

ENGLAND AND WALES / JUDGMENT

# R v Samuel Toon

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- v – SAMUEL TOON  
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Mr A Wilkins appeared on behalf of the Appellant  
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J U D G M E N T (For Approval)

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Wednesday 6 May 2026 LORD JUSTICE MALES: I shall ask Mr Justice Picken to give the judgment of the court. MR JUSTICE PICKEN:

1. This is an appeal against sentence, leave having been granted by the single judge.
2. On 11 March 2025, in the Crown Court at Stafford, the appellant (then aged 32) pleaded guilty to an offence of affray.
3. Almost a year later, on 19 February 2026, before the same court, the appellant (then aged 33) was sentenced to 18 months' imprisonment.
4. His brother, Kaine Toon, having also pleaded guilty to affray, received a suspended sentence order comprising 36 weeks' imprisonment suspended for 18 months and an unpaid work requirement of 120 hours.
5. Another co-accused, Zak Clark, having likewise pleaded guilty to affray, awaits sentence. No evidence was offered against his brother, Harry Clark, and a not guilty verdict was entered in respect of him.
6. The Toon brothers had previously been good friends with the Clark brothers who operated a business from a secluded farm unit on Stiper Farm near Tamworth. Kaine Toon had stored a motorcycle at that unit. There was, however, a falling out between the families and a heated phone call took place between Kaine Toon and Zak Clark on 6 February 2025, following which Kaine Toon and the appellant went to recover the motorcycle. They arrived in a car driven by the appellant with Kaine Toon as his passenger. He drove up at speed. Both got out of the car, to be met by Zak Clark, who came out with a mallet and struck the appellant in the face with it. It was at this point that the appellant got out a work knife that he had with him. Violence ensued, which resulted in injury to both sets of brothers.
7. Harry Clark then got into a silver car and reversed to pick up Zak Clark, who was on the ground. The appellant left in his car and Kaine Toon left on the motorbike. The Clarks stopped at a public house where a member of staff called an ambulance and started to administer first aid to Zak Clark who had a deep cut under his right eye, a deep cut to his left cheekbone and a large gash on the crown of his head. As for Harry Clark, he sustained a stab to his left arm and bruising to his right eye.
8. Police officers attended at the pub where the Clarks were. Other police officers came across a badly damaged silver BMW on the slip road leaving the A5 at the A453. The appellant was in the driver's seat. He had facial injuries and was covered in blood. He said that he had been attacked and needed to go to hospital. The appellant told the officers that he had stopped his car in a lay-by in Polesworth in order to urinate and that, when he got back into his car, he was attacked by people trying to steal the car. He added later, whilst en route to hospital, that three males, dressed in black and wearing balaclavas, had attacked him. The appellant's injuries consisted of two stab wounds to his left forearm, for which he required

stitches. 9. In interview, Kaine Toon provided a prepared statement, in which he said that he had received a call from Zak Clark on the day of the incident asking him to collect the motorbike from their unit as it had been raided by the police, who were looking for a stolen vehicle. Zak Clark was agitated and made threats towards him and his brother. Kaine Toon asked his brother (the appellant) to give him a lift to the unit. When they arrived, things escalated with the Clark brothers picking up hammers and attacking the Toon brothers. Kaine Toon said that he did nothing but defend himself and then ride his motorcycle away.

10. When he was interviewed, the appellant gave 'no comment' responses, but provided a prepared statement in which he referred to an angry phone call in which he felt that Zak Clark was raging at his brother, Kaine. He said that he had then driven to the unit with Kaine and that, when they arrived, he tried to speak to Zak Clark, who was just raging and shouting. From inside the unit, Zak Clark took up a rubber headed mallet which he swung towards the appellant, hitting him on the side of his face. At some point, he added, Zak Clark smashed the front windscreen of his vehicle. The appellant realised that he had a cut to his left forearm and that blood was gushing out of it.
11. At the time of sentence, the appellant had three convictions for four offences between 2012 and 2016: two offences of battery, for which he received a community order in 2012; an offence of failing to comply with the requirements of that community order, for which he received an absolute discharge in 2013; and a possession of cannabis offence, for which he received a conditional discharge in 2016.
12. In sentencing the appellant, the judge said that he accepted the bases of plea of both the appellant and his brother. The appellant's basis of plea was that he did not go to the unit intending to fight or to become involved in any violence; that he had his work knife in his work trousers when he left home, although he did not realise that he had it when he left; that he had not taken the knife to use or possibly use as a weapon; and that had he not been hit by Zak Clark with the mallet, he would not have taken the knife out and used it as a weapon to deter the Clarks. The judge remarked, however, that it is the nature of an affray that all involved take a degree of responsibility for the overall incident. He added that, although Zak Clark struck the first blow, both the appellant and his brother were "up for violence".
13. The judge then went on to note that Kaine Toon did not himself assault anyone and that, on more than one occasion, he had tried to restrain the appellant. The judge said that he regarded the appellant's culpability as being in the "top category", or category A, in the applicable Sentencing Council guideline. There had been serious and sustained violence, and the appellant had intended to cause fear of serious violence to the Clarks. The judge added that the offences entailed serious physical injury and therefore fell within category 1 harm. He took the view that Kaine Toon's culpability was lower; it fell within category B, albeit that his assessment of harm was the same as that for the offence relating to the appellant.

14. The judge referred to the various character references put forward on the appellant's behalf, including what his partner had had to say concerning the support that the appellant provides to her and the hardship that imprisonment would cause to the appellant's family. The judge added that the affray for which the appellant and his brother had to be sentenced was "somewhat unusual", given that it took place in a secluded spot, that no other people were present and that, as a result, it was not a case where there was fear of violence caused to the wider public.
15. The judge then referred to the guideline that deals with suspended sentences. He said that, whilst he considered that the appellant had a realistic prospect of rehabilitation and whilst he had personal mitigation (albeit not regarded by the judge as being that strong), nonetheless the offence was so serious as to mean that appropriate punishment could only be achieved by immediate custody.
16. On that basis, without explaining how he arrived at the length of sentence that he did, and without, in particular, making reference to the level of credit for the guilty plea that he was applying, the judge passed the sentence of 18 months' imprisonment to which we have referred.
17. In relation to Kaine Toon, the judge took a different view as regards suspension of the sentence. He noted his previous good character, the support he provides to his mother and the more limited role that he had played in the offence. The judge therefore sentenced him to a suspended sentence order to which we have similarly previously referred.
18. On the appellant's behalf, Mr Wilkins, first, submits that the judge was wrong to categorise the offence in the way that he did, in view of the fact that the appellant was the initial victim of the unlawful violence that took place. Secondly, he submits that the judge failed to take proper account of the mitigating features referable to the offence. Thirdly, he submits that the judge failed to take proper account of the appellant's personal mitigation. Fourthly, he submits that the judge ought to have suspended the sentence imposed upon the appellant. Fifthly, he submits that that sentence was "materially discrepant" compared with that received by Kaine Toon. All in all, Mr Wilkins submits that the appellant's sentence was manifestly excessive.
19. We can deal with these various submissions in relatively short order.
20. As to the first, we do not consider there to be any error on the judge's part as to the appropriate categorisation of the offence. A weapon was used by the appellant, who can be seen on the CCTV footage to strike somebody (presumably one of the Clark brothers) on the ground with an object of some sort. The violence was also sustained and, albeit that no member of the public was present, there was clearly an intention to cause fear of very serious violence, at least as far as the Clarks were concerned. This was, therefore, a culpability A offence. The judge did not ignore the self-defence aspect and therefore a culpability C factor. On the contrary, he took it into account, but he clearly considered – and we agree – that the fact that the appellant was not the initial aggressor did not mean that

everything that he did (including as his brother tried to restrain him) was in self-defence.

21. Nor are we persuaded that the judge failed to take into account mitigating features referable to the offence itself. We do, however, consider that, there being no issue that the offence entailed category 1 harm, and so that the appropriate starting point under the guidelines was two years' custody, the judge failed to reflect the appellant's personal mitigation by reducing that two-year starting point when arriving at an appropriate notional sentence, prior to credit for the guilty plea. The appellant's personal mitigation, whilst not particularly strong, nonetheless merited a reduction to 20 months' custody. We have in mind here the lack of recent convictions, the appellant's work record, the fact that he has dependent children, the character references that were before the judge, the appellant's remorse and also the length of time that had passed between the appellant's guilty plea and the date of sentence. Applying 25 per cent credit for the guilty plea, that term is reduced to 15 months' custody.
22. We then turn to the fourth of Mr Wilkins' submissions, namely that, in the circumstances, the judge should have suspended the sentence rather than to have imposed a sentence of immediate imprisonment. We consider that the judge should indeed have suspended the sentence – not, we make it clear, because of the disparity argument which forms the basis of Mr Wilkins' fifth submission, but because we consider that this was an appropriate course in the present case. The judge himself described the appellant as having a realistic prospect of rehabilitation. He referred also to there not having been a history of poor compliance with court orders and to the appellant not presenting "a great risk". This combination of factors, together with the effect on others if the appellant were to be sentenced to immediate custody, justified a conclusion that this was not a case that required there to be immediate imprisonment.
23. Accordingly, we allow the appeal, quash the sentence of 18 months' immediate imprisonment and replace that sentence with a suspended sentence order comprising a custodial element of 15 months' imprisonment and an operational period of two years.
24. Having regard to the fact that the appellant has now been in custody since mid-February of this year, we consider it inappropriate to impose an unpaid work requirement. We do, however, make the appellant the subject of a rehabilitation activity requirement of 20 days, as recommended in the pre-sentence report.
25. The appellant should understand that, if over the course of the next two years he commits a further criminal offence and is convicted of it, then, in addition to the sentence which he will receive for that offence, the court will be entitled to re-sentence him in relation to the affray offence by the imposition of a period of up to 15 months' imprisonment.

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