

# Courts and Tribunals Judiciary

**Regina**

**v.**

**Daniel ASTLEY**

## **Sentencing Remarks**

1. Daniel Astley, on 6 October 2021 you killed Andrew Welbourn. The jury found you guilty of manslaughter.
2. Andrew Welbourn was a young man of 25. You ended his life and you brought grief and misery to the lives of others. His mother has made a moving statement, in which she has set out in powerful terms the devastating effect of your actions on her.
3. Your offence is so serious that only a custodial sentence can be justified. I am also required to impose the statutory surcharge, if it applies. The order can be drawn up in the appropriate amount.
4. There are sentencing guidelines which I have to apply in a case like this. I have to consider first the level of your culpability. I am sure that this is a case of high culpability. You punched Andrew Welbourn and sent him to the ground. When he was lying on the pavement and not defending himself, you punched him five times to the face. The video of those five punches is chilling. You punched straight down, like a pile-driver, into Mr Welbourn's face when the back of his head was on or just above the pavement.
5. I am sure that when you did that you intended to cause harm falling just short of grievous bodily harm. Moreover, your assault on Mr Welbourn carried a high risk of grievous bodily harm which was, or ought to have been, obvious to you. Your punches could easily have broken bones in his face or cracked his skull. In those circumstances, the guidelines set out a starting point of 12 years' imprisonment, with a range from 8 to 16 years.
6. I next have to consider all of the aggravating and mitigating factors. The principal aggravating factors are your previous convictions for offences

involving violence or the threat of violence. You are now 33. You were convicted of two offences of battery committed in 2009, when you were 19 or 20. By themselves, those convictions would not count for much, but they were followed by convictions for three offences of robbery committed in a single incident in 2018, when you entered a flat brandishing a pair of scissors as a weapon and stole from the three occupants of the flat. That offence was aggravated by the fact that you were under the influence of drugs. It is an additional aggravating factor that you were on licence for that offence when you killed Mr Welbourn.

7. The principal mitigating factor is that Mr Welbourn's death was caused by an unusual combination of circumstances. The manner in which you punched Mr Welbourn while he was defenceless and on the ground was appalling, but the fact is that you did not directly inflict harm which would be categorised as really serious bodily harm. For instance, you did not break any bones. Unknown to you, Mr Welbourn suffered from a serious and undiagnosed heart condition. That, coupled with his extremely intoxicated state, meant that your assault on him, while it did not directly cause really serious bodily harm, precipitated a fatal cardiac arrest.
8. I regard that as a very significant mitigating factor, to which are to be added the other matters which have been said on your behalf by Mr Wright KC. Your assault on Mr Welbourn was neither planned nor premeditated and you have shown remorse, which I accept is genuine. I have also read the character reference, which tells of the positive features of your character. You personally were keen to admit to manslaughter, but did not do so because there was an issue as to causation, on which you were no doubt advised by your lawyers. I am told that you have a trusted position in prison. Taken together, I consider that the mitigating factors outweigh the aggravating factors to a significant degree and that I should impose a sentence which is a little below the range for a category B offence.
9. However, I also have to consider whether to impose the normal type of sentence of imprisonment, known as a determinate sentence, or the special type of extended sentence which can be imposed on offenders who are classed as dangerous. For that purpose, I first have to consider whether there is a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences.
10. The probation officer who prepared your pre-sentence report considers that you pose a high risk of serious harm to the public. However, there are at least three features of the report which mean that I cannot simply accept that opinion:

- (1) The report refers to an alleged incident recorded in a police domestic abuse log in 2017, but that is merely an allegation and it concerned no more than pushing.
  - (2) The report refers to the use by you of serious violence in 2018, whereas what you did on that occasions was to threaten, rather than to use, violence.
  - (3) The report does not refer to the unusual circumstances relating to causation which I have already mentioned.
11. I have considered all of the circumstances of this case for myself and I have concluded that there is a significant risk to members of the public of serious harm occasioned by the commission by you of further specified offences. The principal factors supporting this conclusion are as follows:
- (1) By brandishing the scissors in the robbery in 2018 you were threatening to stab the occupants of the flat if they did not comply with your wishes. Clearly, the occupants of the flat faced a significant risk of serious harm.
  - (2) The robbery in 2018 was attributed to your drug addiction at the time, but you were free of drugs and had drunk very little alcohol when you assaulted Mr Welbourn, which demonstrates that you present a risk to members of the public whether you are on drugs or not.
  - (3) There was no reason for the assault on Mr Welbourn. You stopped your van, got out and confronted him because you saw him swing his bag at, and possibly hit, the van in front of you. You said that you just wanted to speak to him, but I am sure that that you were fired up and ready to use violence when you got out of your van. You also said that you hit him because he swore at you and threatened you. He may have said something to you, but your punches to him on the ground would have been a massive overreaction to any words which he may have spoken. At trial, Mr Collins asked you why you punched Mr Welbourn after he fell to the ground. What you said in reply indicates that this was, as I am sure, a case of mindless violence. You said:

“I wasn’t really thinking. It just kind of happened.”
  - (4) You were on licence at the time. I agree with the probation officer that it is concerning that you were not deterred from what you did by the prospect of being recalled to prison.

- (5) Despite the causation issues to which I have referred, I have already found that your assault on Mr Welbourn carried a high risk of grievous bodily harm which was or ought to have been obvious to you.
12. This is not a case in which a life sentence would be appropriate, so the next question which I have to consider is whether a determinate sentence would be sufficient. I do not consider that it would be. I say that having regard to all the circumstances of the case, but the following factors are particularly significant.
- (1) When you assaulted Mr Welbourn, you used appalling violence for no explicable reason. Until your motivation is identified and addressed, you will remain liable to do the same at any time.
- (2) You were sentenced to 45 months' imprisonment for the robbery in 2018. A Thinking Skills Programme completed during that sentence does not appear to have had much, if any, effect. You were released on licence on 24 February 2020, but recalled on 9 March 2020, returning to prison on 9 April 2020. You were released again on 28 July 2020, but recalled for a second time on 17 March 2021. You were released for a third time on 23 July 2021, but committed this offence less than 3 months later, which led to a third recall. Clearly, you did not respond well to the determinate sentence imposed in 2018.
13. The least possible sentence I can impose, having regard to the aggravating and mitigating factors of the case, is an extended sentence made up of two parts: a custodial period of 7 years and an extended licence period of 3 years, making an extended sentence of 10 years' duration in total.
14. The time which you have spent in custody on remand will count towards your sentence, but not the time which you have spent serving the remainder of the sentence which was imposed on you in 2018 for the robbery.
15. You will serve two-thirds of the custodial period of this sentence in prison before the Parole Board will consider whether it is safe to release you, and if so on what terms. Once released, you will serve on licence any part of the custodial period which remains, and you will then be subject to an extended licence for a further period of 3 years. If, when you are subject to licence, you commit another offence or fail to comply with the terms of your release, you are liable to be recalled to custody and may serve the entire sentence in custody.

**Mr Justice Lavender**

10 February 2023