

ENGLAND AND WALES / JUDGMENT

Bolland, R. v

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Neutral Citation Number: [2018] EWCA Crim 1756 IN THE COURT OF APPEAL CRIMINAL DIVISION Case No: 201704939 A3 Royal Courts of Justice Strand London, WC2A 2LL Date: Tuesday, 17 April 2018 B e f o r e: LORD JUSTICE SIMON MR JUSTICE EDIS THE RECORDER OF LEEDS

- HIS HONOUR JUDGE COLLIER QC (Sitting as a Judge of the CACD)
- ----- R E G I N A v JOSHUA ROBERT BOLLAND
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- ----- Mr J Kennerley (Solicitor Advocate) appeared on behalf of the Appellant
- ----- J U D G M E N T If this transcript is to be reported or published, there is a requirement to ensure that no reporting restriction will be breached. This is particularly important in relation to any case involving a sexual offence, where the victim is guaranteed lifetime anonymity (Sexual Offences (Amendment) Act 1992), or where an order has been made in relation to a young person. LORD JUSTICE SIMON:
 1. On 13 July 2017, having pleaded guilty before the magistrates, the appellant was committed to the Crown Court for sentence under committal S20170392, the first committal; and S20170392, the second committal. The committals were made under both section 3 and section 6 of the Powers of Criminal Courts (Sentencing) Act 2000 (the "Sentencing Act"). He was committed under section 6 in respect of offence 4 in the first committal and offence 2 in the second committal. He was committed under section 3 in relation to offences 1 to 3 in the first committal and offence 1 in the second committal.
 2. On 24 October 2017, in the Crown Court at Manchester (Crown Square), he was sentenced by Mr Recorder Hussain QC for offence 1 in the first committal, criminal damage, to a term of 1 month imprisonment; for offence 2 of the first committal, witness intimidation in relation to NW, to a term of 12 months' imprisonment consecutive; for offence 3 of the first committal, witness intimidation in relation to AW, to a term of 12 months' imprisonment concurrent;

for offence 4 of the first committal, putting a person in fear of violence, contrary to section 4 of the Protection from Harassment Act 1997, to a term of 3 years' imprisonment consecutive; for offence 1 of the second committal, another charge of criminal damage, to a further term of 1 month imprisonment consecutive; for offence 2 of the second committal, fraud, contrary to section 1 of the Fraud Act 2006, no separate penalty was imposed. The total sentence was therefore a term of 4 years and 2 months' imprisonment.

3. He appeals against that sentence with the leave of the single judge.
4. The appeal raises three main issues: first, the sentencing powers of the Crown Court in the light of the committal route, second, the sentence of 3 years for the harassment offence, and third, totality and the overall sentence of 4 years and 2 months.
5. From early in 2017, NW was in a relationship with the appellant. She was aged 17 and he was 24. In March or April 2017 he moved into her father's house. AW was rarely there, so most of the time there was just NW and the appellant. The relationship had difficulties. Although the appellant was not physically violent, he was dominating and controlling and she was scared of him.
6. On 7 May, they had an argument. He accused her of seeing other men, became angry and started kicking furniture in the living room. She remonstrated with him. He told her that if she was going to treat him like a dick he was going to behave like one. As a result of this she told him that their relationship was over, at which he stormed out of the house.
7. After a short while she rang him. He asked if they were still finished and she said yes. He then made various threats and the argument continued into the next day. These threats included threats to damage the property: smashing windows. He told her that she could only leave him if she killed herself. She took 15 paracetamol tablets, and although he knew she had taken the tablets when he came around to the property he took her bank card and left. He withdrew £100, which was the basis of the fraud charge. He later contacted her and said that she could have the money back but only if she contacted him.
8. On 9 May, at 9.40 am, she was at home, having been discharged from hospital. She saw the appellant by the back gate. He threw a stone at the dining room window, smashing it and causing £150 worth of damage. This gave rise to one of the charges of causing criminal damage.
9. The police were called and the appellant was interviewed. He was released on bail on 10 May with conditions not to contact NW or her father.
10. On 13 May, she received a friend request on Facebook from someone she did not know. She soon realised that it was in fact the appellant. The first message was friendly, saying he hoped she was well after the overdose and that he loved her. He said he missed her and did not mean to hurt her. When she did not respond to that message, the tone changed and he texted: "No need to fucking ignore me. You stupid slag. I'm going to put every window in and burn them cars out". She turned off her Facebook account. The appellant left numerous

further messages but she was not aware of them at the time.

11. On 2 June, the appellant went back to the house. NW and her father were not in. The appellant threw a stone at the front window, causing £100 worth of damage. He ran away but was caught on CCTV images. He sent a text to one of NW's friends saying, "Looks like she needs a new front window. Oops". This offending gave rise to the second charge of causing criminal damage.
12. By 13 June, the family had had enough. Mr W contacted the appellant to try to sort the matters out. He told him that if he paid for all the damage and repaid the money he had taken they would withdraw the charges. The appellant said that he would pay the money, although he never did. In the event, Mr W contacted the police to tell them that he wanted to drop the charges.
13. On 14 June, hoping matters had settled down, NW reactivated her Facebook account. She saw that the appellant had sent many more messages while the account had been deactivated. One message said, "When I see your mum and dad, better make sure they have a grave picked out for you". He said if she did not ring he would stab her dad and that she was "getting it". Another message said that her dad's car was getting burnt and that she was dead. He called her a grass and repeated, "NW dead. House is going to be burnt down". There were also threats to kill her mother. He said, "Fine, I'm going to kill your mum. Watch. I'm already outside hers". He sent pictures of a knife with the caption: "For your dad's neck". He also said, "Get the charges dropped and I'll leave you alone". The appellant handed himself in to the police the next day, 15 June.
14. He is now aged 25. He had appeared before the courts on four previous occasions for seven offences between 2013 and 2016. In 2013, he was sentenced initially to a community order for an offence of harassment, putting a person in fear of violence. That sentence was varied in 2014 for non-compliance and he was sentenced to 2 months' imprisonment suspended for 12 months. In 2014, he was sentenced to 4 months' imprisonment suspended for 12 months for driving offences. In March 2016, he was fined for one offence of criminal damage. We will come to the first and third of these convictions in the context of the judge's sentencing remarks.
15. A pre-sentence report noted that the appellant accepted culpability for his behaviour. He said he was heavily addicted to cocaine at the time, which he believed compromised his thinking. He expressed regret and remorse and attributed his offending to drug abuse. He said he had now stopped taking cocaine. In the view of the writer of the report there was an emerging pattern whereby he sought to maintain power and control by his offending behaviour.
16. The court also had a psychological assessment prepared by a clinical psychologist, Dr Whittle. His conclusion was that the appellant was someone who exaggerated their difficulties and this called into question the validity of some parts of his own account of the offending. This led the author of the report to place greater reliance on independent

information. Relevant personality factors included paranoia, antisocial, dependent and narcissistic features such as excessive sensitivity to perceived slights, unjustified suspicions of partners' infidelity, criminal behaviour, irritability, aggressiveness, recklessness, limited evidence of remorse, minimisation and denial, and an inflated sense of entitlement to act against those whom he believed had slighted him.

17. The author concluded that the appellant possessed a number of problematic attitudes towards intimate partners, if not women in general. He was quick to experience suspicions of infidelity and intense feelings of jealousy and rage. Some of his problematic personality traits were relevant, particularly the paranoid and narcissistic traits. The appellant sought to manage his intense negative feelings in intimate relationships by exerting extreme control over his partner using abuse, intimidation and threats. With regard to his cocaine use, he had given wildly varying accounts of usage to different professionals, making accurate assessment difficult. His emotional and interpersonal difficulties were likely exacerbated by his substance misuse but he had exhibited problematic offending behaviour towards partners when his usage was infrequent.
18. There was a further pre-sentence report prepared in the light of the psychological report. However, since it is not argued today on this appeal that a non-custodial disposal was appropriate, it is unnecessary to say anything further about that.
19. The Recorder had victim personal statements from NW and AW. The impact of the appellant's course of criminal conduct on the former was plainly severe.
20. In passing sentence, the Recorder set out the facts as we have outlined them. He noted that the appellant had pleaded guilty at the earliest opportunity to the criminal damage and fraud offences, for which he would be given full credit. However, he entered not guilty pleas in relation to the witness intimidation and harassment charges, indicating his plea 2 weeks before trial and pleading guilty on 13 July. He would be given 20 per cent credit for those pleas.
21. The second offence of criminal damage, the witness intimidation and the harassment occurred in breach of a bail condition which provided that he was not to contact NW, which he did through Facebook. It began in a friendly manner but soon turned nasty with threats, including threats to damage her father's property, which he carried out on 2 June by throwing a stone and breaking a window. Not only was he making threats, he was carrying them out. The court took into account that he had handed himself in to the police.
22. The Recorder noted that he had relevant previous convictions. In November 2013, he had been convicted of harassment in similar circumstances: threats made to a young woman with whom he was in a relationship. On 30 March 2016, there was a conviction for criminal damage in respect of yet another young woman with whom he was in a relationship. He had burnt her passport and bleached her clothes. This showed an escalating behaviour of harassment on his part reaching really serious and terrifying threats and backed by damaging property. He was a controlling and overbearing individual and his behaviour

towards NW had led her to attempt to take her own life.

23. Having taken into account the material placed before the court and the plea, and despite some positive steps taken by him while in custody and the caring role he played in relation to his brother and grandmother, the Recorder concluded that the offences were so serious that only custody was justified. He then passed the sentence to which we have referred.
24. The first point taken by Mr Kennerley on this appeal relates to the offences which were committed to the Crown Court under section 6 of the Sentencing Act. He submits that the powers of the Crown Court were confined to an overall term of 12 months in respect of these offences and that the sentence for each offence so committed could not exceed 6 months. Here, the Recorder had sentenced on each of offences 2 and 3 on the first committal to terms of 12 months and in relation to all the offences committed under section 6, a total of 14 months. Those sentences were unlawful. Second, he submits that the sentence of 3 years for the harassment offence was too long and the overall sentence of 4 years and 2 months was too long as a matter of totality.
25. As we have noted, offences 1 and 3 on the first committal were committed under section 6 of the Sentencing Act, as was offence 1 on the second committal. It follows that the maximum sentence in relation to each offence was a term of 6 months' imprisonment in relation to each offence and the aggregate sentence could not exceed 12 months. It follows that the term of 14 months passed in respect of these offences was unlawful.
26. Although the witness intimidation might be described as part of the appellant's criminal conduct towards his victims, they are in fact distinct offences which strike at the administration of public justice. They carry a maximum sentence of 5 years and, in our view, magistrates should think very carefully before such offences are committed to the Crown Court under section 6 of the Sentencing Act.
27. In the event, we propose to quash the sentences for the two offences of witness intimidation and substitute sentences of 5 months' imprisonment. The offence in respect of NW can properly be regarded as linked to the harassment and accordingly that sentence will be served concurrently with the other sentences. The sentence in relation to the witness intimidation of her father was quite separate and there will be a consecutive sentence of 5 months in respect of that offence.
28. So far as the offence under the Harassment Act is concerned, the maximum sentence is a term of 10 years' imprisonment. Since the judge passed a sentence of 3 years after giving 20 per cent credit, the starting point must have been a term of 45 months or so. The offence of its nature put its victim in fear of violence, it was protracted and vicious, it had a significant impact on a vulnerable young woman, and part of the offending took place while the appellant was on bail and strictly prohibited from making contact. In addition, and importantly in terms of the seriousness of the offending, this is not the first time he had committed this offence.

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29. In these circumstances, we do not regard the sentence of 3 years as manifestly excessive. We are, however, persuaded that since the malicious damage was part of the harassment, the sentence for those offences should be ordered to be served concurrently.
30. In conclusion, we quash the sentences of 12 months for offences 2 and 3 on the first committal and substitute sentences of 5 months for each offence, concurrent in one case and consecutive in the other. The sentences for the criminal damage offences of 1 month for each committal offence will be ordered to be served concurrently with each other and the other sentences. All the other sentences will remain unaffected. The total sentence will therefore be a term of 3 years and 5 months.
31. To that extent, the appeal succeeds.
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