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IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202001400/A2

Neutral Citation Number [2020] EWCA Crim 1694

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 8 December 2020

Before:

LADY JUSTICE CARR DBE
MRS JUSTICE McGOWAN DBE
HIS HONOUR JUDGE KATZ QC
(Sitting as a Judge of the CACD)

REGINA
V
JAMES STEELE

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

Mr O Majid appeared on behalf of the Appellant

JUDGMENT

LADY JUSTICE CARR:

Introduction

1. This is an appeal by the appellant, now 22 years old, against the sentence of six years and eight months' imprisonment imposed upon him by His Honour Judge Mark Wall QC (as he then was) ("the Judge") in Birmingham Crown Court on 21 November 2019. The appellant had earlier pleaded guilty to a single offence of aggravated burglary, contrary to s. 10(1) of the Theft Act 1968. He was also made the subject of a restraining order.
2. The appellant's co-accused, Justin Mousley-Jones, known and to whom we shall refer as "JJ", now 21 years old, had also pleaded guilty to aggravated burglary, contrary to s. 10(1) of the Theft Act 1968, and was sentenced to seven years and four months' detention in a Young Offender Institution.
3. For the purpose of resolving the issues raised on appeal, we have had the benefit of both written and oral submissions from Mr Majid, who has appeared on behalf of the appellant before us, as he appeared for the appellant below.

The facts

4. The background to the offending lay in the appellant's relationship with a young woman named Katy Roughton, then 18 years old. Katy Roughton and the appellant had commenced a personal relationship in around October 2018. She described the relationship as abusive and rocky. It was complicated by the fact that, as the appellant discovered, she had undergone an abortion of their child without consulting him. Katy Roughton also knew JJ.
5. Katy Roughton lived with her brother, Jake Roughton (aged 20), and their grandmother Tina Roughton (aged 57), in a three-bedroomed residential property. The appellant had never been invited into Katy Roughton's home but he knew where she lived. On an earlier occasion Tina Roughton had objected to her granddaughter getting into a car with the appellant, JJ and a male named Reece. There had been an argument in which Jake Roughton had become involved and Reece kicked him. On this occasion JJ had a knife in a pouch with him.
6. The incident in question took place in the early hours of 4 June 2019. At around 9 pm on the previous evening Katy Roughton and the appellant had been messaging and texting each other. The appellant wanted to meet up, but Katy Roughton did not want to. At just after midnight the appellant started "going on" about Jake Roughton and asked Katy Roughton for her address. She asked why. When she did not give it to him, he ended the call. She called him again and the same occurred. She asked who he was with and he replied that he was not with anyone. She asked him to Face-time her to confirm this, which he did. She was of the opinion that the appellant did not look "quite right". He continued going on about her brother and her address. She did not give the address to him, but he told her he had it somewhere and disconnected the call. She tried several times to ring him back but he did not answer.

7. At around 1 am the appellant and JJ arrived at Katy Roughton's home. What followed was a shocking ordeal for all of its occupants.
8. Both men, with the hoods of their jackets up, first entered Katy Roughton's bedroom. She recognised them and asked what they were doing. When asked where her brother was, she lied and said that he was out. The men left her room. Tina Roughton had been awoken from her sleep in her bedroom by the voices. She got up and recognised JJ standing in the doorway of her grandson's bedroom, blocking her path. She saw the appellant, whom she recognised, punching her grandson - who had taken a protective position and was curled up. She was understandably terrified. Despite her own health problems and demonstrating considerable bravery, she pushed past JJ and threw herself on the bed to try to protect her grandson. She managed to stop some of the blows, but the appellant carried on punching Jake. Jake stated how he was punched multiple times to the head and body for at least 20 to 30 seconds. The appellant also inflicted some blows to the side of Tina Roughton's head.
9. JJ was in fact holding a machete across the doorway. As the appellant was punching Jake Roughton, JJ came over, raised the machete and brought it down towards Tina and Jake Roughton. Tina Roughton immediately put her hand up in a defensive action to try and stop him. As she raised her hand, she felt immense pain and knew that she had been stabbed to the back of her hand. She said that she thought that she and her grandson were going to die.
10. Katy Roughton dialled 999 from her bedroom. She got through but struggled to hear what was being said and so returned to the landing whereupon JJ tried to grab her telephone. She resisted until he threw the machete towards her neck and said: "Give me the phone". He took it from her hand and ran downstairs with it. The appellant ran after him and the two men escaped.
11. Tina Roughton by this stage was bleeding heavily. She fell down the house stairs and ended up lying on the ground floor. From the machete stab she suffered a single long cut about two inches in length and about half to three quarter inches in depth, running from her wrist to the web of her right thumb. From the fall she suffered a fractured left wrist, stiffness to her left leg and scrapes and abrasions to her left leg, with bruising to the upper leg. At hospital, she was found to have damaged the superficial branch of the radial nerve which supplies sensation to the back of the hand and for which an operation was required. A fortnight later whilst she had regained some sensation to the back of her hand, it was unlikely that she will regain full sensation. She is now terrified about security at her home. Jake Roughton suffered pain and discomfort to the left side of his head and a small scratch to his left armpit.
12. The appellant and JJ were seen by police on mobile patrol about half an hour after the incident. The two began to run off. JJ threw a machete under a vehicle and the appellant threw the sheath to the machete under a vehicle as well. Both machete and sheath were recovered by the police. The appellant was arrested having been found hiding behind a bush. His clothes were covered in blood. The machete was forensically examined and found to have Tina Roughton's blood on the blade. There

was also DNA from both the appellant and JJ on the handle.

13. In interview, the appellant admitted attending the property and assaulting Jake Roughton but denied having the machete. The appellant had one previous conviction in 2016 for the possession of a class B drug.

Psychiatric reports

13. Following this incident in September 2019, the appellant had a period of inpatient assessment relating to his mental health. He was initially deemed not fit to plead or stand trial, but he responded positively thereafter to strong anti-psychotic treatment. Three consultant forensic psychiatrists had provided reports as follows:
 - i) Reports of Dr Sebastian dated 6 and 21 October 2019;
 - ii) Reports of Dr Mattar dated 30 December 2019 and 14 February 2020;
 - iii) A report of Dr Furtado dated 25 February 2020.
14. Dr Mattar also gave oral evidence at the sentencing hearing. She indicated that the appellant was a high risk to himself of suicide and self-harm and would not be able to cope in a custodial environment. Her recommendation was for an order under section 45A of the Mental Health Act 1983 but only because the alternative, namely custody, would lead to a deterioration in the appellant's mental health.
15. The effect of the medical evidence overall was that the appellant had a history of psychotic illness long preceding the offence in question. His primary diagnosis is that of a chronic personality disorder, the effects of which include emotional instability, a tendency to act impulsively and difficulty in managing stressful situations. He was also diagnosed with alcohol dependency syndrome. He was assessed as being at high risk of developing paranoid schizophrenia, given amongst other things his family history. The expert evidence confirmed that he had a capacity to form the requisite intent to cause grievous bodily harm at the time of the offence.

The sentence below

16. The appellant was sentenced on the basis that, once inside the premises, he attempted to inflict grievous bodily harm on Jake Roughton and was effectively in joint possession of the machete. He had intended the machete to be used as part of the enterprise with JJ. The Judge commented that this was a targeted revenge attack with a number of aggravating features which he identified as follows: planning, attempt to conceal identity, a persistent attack at night-time involving three people who were either attacked or put in fear of harm, serious impact, the involvement of drink or drugs. He categorised the offending as a Category 1 offence with a starting point of 10 years. For an adult, he stated that he would have passed a sentence of 11 years' imprisonment on the appellant and 12 years' imprisonment on JJ. Taking into account their ages, those terms were reduced to 10 years and 11 years' imprisonment respectively. After full credit for guilty plea, the Judge arrived at the term of six years and eight months' imprisonment for the appellant.
17. The Judge indicated that, in fixing that sentence, he had taken into account the matters

urged upon him in mitigation, in particular the matters contained within the psychiatric reports. He also indicated that he would not treat the appellant or JJ as dangerous offenders because of their age, the fact that they had relatively limited previous convictions and given the lengths of the sentences that they were to serve.

18. The Judge found that the evidence did not support the making of an order under section 45A of the Mental Health Act 1983. There is no criticism of that decision.

Grounds of appeal

19. Mr Majid accepts at the outset that this was a serious incident, justifying a serious custodial sentence. However, he submits that in three key respects the sentence can be identified as manifestly excessive. In particular, the appellant's serious mental health issues were not taken into account either by way of reduction in assessment of culpability or mitigation.
20. The starting point, submits Mr Majid, was simply too high. The Judge placed no weight on the appellant's mental disorder which was linked to the commission of the offence. The psychiatric reports confirmed that the underlying personality disorder and alcohol dependency syndrome affected his impulsivity and ability to manage his emotions and stress. This was a time of stress given the recent abortion undergone by Katy Roughton. Katy Roughton indeed had concerns herself about the appellant's wellbeing on the night in question. Even if the offence remained in the higher culpability bracket, submits Mr Majid, it ought to have been placed at the lower end of that category.
21. The Judge is also criticised for double-counting, and for concluding in any event that the level of planning here was an aggravating factor, that this was a case where the appellant had attempted to conceal his identity and that this was a case of deliberate targeting within the meaning of the Sentencing Council Guideline on Burglary Offences ("the Guideline"). Insufficient weight was also attached to the appellant's mitigation arising out of his mental health problems, which amongst other things would affect the appellant's ability to cope in a prison environment.
22. Separately, it is submitted that the Judge failed to draw a sufficient distinction between the position of the appellant and that of JJ who had pleaded guilty to a separate offence and whose actions were significantly more serious. The one year difference in sentences was insufficient. This, submits Mr Majid, not only highlights the lack of attention paid by the Judge to the appellant's mental health issues, but also fails to reflect the fact that the appellant's actions caused far less harm than did those of JJ.
23. Either individually or cumulatively, the effect of these errors is said to be that the sentences imposed on the appellant was manifestly excessive.

Analysis

24. There is, in our judgment, no basis on which to disturb the Judge's conclusion that this was offending involving greater harm. It was a burglary in which the victims were at home. Persistent violence was both threatened and used and a weapon used by JJ which the appellant knew JJ had with him and was to be used in the raid. It is clear that, in

addition to Tina Roughton's serious physical injury, the event had a traumatic impact on all those in the house. The Judge was clearly entitled to find that greater harm was made out.

25. As for culpability, there were obvious factors indicating higher culpability. It is not clear whether the Judge concluded that there was a significant degree of planning for the purpose of the guideline, but there was certainly a degree of planning as seen in the appellant's attempts earlier to obtain the address from his ex-girlfriend and the fact that he was able to acquire that address by other means when that failed. But a weapon was, to the appellant's knowledge, present on entry and the appellant was acting in a group. The appellant deliberately targeted the house in question as a result of a grudge against his ex-girlfriend and her brother and deliberately sought the brother out as part of the pre-agreed course of conduct. Again, whether this was targeting within the meaning of the Guideline or not, that factor clearly had to play a part in the sentencing exercise, either as a factor indicating higher culpability or by way of aggravating factor increasing seriousness.
26. The gravamen of the challenge, in our judgment, relates to the appellant's personality disorder and alcohol dependency syndrome. It is said that the Judge placed no weight at all on whether there was a mental disorder linked to the commission of the offence, a factor indicating lower culpability.
27. The relevant principles that apply when sentencing an offender who suffers from a mental disorder were considered recently in R v PS [2019] EWCA Crim 2286 (at [8] to [21]. The sentencing judge is obliged to consider what effects any psychiatric problems may have had on culpability: see R v Edwards [2018] EWCA Crim 595 at [14]. The exercise necessarily requires a close focus on the mental health of the individual offender, both at the time of the offence and at the time of sentence, as well as on the facts and circumstances of the specific offence. In some cases his mental health may not materially have reduced his culpability; in others his culpability may have been significantly reduced. In some cases he may be as capable as most other offenders of coping with the type of sentence which the court finds appropriate; in others his mental health may mean that the impact of the sentence on him is far greater than it would be on most other offenders. It follows that in some cases the fact that the offender suffers from a mental health condition or disorder may have little or no effect on the sentencing outcome. In other cases it may have a substantial impact. Where a custodial sentence is unavoidable it may cause the sentencer to move substantially down within the appropriate guideline category range or even into a lower category range in order to reach a just and proportionate sentence: see R v PS (supra) at [17] and [18].
28. In our judgment, the Judge was entitled to conclude that this was a case of higher culpability, despite the psychiatric evidence available. Much of that evidence was directed to the question of whether a hybrid order under section 45A of the Mental Health Act 1983 should be made rather than what role, if any, the appellant's mental disorder played in the commission of the offence. On that latter question, Dr Mattar and Dr Furtado agreed that the appellant was not psychotic at the time of the incident, psychosis played no part in the commission of the offence. Dr Mattar opined that the appellant

was capable of forming an intention to cause grievous bodily harm, although his personality disorder and intoxication would have contributed to his impulsivity and inability to manage his emotions. Dr Furtado expressed the view that the appellant had "traits of emotionally unstable personality disorder, including a marked tendency to act unexpectedly and without consideration of the consequences, liability to outbursts of anger, unstable and capricious mood." Thus, whilst the psychiatric evidence established a link between the appellant's personality disorder and the offending, it did not demonstrate such a strong connection as to outweigh the powerful factors pointing to higher culpability overall as set out above.

29. It follows that there is no proper basis on which to disturb the Judge's categorisation of this offending within Category 1 for the purpose of the Guideline, with a starting point of 10 years' custody and a range of nine to 13 years' custody. Given the overall gravity of this offending, a starting point of 10 years was entirely appropriate.
30. But the over-arching question remains as to whether or not the sentence imposed was manifestly excessive given the appellant's mental health problems, as well as his age and other mitigation. As indicated, the Judge raised the starting point of 10 years' imprisonment to 11 years' imprisonment for an adult, to take account of what he identified as aggravating features. The exercise that he carried out does appear to have involved a degree of double-counting, for example by reference to impact, but there were certainly some additional aggravating factors. The Judge was entitled to consider, for example, that this was an attack at night-time with the involvement of drink or drugs.
31. Having taken a term of 11 years' imprisonment before credit for guilty plea for an adult, the Judge then reduced it to 10 years' imprisonment on account of the appellant's age. He does not appear to have made any downward adjustment for the appellant's personality disorder, other mental health issues and mitigation at that stage. Thus those factors must have been taken into account when arriving at the term of 11 years.
32. In our judgment, the Judge did fail to give sufficient weight in particular to the appellant's personality disorder. Extremely serious though this offending was, a term of 10 years' imprisonment before credit for guilty plea was manifestly excessive, taking into account the appellant's mental disorder, alcohol dependency syndrome and effective previous good character, as well as his age. In our judgment, a term of eight years before credit for guilty plea was appropriate, resulting in a final sentence of five years and four months' imprisonment.
33. For the sake of completeness, we would add that we are not persuaded that there would have been any merit in the disparity argument raised by reference to the sentence imposed on JJ. The Judge carefully considered the differences in their respective positions, including the fact that JJ was younger than the appellant, had a more serious record of offending and was the one who actually deployed the machete. However, that last distinction in particular has only limited force in circumstances where the appellant was fully aware and indeed intended that the machete would be deployed. It was his desire for revenge that lay at the heart of the attack and he was the one to inflict the blows to Jake Roughton as well as to Tina Roughton.

Conclusion

34. For these reasons, this appeal will be allowed. We quash the sentence of six years and eight months' imprisonment and substitute a sentence of five years and four months' imprisonment. All other elements of the sentence, including the restraining order, remain in place unaltered. We conclude by repeating our thanks to Mr Majid for his helpful submissions.

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