2020] EWCA Crim 570

No: 201904161/A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 24 April 2020

(VIRTUAL COURT)
B e f o r e:
LADY JUSTICE CARR DBE

MR JUSTICE GOOSE

RECORDER OF WESTMINSTER
(HER HONOUR JUDGE DEBORAH TAYLOR)

(Sitting as a Judge of the CACD)
R E G I N A
v

LEE JEWITT

Computer Aided Transcript of the Stenograph Notes 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)

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NON-COUNSEL APPLICATION
J U D G M E N T

LADY JUSTICE CARR:

1. This is a renewed application for leave to appeal against sentence, alongside an application for a necessary extension of time.

2. On 25 October 2018, in Cardiff Crown Court, the applicant changed his plea (after the jury had been sworn) to guilty of the offence of causing grievous bodily harm contrary to section 18 of the Offences Against the Person Act 1861. On 9 November 2018 he received an extended sentence under section 226A of the Criminal Justice Act 2003 of 9 years, comprising a custodial term of 7 years and an extension period of 2 years.

3. The facts are set out fully in the Criminal Appeal Office summary and it is not necessary for the purposes of this application for us to rehearse its contents.

4. The applicant was born on 16 May 1975 and had 49 previous court appearances for 99 offences between 1989 and 2018, his relevant conviction including both section 20.

5. The sole ground of appeal advanced is that the test under section 226A of the Criminal Justice Act 2003 was not met because there was no significant risk of serious harm to the public. The pre-sentence report had stated that the applicant fell within the medium risk category. The report also stated that there was a high risk of harm but the statutory test relates to risk of serious harm. The first conviction of section 20 wounding took place over 20 years ago and the second, although much more recent, resulted in a sentence of only 14 months and was therefore on the lower end of the scale of dangerousness. Given the background to his offending, involving provocation by the victim, and the fact that the pre-sentence report was inconclusive on the statutory test of dangerous, the submission is that the court should simply have imposed a determinate sentence.

Analysis

6. When refusing leave the Single Judge said this:

    i. "As the judge found, this was a serious offence of wounding. In a fit of jealousy, you used a knife you had obtained for the purpose, to inflict a series of injuries on your former friend. You have an appalling list of previous convictions, including serious offences of violence. The judge was entirely justified in concluding that you present a significant risk of serious harm occasioned by the commission by you of further offences. He was entitled to reach that conclusion notwithstanding the terms of the PSR. I see no properly arguable ground of appeal."

7. We have reviewed the papers independently alongside a recent manuscript letter received from the applicant. We agree with the Single Judge's conclusion. The finding of dangerousness cannot properly be impugned. The Judge applied the correct legal test and was entitled to conclude on the facts that the applicant presented a significant risk of serious harm to members of the public through the commission of further offending, and

to consider that the imposition of an extended sentence was necessary for the protection of the public. The pre-sentence report was of limited assistance, as the Judge himself remarked, in that it failed to address the correct legal test; in any event it was always for the Judge independently to reach his own conclusion on the question of dangerousness.

8. In the absence of any merit and given the length of delay in making this application, for which no good reason has been identified, we also refuse the application for an extension of time.

9. The applicant was warned that in the event of making a renewed application the court would consider making a loss of time order in the case. We have undertaken that consideration. Having found the application to be wholly without merit and substantially out of time, we impose a loss of time order of 28 days. 28 days of time already served should not count towards the applicant's sentence.

10. Both applications are rejected and a loss of time order made accordingly.

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

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