

**Neutral Citation Number: [2019] EWCA Crim 1125**

No: 2019 00500 A3

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Wednesday 5 June 2019

**B e f o r e:**

**LADY JUSTICE NICOLA DAVIES DBE**

**MR JUSTICE MARTIN SPENCER**

**HIS HONOUR JUDGE PICTON**

**R E G I N A**

v

**RAWLINGS AKONEDO**

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**Mr S Levy** (a solicitor advocate) appeared on behalf of the **Applicant**

**J U D G M E N T**

(Approved)

**MR JUSTICE MARTIN SPENCER:**

1. By this application Rawlings Akonedo renews his application for permission to appeal against sentence, permission having been refused by the Single Judge.
2. On 21st November 2018 the applicant pleaded guilty to an offence of aggravated burglary, for which he was sentenced on 10th January 2019 to five years' detention in a young offenders' institution, and to a further offence of assault occasioning actual bodily harm, for which he was sentenced to two years' detention concurrent, making a total of five years' detention.
3. The court record sheet records that the applicant was also ordered to pay a Victim Surcharge Order of £140, but this was an error and my Lady has ordered that the court record sheet be amended to record a Victim Surcharge Order of £30.
4. On this application Mr Levy has appeared for the applicant *pro bono*, and we are extremely grateful to him for doing so and for the assistance given not just to the court but to the applicant.
5. The lead offence of aggravated burglary was committed by this applicant together with two others. The applicant was born on 11th November 2000 and the offence was committed on 23rd October 2018, when the applicant was still 17 years old - some three weeks short of his 18th birthday. He had attained 18 by the time he was sentenced on 10th January 2019. One of his co-accused, PA, was born on 25th February 2001 and was therefore aged 17 both at the time of the offence and at the time of sentencing. But he attained his 18th birthday approximately seven weeks later. He is now 18.
6. The facts of offences are that on 23rd October 2018 the victim (aged 58) was at his home address watching television in his living room when the co-accused PA, armed with

a claw hammer, burst through the door and struck the victim fifteen times on the arms and legs using the claw hammer. He threatened to break every bone in the victim's body unless he opened the back door, which he did. This allowed the applicant together with the third co-accused to enter the premises. As shown on the CCTV, they had hoods pulled up to disguise their appearance. They pushed the victim back into his living room. The applicant struck the victim in the face a few times and they demanded to know where the money was. They demanded bagged cannabis from the victim, who told them that he had none. He did have fifteen cannabis plants upstairs, but when told to cut them down he said that the plants were not ready to be harvested.

7. A neighbour who had seen two men acting suspiciously outside the victim's house contacted the police. Police officers arrived at the scene whilst the three accused were still inside the property and the property was surrounded. The defendants were arrested; and the process of arrest and handcuffing was again shown on the CCTV camera posted inside the victim's house. The whole incident had lasted some 20 minutes. The victim sustained bruising to both arms, cuts to his lower left leg, which caused significant bleeding, and bruising and swelling to both sides of his face.
8. The three defendants were all young man of previous positive good character. They were intelligent and must have known how terrifying the offence would be. They all took the decision to participate. It was agreed before the learned judge that the offence of aggravated burglary fell within category 1 of the Sentencing Guidelines, with a starting point of 10 years' custody and a category range of 9 to 13 years.
9. The sentencing judge did not distinguish between the applicant and the other co-accused with whom the applicant had entered the premises. He took a starting point of 9 years, which in our view was generous; he could easily have gone up from the starting point

rather than down, given the circumstances of the offence. He then reduced the sentence to 6 years, after applying the full credit for plea. The sentence was then further reduced to 5 years to take into account the sentence which was to be passed on the 17-year-old co-defendant PA, who fell to be sentenced as a youth as he was still only 17. Although he was the youngest, his offending had been the most serious as he was the one who had forced entry and produced the hammer, repeatedly striking the victim and threatening to break every bone in his body.

10. On behalf of the applicant, Mr Levy has submitted that the sentence imposed was arguably manifestly excessive and the 9-year starting point should have been reduced to between a half and two-thirds for the applicant because he was a youth at the time of the offence. Thus it is argued that the learned judge should have taken additional account of the applicant's age at the time of the offences and thus started at a lower starting point, this argument being raised particularly by comparison to what the learned judge did with PA, the co-accused. It was also argued that there had been insufficient account taken of the applicant's good character.
11. However, as was pointed out in the case of Hashi [2019] EWCA Crim 185, the guideline on sentencing children and young persons is only a rough guide and must not be applied mechanistically. The Court said:

"The guideline internally recognises that it is only a rough guide and that ultimately it is a matter for the sentencing judge as to what, if any, discount is to be given to a young offender in any particular case."
12. Clearly the same factors cannot apply when sentencing a person who, at the date of the offence, was three weeks shy of his 18th birthday as to when sentencing, say, a 15-year-old.

13. In refusing permission to appeal, the single judge stated:

1. The judge had to sentence three young men for an offence of aggravated burglary. One of them also had to be sentenced for an offence of robbery.
2. The grounds of appeal are that the judge did not deal with the fact that the applicant was 17 years old at the time of the offence in the manner contemplated by the Sentencing Guidelines. However, the judge did in fact make a reduction on account of the fact that the applicant was not much older than the other defendant in relation to whom the judge applied the Sentencing Guidelines. He reduced the sentence from 6 to 5 years to reflect that point.
3. Bearing in mind that the applicant was almost 18 when the offence was committed, I consider that the judge made adequate allowance for the applicant's age."

14. We are in agreement with the single judge and for the reasons stated by him we consider that it is not reasonably arguable that the sentence was manifestly excessive. The application is therefore refused.

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