



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 15
HCA/2025/000001/XC

Lord Doherty
Lord Matthews

OPINION OF THE COURT

delivered by LORD DOHERTY

in

NOTE OF APPEAL

by

CD

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: A Ogg, sol adv; David Tod & Co, Solicitors
Respondent: E Lindsay AD; the Crown Agent

25 February 2025

Introduction

[1] On 5 November 2024 at a first diet the appellant pled guilty to three charges on an indictment. The offences were all committed in short succession on the evening of 24 January 2024. Charge 2 involved assaulting a door steward at licensed premises by pushing and kicking him on the body and spitting blood to his face and body to his injury. The injury was a scratch. The most serious charge, charge 3, involved assaulting the same

steward by swinging a knife towards him twice. Charge 5 was a further assault to injury, which was committed after the appellant had been arrested by the police. She bit the hand of a female police constable who had been attempting to adjust the appellant's crop top in order to maintain her dignity. The injury was the making of a teeth imprint. There is no indication that the skin was broken. The offences all took place when the appellant was on a rare night out with friends. She had been very drunk as a result of a combination of prescribed medication and her excessive consumption of alcohol.

The sheriff's sentence

[2] Understandably, the sheriff took a very dim view of the offences. Notwithstanding the terms of a favourable criminal justice social work report, the applicability of section 204 of the Criminal Procedure (Scotland) Act 1995, and the appellant's role as the mother and primary carer for her three children, he considered that the gravity of the offences and the prevalence of knife crime in the locality required that he impose a custodial sentence. He selected a headline *in cumulo* sentence of 24 months' imprisonment which he discounted to 18 months because of the utility of the plea of guilty.

Submissions for the appellant

[3] On the appellant's behalf, it was accepted that these were serious offences, and that the sheriff was right to consider imposing a custodial sentence. However, there were exceptional circumstances which, taken together, had made it appropriate for him to opt for a community disposal. The appellant had faced adverse circumstances when growing up. She suffers from mental illness. She is a first offender and she has no other matters outstanding. She is now aged 30, and she was aged 28 at the date of the offences. These

offences aside, she had lived a pro-social life. She is the main carer for her three young children. Her 11-year-old son is severely disabled, being quadriplegic and suffering from cerebral palsy. They have a very strong bond. Her caring commitments have prevented her from working for several years. The criminal justice social work report indicates that there is a low risk of further offending and that she is suitable for, and willing to comply with, a community payback order. It is also relevant to bear in mind that the appellant has been in prison since 18 December 2024. She has already served the equivalent of a sentence of more than 4 months' imprisonment.

Decision and reasons

[4] The appellant should be in no doubt that the court takes a very serious view indeed of all of these offences. Each of them was serious. Stewards are entitled to expect that they are not assaulted, and that the courts will take a stern view of it if they are. Assaults with a knife require to be viewed particularly seriously, as do assaults on police officers.

[5] Had it not been for what we regard as the exceptional circumstances of this case, we would not have interfered with the sheriff's sentence. The fact that the appellant was intoxicated at the time is no excuse. It is clear that it will be in the interests of the appellant, her children, and the community, that in future she avoids, or at the very least is extremely careful with, alcohol.

[6] However, we are satisfied that a non-custodial disposal is available and appropriate here. The appellant is a person to whom the provisions of section 204 of the Criminal Procedure (Scotland) Act 1995 apply. We have regard to that and to all of the factors upon which Miss Ogg relied. We attach particular weight to the appellant's caring responsibilities and her importance to the lives of her 3 children, especially her very disabled son. This is a

case where the Article 8 ECHR rights to family life of the appellant, her partner, and her children are engaged, and where the children's Article 8 rights should be afforded considerable weight when determining the appropriate disposal. We also weigh in the balance that the appellant has now had the salutary experience of a period in prison.

[7] The appellant has confirmed her willingness to comply with a community payback order. We shall quash the sentence of imprisonment which the sheriff imposed and substitute a community payback order with a supervision period of 18 months and an unpaid work or other activity requirement of 150 hours, reduced from 300 hours to reflect the timing of the plea and the sentence of imprisonment that she has already served.