Court to an offence of assault occasioning actual bodily harm. On 5th December 2023 he was committed to the Crown Court for sentence.

2. On 11th January 2024, in the Crown Court at Bolton, he was sentenced to serve a term of six months' imprisonment.

3. He now appeals against sentence with the leave of the single judge. The imposition of a restraining order and of the statutory victim surcharge are not challenged on this appeal.

4. The facts are these. On 6th March 2022 Anthony Jenkins had been drinking at the Star and Garter Public House in Bolton. Both the appellant and Jenkins knew the landlord and had helped him out behind the bar that evening. When the appellant's partner turned up at the public house in the early hours of the morning, Jenkins tried to engage her in conversation but she ignored him. In response he made a comment about her being controlling. A short time later the appellant unexpectedly punched Jenkins to the face. Jenkins hit his head on a table as he fell. The appellant then hit Jenkins again at least once whilst he was defenceless on the floor. He sustained a broken nose, cuts to the right ear and right eyebrow, two black eyes, swelling to the face, and bruising to the back. We have seen photographs of the injuries which show just how disfiguring they were in the immediate aftermath of this attack. It is not surprising that Jenkins was embarrassed to be seen at work and in a social context for about

six weeks after he had been assaulted.

5. The appellant had 11 convictions for 13 offences between 2012 and 2020. Of particular note is that they included two offences of disorderly and threatening behaviour likely to cause harassment, alarm or distress, and two of battery. There are also three offences of failing to comply with the requirements of a community order.

6. In passing sentence the Recorder observed that he had paid regard to the assault occasioning actual bodily harm sentencing guideline, the reduction for a guilty plea guideline, sentencing offenders with mental disorders, developmental disorders or neurological impairments guideline, the overarching principles of sentencing guideline, and the imposition of community and custodial sentences guideline. He placed the offending within culpability B, because the assault continued after the complainant had already been punched to the floor; and within harm factor 2, because although the injuries sustained were more than minor, they fell short of the severity which would be required for the level of harm to fall within the highest bracket.

7. The prosecution and defence had been in agreement that this was the right approach. That provided for a starting point of 36 weeks' custody, with a range from a high level community order to 18 months' custody. The Recorder alighted thereafter upon a sentence of nine months' imprisonment, which was reduced to one of six months to reflect a discount of one third on account of the early guilty plea.

8. The only challenge to the sentence is that ought to have been suspended. The factors relied upon in support of this proposition are that the appellant had evidenced genuine remorse by virtue of his early guilty plea; there had been a long delay of 21 months in charging him, over which period he kept out of trouble; he had a history of alcohol abuse

which he was addressing, having referred himself to Achieve (an alcohol treatment and recovery service); and the fact that he had been diagnosed with ADHD whilst at school. Reliance is also placed upon the need to have regard to the very high prison population to which reference as a relevant factor is made in *R v Ali* [2023] 2 Cr App R(S) at page 25.

9. The author of the pre-sentence report concluded that the appellant presented a medium risk of re-offending within the next two years, but offered as an alternative a 24 month community order, to include a Building Better Relationships Programme, a rehabilitation activity requirement and an unpaid work order.

10. The Recorder made express reference to all of the options identified in the pre-sentence report, but nevertheless concluded that the shortest term commensurate with the offence was six months' imprisonment which could not be suspended because appropriate punishment could only be achieved by immediate custody.

11. We take the view that the imposition of a sentence of immediate custody fell comfortably within the range of the evaluative judgment to be exercised by the Recorder. He was right to refer to the seriously aggravating feature of the appellant's record. The relevance of the appellant's ADHD diagnosis was diminished by the fact that his attack was not an immediate and spontaneous response to his victim's remark, but was launched sometime after, and once embarked upon was persisted in after the initial blow. The Recorder did not expressly refer to the high prison population in his sentencing remarks, but this factor was expressly referred to in mitigation and we have no reason to doubt that he paid heed to it. The authority of *Ali* provides valuable guidance on the topic, but as the Chairman of the Sentencing Council observed in March 2023 in his formal statement on the application of sentencing principles during a period when the prison population is very high:

> "This does not mean that the high prison population is a factor which requires all short prison sentences to be suspended. Rather, when a court has to decide whether a custodial sentence must be imposed immediately or whether the sentence can be suspended, the high prison population is a factor to be taken into account."

12. As this court observed in *R v Collins* [2022] EWCA Crim 1781, with specific reference to the decision whether or not to suspend any sentence of imprisonment:

> "17. Factors have to be weighed. There is no requirement for a formulaic approach, but we simply observe that consideration of the various factors calls for the exercise of judgment. There may be cases where there are factors in favour of suspending a sentence – indeed that is the case here. But on the other side, there may be one weighty factor in all the facts of the case whereby the judge, having properly considered all the factors, reaches the conclusion that appropriate punishment can only be achieved by immediate custody. In sentencing remarks there is a need to address the issue, but elaborate analysis and explanation is not a requirement."

13. In *R v Price* [2023] EWCA Crim 1060 this court observed:

> "12. We acknowledge that the decision whether or not to suspend a custodial sentence is often the most difficult decision which a sentencing judge has to make. In many cases, and certainly in most cases which come before this court, there are things to be said for and against suspending the sentence. The guideline is helpful in so far as it identifies relevant factors, but it is not simply a matter of counting the factors on one side or the other which apply in a particular case. Moreover, the competing factors are incommensurable. Weighting the competing factors can never be an arithmetical exercise. The question of which factor or factors should prevail in any particular case is necessarily a question of judgment, and moreover a judgment of the kind which sentencing judges are experienced in addressing. This court will not lightly interfere with judgments of that nature. Appellants in such cases will not succeed unless they can show that the decision not to suspend their sentence was either manifestly excessive or wrong in principle."

14. Stepping back from the detail of the relevant factors in play in this case, we are unable to conclude that the balancing exercise carried out by the Recorder was flawed. His decision not to suspend the sentence is one in which it would not be appropriate for this court to interfere. The sentence in this case was neither manifestly excessive, nor wrong in principle.

15. Accordingly, this appeal is dismissed.