APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 38
HCA/2025/000243/XC

Lord Justice General
Lord Doherty
Lord Clark

OPINION OF THE COURT

delivered by LORD PENTLAND, the LORD JUSTICE GENERAL

in

CROWN APPEAL AGAINST SENTENCE

by

HIS MAJESTY'S ADVOCATE

Appellant

against

EAMONN GALLAGHER

Respondent

Appellant: Keenan KC; the Crown Agent
Respondent: O'Keefe; John Pryde & Co (for Keegan Smith, Livingston)

15 August 2025

Introduction

[1] At Edinburgh Sheriff Court on 25 March 2025 the respondent pled guilty to a single charge in an indictment served under section 76 of the Criminal Procedure (Scotland) Act 1995. The charge was in the following terms:

> "(001) on 15 April 2024 at Gorgie Road, Edinburgh you EAMONN GALLAGHER did assault John Watters, c/o Police Service of Scotland and did strike him on the body with a knife to his severe injury and to the danger of his life".

[2] The respondent had one previous conviction in 2014 for producing cannabis; a Community Payback Order of 75 hours unpaid work was imposed.

[3] The court adjourned the diet for the purpose of obtaining a Justice Social Work Report and a Restriction of Liberty Order Assessment. On 22 April 2025 the sheriff imposed a sentence of 16 months' imprisonment discounted from 2 years to reflect the guilty plea. The sentence was to run from the date on which it was imposed.

[4] The Crown appeals the sentence on the ground that it was unduly lenient in view of the gravity of the offence and the harm caused to the complainer. The level of discount is also said to be too high.

The facts

[5] The following account of the attack and its effects on the complainer are drawn from the agreed narrative and the complainer's victim statement.

[6] At about 4.20pm on 15 April 2024 the complainer was working as a traffic warden in Gorgie Road, Edinburgh. He was in the process of placing a parking ticket on the windscreen of the respondent's car. The respondent, who was a self-employed courier delivering parcels for Amazon UK, approached the complainer in an aggressive manner. An altercation ensued.

[7] The respondent got into his car and drove it to a nearby street. A few moments later he returned carrying a large knife which had a blade approximately five to six inches long. He quickly and aggressively approached the complainer and struck him on the torso with the knife. The respondent then returned to his car and drove it further down the street to a

dead-end where he abandoned it. He jumped over a wall and fled. The knife was not recovered.

[8] A witness saw the assault from start to finish. He observed the respondent with a large blade about five to six inches in length. The witness identified the respondent from an emulator sheet.

[9] Later that evening the police arrested the respondent at his home.

[10] The complainer sustained a one centimetre stab wound to the lower left quadrant of his abdomen. He was taken by ambulance to Edinburgh Royal Infirmary where it was ascertained that there was a penetrating injury to the underlying left abdominal wall involving the intraperitoneal compartment. There was active bleeding in the left rectus sheath with a possible small bowel injury. A laparoscopic procedure was performed to resect the small bowel. If prompt medical attention had not been obtained, the complainer would have died. He was discharged from hospital that night.

[11] Following his discharge from hospital the complainer developed a severe infection in the wound and had to be re-admitted to hospital on 29 April 2024. Further investigation revealed fluid in the abdomen and damage to the left rectus muscle. Percutaneous drainage was necessary with a drain being left in place. The complainer's understanding was that the infection was close to turning septic.

[12] The complainer was treated as an inpatient for a further seven days. Thereafter he required daily home visits from a district nurse to drain, clean, and dress the wound. His total recovery period was about three months, during which he was not able to leave his home. He was off work thereafter for about a further month. He was unable to resume his previous duties as he could not bend or wear his uniform due to it irritating his wounds. He

had to transfer to an office-based role with a reduced salary and limited potential to work overtime. He would suffer continuing financial loss.

[13] The attack had a severe impact on the complainer's emotional and psychological health. He developed insomnia and had been unable to sleep for more than three hours at a time. He had been prescribed medication for depression and anxiety. His relationship with his partner had been damaged. His daughter's 16th birthday party had to be cancelled. He was anxious about being in public spaces. The family had been unable to go on holiday due to the increased cost of insurance.

Plea in mitigation

[14] The respondent was a 39 year-old man with no recent or analogous previous convictions and no outstanding cases. He was the main breadwinner for his family, a wife and two children aged 12 and 10.

[15] The respondent had been prescribed propranolol and fluoxetine for depression and anxiety prior to the incident. His mental health difficulties were related to financial stresses and outstanding debts exceeding £30,000. These difficulties had arisen from a previous absence from work due to cancer treatment. His wife had a longstanding issue with alcohol, causing strain on the family and increasing his own responsibilities. The family home was subject to a mortgage which would fall into arrears with the consequent risk of repossession if the respondent was imprisoned. The impact of a custodial sentence on his family was significant.

[16] There was no forethought to the offence, which resulted from poor impulse control and was out of character for the respondent. He ran away from the *locus* because he saw a police car approaching. He was genuinely remorseful and demonstrated a good level of

insight into the nature of the physical and psychological harm caused to the complainer and his family. He was engaging with support systems for his mental health.

Justice Social Work Report

[17] The reporting social worker noted that the respondent expressed regret for the harm he had caused to the complainer. He acknowledged that he should never have left the scene and should have ensured that the complainer received the medical care he required.

[18] He reported being stressed on the day of the offence due to his workload demands and financial pressures because of mounting debts. The respondent described experiencing a difficult childhood due to his father's alcoholism and his aggressive and physically abusive behaviour towards him. His father had taken out loans in the respondent's name resulting in him accruing debts. He had experienced mental health difficulties and had been diagnosed with anxiety and depression four years previously.

[19] The respondent was assessed as a low risk and need level. He did not present many of the risks associated with re-offending. The imposition of a custodial sentence would adversely affect the respondent's relationship with his children. A period of imprisonment would result in his partner experiencing financial hardship which would potentially result in the loss of the family home.

The sheriff's report

[20] The sheriff considered the offence to be a serious one which involved the use of a weapon to inflict a serious physical and psychological injury on the complainer. The offence was not pre-planned. It involved a single stab wound to the complainer's abdomen with a knife which the respondent had in his possession attached to his keys in the course of his

employment. Serious harm was caused to the complainer in the form of a 1cm stab wound which punctured his small bowel and required immediate laparoscopic surgical treatment to stem the bleeding into his peritoneal cavity. If left untreated, this posed a danger to the complainer's life.

[21] In assessing the level of harm, the sheriff explained that she did not consider the second hospital admission and the daily nursing visits to be causally linked to the incident, but as a result of a secondary infection "as opposed to the initial wound inflicted". She added that if she had misunderstood the position the appeal court might take a different view of the offence.

[22] In light of the seriousness of the offence the sheriff considered that there was no viable alternative to a custodial sentence. She took into account that the respondent had no recent or analogous convictions and no outstanding cases; he was genuinely remorseful and insightful regarding the impact of his offending on the complainer; the offence was out of character for the respondent, was situational and unplanned. The consequent risks of re-offending were low. The respondent, the main breadwinner of the family, had lost his livelihood as a result of the offence.

[23] The sheriff also noted that the respondent's wife had a history of alcohol misuse and that his 12 and 10 year-old children were very reliant upon him. Unpaid debts and unmet mortgage payments during his incarceration could result in the loss of the family home. The impact on the respondent's family of a custodial sentence would be significant.

[24] In the circumstances a 2 year headline sentence was considered fair, proportionate and no more severe than was necessary. The sheriff exercised her discretion to reduce the headline sentence by a third to reflect the timing of the plea.

Crown submissions

[25] A headline sentence of 24 months' imprisonment for the offence of assault to severe injury to the danger of life showed that the sheriff erred in her assessment of the seriousness of the offence. The sentence imposed did not reflect the true gravity of the offence, such that a headline sentence of 24 months was outside the range of appropriate headline sentences for the offence.

[26] The respondent's culpability was high. He verbally and physically assaulted the complainer in the course of the complainer's employment. He used a weapon to stab him and he fled from the scene without seeking medical assistance.

[27] The harm caused was significant. The subsequent readmission, 14 days after the offence, was a direct consequence flowing from the original assault and ought to have been taken into account for the purposes of the seriousness of the offence.

[28] There were no mitigating factors attributable to the offence itself, but there were a number of factors that aggravated the offence. First, the complainer, by way of his employment, was delivering a service to the public. He ought to have been able to conduct his duties without experiencing verbal abuse or physical violence. The sheriff did not refer to this factor. Second, the respondent drove away from the scene after the verbal altercation, parked his vehicle, and returned to stab the complainer. The offence was not committed on the spur of the moment. Third, the respondent used a large knife, with a blade approximately five to six inches long, to commit the offence. Fourth, the respondent fled the scene without summoning assistance for the complainer.

[29] The respondent did not have any analogous convictions, and he had young children who would be affected by a custodial sentence, but the sheriff placed too much weight on these factors.

[30] In *Colin Brough* v *HM Advocate* (unreported 16 February 2021) the appellant inflicted a single stab wound causing serious injury, permanent disfigurement and danger to life. There was a through and through wound to the liver. The complainer developed sepsis. He was in hospital for 12 days, but made a full recovery. The appellant had a number of previous convictions for violence, disorder and breaching court orders. In particular, he had a conviction for assault to severe injury on indictment in the sheriff court for which he was sentenced to 12 months' imprisonment; he had a High Court conviction for a sexual assault which involved a bottle, for which he was sentenced to 2 years' imprisonment; and he had a conviction for a domestic assault with a knife. The appeal court upheld the headline sentence of 8 years' imprisonment.

[31] *Stewart Stoddard* v *HM Advocate* (unreported 28 October 2022) involved assault to injury with a knife causing permanent disfigurement. There was a single blow to the neck with a knife of about 2 inches long attached to a set of keys. The complainer sustained a two-inch laceration to the dermis layer of the back of his neck. The wound was cleaned and closed by paramedics. He did not have to attend hospital. The appellant had a record of offending at summary level. The appeal court held that a headline sentence of 24 months' imprisonment was appropriate. This was a less serious case than the present one.

[32] With regard to the discount applied, the respondent had appeared on petition on 16 April 2024. On or about 19 April 2024 the Crown disclosed all available statements to the respondent's agents. Further disclosure of statements and productions to different agents took place in May and June 2024. On 20 February 2025 an offer to plead guilty under section 76 was made; this was subject to certain deletions from the averments in the petition, including the allegation of endangerment to life and the replacement of the

reference to a knife with a pointed key. This offer was rejected. After discussion on 11 March 2025 a plea of guilty in acceptable terms was agreed.

[33] As a generality, the discount was usually greater the earlier an offender tendered his/her plea but there was no rigid "sliding scale". The sentencer's discretion was not wholly unfettered and in the circumstances of this case, a reduction of one-third went beyond the level of discounts applied in recent appeal cases (*HM Advocate* v *EK* [2025] HCJAC 10; *Purvis* v *HM Advocate* (unreported, 3 June 2025); *NRL* v *HM Advocate* [2025] HCJAC 4; *HM Advocate* v *Sweeney* [2025] HCJAC 5). The respondent first intimated his intention to plead guilty ten months after his initial appearance on petition.

[34] The sheriff erred in imposing a sentence of 16 months' imprisonment. She failed properly to assess the seriousness of the offence, failed to take appropriate account of applicable aggravating factors and attached too much weight to the respondent's personal mitigating factors. These errors were compounded by applying an excessive discount. As a result of these errors, the overall sentence fell outside the range of sentences which the sheriff, applying her mind to all of the relevant factors, could reasonably have considered appropriate (*HM Advocate* v *Bell* 1995 SCCR 244, 250D). It was appropriate to impose a more severe sentence for the protection of the public, punishment of the offender and to express disapproval of this particular type of offending behaviour. Further, it was necessary for the guidance of sentencers generally to state that the sentence imposed in this case was unduly lenient and to impose a longer determinate sentence of imprisonment.

Respondent's submissions

[35] The test for undue leniency in *HM Advocate* v *Bell* had not been met. The sheriff appropriately considered the seriousness of the offence. She determined that the offence

was not pre-planned and involved a single stab wound to the complainer's abdomen with a knife which the respondent had in his possession attached to his keys in the course of his work. The sheriff did not consider that there was a viable alternative to a custodial sentence. She considered the level of culpability to be high.

[36] The sheriff gave full consideration to the level of harm caused. She detailed the full medical procedure including the post-operative treatment required following the complainer's readmission to hospital. This happened fourteen days after the offence. The sheriff was entitled to take the view that the post-operative treatment was not a direct consequence flowing from the original assault. The inclusion of the post-operative procedure in the sheriff's report indicated that she considered this factor, but concluded that the admission was caused by a secondary infection. This was a conclusion open to her.

[37] There were no mitigating factors attributable to the offence itself. Each aggravating factor was acknowledged in the sheriff's report. She provided reasons as to why she considered the attack not to be pre-planned. She accepted that the knife was work equipment.

[38] The personal mitigating factors on behalf of the respondent were significant. He had no analogous convictions (c.f. *Colin Brough* v *HM Advocate* cited by the Crown). He was in full-time employment and was the sole breadwinner for his family. His family were heavily reliant on him. The respondent had lost his livelihood as a result of the offence. Unpaid debts due to a period of incarceration could lead to loss of the family home. The respondent was genuinely remorseful and insightful as to the impact of his offending on the complainer. The respondent was assessed as being at a low risk and need level.

[39] The sheriff did not err in selecting a headline sentence of 2 years. In all the circumstances, the headline sentence was proportionate and was no more than was

necessary. This determination, in the particular circumstances of this case, was fair and did not meet the test of undue leniency.

[40] Each case turned on its own facts and circumstances. Care had to be taken when drawing comparisons between different sentencing decisions (*HM Advocate* v *William Budge* [2025] HCJAC 27 [43]). The guilty plea came at the earliest opportunity. The respondent had problems with previous agents he had instructed. He instructed his current agents on 22 January 2025 and sought to resolve the matter; he had all along wanted to do so. On 5 February 2025 a plea was offered by the respondent. This was refused. On 11 March 2025 a plea was agreed, and a section 76 letter was signed.

[41] The application of a discount of a third was not excessive, was proportionate and was reasonable. The sheriff did not err in exercising her discretion.

[42] It was not appropriate for the Court to interfere with the decision of the sheriff for reasons of public protection, punishment of the offender or to express disapproval of this type of offending behaviour.

Decision

[43] The test to be applied in a Crown appeal against sentence is well-established. It was set out in the opinion of the court delivered by the Lord Justice General (Hope) in *HM Advocate* v *Bell* 1995 SCCR 245, 250D:

> "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."

[44] We are satisfied that the sentence imposed by the sheriff was unduly lenient in the sense explained in *Bell* and that it is in the interests of justice for this court to interfere with it. We consider that the sheriff has underestimated the respondent's culpability and the nature and extent of the harm he caused to the complainer. We are also persuaded that the sheriff allowed too great a discount from the headline sentence she selected.

[45] The attack on the complainer involved the use of a knife with a blade estimated to have been 5 to 6 inches in length. It was a potentially lethal weapon. The court has repeatedly made clear that those who choose to use weapons to inflict injury must expect that a very serious view will be taken of such conduct. In the present case the offence was significantly aggravated by a number of factors: it was committed in a public place; the complainer was a public official engaged in the enforcement of parking restrictions; the attack was not entirely impulsive – the respondent had time to cool down, having returned to his car after the initial altercation and then moved and parked the car in a nearby street; the respondent fled the scene and did nothing to assist the complainer. We consider that when the cumulative effect of these considerations is taken into account it is clear that the sheriff has not taken a sufficiently serious view of the nature of the attack and the level of the respondent's culpability.

[46] The sheriff has also erred in her approach to the seriousness of the harm caused to the complainer by the attack. Contrary to what she says in her report to this court, it is clear that the infection of the complainer's wound and his readmission to hospital were directly caused by the attack. The complainer explained this in his victim statement and the matter was referred to in the Crown narrative. The infection and the treatment it required led to

significant difficulties for the complainer and to extensive further medical intervention. He has been left with substantial physical and psychological difficulties. He has suffered continuing financial loss.

[47] There were no mitigating circumstances in relation to the commission of the offence. We acknowledge that there was some mitigation in the respondent's personal circumstances: his very limited criminal record and his otherwise pro-social life; his challenging upbringing; his background of mental health issues; his wife's previous difficulties; the financial stress he was under at the time (which the parking penalty charge would have added to); and the fact that he has shown remorse. These considerations are, however, heavily outweighed by the high levels of culpability and harm caused. The sheriff has attached too much weight to the personal mitigation.

[48] Finally, we consider that the sheriff erred in the exercise of her discretion in allowing a discount of one-third. While the plea was eventually tendered in terms of section 76 of the 1995 Act, it was not offered in acceptable terms until about 11 months after the respondent's appearance on petition. The fact that the respondent had certain unexplained difficulties with his agents does not detract from the fact that the plea could and should have been tendered at a much earlier stage.

[49] We conclude that the sentence of 16 months' imprisonment imposed by the sheriff fell outside the range of sentences which, taking account of all the relevant factors, could reasonably be considered appropriate. The present case is somewhat less serious than that of *Colin Brough* v *HM Advocate* (unreported 16 February 2021) where the appellant had a serious criminal record; the injury involved a major organ and there was sepsis; and there was an additional aggravation of permanent disfigurement. It is significantly more serious

than that of *Stewart Stoddard* v *HM Advocate* (unreported 28 October 2022) where the knife was much smaller, the injury was relatively minor and no hospital treatment was necessary.

[50] In the whole circumstances this is a case where the sentence ought to have been close to the maximum sentence which the sheriff could impose. We consider that the appropriate headline sentence is one of 6 years' imprisonment and the appropriate discount is 25 per cent. We shall allow the appeal, quash the sentence imposed by the sheriff and substitute for it a sentence of 4 years and 6 months' imprisonment backdated to 22 April 2025.