IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 243

CASE NO 202202672/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 22 February 2023

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE FRASER

MR JUSTICE BUTCHER

REX
V
JAMIE LEE STEVENS

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MS S NAIR appeared on behalf of the Appellant.

MR E RENVOIZE appeared on behalf of the Crown.

J U D G M E N T

MR JUSTICE FRASER:

1. This is an appeal against sentence, leave having been granted by the single judge. The appellant has been represented before us by Ms Nair and the prosecution by Mr Renvoize. We are grateful to them both for their very helpful submissions.
2. The appellant is 18 years old. He pleaded guilty to one offence of causing grievous bodily harm with intent contrary to section 18 of the Offences Against the Person Act 1861 in the Crown Court on 30 June 2022. This was in respect of an offence which had taken place on 13 May 2022 in Newmarket. He was sentenced by Mrs Recorder Posner on 5 August 2022 to a term of, as it was expressed during the sentencing hearing by the learned Recorder, "imprisonment" of 10 years and 6 months in length. The appellant was 18 at the time of the offending, date of conviction, and also at the sentence and therefore the correct sentence, given it was a custodial one, should have been one of detention in a young offender institute. This is a subject to which we shall return.
3. The appellant is subject to a youth rehabilitation order for previous offending which was in force at the time and that was formally revoked at a slip rule hearing on 21 October 2022. We shall return to that subject later too.
4. The facts of the offending as are follows. On 13 May 2022 at the Golden Lion Public House in Newmarket the appellant, during the course of the evening, became embroiled in an argument with a number of females. That argument went on during the evening and at about 9.30 pm he was heard to be rude to one of the group and threatened "to splash" her; this a colloquial phrase which means that the appellant intended to throw acid or some other corrosive substance at her. Due to the threats one of the females phoned a male friend of hers called Justin Marshall, explaining that the appellant was being

aggressive and that she wanted to leave the pub but that because of his behaviour she was afraid to do so on her own.

5. Mr Marshall attended the public house and located his friend. His intention was to take his friend home. The appellant was pointed out to Mr Marshall, and he told the appellant he should not be making the type of threats that he had been doing during the course of the evening. The discussion or disagreement moved outside and then Mr Marshall walked away towards his vehicle. The appellant approached Mr Marshall, removed a Lucazade bottle from his rucksack and squirted a liquid into Mr Marshall's face. Mr Marshall immediately cried out in pain and felt a burning sensation. He could not see out of his left eye. The appellant made off from the scene. The police arrived and Mr Marshall was taken to Addenbrooke's Hospital by a friend. The appellant was arrested the next day and declined to answer questions in interview. It appeared that the substance used was ammonia. Regardless of the exact chemical composition of the liquid, it caused catastrophic damage to Mr Marshall and in particular to his sight, as he is now blinded in his left eye, the cornea having been completely destroyed.

6. The learned Recorder had the benefit of a pre-sentence report and also oral evidence from the author of the pre-sentence report at the sentencing hearing. In the report the author made certain observations about the risks of the appellant reoffending and the level of risk which he posed to other members of the public in the future, matters which had to be addressed in sentencing due to this being an offence specified in schedule 18 which requires the sentencer to address the issue of dangerousness. In addition to the matters of the appellant's background his previous convictions were highlighted. Notwithstanding his young age these were numerous: he had eight convictions for 14 offences between 2019 and 2022 and these included robbery, possession of an offensive weapon,

possession of a bladed article, battery and a section 20 wounding conviction. For these he had been given referral orders and youth rehabilitation orders. He also had a separate youth caution for possessing a bladed article in 2018. His section 20 offence had involved an altercation with someone in the street, whom he had hit over the head with a bottle that he had in his hand.

7. In conclusion, the author of the pre-sentence report had concluded that the appellant was indeed dangerous and posed such a risk as set out in the Sentencing Act that there was a significant risk to members of the public of his causing serious harm by the commission of further specified offences. This is the test set out in section 380 of the Sentencing Act 2020. The sentencing Recorder agreed. We add here that this conclusion was, in our judgment, an inescapable one on the facts. This appellant had been identified by the author of the report as someone who would arm himself with weapons as a matter of routine, and would not hesitate to use them if he perceived someone causing him offence, even of the most mild kind. Indeed that is borne out by the facts of this offence itself. A group of females who were out enjoying themselves in a public house found the appellant arguing with them and later threatening to do to one of them, exactly what he did later that evening to her friend who she had called to collect her, because she did not feel safe leaving the public house on her own. That friend has paid a very high price for agreeing to help and collect her. He is effectively blinded in one eye and he cannot pursue the career for which he was trained, namely as a security guard.

8. In terms of the Sentencing Guidelines the Recorder considered that because a highly dangerous weapon was used and there was a significant element of planning, in that the appellant had gone out armed with a bottle of ammonia intending to attack someone, this fell into culpability A. Because this had caused permanent loss of sight and had affected

Mr Marshall's ability to carry out his normal day-to-day activities and he is now unable to work within the security industry, the harm was category 1. This made the offending one of category 1A, which has a starting point of 12 years' custody with a range of 10 to 16 years. She identified aggravating factors as being the previous convictions for robbery in 2019, having an offensive weapon and a bladed article in 2021, battery in 2021 and wounding in 2021 and that the offence had been carried out whilst the appellant was subject to a youth rehabilitation order. She might also have added that the attack occurred in a public place with other members of the public nearby and had also been preceded by threats.

9. She considered the offence did not merit a life sentence and also concluded that an extended sentence was not required, essentially due to the youth of the appellant, and she adjusted the sentence within the category range from the starting point to give a figure of 14 years. She then applied a credit of 25 per cent for his plea of guilty and arrived at the figure of 10 years and 6 months which is self-evidently just above the very bottom of the range.

10. The grounds of appeal which were before the single judge and in respect of which he granted leave are as follows. The starting point was too high and manifestly excessive. Secondly, there was insufficient information to make a conclusion as to the level of injury and therefore the level of harm was incorrectly placed into category A. Thirdly, that insufficient account was taken of the appellant's age, lack of maturity and remorse, and fourthly, that the total sentence was manifestly excessive.

11. The fourth ground is of course the test that this Court will apply on an appeal such as this, namely whether the total sentence is manifestly excessive. It is not a separate ground of appeal. We shall consider the first three grounds although some of them overlap one with

another and they also overlap with the fourth ground which is our ultimate question.

12. Grounds 1 and 2 can be taken together, as they both go to categorisation and the correct starting point. It is said in the written grounds, although sensibly not advanced to any appreciable degree orally by Ms Nair today, that the categorisation was incorrect, and the starting point is too high. Of course, the starting point in the Guidelines is specified as 12 years for an offence that is category 1A. Categorisation is arrived at by considering both culpability and level of harm. It is said in the written grounds before us that the offence could not, or should not, be put in category for harm because there was insufficient information to come to a conclusion about the level of injury. This point was expressly addressed in the prosecution sentencing note for the judge below which had explained that:

    i. "Mr Marshall has provided a victim personal statement, which explains that the attack burned the cornea of his left eye and his left is unable to refract light or to focus. The eye is therefore irreparably damaged and he has been left, effectively, blind in that eye."

13. The victim personal statement itself gave a considerable amount of detail about the damage that Mr Marshall had suffered both to his eye, his eyesight and the effect on his life. In our judgment, there was more than sufficient information before the court so that the sentencing Recorder could come to a conclusion as to the level of injury. Medical reports are not routinely required of victims of offences such as this, and we are unpersuaded by that ground.

14. Ms Nair has explained that the first ground should be interpreted as referring to the figure of 14 years, prior to discount for plea being too high, rather than, strictly speaking, the

starting point in the Categorisation Guidelines. That is a ground of appeal which we will explain in some detail. Attacking someone with any weapon with intent to cause them really serious harm is a serious offence but, in our judgment, even more so with this type of highly dangerous weapon. Spraying a corrosive substance into someone's face, even if it does not, as here, cause permanent damage to eyesight is likely to disfigure that victim permanently. There is a wealth of research concerning the detrimental impact of people who suffer permanent facial disfigurement. These consequences are practically inevitable if such weapons are used, and used in this manner. A corrosive substance sprayed or splashed into someone's face is a highly dangerous weapon. Further, carrying such weapons is very easy as they are, as here, disguised as something else. This liquid was being carried in a Lucozade bottle. All that someone would observe in the moments before such an attack is that the offender was holding an innocuous object in their hand, and the dangerous nature of the weapon itself would not be apparent. There has been a marked increase in the incidents of such attacks with weapons such as this in recent years generally and, in our judgment, it cannot seriously be suggested that other material is required for this sentencing judge to have concluded that the offence is one that is properly categorised as 1A.

15. We therefore turn to the third ground which relates to the appellant's age, lack of maturity and remorse. The sentencing Recorder did not separately identify the reduction that she was applying for these features which she ought to have done. She did refer to his age when she concluded that the extended sentence ought not to be imposed. However, there was no proper analysis by her of a specific discount to take account of his age and lack of maturity. She was not assisted in this respect by either the prosecution and Ms Nair has satisfied us that she did explain in her submissions to the sentencing judge that his age

and immaturity should be taken into account. However, it is not something which the pre-sentence report itself expressly deals either in detail or substantially at all. The pre-sentence report does deal with remorse. In it the appellant is quoted as saying: "I did not intend for any of this to happen" when he was interviewed by the author of the report. He also says that he only intended to spray his victim on the chest. Given the offence to which he has pleaded guilty has intent as a central element, such remorse as he seeks to express, if he has any properly so called, is limited. It might better be described as regret for his predicament rather than genuine remorse.

16. However, we return to the important subject of the age of the appellant and his lack of maturity. He had only recently turned 18. There is ample authority to justify the courts properly considering that there is no cliff-edge when an offender reaches the age of 18. It is true that from that age they cease in law being seen as a child offender and become a young offender, but that transformation does not happen miraculously on the night of their 18th birthday. The sentencing approach across the Crown Court is that age and maturity of young offenders must be specifically taken into account when undertaking the sentencing exercise. As we have already observed, the test for this Court is whether the resulting sentence is manifestly excessive or wrong in principle. There is no doubt in our judgment that for an adult the resulting sentence of 10 years and 6 months for this offence could not be said to be manifestly excessive. However, for the appellant, who had just turned 18, in our judgment, the period of 10 years and 6 months was reached by an error of principle in the sentencing exercise which failed to take correct account of his age which resulted in a manifestly excessive sentence.

17. It is therefore the case that we will perform that exercise. Taking a category 1A offence with a starting point of 12 years, it is correct that the figure should be moved upwards

within the range due to the aggravating factors. They are the nature of the weapon, the previous threat during the evening, the premeditated nature of the attack, the previous convictions, and the fact that the offence took place whilst the appellant was serving a youth rehabilitation order. That would move one to the top of the range, namely 14 years. However, a reduction should then be applied to that figure specifically for the age of the appellant and his lack of maturity prior to the discount for the guilty plea being applied. When one applies that exercise the 14-year figure should properly be reduced to one of 12 years. When one applies a 25 per cent reduction to that for the guilty plea one would arrive at a figure for a custodial term of 9 years.

18. However, that is not the end of the matter. Given that we have approved the finding by the judge below of dangerousness and given our conclusion on the custodial element of the correct sentence for this appellant, in our judgment, the fact that he is categorised as dangerous, correctly in our view, means that an extended licence period ought to be applied, to take the overall term back to the 10 year and 6 month figure passed by the court below. Therefore, for the avoidance of doubt, the result of his appeal will be to quash his existing determinate sentence of 10 years 6 months, and impose an extended sentence with a custodial element of 9 years and an extended licence period of 18 months, giving an overall term of his sentence being one of 10 years and 6 months.

19. We return to three separate technical errors in the sentencing exercise that we must deal with. Firstly, the sentence was pronounced as one of "imprisonment"; that is wrong in law. Due to the age of the offender and the effect of section 227 of the Sentencing Act 2020, imprisonment cannot be passed upon an offender below the age of 21. We therefore record that the sentence of imprisonment passed at the Crown Court was unlawful, due to the technical defect in the pronouncement because it was expressed as

"imprisonment" rather than 'detention in a young offender institute'. We direct that the Crown Court record be amended to reflect that the sentence is imposed as one of detention in a young offender institution.

20. Secondly, the appellant had been sentenced on 21 October 2021 to a youth rehabilitation order for the offence of section 20 to which we have already referred. That sentence was passed at Suffolk Youth Court. On 5 August 2022 the appellant was sentenced for the matter the subject of this appeal and a slip-rule hearing was held on 21 October 2022 where the sentencing judge purported to revoke the youth rehabilitation order by using the slip rule. The power to revoke that order arises under schedule 7 paragraph 23 of the Sentencing Act 2020. However, the time between the date of sentence and the slip-rule hearing that occurred in this case was 77 days. Regardless of who attended at that hearing for the appellant, and it is unclear to this Court from the transcript who was present at that hearing, that period is longer than 56 days. The Slip Rule (Alteration of Crown Court Sentence) is governed by section 385 of the Sentencing Act 2020. The period of 56 days is a very maximum period within which the Crown Court may vary or rescind a sentence under section 385(2). Because the slip-rule hearing took place outside that time limit, the revocation of the youth rehabilitation order was done outwith the jurisdiction of the sentencing judge and is therefore of no effect. That order plainly must be revoked as the appellant has been sentenced to a lengthy term of detention in a young offender institution and therefore cannot comply with its terms. We therefore revoke it.

21. Finally, at the sentencing hearing no mention was made of time upon remand to be taken into account, but after the hearing an order was made by the judge stating that the time of curfew of 16 days was to be taken into account. Section 325(4) of the Sentencing Act 2020 states the direction for time to be taken account must be given in open court, which

this was not. Section 325 of the Sentencing Act also contains a formula as to how that figure should be calculated and those principles are further enumerated in R v Marshall [2015] EWCA Crim 1999. Essentially time spent as a result of qualifying curfew is credited in one-half of the time spent as if that time had been on remand towards the resulting custodial sentence. In advance of today's hearing the prosecution and the defence have agreed that because of the time spent on qualifying curfew the number of days to be taken into account and credited against time served is 8 days and we therefore make that order.

22. We therefore allow the appeal, quash the sentence below, substitute an extended sentence with a custodial term of detention in a young offender institute of 9 years and an extended licence period of 18 months. We revoke the youth rehabilitation order that was passed at Suffolk Youth Court on 21 October 2021, and we direct that 8 days of the period spent on curfew by the appellant prior to sentence below be credited towards to serve towards his sentence pursuant to section 325(4) of the Sentencing Act 2020.

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

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