



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 52  
HCA/2025/000448/XC

Lord Justice Clerk  
Lord Matthews  
Lord Armstrong

OPINION OF THE COURT

delivered by LORD MATTHEWS

in

CROWN APPEAL AGAINST SENTENCE

by

HIS MAJESTY'S ADVOCATE

Appellant

against

HELEN HEATHER MORAN OR MACDONALD

Respondent

**Appellant:** Dickson (sol adv) KC AD; Crown Agent  
**Respondent:** Brannigan; George Mathers & Co, Aberdeen

26 November 2025

**Introduction**

[1] On 16 June 2025 the respondent pleaded guilty at a second trial diet to an indictment in the following terms:

“(003) On 15 April 2024 at (an address in Aberdeen) you...did behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did shout at [the complainer]..., enter her home without her consent, cause damage to a laptop, throw her belongings onto the floor

and call her and her family members derogatory names; CONTRARY to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010

You... did commit this offence while on bail, having been granted bail on 04 April 2024 at Aberdeen Sheriff Court.

[...]

(005) On 10 November 2024 you... did force entry to (the same address) and there did assault [the complainer],... and did, repeatedly shout at her, repeatedly demand money from her, utter threats, seize her by the body, push her onto a sofa, seize hold of her head and compress same, repeatedly seize her by the neck and compress same causing her breathing to become restricted, repeatedly threaten to kill her if she contacted the police, restrain her, search her pockets, prevent her from leaving the property, repeatedly seize her by her clothing and drag her back into a room, struggle with her, push her onto a chair, pour a liquid over her, pull her to the floor, sit on her body, repeatedly punch her on the head to her injury and to the danger of her life, and with intent to rob her.

You...did commit this offence while on bail, having been granted bail on 15 April 2024 and 4 November 2024 at Aberdeen Sheriff Court."

[2] On 21 July 2025, having considered reports, the sheriff imposed a Restriction of Liberty Order (ROLO) for 8 months and a Community Payback Order (CPO) with an 18-month supervision requirement. A non-harassment order, which was also imposed, is not the subject of appeal but the Lord Advocate appeals the other components of the disposal as unduly lenient.

## **Background**

[3] The complainer and the respondent had known each other for a long time.

## ***Charge 3***

[4] On the evening of 14 April 2024, the complainer and respondent were at a friend's house. The respondent became angry with the complainer, who left and went elsewhere.

Returning to her own address at 0100 the complainant found the respondent there. The latter made vile accusations against her and members of her family, as well as throwing the complainant's laptop, worth around £1800, to the floor, along with some of her belongings. The complainant was terrified and called the police, who arrested the respondent. She appeared in custody the following day and was granted bail.

### *Charge 5*

[5] On 10 November 2024 the complainant was at home. At about 1930 she heard the respondent shouting at her door and demanding money. The respondent kicked the door frame and the complainant tried to prevent her entry by bracing the door. Noticing this, the respondent instead kicked a glass panel in the door but, having failed to break it, left, shouting that she was going to get a brick. The complainant shouted for help from her living room window. After two or three minutes, the respondent returned and smashed the glass panel before climbing through the broken panel into the complainant's house.

[6] The respondent again demanded money and asked the complainant where her money was. The complainant backed away from her and curled into a ball. The respondent pushed her onto a sofa in the living room and then strangled her for around 30 seconds. The complainant could get some air into her lungs but struggled to breathe. She had a pre-existing lung condition. The respondent said that if she was arrested and then released she would "bury" the complainant. Then she held the complainant down and went through her pockets. The complainant tried to leave the room, but the respondent dragged her back by her hoodie and refused to let her leave, all the while threatening her with more violence and demanding money.

[7] The complainer tried to run into the hall but the respondent dragged her back to the living room. She sat her on a seat and poured a bottle of cola over her head, before dragging her to the ground and sitting on her chest. She strangled the complainer again, this time cutting off her breathing entirely. The respondent then punched her several times in the face, accused her of having “banked” money in her vagina and said she would “go up” her to get it. The door buzzer then sounded, whereupon the respondent exited the property through the damaged door and ran off. She was traced by police and arrested.

[8] The complainer sustained a small cut to her left eyebrow, facial swelling, and red marks on her neck. No victim statement was provided but the sheriff was told that she remains scared of the respondent. Throughout the assault, she was petrified, crying hysterically, and begging the respondent to stop.

### **The Justice Social Work Report**

[9] The JSWR disclosed that the respondent was 43 years of age. When she was 6, her mother, who had raised her until then, was murdered and she saw her mother’s body. That continued to affect her mental health. She was then raised by the complainer’s family and had a difficult relationship with the complainer. She left home at 15 and now has five children, all of whom were removed from her care, to the further detriment of her mental wellbeing. She blames the complainer for some of the problems encountered by her.

[10] The respondent has formal diagnoses of depression and anxiety and she uses substances (alcohol, zopiclone, and pregabalin) to cope. She reports symptoms consistent with PTSD, especially since she was seriously assaulted in November 2023, and has been referred to adult psychiatry. However, they will not treat her until she addresses her substance misuse. The assault led to flashbacks to her mother’s murder. She attributed her

behaviour to self-medicating for her mental health difficulties and reported very little memory of the offences themselves.

[11] The respondent initially showed limited victim empathy. She sought to explain her behaviour as provoked by the complainer's behaviour during their childhood. However, discussion with the social worker enabled her to recognise her behaviour as "stupid" and she felt "guilty". She had insight into her offending in that she appreciated it was linked to her mental health and substance misuse. The social worker assessed her offending as reckless.

[12] She has a limited record of previous convictions, principally involving driving offences and offences of dishonesty. Her record demonstrated periods of desistance, notably a five-year period between 2013 – 2018 but with shorter gaps on either side of that. However, she has previous convictions for assault (albeit at summary level) and for breaches of community orders, for which she ultimately served four months' imprisonment. The instant conviction represents a significant escalation in her offending.

[13] She was assessed as suitable for a ROLO or a CPO. She had limited experience of custody but was aware her offending met the custody threshold. She had been made subject to a CPO with a supervision requirement on 4 December 2024 for other offending. Since the imposition of the order, she had engaged well with it and she has expressed a desire to take advantage of the supports on offer.

### **The sheriff's report**

[14] The sheriff considered that both charges met the threshold for a custodial sentence. The level of culpability for both charges was high, principally because the respondent forcibly entered the complainer's home where she was entitled to feel safe. There was a

degree of planning but not to an extensive degree. Charge 5 was particularly serious. It involved a determined attempt to gain entry, followed by a lengthy assault. There was a clear intention to cause physical and psychological harm and the potential for very serious physical harm. Both offences carried bail aggravations, and charge 5 was aggravated by the threat to kill the complainer if she reported the offence.

[15] As to mitigation, the sheriff did not consider the complainer was targeted due to any vulnerability on her part. The respondent's own personal mitigation was significant. She had suffered significant trauma as a child and adult, for which she was self-medicating. The sheriff considered this significantly impacted her ability to think through the consequences of her actions. Other than the minor assault she had no convictions for violence.

[16] The most significant factor was her behaviour since the offences, principally that she was engaging well with social work, psychiatry, and her mental health nurse and had decreased her drug and alcohol dependencies. The sheriff noted that the supports facilitating this would be lost if she was imprisoned, and her mental health would suffer. The sheriff considered that the principles and purposes of sentencing could be achieved by a non-custodial sentence. The public in general, and the complainer in particular, would be better protected from future offending by the respondent if her rehabilitation was allowed to continue. The sheriff therefore imposed a CPO with an 18 month supervision requirement to facilitate that. Nevertheless, the respondent's offending was serious, and the court's disapproval was marked by an 8 month ROLO, reduced from 9 months for the guilty pleas.

### **Subsequent events**

[17] A breach report in respect of the ROLO was submitted to the court on 6 August 2025. Three further breach reports were submitted on 11 August 2025. The respondent appeared

in court and admitted the breaches on 27 August 2025. However, on 21 August 2025 the ROLO was suspended *ad interim* pending resolution of this appeal. The sheriff therefore continued consideration of the breaches to 19 November and records in her report that, had she been in a position to deal with the matter on 27 August, it is “highly likely” she would have revoked the CPO and ROLO and imposed a custodial sentence.

[18] The respondent appeared from custody on 15 August 2025 in respect of one charge of assault and robbery, two charges of theft by shoplifting, and one charge of assault all allegedly committed the previous day. She was remanded in custody, where she remains.

## **Submissions**

### ***Crown***

[19] The sheriff misapplied the *Principles and Purposes of Sentencing* Guideline. She attached insufficient weight to the force used to enter the complainer’s home, the sustained assault, the assault by strangulation, the humiliation involved in pouring cola over the complainer, and the repeated threats to kill. She had wrongly treated the respondent’s voluntary intoxication as a mitigating factor. Although charge 3 was less serious, it demonstrated a “course of conduct” of invading the complainer’s home when considered alongside charge 5, which was committed in the face of the respondent’s having been granted bail on charge 3. The sheriff thus arrived at an assessment of the respondent’s culpability which was too low. She had also attached insufficient weight to the harm suffered by the complainer. Although no victim statement was provided, the Crown narrative disclosed that the complainer remained in fear of the respondent. Furthermore, the sheriff paid insufficient regard to the potential harm which could have ensued from strangulation.

[20] Although the sheriff was required to address rehabilitation, she gave it too much weight compared to the equally important sentencing purposes of public protection, punishment, and marking society's disapproval of the offending behaviour. The respondent had previously been afforded opportunities for rehabilitation via Community Payback Orders, which she had repeatedly breached. That the sheriff had placed too much emphasis on rehabilitation was demonstrated by the fact that the respondent admitted breaching the ROLO within weeks of its imposition.

[21] As a result, the sheriff imposed a sentence which fell "outside the range of sentences which the judge at first instance, applying [her] mind to all the relevant factors, could reasonably have considered appropriate" (*HM Advocate v Bell* 1995 SCCR 244). A miscarriage of justice had occurred. The appellant invited us to allow the appeal, quash the sentences imposed by the sheriff, and impose a custodial sentence.

### ***Respondent***

[22] There was no escaping the fact that the offences were serious, especially charge 5. However, while the custody threshold was met, the sheriff had provided cogent reasons for the sentence which she imposed. Despite the potential for more serious harm, which the sheriff recognised at para 38 of her report, the fact remained that the actual injuries sustained by the complainer were minor. The respondent was engaging well with her CPO and was addressing her mental health problems. Her previous convictions had been given appropriate weight and she had accepted responsibility for her offending.

[23] The Crown attacked the sheriff for considering the respondent's intoxication as mitigatory but it was the significant trauma in her childhood and adulthood giving rise to her substance misuse and mental health problems which was important. It all affected her

ability to think through the consequences of her actions. There was no planning, the respondent not having brought a brick with her. The sentence might be considered lenient but it was not unduly so.

### Analysis

[24] The law in these appeals is uncontroversial, the test being set out in the well-known dicta of Lord Hope of Craighead in *HM Advocate v Bell* at 250D, as follows:

“It is clear that a person is not to be subjected to the risk of an increase in sentence just because the appeal court considers that it would have passed a more severe sentence than that which was passed at first instance. The sentence must be seen to be unduly lenient. This means that it must fall outside the range of sentences which the judge at first instance, applying his mind to all the relevant factors, could reasonably have considered appropriate. Weight must always be given to the views of the trial judge, especially in a case which has gone to trial and the trial judge has had the advantage of seeing and hearing all the evidence. There may also be cases where, in the particular circumstances, a lenient sentence is entirely appropriate. It is only if it can properly be said to be unduly lenient that the appeal court is entitled to interfere with it at the request of the Lord Advocate.”

We can sympathise with the sheriff in this case. The offender had and has a number of problems, not of her own making, which have blighted her life from a young age. However, we are satisfied that the sentence was unduly lenient. Had the sheriff been dealing with charge 3 alone, this would not have been the case and, as the Crown conceded, this court’s jurisdiction would not have been invoked. Nonetheless, that charge is of some significance. In the first place, it forms a background to charge 5 and shows that the respondent engaged in a course of conduct which entailed the targeting of the complainer.

[25] Secondly, the fact that the respondent carried out the offence libelled in charge 5 while on bail for charge 3 is an aggravating feature over and above the aggravation inherent in offending while on bail.

[26] There may or may not have been some planning involved in the commission of the offences and there is force in counsel's submissions in that regard. However, what cannot be gainsaid is the determination of the respondent to force entry to the complainer's home and thereafter to indulge in a sustained attack, thwarting the complainer's efforts to escape, all in the pursuit of money.

[27] Despite the mitigation arising from the respondent's personal circumstances, her culpability was high. The sheriff tells us that that was her assessment. She considered that the respondent intended to cause the complainer both physical and psychological harm. She was correct.

[28] She noted that the injuries were at the lower end of the spectrum but that there was the potential for much more serious physical harm to have been caused. Again, she was correct.

[29] However, all that having been said, and having noted the bail aggravations, the sheriff, in our opinion, attached too much weight to the respondent's personal circumstances, her lack of serious record and her apparent progress since being placed on a CPO.

[30] These were undoubtedly relevant to disposal but the fact remains that she committed, in the space of a few months, two offences against the same complainer in her own home. The sheriff did not attach enough weight to the serious nature of these offences, especially charge 5.

[31] That offence, with its repeated feature of strangulation, could easily have resulted in the complainer's death. Strangulation is an all-too common feature of assaults in modern times and the court must visit it with appropriate penalties.

[32] The fact that the respondent has breached the ROLO is not itself decisive but with the benefit of hindsight, it has some relevance. The respondent's tragic background has to be factored into any disposal and the sentence we are about to impose recognises that.

[33] In all the circumstances we quash the sentence imposed by the sheriff and in its place we substitute one of imprisonment for 3 years and 8 months, reduced from 4 years to reflect the timing of the plea at a second trial diet 15 months after first appearance, of which 4 months of the sentence are attributable to the breaches of bail. In addition, in view of the contents of the JSWR and, in order to protect the public from serious harm on the respondent's release, we shall make a Supervised Release Order for a period of 12 months with an additional special condition that respondent attend drug and alcohol counselling as directed by the supervising officer.

[34] The appeal is allowed to that extent.