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IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2020] EWCA Crim 1341

CASE NO 201904614/A2

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 18 September 2020

Before:

LORD JUSTICE SINGH

MRS JUSTICE WHIPPLE DBE

MRS JUSTICE MOULDER DBE

REGINA

V

SAM BATH

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NON-COUNSEL APPLICATION

J U D G M E N T

MRS JUSTICE WHIPPLE: This appeal comes before us with leave of the single judge to correct a technical defect on sentence, pursuant to the process described in R v Hyde [2016] EWCA Crim 1031 [32].

It is not necessary to go into the background facts. It is necessary only to record that on 12 September 2016 the appellant pleaded guilty to two counts of unlawful wounding, under section 20 of the Offences Against the Person Act 1861 (counts 3 and 5 on the indictment) as lesser alternatives to counts 2 and 4 on the indictment which were counts of wounding with intent under section 18 of the same Act.

The plea was not acceptable to the Crown and the matter proceeded to trial. On 19 September 2016 the appellant was convicted of counts 2 and 4. On 23 December 2016 the appellant was sentenced on counts 2 and 4 to an extended sentence, under section 226A of the Criminal Justice Act 2003, of 14 years' imprisonment, comprising a custodial term of 10 years and an extension period of 4 years. On counts 3 and 5 "no separate penalty" was imposed and so recorded in the court record.

The appellant sought to appeal against sentence on two grounds. The second ground addressed the finding of dangerousness which gave rise to the extended sentence on counts 2 and 4. Permission to appeal on that ground was refused by the single judge and has not been renewed before us.

The first ground was that the sentencing judge had been wrong to impose a sentence of "no separate penalty" on counts 3 and 5 as both were lesser alternatives to counts 2 and 4. The correct position was that no sentence at all should have been imposed on counts 3 and 5. The appellant's guilty plea to those counts should simply have been left to lie on the court file. On that ground of appeal the single judge granted leave to appeal and extended time, directing that there should be no representation of the appeal hearing and the appeal

should be on the papers only.

In the circumstances we allow the appeal on ground 1 but limit it to that ground. We direct that the court record be amended so that the sentence of "no separate penalty" is removed in relation to counts 3 and 5 and the appellant's guilty plea on those counts is simply left to lie on the court file. In all other respects the sentence remains undisturbed.

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

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