

Judicial Communications Office

Monday 12 September 2011

COURT OF APPEAL GIVES REASONS FOR REVOKING EXTENDED CUSTODIAL SENTENCE

Summary of Judgment

The Court of Appeal today gave its reasons for revoking an extended custodial sentence imposed on Leon Owens who pleaded guilty to the offence of assault occasioning actual bodily harm against his former partner, Ms C.

The Court heard that on 21 September 2008 an incident took place in the home of Ms C where she sustained injuries consistent with an assault. At the time, Owens was subject to a Non Molestation Order in respect of Ms C, although it was accepted that the pair had spent the day with Ms C's 6 year old son in a pub watching a sporting event. Ms C claimed that Owens had entered her home uninvited later that evening, punched and kicked her around the face and was about to hit her with a poker when her son intervened. Owens claimed that it was Ms C who had kicked him and slapped him around the head. The trial judge preferred Ms C's account as it was more consistent with the injuries that she had sustained. The Lord Chief Justice, delivering the judgment of the Court of Appeal, said the Court could certainly appreciate the basis for the trial judge's conclusion but if Owens was persisting in his account then there should have been a Newton hearing to consider this.

Owens had a substantial criminal record. He had convictions for breaches of non-molestation orders, common assault, and assault occasioning actual bodily harm. All these offences were in connection with previous relationships. He had served sentences of imprisonment in relation to all of those matters. He had also been convicted in 2004 of unlawful carnal knowledge of a girl under 14 and two counts of indecent assault on a female as a result of which he was sentenced to a period of 30 months imprisonment.

The Criminal Justice (NI) Order 2008 sets out the sentencing framework for dangerous offenders. Article 14 of the Order provides that where an offender has been convicted of a specified offence and the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by him of further specified offences the court shall impose on him an extended custodial sentence. The Schedules to the Order provide that assault occasioning actual bodily harm is a specified violent offence but that it is not a serious offence.

The Lord Chief Justice said that the risk of serious harm occasioned by the commission of further specified offences must be significant. The guidance in the leading case on the matter provides that if the foreseen specified offence is not serious, there would be few cases in which a risk of serious harm would properly be regarded as significant. "Repetitive violent or sexual offending at a relatively low level without serious harm [would] not of itself give rise to a significant risk of serious harm in the future".

Judicial Communications Office

The trial judge had described the injuries sustained by Ms C as “multiple superficial injuries”. “Serious harm” is defined in the Order as meaning death or serious personal injury, whether physical or psychological. The Lord Chief Justice reviewed the relevant case law and said that it indicates that multiple superficial injuries are highly unlikely to constitute serious personal injury within the meaning of the legislation. The Court of Appeal accepted the multi-agency risk management group’s assessment that Owens was likely to reoffend but said that it’s assessment that the injuries inflicted by him constituted serious harm was flawed.

The Lord Chief Justice concluded that it was a necessary condition for an extended sentence that there be a significant risk of serious harm as a result of the commission of further specified offences: “In our view this was not established in this case and we accordingly were obliged to allow the appeal and revoke the extended custodial sentence”. The Court, however, agreed with the sentence imposed by the trial judge and considered that it was not manifestly excessive.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).
2. If, following a guilty plea, the factual dispute between prosecution and defence versions is so different that it affects the appropriate sentence in the case, the court must hear evidence on the disputed points. Such hearings are referred to as “Newton hearings”.

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lord Chief Justice’s Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921
Fax: 028 9023 6838
E-mail: Alison.Houston@courtsni.gov.uk