

Regina v Jamie William O'Hagan

No: 201703786/A3

Court of Appeal Criminal Division

8 February 2018

[2018] EWCA Crim 272

2018 WL 01052296

Before: Lord Justice Irwin Sir Kenneth Parker His Honour Judge Aubrey QC (Sitting as a Judge of the CACD)

Thursday, 8 February 2018

Representation

Mr T Dyke appeared on behalf of the Applicant.

Judgment

His Honour Judge Aubrey:

1 An application for an extension of time of approximately 220 days and leave to appeal against sentence has been referred to this court by the single judge.

2 On 23rd November 2016 the applicant, now aged 34 years, having pleaded guilty to one offence of breach of a restraining order, contrary to section 5(5) and (6) of the Protection from Harassment Act 1997 was committed for sentence to the Crown Court sitting at Northampton. On 16th December 2016 the applicant was sentenced to 18 months' imprisonment by Her Honour Judge Lucking QC.

3 The facts are that the applicant and Zoe Oxlade were former partners. On 5th July 2006 an indefinite restraining order was imposed which prohibited the applicant from contacting her. Between 2006 and 2016 the applicant had served custodial sentences but when at liberty there had been breaches of the order which included damaging her car, threatening her with a knife and making threats over the phone.

4 On 26th October 2016 the applicant was released from prison. He went, almost immediately, to Ms Oxlade's place of work and said that he loved her. He then went to her home and a confrontation took place with her new partner. He went again to her place of work on 27th, 29th and 30th October 2016. On 2nd November he tried to gain access to her place of work, a betting shop, after hours, but the door was locked. He then went to her home and waited outside.

5 The applicant has 39 previous convictions in respect of a variety of offences including threats to kill, robbery, possession of a knife, assault occasioning actual bodily harm, malicious communication and offences of harassment. In respect of offences of harassment he has some eight previous convictions.

6 There was a pre-sentence report and a psychiatric report before the court. The author of the pre-sentence report was of the opinion that the applicant posed a continued risk of serious harm to Ms Oxlade and that he was unwilling to adhere to protective measures to safeguard her. Accordingly she would not propose a community order.

7 In passing sentence the learned judge stated that there had been serious issues in relation to non-compliance with non-custodial sentences in the past, and whilst he had not committed an offence against Ms Oxlade for 10 years, whilst believing the restraining order had expired, he sought to make contact with her again immediately upon release from a custodial sentence. It

was apparent that she found this extremely distressing and upsetting.

8 The judge found that she had suffered significant psychological harm. By doing so and by reason of the sentence passed the learned judge placed the offence within the top range of the Definitive Guideline issued by the Sentencing Council. She made reference to the fact that there had been five breaches of the restraining order in the past and there were series of breaches on this occasion.

9 The learned judge concluded that the appropriate starting point after a contested trial was 27 months' imprisonment and gave full credit for his plea of guilty.

10 A written chronology has now been provided to this court in respect of the application for an extension of time of about 220 days. It is apparent that the applicant had consulted new solicitors after his sentence and indeed he has now been released from his custodial sentence, he having been released on 4th August 2017. Whatever the factors disclosed in the chronology of the case are for the delay in this case being before this court it is most unfortunate and indeed, in many respects, such delay cannot be justified.

11 There are also a number of grounds of appeal in which it is submitted that the judge erred in her assessment of the facts. But the principal ground is that the sentence was too long and manifestly excessive in all the circumstances.

12 It is also submitted that the learned judge erred in finding that the victim had suffered significant psychological harm. We do not agree with that submission. The victim was vulnerable, she suffered anxiety which is hardly surprising in the circumstances of this case, bearing in mind the obsessive and compulsive nature and conduct of the applicant.

13 However, we have stood back and examined all the circumstances of the case, notwithstanding the fact that the applicant has been released from his custodial sentence and was so on 4th August 2017. We have also reflected upon the aggravating features in this case, including the fact that the seriousness of the offences is aggravated by many of the previous convictions. Nonetheless we are persuaded and have come to the conclusion, in all the circumstances, that the sentence imposed by the judge was manifestly excessive.

14 In those circumstances, we do grant the application and having granted the application we have come to the conclusion that taking all the circumstance into account the appropriate sentence after trial would have been one of 18 months' imprisonment and in consequence of the appellant's guilty plea we substitute a sentence of 12 months' imprisonment.

15 In those circumstances this appeal is allowed.

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