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No: 201900240/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Wednesday, 20 February 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MRS JUSTICE FARBEY DBE

THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE GOLDSTONE QC
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER
S.36 OF THE CRIMINAL JUSTICE ACT 1988

R E G I N A

v

SHERIE LEIGH NORTH

Mr J Smith appeared on behalf of the **Attorney General**

Mr J Bottomley (Solicitor Advocate) appeared on behalf of the **Offender**

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J U D G M E N T

(Approved)

1. LORD JUSTICE HOLROYDE: On 5 November 2018 in the Crown Court at Bradford, Sherie Leigh North, now aged 24, pleaded guilty to two offences of robbery and one offence of attempted robbery. On 18 December 2018 she was sentenced for each of those offences to concurrent terms of two years' imprisonment suspended for two years. A nine-month drug dependency treatment requirement was imposed, together with a six month curfew and a rehabilitation activity requirement for up to 30 days. Her Majesty's Attorney General believes that sentencing to have been unduly lenient and accordingly application is made to this court, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the case so that the sentencing may be reviewed.
2. The offender Miss North committed her three offences with an older man, Scott Cross, now aged 34, with whom she had for a short time been in a relationship. Cross pleaded guilty to the same three offences and also to two further offences of robbery. He is not before the court but it is necessary to refer to him in summarising the facts.
3. Taking matters in chronological sequence, on 26 September 2018, Cross alone committed a robbery in what is referred to as an "adult shop". He went in carrying a brick with which he threatened to strike a member of staff. There was a tussle and he made off, taking a mobile phone with him.
4. Three days later, on 29 September 2018, both Cross and Miss North jointly committed an offence of robbery of Miss North's grandfather, Mr Horvath, in his own home. This offence was charged in count 2 of the indictment against Miss North and was the most serious of the three offences.
5. Mr Horvath was 70 years old. He had recently left hospital after surgery to his leg. He had difficulty walking and needed to use a Zimmer frame. He was on any view vulnerable.
6. On 29 September 2018, he was woken from a sleep in the course of the morning by a knock on the door. He initially opened the door a short distance, keeping the chain on. Not being able to see anybody outside he released the chain in order to open the door further. Miss North and Cross immediately pushed past him and into his home. Mr Horvath retreated to his bedroom, hoping to protect some cash which he kept there. He could hear banging and crashing in the rest of the house.
7. Cross then came into the bedroom carrying a hammer which he had taken from the kitchen. He held it to Mr Horvath's face and said that if Mr Horvath did not give him the money and the jewellery "I'm going to hurt you". Mr Horvath said he did not know where money or jewellery were. Cross then up-ended the bed and knocked Mr Horvath to the floor where he continued to threaten him with the hammer. Some minutes later Miss North came into the bedroom. She told Cross that she had found the jewellery and they should leave as a taxi was waiting for them. They did leave, taking with them jewellery valued at around £1,000 and some £160 in cash which had been under the pillow in the bedroom.

8. After they had gone, Mr Horvath found that his living room had been ransacked and some of his ornaments smashed. A neighbour who came to his assistance found broken glass all over the place, the clock off the wall and plants tipped over. The neighbour described Mr Horvath as frightened and upset and stating that he wished to leave the area.
9. A few days after that, on 2 October 2018, Cross alone committed a further offence, this time robbing a man of his bicycle by threatening to punch him.
10. On the following day, 3 October 2018, Miss North and Cross again went to rob the unfortunate Mr Horvath. He was again roused from sleep in the middle of the day by a knock at the door. When he asked who it was, a voice replied with the name of the company which manages the property. Taken in by this deceit, Mr Horvath opened the door and once again Cross and Miss North pushed their way in. Cross demanded money and struck Mr Horvath on the face. Cross again overturned the bed on which Mr Horvath was sitting, thus sending Mr Horvath to the floor. As it happened, Mr Horvath fell close to his alarm call button which he was able to call and speak to the alarm company. At that point the two offenders left without taking anything. Mr Horvath sustained a cut knee in this incident, which was the subject of count 3 against Miss North. In a statement about these events he said that after the first robbery he had felt frightened and he had lost confidence and was still shaken as a result of what had happened. After the second incident, he said he no longer felt safe in his home, but he had nowhere else to go. He said he was too scared to go outside or to answer the door and would no longer leave the door open for ventilation as he had previously done.
11. Within a very few hours of that second offence in Mr Horvath's home, Miss North and Cross committed a robbery at a shop, which was the subject of count 1 against Miss North. This was the same shop which Cross had previously robbed on his own. On this occasion it was Miss North who first went into the shop. She asked a bland question about when the shop would close, but was clearly there for the purposes of reconnaissance. She left and at once Cross entered and began to struggle with the shopkeeper. As they were struggling, Miss North came back into the shop, opened the till and stole £80 from it. A silver chain belonging to the shopkeeper was also stolen and the shopkeeper received a graze and reddening to his face.
12. Those in summary were the circumstances of the three offences to which Miss North pleaded guilty. She has a total of 15 previous convictions at seven sentencing hearings. Principally, her previous offences have involved theft and breaches of court orders. In 2016 she was made the subject of a community order with a drug rehabilitation requirement. In August 2017 she was fined for an offence of violence.
13. Cross for his part had a much worse record, with numerous previous convictions including a number of serious offences such as robbery and burglary.
14. There was a pre-sentence report in Miss North's case. It said she had been in a relationship with Cross for about four weeks before the offending. She had not been taking her anti-anxiety medication and had been using crack cocaine. She put forward an explanation for the first visit to Mr Horvath's home which involved making

allegations against Mr Horvath, which were not pursued at the sentencing hearing and about which we say no more. She denied knowing what had happened between Cross and Mr Horvath on that occasion.

15. She accepted her involvement in the shop robbery, saying she had committed it because of her drug use. She said she had been using crack cocaine at the time of the offending. In the past she said she had worked as a sex worker and had experienced rape in that capacity. The author of the pre-sentence report noted an escalation in the seriousness of Miss North's offending and also noted that her response to previous supervision had been poor.
16. There was also available to the sentencing judge a report from a liaison case worker at a specialist service "4 Women" which supports women trying to exit from sex work. This letter noted that Miss North had for a long time been homeless without access to benefits. It recorded that she struggles with mental health problems and substance misuse and that her engagement with various services had recently improved. The letter stated that it was the relationship with Cross which had caused Miss North to become involved in crimes which she would not otherwise have committed, and stated that she was remorseful for her actions. Miss North herself had written a letter to the court in which she apologised for what she had done and expressed a hope to engage with support services, take her anti-depressant medication and rebuild her life.
17. At the sentencing hearing detailed reference was made by the prosecution advocate to the Sentencing Council's Definitive Guideline on Sentencing for Offences of Robbery, the "robbery – dwelling" and the "robbery - less sophisticated commercial" both being relevant to the offences concerned. As to the robbery of Mr Horvath (count 2) the prosecution submitted that it was a Category 1B offence with a starting point of eight years' custody and a range of six to ten years. The attempted robbery of Mr Horvath, it is submitted, fell between Categories 2B and 3B, an appropriate starting point being of the order of four years' custody with some reduction to reflect the fact that it was an attempt rather than the full offence. The shop robbery (count 1) was submitted to be a Category 3B offence under the relevant guideline with a starting point of two years and a range from one to four years.
18. In mitigation, it was submitted that in Miss North's case, if not in Cross's case, the count 2 offence of robbery was a Category C2 offence because of her limited role. In the course of listening to that submission by Mr Bottomley who then, as now, represented Miss North, the judge indicated that he could be persuaded that it was a Category B2 offence with a starting point of five years and a range from four to eight, but not a Category C2 offence. Mr Bottomley did not make specific submissions as to the categorisation of the other offences. He relied on the reports to which we have referred. He submitted to the judge that rehabilitation work had recently been undertaken and further rehabilitation work carried a realistic prospect of success. Mr Bottomley invited the judge to deal with the case in a way which would allow Miss North to retain her liberty, that providing a prospect that future offending would be extinguished or greatly reduced. He submitted that she was a very different person from her co-accused and could properly be dealt with very differently from him. The

judge allowed full credit for the guilty pleas which Miss North had entered and no separate issue arises in that regard.

19. In his sentencing remarks, the judge referred to Miss North's life as being a sad and dysfunctional one and said that she was clearly less involved than was Cross. Addressing first the circumstances of Cross's case, he imposed for the robbery of Mr Horvath an extended determinate sentence of 14 years, comprising a custodial term of nine years and an extended licence period of five years. The judge imposed concurrent sentences of three years' imprisonment for each of the other offences to which Cross had pleaded guilty.
20. Turning to Miss North, the judge said that he was confronted with a stark choice. He said that he could "bring the sentence down". He continued: "It is probably a C2, maybe features of C3 in it. Bring it down from a starting point of 60 months. She was clearly under the influence of a very dangerous man." The judge went on to say that Miss North may have been frightened of Cross, who was a violent man clearly capable of behaving "like a monster". The judge observed that he felt in a dilemma as to what he should do. He confirmed by a direct inquiry of Miss North that she had been using crack cocaine and commented that he was not prepared to destroy her life. He said:

"I can bring the sentence down, by implementation of the facts - her role, and I suspect a degree of vulnerability and coercion - and full credit, 33.3% credit, to two years, by simple application of the facts. It is my judgment. I can suspend that two year sentence, which will be on all counts concurrently - I make no distinction - for two years. I will, because I am told of the progress you are making, I will, in the hope that the public will be better served by this, do that. I will make you the subject of a nine-month drug rehabilitation requirement."

The judge then explained the effect of the order to Miss North. He observed that he was "not sure this is going to work" but that he would "rather try it". Thus the total sentence was one of two years' imprisonment suspended for two years, with the requirements which we have noted.

21. In challenging that sentencing as unduly lenient, Mr Smith on behalf of the Attorney General points in his written submissions to a number of aggravating features: the ransacking and vandalism of Mr Horvath's property, the production of a hammer used to threaten violence to Mr Horvath, the vulnerability of Mr Horvath, the impact upon him including consideration of leaving his home, the fact that false allegations about Mr Horvath had been made to the author of the pre-sentence report, and the presence of a degree of premeditation. Mr Smith submits in writing that the mitigating factors available to Miss North were her guilty pleas, the fact that she had not personally used serious violence (although she had been jointly involved with Cross), the fact that she had previously struggled with depression and the judge's finding that there was "a degree of vulnerability and coercion."

22. In his helpful oral submissions to us this morning, Mr Smith submits that the offence of robbery of Mr Horvath (count 2) was a Category 1B offence under the guideline. The harm was Category 1 because the offence involved "soiling, ransacking or vandalism of property". Mr Smith accepts that those features are present to a greater and substantially worse degree in other cases, but that he argues may be a reason for moving down from the category starting point but not a reason for going to a different category. The harm was Category B because of the threat of violence by the production of a weapon other than a bladed article or firearm. For Category 1B the guideline indicates a starting point of eight years' custody and a range from six to ten. It was aggravated, submits Mr Smith, by the vulnerability of the victim. The other two offences were less serious but were by no means trivial. The judge could have dealt with them by imposing shorter consecutive sentences or by concurrent terms with the sentence on count 2 increased to reflect the overall offending. But however it was assessed, and subject of course to proper consideration of the totality principle, Mr Smith submits that a total of two years was far below what was appropriate in the circumstances of the case. Mr Smith points out that when sentencing Cross the judge had categorised the robbery of Mr Horvath as a Category 1A offence. The level of harm should, submits Mr Smith, have been the same for both offenders.
23. Mr Bottomley on behalf of Miss North invites the court to conclude that the count 2 offence should come within Category 2C, having regard to the limited function which Miss North performed, possibly under direction. Mr Bottomley reminds us that the judge had the advantage of seeing both offenders in the dock together and was able to form an assessment of the dynamic of their joint offending. As to the element of ransacking of Mr Horvath's home, Mr Bottomley accepts that it was present, but says that other considerations such as the comparatively low value of the property stolen meant that the case could more appropriately be regarded as attracting a sentence in the Category 2C range. For that, the guideline gives a starting point of three years' custody and a range from two to five.
24. We were helpfully told during the submissions of counsel that although no details are available, it is known that breach proceedings have been brought against Miss North in relation to the order made by the judge below. It is also known that a warrant for Miss North's arrest in relation to those breach proceedings has been issued.
25. We have reflected on these submissions. In relation to the robbery and attempted robbery of Mr Horvath, the "robbery – dwelling" guideline applies. The use of the weapon to threaten violence in the count 2 robbery demonstrates medium culpability, that is to say culpability B. Miss North was of course a party to that threat of violence by Cross in that offence.
26. With respect to the judge, the manner in which he reached his eventual sentence was not spelled out in any great detail. We infer that he took the view that that Miss North's involvement was properly placed in Category C, lesser culpability, on the basis that she was involved through coercion or intimidation, or perhaps on the basis that she performed a limited function under direction. As to the harm, the ransacking being a Category 1 feature, the judge did not particularly indicate his approach. It certainly could not be said that Mr Horvath had suffered no or minimal physical or psychological

harm so as to bring the case within Category 3. In our view, taking the most generous assessment of this offence, it was at least a Category 2B offence and in some respects nearer to Category 1 than Category 3. The judge's reference to 'bringing the sentence down from 60 months' perhaps suggests that he had in mind the B2 starting point of five years and the C2 starting point of three years' custody for this offence.

27. Pausing there, we are very conscious that the judge had the advantage, which we do not, of seeing both Cross and Miss North. He was entitled to form the view he did that Miss North was much less involved than Cross and may well have been frightened of him. The reports before him provided a prospect of rehabilitation and we well understand why the judge wanted, if he properly could, to take a course which might offer the best hope of avoiding further offending. But even adopting that approach, we take the view that a sentence after trial of only three years for the count 2 offence of robbery of Mr Horvath would in itself have been very lenient and would have come close to being unduly lenient.
28. It is of course then necessary also to take into account the other two offences. The attempted robbery of Mr Horvath (count 3) was somewhat less serious than the first offence, because no weapon was brandished and there was no actual theft. On the other hand, it was a second offence against a vulnerable victim, committed only days after he had been assaulted and frightened in his own home. It was readily foreseeable that a further intrusion into his home would be extremely distressing for him. The fact of involvement in a second attempt to rob Mr Horvath so soon after the first may also be said to have left Miss North in a position where she could have no illusions about what Cross might do in the course of the second offence.
29. We agree with the prosecution's submission as to the categorisation of this offence of attempted robbery. It seems to us that if that offence had stood alone there could have been no complaint if a sentence of three years' imprisonment had been imposed after trial.
30. The count 1 offence of robbery in the shop, to which the "robbery - less sophisticated commercial" guideline applies, involved some violence although not any use of a weapon. We agree with the submission of the prosecution that it could fairly be viewed as a Category 3B offence. The role played by Miss North was a comparatively limited one, but it was she who carried out the reconnaissance and she who actually took the money, whilst a man whom she knew to be very ready to use violence was attacking the shopkeeper. The custody threshold was clearly passed for that offence, even if viewed in isolation. We do not think a sentence after trial of 18 months' imprisonment could have been the subject of any complaint if that offence had stood alone.
31. The principle of totality is of course very important. It is however also important that however the sentence is structured, whether by concurrent or consecutive sentences, the overall sentence should provide just and proportionate punishment for the totality of the offending. With all respect to the judge, we are driven to the conclusion that a total sentence after trial of only three years fell well short of achieving that aim. We very conscious that our decision will mean that Miss North, having been told that she would

escape immediate custody, will now have to go to prison. These were serious offences; in particular those against a vulnerable man of 70 in his own home and we are satisfied that the total sentence must be significantly in excess of the level at which suspended imprisonment would be possible.

32. We give as much weight as we can to the factors which the judge found in Miss North's favour, but in all the circumstances we think that even with full credit for the guilty pleas, the very least total sentence which could properly be imposed was one of four years' imprisonment. We therefore grant Her Majesty's Attorney General leave to refer. We quash the sentences imposed below as being unduly lenient. We substitute for them the following: Count 1, eight months' imprisonment; count 2, 40 months' imprisonment consecutive; count 3, 24 months' imprisonment concurrent. Thus the total sentence which must be served, subject of course to release on licence, becomes one of four years.
33. We order that Miss North surrender by 4 pm today at a police station which we will identify in a moment. We are conscious that actual surrender is unlikely since her present whereabouts are unknown, but no doubt steps will be taken to seek her arrest in the near future.
34. Mr Bottomley, two matters. First of all, would it be Bradford Police Station?
35. MR BOTTOMLEY: Yes, Trafalgar House Police Station.
36. LORD JUSTICE HOLROYDE: The order should please record that that is the place for surrender. Then my Lord rightly reminds me to ask, was there any time on qualifying curfew?
37. MR BOTTOMLEY: My Lord, there was time on remand. She spent 60 days -- sorry.
38. LORD JUSTICE HOLROYDE: Yes, that is dealt with automatically but is there anything which needs any pronouncement by us?
39. MR BOTTOMLEY: No, my Lord.
40. LORD JUSTICE HOLROYDE: Thank you very much.

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