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IN THE COURT OF APPEAL

CRIMINAL DIVISION

**[2023] EWCA Crim 1680**



No. 202303727 A3

202303753 A3

Royal Courts of Justice

Tuesday, 19 December 2023

Before:

LORD JUSTICE WILLIAM DAVIS  
MRS JUSTICE FARBEY  
HER HONOUR JUDGE MORELAND

REX  
v  
ART  
and  
AJB

**REPORTING RESTRICTIONS APPLY:  
SECTION 45 OF THE YOUTH JUSTICE AND CRIMINAL EVIDENCE ACT 1999**

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Mr. G. Hughes appeared on behalf of the Applicant ART.  
Ms. K. Roxburgh appeared on behalf of the Applicant AJB.  
Ms. L. Tucker appeared on behalf of the Crown.

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**J U D G M E N T**



MRS JUSTICE FARBEY:

- 1 The provisions of section 45 of the Youth Justice and Criminal Evidence Act 1999 apply in this case. No matter relating to either of the applicants or the victim of the offence shall, while they are under the age of 18, be included in any publication if it is likely to lead members to identify that person as a person concerned in the proceedings.
- 2 On 2 December 2022 in the Crown Court at Norwich the applicant AJB (then aged 16) pleaded guilty upon re-arraignment to one offence of conspiracy to cause grievous bodily harm with intent, contrary to section 1(1) of the Criminal Law Act 1997. On 27 January 2023 in the same court the applicant ART (then aged 17) pleaded guilty upon re-arraignment to the same offence. On 5 October 2023, before Her Honour Judge Robinson, ART was sentenced to 3 years, 9 months and AJB to 4 years' detention in a young offender institution. Appropriate ancillary orders were made. At the date of the offence both applicants were aged 16. At the date of sentence they were both 17 years old. Their applications for leave to appeal against sentence have each been referred to the full court by the Registrar on account of their young age.

#### Facts

- 3 We turn to the facts. On 10 August 2022 at around 7.20 p.m. V1 was confronted by six males at her home address. The group comprised AJB, ART and four others, who were the applicant's co-accused. Two of V1's sons, aged 8 and 5, were inside the property. Her eldest son V2, aged 15, was not at home. The group were aggressive and told V1 that they were looking for V2. One member of the group told V1: "We came here to warn V2 we are going to kill him." The group then all began to say that they were going to kill V2. They were aggressive to V1, who feared they would push their way into the house. The males remained for 5 to 10 minutes before leaving. V1 then called the police. Officers arrived at the scene shortly afterwards.
- 4 All six males were found in a nearby public park. Their mobile telephones were seized. Two machetes were recovered from different places along the park footpath.
- 5 AJB's fingerprints were on one of the machetes. ART, AJB and the four co-accused were associated with the "Neno" gang based in Nacton in East Ipswich. The motivation for wanting to attack V2 related to rivalry with another gang, "J Block", which operated in the area of Ipswich where V2 lived with his mother.
- 6 The mobile telephones of AJB and another co-accused were examined. They revealed a group conversation in which AJB reported that he thought rival gang members were on Nacton Road. He asked the group if they had found out where V2 lived. AJB sent images of houses to the group and a discussion followed as to which house belonged to V2. The group discussed finding and attacking V2 with knives. Plans were made to travel to the address by taxi. A co-accused's phone had an invoice for four machetes that were to be delivered to another member of the group, as well as screenshots of the machetes. Following the offence, V2 and his family were forced to move out of the area.

#### Sentencing remarks

- 7 The judge sentenced all six members of the group together. She rightly described the incident at V1's house as a very serious incident. She observed that V2 was vulnerable because of his age. The group had planned to use highly dangerous weapons and were intent on taking revenge on V2 for a trivial reason, relating to damage to a door at a house

with which one member of the group was associated. She said that the group was lucky that V2 was not at home; otherwise, they may have been facing a murder charge. Although sentencing for a conspiracy, the judge considered the Sentencing Guideline for the completed offence of causing grievous bodily harm with intent. She was entitled to do so. She concluded that the offence fell within the highest culpability category, i.e. level A, under the guideline.

- 8 As regards harm, the judge noted that the conspiracy did not result in any physical harm as the intended stabbing did not take place. However, she was satisfied that the group intended to cause very serious injury or death. The offence was one of category 2 harm under the guideline. The judge was entitled to reach this conclusion on the basis of the harm which the conspiracy was intended to cause or might foreseeably have caused.
- 9 The conspiracy was therefore to be treated as a category 2A offence under the guideline with a starting point of 7 years' custody and a category range of 6 to 10 years' custody for an adult. It was an aggravating factor for all group members that the offence took place in a residential street in daylight when other people were around. It was a further aggravating factor that the offence took place against what the judge described as the backdrop of tensions and tit for tat violence between opposing gangs. By way of mitigation the judge took into consideration that the applicants were aged only 16 at the time of the offence, had no previous convictions and were vulnerable young people "sucked into" gang violence.
- 10 In relation to AJB the judge observed that the phone messages showed that he played an active part throughout in plans to carry a large knife and attack V2. He had failed to take responsibility for his offence. On the other hand, AJB had plans to apply for a railway engineer apprenticeship. He had been working with the Youth Justice Service, with the support of his family, to distance himself from negative influences.
- 11 In relation to ART the judge noted that ART's phone messages stated that he would stab V2 and that he wanted to borrow a balaclava. Footage from a police body-worn camera showed him wearing a dark mask. He was, however, less active in the conspiracy than others. He had accepted responsibility for what he had done. He had been working with the Youth Justice Service to distance himself, and had distanced himself, from negative influences.
- 12 The judge applied the Overarching Guideline on Sentencing Children and Young People ("the Overarching Guideline"). She took into consideration that the court must have regard to the principal aim of the youth justice system, which is to prevent offending and to promote the welfare of a child or young person. The approach to sentencing should be individualistic and focused on rehabilitation rather than punishment. She recognised that in determining a child's culpability the emphasis must be on emotional and developmental age as much, if not more, than chronological age. She acknowledged that a custodial sentence for a young person is a last resort and that, if a custodial sentence is imposed, the court may think it appropriate to apply a sentence falling within the region of half to two thirds of the adult sentence for those, like the applicants, aged 15 to 17.
- 13 The judge concluded that the offence was so serious that an adult would have received 8 years' imprisonment. Applying a one-third reduction for the applicant's age and a 25 per cent discount for their guilty pleas, she arrived at the sentences which we have mentioned already. We do not need to set out the ways in which she sentenced the co-defendants.

### Submissions

- 14 On behalf of ART, Mr Hughes submits that the sentence passed by the judge was manifestly excessive. She had failed to give sufficient weight to ART's age, previous good character and progress towards rehabilitation since the date of the offence, such as distancing himself from gang culture and securing an apprenticeship which his detention will bring to an end. She had failed to have proper regard to the detailed Pre-Sentence Report. She ought to have accepted the recommendation in that report for an alternative to detention, namely a Youth Rehabilitation Order with Intensive Supervision and Surveillance ("YRO with ISS"). She had failed to explain why she had rejected that alternative. She had failed properly to apply the Overarching Guideline by focusing on punishment when she ought to have focused on rehabilitation and reintegration.
- 15 On behalf of AJB, Ms Roxburgh submits that the judge gave insufficient weight to the principles in the Overarching Guideline. She did not apply her mind specifically to the imposition of a YRO with ISS and had failed to give reasons for concluding that such a sentence would not be sufficient. She could usefully have addressed the elements of ISS. The Pre-Sentence Report made plain that AJB had rehabilitated himself through his engagement with the Youth Justice Service. He had detached himself from his negative peer group. He had a career and a realistic plan to achieve it. The Pre-Sentence Report considered that detention would be harmful to AJB's mental health and his employment prospects. Detention would increase - rather than reduce - the prospect of recidivism.
- 16 On behalf of the respondent, Ms Tucker, principally in writing, submits that the judge had the principles of the Overarching Guideline at the front of her mind, as well as the relevant case law. She had considered the contents of the reports. While she had not expressly spelt out in terms why the offence was so serious that she could not impose a YRO with ISS, she had clearly acknowledged that detention is a sentence of last resort for a child, but had concluded that, given the seriousness of the offence, only a sentence of detention could be justified for each of the applicants. She had applied the relevant offence guideline and had made a proper deduction for age, as well as applying the appropriate discount for the guilty pleas. The sentences imposed on each applicant were not manifestly excessive or wrong in principle.

### Discussion

- 17 The Overarching Guideline gives guidance about the imposition of custodial sentences on children, emphasising the importance of the assessment of the Pre-Sentence Report in the judge's determination of whether the custody threshold has been crossed:

"6.44 In determining whether **an offence has crossed the custody** threshold, the court will need to assess the seriousness of the offence, in particular the level of harm that was caused, or was likely to have been caused, by the offence. The risk of serious harm in the future must also be assessed. The pre-sentence report will assess this criterion and must be considered before a custodial sentence is imposed. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm.

6.45 Only if the court is satisfied that the offence crosses the custody threshold, and that no other sentence is appropriate, the court may, as a preliminary consideration, consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence."

18 The guideline goes on to state:

"6.46 When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 [...] This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.** This reduction should be applied before any reduction for a plea of guilty."

19 In her sentencing remarks the judge referred to *R v ZA* [2023] EWCA Crim 596, to which we too have been referred. The court in that case emphasised, at paragraph 82, that an "entirely different approach to sentence is required than that which courts routinely apply to adult offenders", and provided a summary of the general principles. Among other things:

"(5) The contents of the Youth Justice Service pre-sentence report and any medical/psychiatric/psychological reports will be key. Courts should consider these reports, bearing in mind the general principles at section 1 of the overarching youth guideline, together with any youth-specific offence guideline, carefully working through each.

(6) In general it will not be helpful to go straight to paragraph 6.46 of the overarching youth guideline without having first directed the court to general principles canvassed earlier in that guideline, as well as to any youth-specific guideline. The stepped approach in the overarching youth guideline and any youth-specific offence guideline should be followed. Working through the guideline(s) in this way will enable the court to arrive at the most appropriate sentence for the particular child or young person, bearing in mind their individual circumstances together with the dual aims of youth sentencing.

(7) If the court considers that the offence or offence(s) is (are) so serious as to pass the custody threshold, the court must consider whether a YRO with ISS can be imposed instead. If it cannot, then the court must explain why."

20 In our judgment, the judge in the present case followed the approach in *ZA*. Her sentencing remarks show that she did not sentence the applicants as mini-adults but had in mind the principles that must be adopted under the Overarching Guideline. Her sentencing remarks are structured and demonstrate that she considered each case before her on an individual basis, albeit that there were certain factors that were relevant to all the cases, such as the seriousness of the offence. We find no material error in her approach.

21 The judge did not expressly refer to paragraphs 6.44 and 6.45 of the Overarching Guideline. She was not required slavishly to cite large passages from the guideline, but to indicate that she had considered and applied its substance. In our judgment, the judge's sentencing remarks read as a whole satisfy us that she did so.

22 The judge did not expressly say why she was rejecting a YRO with ISS in favour of detention. However, the judge considered the Pre-Sentence Reports for each applicant which made clear that there was a significant risk of serious harm in the future. It is plain from her sentencing remarks, read fairly and as a whole, that she regarded the offending as so serious that only a sentence of detention for each applicant was warranted. Neither of the

applicants can be in any realistic doubt as to why she did not impose any form of community sentence, even a stringent one.

- 23 By their pleas to the offence which they each entered on a “full facts” basis, the applicants have accepted that they conspired to cause very serious violence. We have seen the images of the machetes found by the police, as well as other vivid material that was before the judge. We agree with her that this was a very serious incident, putting at risk the life of a 15-year-old boy in the context of wider gang violence in the area. Age and good character do not in these circumstances mean that a YRO with ISS ought to have been imposed.
- 24 In our judgment, the judge was entitled to impose a sentence on each applicant of immediate detention for the length that each received. It is not arguable that the sentence of either of the applicants was manifestly excessive or wrong in principle. We refuse leave to appeal in both cases.
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**CERTIFICATE**

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.