

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.

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.

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1514

CASE NO 202000905/A3



Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 30 October 2020

MRS JUSTICE CUTTS DBE
SIR NICHOLAS BLAKE

REGINA
V
HUMZA HUSSAIN

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)

Mr C Digby appeared on behalf of the Appellant

J U D G M E N T

SIR NICHOLAS BLAKE:

1. This is an appeal against a sentence of 27 months' imprisonment imposed by Her Honour Judge Herbert on 3 March 2020 at the Crown Court at Luton for an offence of inflicting grievous bodily harm, contrary to section 20 of the Offences Against the Person Act, to which this appellant had pleaded guilty on 21 October 2019. This plea was an alternative to an offence of inflicting grievous bodily harm with intent, contrary to section 18 of the same Act with which he had originally been charged.
2. The sole issue in this appeal, on which the single judge granted leave, was whether the learned sentencing judge had erred in principle in the application of the guideline for guilty pleas in only affording a discount of 10 per cent, that is to say the discount applicable to a plea of guilty on the date of the trial.
3. The circumstances of the offence were as follows. At 4.30 am on 4 May 2019 a man called Zaffar Iqbal, aged 47, was the victim of a brutal and sustained assault by five men during which he was punched, slapped, kicked and repeatedly shoved into a fence. He fell to the ground and the attack continued thereafter, the whole incident lasting some 10 minutes.
4. Three of the five offenders played greater roles in the inflicting of the violence and two (including this appellant and his co-defendant Adeel Saghir) lesser roles. They had left the scene before the police attended, but during their participation in the offence both had landed blows on Mr Iqbal and this appellant had aggravated the offending by taking photographs of the victim when he was on the ground hurt and distributing them.
5. The judge accepted that there was a background of grievance between the defendants and the victim. The offending however was appalling whatever grievance had been harboured by the defendants. The defendants had behaved with utterly callous savagery, acting together and raining more than 80 blows on their victim. The judge concluded this was a determined, persistent and prolonged attack which left him bleeding in the street. He was badly hurt and spent some two weeks in hospital. As it transpired subsequently he had suffered a subdural haemorrhage and continued to suffer debilitating sequelae. The judge noted that serious as they were, it was fortunate that his injuries were not worse.
6. Despite these aggravating factors, the judge also noted substantial mitigating ones. All the defendants either had no or no recent convictions and many, such as this appellant, were of positive good character, in work and on whom their families depended.
7. The sentences the judge imposed were as follows: on Wasim Mahmood, nine years and one month's imprisonment for the section 18 offence; Anied Saghir, the same sentence; Sanan Amir, seven years two months; Adeel Saghir 32 months for the section 20 offence and this appellant, as indicated already, 27 months.
8. The judge explained that she was treating the offending as coming within Category 2 of the assault guidelines for both the section 18 and section 20 offending as she had indicated earlier that she would do, although this was before the medical evidence of the

subdural haemorrhage had become available. It was because of this previous indication that the matter had been listed before this judge for sentence following the guilty pleas. The difference in starting point between the two offenders who had pleaded guilty to the section 20 was age - the appellant was the younger of the two aged 20 and his co-defendant on this count was aged 29. All the defendants received the same 10 per cent discount for pleas on the date of the intended trial.

9. The judge had accepted that there had been discussion before the plea in October of a guilty plea but concluded that there was no formal pronouncement of it in open court and applying the Sentencing Council definitive guideline for credit for a guilty plea of for offences prosecuted after 1 June 2017 and the case of R v West [2019] EWCA Crim 497, concluded that there was no basis in which an unambiguous plea of guilty to the section 20 had been offered and therefore this offender was not entitled to a more generous discount.

10. Under the heading "Offender convicted of a lesser or different offence" Section F3 of the Sentencing Council Guideline reads as follows :

"If an offender is convicted of a lesser or different offence from that originally charged, and has earlier made an unequivocal indication of a guilty plea to this lesser or different offence to the prosecution and the court, the court should give the level of reduction that is appropriate to the stage in the proceedings at which this indication of plea (to the lesser or different offence) was made taking into account any other of these exceptions that apply. In the Crown Court where the offered plea is a permissible alternative on the indictment as charged, the offender will not be treated as having made an unequivocal indication unless the offender has entered that plea."

11. Mr Digby represented the appellant below and before us. From his grounds and advice and the transcripts it is apparent that there were discussions between the advocates in August 2019 as to a potential plea to section 47, assault occasioning actual bodily harm, but such a plea was not acceptable to the Crown. We note that assault occasioning actual bodily harm is not an alternative to a s.18 offence. In September the Crown announced in open court that a proposed plea of guilty to section 20 for the Offences Against the Person Act was not acceptable to them either. This defendant then was arraigned and when the section 18 count was put to him he pleaded not guilty. We raised with Mr Digby in the course of his submissions to us that the appellant could and should, if he had wanted to retain the credit for a plea, have indicated on arraignment that he was not guilty to section 18, but guilty to section 20. In his grounds and his initial response to this point in oral argument, Mr Digby suggested that such a plea would have been a nullity because it was not acceptable to the Crown. On reflection he withdrew that submission as it is clearly would be ill-founded.

12. It is for the defendant in the Crown Court to make plain unambiguously and unequivocally what his response to the charge is. Where there is an alternative to the count on the indictment and it does not require a separate count to be added, he has the

opportunity of doing that and the policy and the plain wording of the definitive guidance is that anything other than that will not be unequivocal indication. We observe that following that not guilty plea a defence case statement was lodged but it made no reference to acceptance of guilt to the section 20, but the matter was eventually resolved on the basis that the Crown did accept the section 20 plea in October.

13. For those reasons we conclude that the judge did not err in principle in her application of the sentencing guidance and of the authority of West which discusses what is an unequivocal plea. Mr Digby has also drawn our attention to the case of R v Hardy [2020] 2 Cr.App.R (S) 37 where the facts were different but the Sentencing Council's over-arching guideline was identified. In that case the court concluded that there had been a misapplication of the principle but it made no overall difference to the appeal as the sentence was not manifestly excessive.
14. Mr Digby has frankly admitted today that the oversight in advising his client may have been his rather than Mr Hussain's. We take account of that, but we conclude that even if some greater credit for plea had been given in the light of the facts as we have described, it would not have made such a difference to this sentence that would enable this court to intervene. The overall sentence in all of these circumstances of 27 months was not manifestly excessive and for both these reasons this appeal is accordingly dismissed.

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