

[2019] EWCA Crim 1583
No. 2019/02135/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 20 September 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

and

MR JUSTICE LAVENDER

REGINA

- v -

HAMSA AMIN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Funnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

This transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Mr P Eguae appeared on behalf of the Appellant

Mr Holt appeared on behalf of the Crown

J U D G M E N T
(Approved)

Friday 20 September 2019

LADY JUSTICE NICOLA DAVIES:

1. On 22 March 2019, in the Crown Court at Isleworth, the appellant was convicted of the offence of violent disorder. On 10 May 2019, he was sentenced by the trial judge to four years' detention in a young offender institution. Two co-accused, Clarke and Wickens, pleaded guilty to the same offence. Each was sentenced to 31 months' detention in a young offender institution.
2. The appellant appeals against sentence by leave of the single judge.

The background

3. On 24 March 2018, at about midnight, the appellant, his two co-accused, four other males and a female attended a party being held in a private garden in Osterley, West London. None of the male members of the group had been invited. The purpose of attending the party was to find a male who had flirted with the appellant's girlfriend and to cause him damage. At least three of the seven males carried knives. All wore balaclavas, masks or scarves, most had their hoods up. In order to enter the garden, the group had to trespass onto private property and unchain a well-secured gate at the back and side of the house. The judge found that they had effectively broken into the property and were trespassers.
4. When they arrived, the party had ended. That is what the group was told by one of the hosts, Krishna Parmar. Approximately eight people were in a tent at the end of the private garden, there had been drinking, the judge described the mood as "soporific". The group rushed into the tent and began to bully the partygoers. They interrogated them and asked where was the person who was believed to have flirted with the appellant's girlfriend. Krishna Parmar was punched and kicked by a group of males which included the appellant and his two co-accused. He was knocked to the ground, the attack continued. Two of the group, which included the appellant and the co-accused, pulled out knives. Krishna Parmar was stabbed in the shoulder, the legs and the buttock, seven stab wounds were inflicted.
5. The judge identified the appellant as being the focus of the group activity. He was physically in the centre of the violence and the reason for it. The judge was certain that the appellant and the two co-accused were present when the two knives were used, albeit the judge could not be certain to the criminal standard who held the knives. One knife was a ten-inch Rambo knife with a sharp blade, designed to hurt people and useful for no other purpose. Another partygoer was chased out of the garden by one of the group who was holding a flick-knife towards him. The judge found that the description of the person who was carrying the flick-knife fitted that of the appellant. However, the judge could not be certain to the criminal standard.
6. Another member of the group beat one of the partygoers. A further partygoer was pushed to the ground and kicked, causing damage to his teeth and displacing two ribs. Another partygoer was pushed, bullied and punched. One of the group robbed partygoers of a wallet, a silver chain, a mobile phone and a belt.
7. When he gave evidence, the appellant admitted that the group were "his boys" and that they did what he said. He also admitted that the partygoers did not fight back or retaliate.

8. The judge described this as a very violent, unprovoked attack on a number of largely younger, inebriated young men in a private garden. The group had entered the garden in order to do “violent mischief” on the direction of and at the request of the appellant.
9. The judge found that the culpability was in the most serious category. It was motivated by revenge or a desire to enforce the will of the appellant and “his boys” on another group. It was premeditated. The group went equipped to do violence. They wore balaclavas, masks and carried knives. The violence, including the stabbing, was disproportionate and widespread. The judge found that in terms of harm, the offending was in the most serious category. The knife injuries were serious and have caused lasting physical and psychological damage. The fear caused by the gang was such that a number of witnesses had first refused to give evidence. It was the intervention of the judge which eventually led to them giving evidence to the court.
10. In sentencing the appellant, the judge identified the leading role which he played in arranging and directing the attack. The judge stated that by reason of that leading role, he fell to be sentenced most severely. The judge observed that at the date of sentence the appellant was aged 18. The judge stated that he had taken account of his relative youth and imposed the sentence of four years’ detention.
11. At the date of sentence, the co-accused Wickens was aged 18; he was nearly 18 at the time of committing the offence. He had no previous convictions. The co-accused Clarke was lightly convicted. Each received a discount of 25 per cent for their guilty pleas.
12. The sole ground of appeal is that the court should have taken as its starting point the sentence likely to have been imposed on the date on which the offence was committed. The appellant was born on 10 January 2001. He was aged 17 years and two months at the date of the offence, and 18 years and four months at the date of sentence. He had one previous conviction for assault occasioning actual bodily harm, for which he received a referral order of six months on 28 September 2017.
13. The essence of this appeal is that the judge failed to take any proper account of the appellant’s age, and in particular failed to follow the guidance contained in the Sentencing Council’s Children and Young People Definitive Guideline, section 6 of which sets out the available sentences for those crossing a significant age threshold between the commission of an offence and sentence. Sections 6.2 and 6.3 of the guidelines state:

“6.2. In such situations the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. This includes young people who attain the age of 18 between the commission and the finding of guilt of the offence. But when this occurs, the purpose of sentencing adult offenders has to be taken into account which is :

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders;
- the protection of the public; and

- the making of reparation by offenders to persons affected by their offences.

6.3. Where any significant age threshold is passed, it will rarely be appropriate that a more severe sentence than the maximum that the court could have imposed at the time the offence was committed should be imposed. However, a sentence at or close to the maximum may be appropriate.”

14. This guidance reflects the guidance given in the authorities of *R v Ghafoor* [2002] EWCA Crim 1857, *R v Bowker* [2007] EWCA Crim 1608 and *R v Y* [2013] EWCA Crim 1175. In *Bowker*, Latham LJ referred to the provisions of section 142 of the Criminal Justice Act 2003, which provide:

“Purposes of Sentencing

(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing –

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and
- (e) the making of reparation by offenders to persons affected by their offences.

(2) Subsection (1) does not apply —

- (a) in relation to an offender who is aged under 18 at the time of conviction,

...”

15. As to section 142, Latham LJ stated at [22] and [23]:

“22. ... Whilst therefore it is clearly right that a person who has committed an offence whilst under the age of 18 should be sentenced on the basis that his culpability is to be judged by reference to his age at the time of the offence, nonetheless, the necessary sentencing disposal has to take account of the matters set out in section 142(1) if he is convicted after he has reached the age of 18. When sentencing those under 18, the court will generally focus more on their requirements and their rehabilitation. Section 142 suggests that for those over the age of 18, however, more general public policy considerations, in particular deterrence, can play a greater part.

23. That does not mean, however, that *Ghafoor* and the line of

authority it represents is not a fair and just approach in determining the starting point in cases such as this. ... it remains the starting point and one of the matters which may well ultimately determine the appropriate sentence will be the need in any given case for a deterrent sentence. ...”

16. In *R v Y*, the court considered the authorities of *Ghafoor* and *Bowker* and acknowledged the propositions set out in those authorities that “where somebody was 17 at the time when the offences were committed, that would be a significant factor to take into account in the sentencing exercise”. In giving the judgment of the court, Elias LJ stated at [9]:

“9. ... The position is not that the defendant must then be sentenced in accordance with any guidelines applicable to young offenders, but the cases of *Ghafoor* and *Bowker* do confirm that in those circumstances regard should be had to the sentence that would have been appropriate had they been sentenced in that way, and that it would be a powerful factor, albeit not the sole determining one, in deciding what their sentence should be. ...”

17. Had the appellant in this case been sentenced at the date of the offence, when he was aged 17 and two months, the maximum sentence available to the court would have been a detention and training order of 24 months.
18. It is with that significant factor in mind that we approach the issue of the appropriate sentence in this case. It is of note that in passing sentence the judge did not refer to the provisions of the Sentencing Council Guidelines, nor to any of the authorities cited above. Although reference was made to the relative youth of the appellant, nowhere in the sentencing remarks is there reference to what would have been the appropriate sentence available to the court on the day on which the offence was committed. In our judgment, there was a failure to take account of that factor which, following the authorities, would represent the starting point for the sentencing judge. The starting point being one of 24 months’ custody, on the facts of this case were there any reasons to increase that starting point?
19. We note that the judge identified the appellant as the leader of the group, and we take account of the appellant’s age (namely, seventeen years and two months at the time of the offence). Balancing those two factors, and in particular following the guidance set out in paragraph 6.3 of the Sentencing Council Guidelines, we have concluded that it would not be appropriate to impose a more severe sentence than that which could have been imposed at the time of the original offence, namely that of 24 months.
20. Accordingly, the sentence of four years’ detention is quashed and substituted for it is a sentence of 24 months’ detention in a young offender institution. To this extent the appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk
