IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202200602/A2

[2022] EWCA Crim 1209

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 28 July 2022

Before:

LADY JUSTICE CARR DBE
MR JUSTICE FRASER
THE RECORDER OF LEEDS
HIS HONOUR JUDGE KEARL QC
(Sitting as a Judge of the CACD)

REGINA
V
JOHN JOSEPH HALL

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MISS S BAHIA appeared on behalf of the Appellant

J U D G M E N T

MR JUSTICE FRASER:

1. This is an appeal against sentence brought with permission of the single judge, who also granted a representation order in the usual way. We have been assisted by the oral submissions of Miss Bahia of counsel on behalf of the appellant and we are very grateful to her.
2. On 8 December 2021 in the Crown Court at Warwick the appellant pleaded guilty at a mention hearing when the case was to have been fixed for trial. The charge was one count of attempting to cause grievous bodily harm with intent, contrary to section 1(1) of the Criminal Attempts Act 1981. His guilty plea came after he had attended at court at the invitation of the judge to watch CCTV footage of the incident in question. For this count he was sentenced on 9 February 2022 by Her Honour Judge de Bertodano to a term of imprisonment of 39 months. Another count against him, arising out of the same incident, which was a count of causing actual bodily harm, was not proceeded with upon his guilty plea and no evidence was offered in respect of that count.
3. The facts of the offending are as follows. The appellant was 21 at the time of sentence and 19 at the time of the offence, which had taken place on 2 February 2020. An argument had started – the reasons for it are not clear, nor are they relevant – in the early hours in or outside a nightclub in Coventry. That club is situated in a shopping precinct. The victim of what happened next is called Milad Noori and he became involved in a disagreement with a doorman at the nightclub and was ushered away by a friend of his. As a result perhaps of something that was said to an adjoining group, one of that adjoining group went back into the club and emerged with some friends. These young men then chased the friend of Milad Noori through the shopping precinct. That chase ended up in a car park. When that victim was attempting to get into his car he was set upon, including being kicked and punched when on the ground. The appellant was not involved in that attack. Milad Noori attempted to become involved and was himself chased by the attackers out of the car park. This chase group ended up back outside the club.
4. Milad Noori also returned to the vicinity of the club and then again to the car park and was again chased by some members of the same group. By this time the appellant was with someone called McCarron walking through the precinct. McCarron had been involved throughout the earlier violence in the car park. McCarron and the appellant noticed Milad Noori running towards them, being chased; one of them attempted to trip him up and the two of them then joined the chase. Eventually four of them, including the appellant, caught up with Milad Noori and he fell to the ground, whereupon they set upon him using kicks and punches.
5. The appellant kicked or stamped on Milad Noori whilst he was on the ground five times. He also took out his phone and filmed the rest of the attack. This was all captured on CCTV. We have all watched this footage and even for those accustomed to watching such material, as we are, the level of violence inflicted is shocking. It is extremely lucky for all involved that Milad Noori was not more badly injured or worse. The number of kicks and stamps to the head in total is very high and the attack continues for some time. Throughout Milad Noori is outnumbered and lying on the ground whilst he is being attacked by the appellant and others. All of this was captured by the appellant as he filmed what was happening.
6. When sentencing him, the learned judge noted the involvement of the appellant as well as

that of his co-defendant William Brennan who was sentenced at the same time. Two other co-defendants had already been sentenced on an earlier occasion for this offending, as well as for far more serious offending which on a different occasion that had led to the unlawful killing of somebody and for which they were convicted of manslaughter.

7. The sentencing judge correctly noted when sentencing the appellant that maturity does not instantly descend upon someone when they reach the age of 18, and she considered the guideline on sentencing young people and the key elements and principles involved in doing so. She took express account of the impact of the Covid pandemic upon those who were sent to prison generally and had the benefit of a pre-sentence report.
8. That pre-sentence report states in relation to the attack:

> "All persons act as one, in what is a frenzied and prolonged attack, leaving the victim in a bad state, in and out of consciousness. All of them then flee the area back towards the car park and where they get into a vehicle and leave the area either in that or on foot. Meanwhile the police and paramedics arrive and tend to the victim. He is hospitalised with a suspected bleed on the brain, head and facial injuries and injuries to his hands. Injuries sustained are later consistent with Actual Bodily Harm."

9. The report also noted, pursuant to the account given to the Probation Officer by the appellant, that he had been drinking to the point of inebriation and was influenced by what was called "group rage".
10. Turning to the categorisation, the sentencing judge assessed harm as Category 3 due to the fact that the victim did not sustain really serious injury but with high culpability. She said that it was the fact that the offence was an attempt that put it in Category 3 and she did not discount further for the fact it was an attempt. Effectively the discount for it being an attempt, rather than the completed offence, was included in that categorisation. The judge took account of the appellant's age, good character, home circumstances and general background and said that had he been in his twenties at the time she would have started at five years. However, she took a starting point of four years due to his age and reduced it for his plea by another nine months to arrive at a figure of three years three months (or 39 months). The starting point for Category 3 is four years' imprisonment with a range of three to five years.
11. The grounds of appeal are as follows. First, it is said:

> "The sentence is appealed on basis that on the basis of parity alone he should have received 3 years and the distinguishing factors in his case meant there should have been a distinction between his sentence and that of Blue Brennan and Kane McCarron."

12. Brennan and McCarron were also involved in the attack. McCarron was 17 years old and Brennan was also only 17 years old. McCarron was sentenced by another judge and given 54 months, which was a figure for sentence discounted down from what he was told an adult would have been given of nine years after a trial, reduced to six years for his age. The judge who sentenced him was also sentencing for all the other offences that defendant faced. The figure of three years for that other defendant’s offending on this

occasion features in this appeal in the sense that it is pointed out to us that this appellant has received the most severe sentence of any of the others involved in that attack.

13. There are three specified grounds. They are as follows:

1. The categorisation of sentence was wrong in principle based on the learned judge's sentencing remarks for Kane McCarron and Ethan Lilley.
2. The sentence should have been further adjusted to reflect that this was an attempt.
3. The personal mitigation was not reflected in the overall sentence that was imposed of three years and three months.

14. Lilley was sentenced to a period of two years for this attack, but that was ordered to run with other sentences including one for manslaughter which led to a total sentence in his case of 14 years.

15. We deal firstly in general terms with the criticism of parity, or more accurately the lack of it, that is raised in the grounds. There are two reasons why such an approach to challenging a sentence in this court is flawed. First, parity is not a point which generally has much traction in this court, which is solely concerned with whether a sentence for any particular offence on any particular individual is manifestly excessive or wrong in principle. Secondly, specific to this case, two of the other defendants whose sentences are identified as demonstrating a lack of parity were only 17 years old at the time and far less mature. They were not in legal terms adults at the time of their offending. One of them, as we have explained, was given a concurrent sentence to run at the same time as a far longer sentence for manslaughter.

16. Additionally, none of those others took their phones out and filmed the attack. This is additional degradation or humiliation for the victim and in the court's view is a serious aggravating factor. It is a feature of offending which only affects the appellant and not the other members of the group involved in the attack.

17. Turning to the suggestion that the starting point should have been adjusted lower to reflect the level of harm in fact caused, which was consistent with actual bodily harm and not grievous bodily harm, the court considers this to be a flawed argument. The offence to which this appellant pleaded guilty was one of attempting to cause grievous bodily harm with intent. The approach to sentence in such cases is to take account of the substantive offence and its relevant guidelines and adjust as necessary for the fact that it was an inchoate offence only. The level of intended harm is highly relevant. Here the level of culpability was more than high enough to justify the judge's approach. She chose the relevant category based on the fact it was an attempt and made an adjustment by reason of doing so. The sentencing judge expressly took the lower categorisation into account to reflect the fact this was an attempt and she explained that she was doing so.

18. Turning to personal mitigation, we have touched on the contents of the pre-sentence report and there were also a large number of personal references, predominantly from family members but also from work colleagues. The appellant's father said that he found it hard to believe his son was before the court for sentencing, and his grandmother stated that "it would be an awful shame if his whole life was ruined by an awful momentary mistake". That description of the event as a momentary mistake is not one that sits easily with the CCTV footage, and the length of time over which the attack unfolds. This was a prolonged and vicious group attack in which an outnumbered victim is subjected to prolonged assault by a group.

19. Although the appellant is a young man and he had no previous convictions and a good

work record, he also had other mitigation, for example taking a paid job to assist in the family finances after his father had left his mother and she found herself struggling alone financially. He plainly does have some positive qualities.

20. However, this mitigation was taken into account by the sentencing judge. We wish to make it clear, as the sentencing judge did, the hope of the court that upon his release at the halfway stage the appellant will go on to be a productive and worthwhile member of society. However, the circumstances of this offence are such that the resulting sentence cannot in all the circumstances be said to be manifestly excessive. We therefore dismiss the appeal.