IN THE COURT OF APPEAL FOR GIBRALTAR

Neutral Citation Number 2025/GCA/019

2025/CACRI/003

BETWEEN:

MICHAEL STAINTON

Appellant

-and-

REX

Respondent

Shane Danino (instructed by **Hassans)** for the **Appellant**
Christina Wright (instructed by **OCPL)** for the **Respondent**

Judgment date: 30 October 2025

JUDGMENT

SIR MAURICE KAY, P:

1. This is the judgment in the appeal of Michael Stainton. The Appellant who is now aged 36 was arraigned in the Supreme Court on 15 June 2025 when he pleaded not guilty to two offences – assault occasioning actual bodily harm and strangulation. On 6 May, one week before his trial is due to take place, he was arraigned on the assault charge to which he pleaded guilty. This was accepted by the Crown and the charge of strangulation was ordered to lie on the file on the usual terms. Sentencing was adjourned to 12 June

2025 when the Appellant was sentenced by the honourable Chief Justice to twelve months imprisonment. It is against that sentence that he now appeals.

2. The victim of the assault was the Appellant's ex-partner Sian Clarkson. At the sentencing hearing the Chief Justice set out the facts of the case in these terms:

> *"On the evening of Sunday 30 June 2024, together with your former partner, you went to a pub where you each consumed approximately five to seven pints of beer. You then returned home and you took the dogs for a walk. When you returned home, because you had not taken your house keys and your former partner was asleep on the sofa, you urinated yourself. Someone, presumably either your former partner or one of her children then let you in. You blamed your partner for your wetting yourself and you slapped her in the face. You then discuss separating as a couple and when your former partner mentioned her bosses name in relation to an advance, a struggle ensued. You slapped her on numerous occasions causing her a bruise around her right eye, a bruise on the bridge of her nose, swelling around her left ear, an abrasion on her neck and bruising to her arms and legs. During the course of the incident, you also sustained bruising to both cheeks of your face. That you suffered those injuries affords you no mitigation. Evident that they came about because your former partner was defending herself. Your former partner shouted for her son to call the police and then together with her children who were in a bedroom within the property, they fled from the address".*

3. The Chief Justice then referred to Ms Clarkson's victim impact statement, the guidelines prescribed by the Sentencing Counsel, and to aggravating and mitigating factors. He concluded that the appropriate sentencing starting point was 15 months' imprisonment but that the Appellant was entitled to a 20% discount for his late guilty plea thus producing the final figure of 12 months' imprisonment. He declined to suspend the sentence.

4. Mr Danino seeks to advance a number of grounds of appeal in support of his overriding submission that the sentence of 12 months' imprisonment was wrong in principle or manifestly excessive. Essentially, they criticise the Chief Justice's approach to the sentencing guidelines. The victim impact statement and the conclusion that the sentence should be one of immediate custody rather than a suspended sentence.

The Sentencing Guidelines

5. In the customary manner the Sentencing Guidelines on assault occasioning actual bodily harm require a sentencing Judge to determine the category of offence by reference to an assessment of culpability and harm. As to culpability, the distinction is drawn between high, medium and lower culpability as follows:

> " *A - High culpability*
> - *Significant degree of planning or premeditation*
> - *Victim obviously vulnerable due to age, personal characteristics or circumstances*
> - *Use of a highly dangerous weapon or weapon equivalent*
> - *Strangulation/ suffocation/ asphyxiation*
> - *Leading role in group activity*
> - *Prolonged/ persistent assault*
>
> *B - Medium culpability*
> - *Use of a weapon or weapon equivalent which does not fall within Category A*
> - *Lesser role in group activity*
> - *Cases falling between Category A or C because*
>   - *factors in both high and lesser categories are present which balance each other out and/ or*
>   - *the offenders culpability falls between the factors as described in high and lesser culpability*
>
> *C - Lesser culpability*
> - *No weapon used*
> - *Excessive self-defence*
> - *Impulsive/ spontaneous and short-lived assault*
> - *Mental disorder or learning disability when linked to the commission of the offence"*

6. Turning to the categorisation of harm, the guidelines provide as follows:

> "*Category 1*
> - *Serious physical injury or serious phycological harm and/ or substantial impact upon victim*
>
> *Category 2*
> - *Harm falling between categories 1 and 3*

Category 3

- *Some level of physical injury or psychological harm with limited impact upon victim"*

7. The Chief Justice rejected a submission on behalf of the Appellant that this was a "*lower culpability"* case. Although he acknowledged there was no previous history of assault and no weapon was involved, he did not accept that the assault was "*impulsive or short-lived"*. He said:

> *"On the agreed facts, the first slap could be described as impulsive or spontaneous, however, the subsequent series of slaps cannot in my view be described as either a spontaneous or a short-lived assault. In all the circumstances, in my judgement, this is a borderline case of lesser/ medium culpability."*

He assessed the harm as Category 3 in the following terms:

> "*As regards harm, taking account of both the physical injuries, the serious phycological harm and the substantial impact of the offending upon the victim, namely her relocating to the UK with her children, this is a Category 3 case."*

8. As a "*borderline culpability B/ C Category* 3" case, he took the starting point to be 12 months increased to 15 months following a consideration of aggravating and mitigating factors but requiring an actual sentence of 12 months after discount for the late guilty plea.

9. Mr Danino takes issue with the Chief Justice's treatment of culpability and harm. His first submission is that there were no higher culpability factors present in this case so it cannot be a medium culpability case by reason of the presence of both high and lower factors. That submission has some force. However, it seems to me that the Chief Justice did not find the presence of Category A factors. He considered that it was a borderline Category B/ C case on the alternative basis that the Appellant's culpability "*fell between the factors as described as high and lesser culpability"*. This was because he did not accept that the Category C feature of "*impulsive/ spontaneous and short-lived assault"* were present. In my judgement, this was an ungenerous conclusion. It is significant that the Appellant had never

previously behaved violently and the altercation in which he did so on this occasion changed in nature when his partner mentioned her boss and an advance. That does not excuse the ensuing violence in any way, but it is consistent with the violence having been impulsive or spontaneous. It probably did not seem "*short-lived"* to the victim, but the temporal criterium has to be applied fairly and objectively. Neither the number nor the extent of the physical injuries compels the finding that this was a prolonged incident.

10. The next question is whether the Chief Justice was justified in treating the harm as being in the highest category of "*serious physical injury or serious phycological harm and/ or substantial impact upon the victim".* His conclusion was substantially driven by the victim impact statement. He correctly reminded himself of the need for caution when considering victim impact statements but was satisfied as to reliability in this case. He said:

> "*It evidences that in incident had an emotional impact upon her son and resulted in her suffering serious phycological harm which notwithstanding her going to therapy, has affected both her ability to return to employment and her social life. Moreover, and significantly that the offending has had a substantial impact on the victim is evident from the fact that because she felt unsafe, together with her children she has left Gibraltar for the United Kingdom".*

11. The need for caution when considering victim impact statements in the context of determining a sentence was emphasised in the case of *Chall* [2019] 4ER 497 which was subsequently applied in *Panta* [2020] EWCA CRIM633. In the latter case, Lord Justice Green said at paragraph 15:

> "*The contents of a statement can be taken into account in the setting of the appropriate sentence. A court should, when sentencing a defendant, proceed upon the basis of the facts about which the Judge is sure. Such statements may contain facts and other evidence which is incontrovertible, but they often contain expressions of a deeply personal nature or assertions unsupported by evidence. As the court pointed out in Chall, there is always a risk in the raw emotion that is expressed might be exaggerated or the description of the harm suffered overstated albeit unintentionally and without a desire to mislead. If a Judge is going to rely upon a statement of this sort to*

justify a leap in the categorisation of a sentence, then that needs to be explained in the sentencing remarks."

12. In the present, case it seems to me that the need for caution required the Chief Justice to exercise a greater degree of restraint here. I do not doubt that the victim experienced significant physical harm accompanied by emotional and phycological damage. However, it is difficult to quantify the latter simply on the basis of the victim's subjective account. It is not an expert assessment nor does it or could it look far into the future. The Chief Justice took express account of the fact that the victim has "*had to leave Gibraltar"* as a result of the offence. That may well be how she sees it but, objectively, it seems that there were probably underlying tensions within the relationship. That was the opinion of the author of the Pre-Sentence Report. In that event, the relationship may not have endured. They had come to Gibraltar from the United Kingdom as a couple with her children. It is likely that however the relationship had come to an end for a variety of family, financial and personal reasons, she would have soon returned to the United Kingdom. This is of relevance to any assessment of harm caused by the offence.

13. No offence of domestic violence causing significant injuries is trivial. This was a serious offence. However, I have come to the conclusion that the Chief Justice erred in his fixing of the starting point. He did so primarily because his assessment of culpability as borderline B/ C was too high as a result of a harsh interpretation of "*impulsive, spontaneous and short-lived".* I also think that his categorisation of harm in the highest category based as it was overwhelmingly on the victim impact statement was an overstatement.

14. Cases of this kind are difficult to categorise, but it seems to me that it was inappropriate to put this case any higher than the high end of Category C culpability and the high end of Category 2 harm. This produces a starting point of 36 weeks' imprisonment and a range of high-level community order to 18 months' imprisonment. The aggravating factors of the offence being one of domestic violence committed in drink while the victim's children

were in the property have to be fairly balanced against the Appellant's good character and apparently successful rehabilitation. The Chief Justice's approach for a discounted late guilty plea was reasonable. Taking all these matters into account, I have come to the conclusion that the sentence of 12 months' imprisonment was manifestly excessive. Adopting my categorisation of high end of Category C culpability and high end of Category 2 harm, it seems to me that the appropriate sentence is one of 8 months' imprisonment.

Should the sentence be suspended?

16. The Sentencing Guidelines set out factors that would make a suspended sentence inappropriate or appropriate. Suspension is inappropriate if an offender presents a risk/ danger to the public; appropriate punishment can only be achieved by immediate custody; or there is a history of prior compliance with court orders. Factors indicating that it may be appropriate to suspend a custodial sentence are a realistic prospect of rehabilitation; strong personal mitigation; or if immediate custody will result in significant harmful impact on others. The Chief Justice concluded that it would be inappropriate to suspend the sentence by reference to his finding that appropriate punishment could only be achieved by immediate custody. He did not refer at that stage of his sentencing remarks to the evidence of rehabilitation or personal mitigation, although he had mentioned them earlier in this passage:

> "*As regards personal mitigation, I note that you have no previous convictions and you have addressed your alcohol misuse having voluntarily attended a 15 weeks rehabilitation programme… and made positive progress. I note that the probation officer states that you appear to be genuinely remorseful, however that assessment has to be viewed from the prospective that the plea has been entered at a late stage. I also note that the probation officer assesses you as being of low risk of reoffending".*

17. Given the Appellant's lack of previous convictions and the positive aspects of the Pre-Sentence Report, in particular the voluntary,' conscientious and

evidently successful steps taken by the Appellant in relation to rehabilitation, there were strong arguments favouring suspension in this case, however, it is difficult to say that at the time of sentencing, the Chief Justice was wrong to reject that.

18. At this stage, the Appellant having served 7 weeks in custody prior to being granted bail on 24 July, I would not consider a wholly suspended sentence to be appropriate. Mr Danino has drawn our attention to section 508 of the Criminal Procedure and Evidence Act 2011 which empowers the court to impose a prison sentence that is to be partly served and partly suspended. This option used to be available in England and Wales, but it was abolished there in 1991. In Gibraltar however, it remains available. Although our researches reveal that it is rarely used. In my judgment the unusual circumstances of this case where a sentence of immediate custody has been partly served prior to release on bail before a successful appeal against sentence make a partly suspended sentence a just outcome. Accordingly, I would adjust the outcome.

Conclusion

19. I would quash the sentence of 12 months' imprisonment and substitute a sentence of 8 months' imprisonment with a direction of 3 months' to be served and 5 months' to be suspended for 12 months from the date of this judgment. This means that:

    (1) The Appellant probably already served the 3 months by reason of the earlier release provision but;
    (2) If he were to be convicted of a further offence within the next 12 months, he would be liable to serve the suspended part of this sentence as well as any later sentence. A copy of this judgment should be served on the Appellant.

20. To this extent, I would allow the appeal against sentence.

SIR NIGEL DAVIS, JA:

21. I agree.

SIR COLIN RIMER, JA:

22. I also agree.