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IN HER MAJESTY'S COURT OF APPEAL FOR NORTHERN IRELAND

THE QUEEN

-v-

ALAN JONES

CAMPBELL LJ

Introduction

The appellant appeals with the leave of the single judge against a sentence of two years' imprisonment imposed by His Honour the Recorder of Belfast on a charge of assault occasioning actual bodily harm contrary to section 20 of the Offences against the Person Act 1861.

Background

On 1 October 1999, at around 9 pm, the appellant along with members of his family boarded a bus at Newtownards to travel to Belfast. Before the journey began a dispute arose between members of the party and the bus driver about concessionary fares. As they were leaving the bus when it reached Belfast, two younger members of the group attacked the bus driver, a Mr Ronald Steenson. The appellant, a forty-seven year old married man, then approached and after telling the younger men to stand aside proceeded to assault the bus driver with considerable force, raining a number of blows on him. The bus driver considered that the blows struck by the appellant caused greater injury than those from the younger assailants.

When the bus driver attempted to get assistance by sounding the horn the appellant and his wife departed through the emergency exit and the two younger men left through the passenger door.

Mr Steenson sustained several injuries including contusions to the left eye which caused swelling, a fractured tooth, bruising to the cheek and jaw which were also swollen and an injury to the neck which caused severe pain, stiffness and restriction of movement. The injury to the eye caused blurred vision for a time. Mr Steenson had difficulty reading and he developed drooping of the eyelid. As a result of his experience he suffered from an emotional upset and he was off work as a bus driver and part-time fire fighter for four months.

The appellant and the two younger males who had attacked the bus driver pleaded guilty, at the first opportunity, to the charge of assault occasioning actual bodily harm. All three were sentenced to two years' imprisonment. The appellant's wife was also charged with the same offence. She contested the charge and was acquitted.

The appellant has a criminal record for dishonesty and disorderly behaviour but there is no history of his being involved in violent offences. He has expressed remorse and shame at his involvement in the present offence which are considered to be genuine. A probation officer has given the opinion that the appellant would benefit from a period of probation.

The appeal

Two principal arguments were advanced on behalf of the appellant. It was submitted that the learned Recorder had wrongly adopted a version of events of the incident derived from the evidence given in the trial of Mrs Jones. This account differed from that given by the appellant himself. He had claimed that he believed that the bus driver had attacked his wife and that this had provoked his assault on the driver.

The second submission made on behalf of the appellant was that the sentence imposed was manifestly excessive.

We can deal with the first of these arguments briefly. There is nothing in the sentencing remarks of the Recorder which suggests that he preferred the account given by the bus driver on the trial of Mrs Jones to that advanced on the appellant's behalf. It is true that, in the course of the plea in mitigation, the Recorder drew attention to the version of events that emerged during Mrs Jones's trial. He was perfectly entitled to do so. Indeed, it was proper that he should have pointed out to counsel that a different version to that proffered by the appellant had been given. It does not follow that, because he had done so, he rejected the appellant's version. In his sentencing remarks, the Recorder said:

> "It is quite clear from the committal papers and the evidence given [by Mr Steenson in the trial of Mrs Jones] that the present defendants were aggressive and abusive and resented his remonstrating with them as he tried to do his duty."

These observations suggest that either the Recorder accepted the appellant's account for the purpose of sentencing or that he considered that the sentence should be one of two years irrespective of which version was correct.

Where there is a dispute between the version advanced on behalf of a defendant who has pleaded guilty and an account given of his role in an earlier trial in which he was not represented or did not participate, it may be necessary for the judge to resolve that dispute by holding a *Newton* hearing. (See Blackstone's Criminal Practice 2001). The need for such a hearing did not arise in the present case. It is clear that the judge was principally exercised by the aggressive nature of the attack carried out by the appellant and the other young men. That feature was common to both versions of the incident.

It was accepted on behalf of the Crown that the sentence passed in this case was towards the upper end of the range of imprisonment imposed in similar cases. It is to be remembered, however, that this was an attack on a vulnerable individual who was carrying out an indispensable public service. The need to deter (and, preferably, eliminate) attacks on those who carry out essential work in providing public transport is self-evident. Unless it is made clear to individuals like this appellant that attacks on the providers of this service to the public will be severely punished, such attacks will not only continue but will multiply.

It was claimed that the judge failed to give sufficient credit for the appellant's plea of guilty, that he had failed to acknowledge the absence of convictions for violence in the appellant's record and that he had not given sufficient weight to the appellant's working record and personal circumstances.

These claims are not borne out by the transcript of the judge's sentencing remarks. He said that all three defendants were entitled to "full credit" for having pleaded guilty. He had before him the Probation report on the appellant and he had clearly read this because he considered (and rejected) the recommendation that the appellant should be the subject of a custody/probation order. This report dealt extensively with the appellant's working record, and this must have been present to the judge's mind on sentencing. Moreover, the judge made explicit reference to the appellant's criminal record, which he described as "modest". We are satisfied, therefore, that the Recorder had due and proper regard to all material circumstances. Notwithstanding that, was the sentence excessive?

We were referred to a number of English cases whose relevance to the present appeal was, counsel for the appellant accepted, at best doubtful. The most helpful case in this jurisdiction was, perhaps, *R v McCullough*[1998] 4 BNIL, 83 where this court said that the general trend of

sentencing for this type of offence was towards a period of imprisonment of less than two years. It is clear, however, that the court did not rule out imprisonment for two years where the particular circumstances of the case called for it.

In our view, the circumstances of the present case *do* call for such a sentence. Mr Steenson was performing this public service on his own and at night. It is necessary to ensure that those who carry out such vital work are adequately protected. An element of that protection is the punishment of those who attack public servants. Moreover, the appellant's participation in this attack is made all the more reprehensible because of his age. He was substantially older than the other defendants and was in a position to restrain them from attacking the injured party. So far from doing that, he required the two younger men to stand back, the better to perpetrate his attack on Mr Steenson. These factors combine, in our opinion, to make this a case worthy of significant punishment.

Conclusions

We consider that the claim that the Recorder wrongly adopted a version of the incident adverse to the appellant has not been made out. We do not consider that the sentence passed was either wrong in principle or manifestly excessive. The appeal is therefore dismissed.

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