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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 3 November 2016

B e f o r e:

LORD JUSTICE LLOYD JONES

MR JUSTICE DINGEMANS

THE RECORDER OF PRESTON - HIS HONOUR JUDGE MARK BROWN
(SITTING AS A JUDGE OF THE COURT OF APPEAL CRIMINAL DIVISION)

R E G I N A

v

D
H

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The Applicant D was not represented
Mr M McAlinden appeared on behalf of the **Applicant H**
The Crown did not attend and was not represented

J U D G M E N T
(Approved)

1. MR JUSTICE DINGEMANS: These are renewed applications for permission to appeal against sentence following refusal by the single judge.

2. The applicants were sentenced on 28 October 2015 in the Crown Court at Snaresbrook for an offence of causing grievous bodily harm with intent. The circumstances giving rise to the offence were that the applicants were members of or associated with, on the judge's findings, the Holly Street Gang. Four days before the offence a young man who also belonged to the Holly Street Gang had been killed.

3. At 5 pm on Saturday, 10 January 2015, the applicants came across the victim, a 14-year-old schoolboy, who, together with another of the co-accused, is entitled to anonymity pursuant to the provisions of section 45 of the Youth Justice and Criminal Evidence Act 1999. I should record that an order was also made on 14 August 2015 under the Children and Young Persons Act 1933.

4. The victim in this case was a member of the London Fields Gang, which was believed and alleged to have been responsible for the murder of the young man four days before. The victim was at Kingsland High Road shopping centre and he was on his bicycle and unarmed. The applicants and others surrounded the victim, punched him, and one of the applicants, represented today by Mr McAlinden, and we are very grateful for his submissions, was in possession of a knife which he took out and used to stab him. The victim sustained a serious injury to his liver. There was a single incised wound to the abdomen. There was a laceration and internal bleeding and a haemothorax on the right side. The victim was in hospital for nine days. He had a metal clip attached to his liver and the victim has been advised never to drink alcohol or take part in sport. He has a very substantial operation scar and a scar from the stabbing.

5. The judge decided that the applicants and the co-accused had joint responsibility: one had the knife but no previous convictions (Mr McAlinden's client); the other two had previous convictions. The judge considered that, if they had been adults, the appropriate sentence would have been a sentence of imprisonment of 15 years before discount for plea of guilty; but, discounting because of the age of the applicants, the judge took a starting point of 7 1/2 years. The judge made a further reduction of 25 per cent for the pleas of guilty, resulting in a sentence of 5 years 8 months' detention pursuant to section 91.

6. Mr McAlinden has pointed out this morning that his client had made what might be considered exceptional progress after his arrest. He had co-operated with the police, he had been subject effectively to a control order and he had proved that the actions on that day were not the actions of the man that he is. He had regretted his involvement and there was only a single stab wound.

7. However, in our judgment, the complaints that the sentences imposed on these applicants are manifestly excessive is unsustainable. This was an extremely serious offence. The applicants were part of a group of three. The intention had been to cause really serious bodily injury. A knife had been used. It was in public in a shopping centre and was bound to have caused fear and distress to adults and children. Although

the applicants were committing crimes which were adult in nature, the discount accorded for youth is because these applicants were young and immature, and not old enough to recognise that membership of a gang and carrying knives was immature and dangerous behaviour rather than anything to be respected. But that was properly reflected by the judge in his sentencing remarks and in his discount from 15 years to 7 1/2 years.

8. There is, in our judgment, nothing in the distinct point taken by Mr McAlinden about the discount for the plea of guilty because that was only offered at the plea and case management hearing, and the discount of 25 per cent was right.

9. That would have been the end of the renewed applications for permission to appeal, apart from a point spotted by the Registrar in the Criminal Appeal Office and developed by Mr McAlinden today, and, as I say, we are grateful for his submissions. This point relates to credit for time spent on electronic curfew while remanded to local authority accommodation. An adult remanded on bail who has as a condition of bail an electronic curfew requirement is entitled to credit of half a day for each day spent on curfew. This is pursuant to the conjoint provisions of the Bail Act 1976 and in particular sections 3(6ZAA), and section 240 of the Criminal Justice Act 2003 and its successor, section 240ZA. I should just interpose to record that section 240 was repealed and section 240ZA was inserted by the Legal Aid, Sentencing and Punishment of Offenders Act ("LASPO"). Section 240 was repealed and replaced because errors had started to occur when days recorded for time spent in custody were recorded for the purposes of the sentence. The deduction then became administrative and automatic.

10. If a young offender is remanded to detention pursuant to LASPO, time spent in custody or on electronic curfew will count. That is because it is a remand in custody for the purposes of the Criminal Justice Act. However there is an anomaly in the statutory provisions, because if a young person is remanded into local authority accommodation with an electronic curfew provision, that does not amount to a remand in custody for the purposes of the 2003 Act. In those circumstances, counsel appearing for young persons remanded into local authority accommodation and subjected as a condition of bail to curfew should raise the issue with the sentencing judge, as indeed should those who have been the subject of an electronic curfew when remanded into what is equivalent to custody.

11. In this case, the issue was fairly raised with the sentencing judge at the end of sentencing, and he said this:

> "I have heard various points about curfews, periods in custody. If the prison authorities decide that there are allowances to be made, so be it. I am making no directions as to anyone's current terms, I am making no directions as to any discounts for curfews."

12. In this case, so far as the applicant represented by Mr McAlinden is concerned, he was remanded into the care of a local authority and placed at the home of his aunt with an electronically monitored curfew. He was then granted bail by the Crown Court on the same terms, namely to live with his aunt with an electronically monitored curfew. That

remained in place until 1 December 2015. That meant that there were 182 qualifying days, so he should have been credited with 91 days pursuant to the provisions of section 240A of the Criminal Justice Act 2003 which applies where there has been a remand with electronic curfew monitoring. Section 240A(2) provides:

> "Subject to subsections (3A) and (3B), the court must direct that the credit period is to count as time served by the offender as part of the sentence."

13. I should just note that subsection (3) then deals with the steps to be taken to calculate credit for days, and that includes, because it is relevant to the applicant not appearing today, at step 3 "from the remainder, deduct the number of days during that remainder on which the offender has broken either or both of the relevant conditions." It concludes with step 4, "Divide the result by 2, and if necessary round up to the nearest whole number".

14. In these circumstances there was no reason why the applicant represented by Mr McAlinden should not have been credited with the 91 days pursuant to section 240A(2). So although we will refuse the basis of the proposed appeal on the grounds that the sentence was manifestly excessive for the reasons already given, we will grant permission to appeal and allow the appeal to the extent of directing that the appellant should have credit for the 91 days served.

15. That then brings us to the case of the applicant D, who was remanded into local authority care on 15 May 2015 with a relevant curfew pursuant to section 91(1) of LASPO. He breached the conditions of the remand and was placed in secure detention on 9 June. On 9 June he was then remanded into local authority accommodation with a relevant curfew, but he again breached the terms of the remand and on 16 June he was remanded into secure accommodation. He was also sentenced to a detention and training order for drug-dealing unrelated to this matter on 27 August 2015.

16. The issue then is whether the time spent by the applicant D when remanded into local authority accommodation with an electronic curfew. The relevant periods are between 15 and 22 May and between 9 and 16 June 2015. This is a case where the provisions of section 240A(2) do not directly assist the applicant D because he was remanded into local authority accommodation. However, as noted above, the issue had been fairly raised with the judge, and because of the statutory anomaly the same provisions which apply for section 240A(2) should, in our judgment, apply by way of analogy. That is because the person has suffered effectively the same loss of freedom when on curfew in local authority accommodation and should have the same credit as the person who is remanded under an electronic curfew under the Criminal Justice Act.

17. Having regard then to section 240A there is provision to deduct days where it is proved that the offender has been in breach of the provisions of the electronic curfew. In this case, the only information before us shows that by reason of his breaches of relevant provisions the applicant D was remanded into custody and then released again, and then after a further week remanded into custody. So it appears that he was punished for the breach of the bail or electronic curfew at the time that he was remanded into custody. We have no information that there were breaches on the other days, and in those

circumstances we consider that it is appropriate to grant permission to appeal and to direct that the 7 days (being half of the 2-week period that he spent on the electronic curfew) should count towards his sentence, therefore reducing his sentence by the period of 7 days.

18. MR MCALINDEN: My Lord, I am embarrassed to ask, but as my appeal succeeded in part would the court grant me a representation order for the applicant H?

19. LORD JUSTICE LLOYD JONES: Yes, you shall have a representation order for today.