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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 202203707 A2

[2023] EWCA Crim 630



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 25 April 2023

Before:

LORD JUSTICE SINGH

MR JUSTICE HOLGATE

HER HONOUR JUDGE MONTGOMERY QC

REX

v

HASAN GULZAR

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MR SIMON MOLYNEUX appeared on behalf of the Appellant

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

MR JUSTICE HOLGATE:

1. On 3 March 2022 in the Crown Court at Aylesbury before Mr Recorder Reid, the appellant pleaded guilty on re-arraignment to having a bladed article, contrary to s.139 of the Criminal Justice Act 1988. On 9 June 2022 before His Honour Judge Sheridan, the appellant pleaded guilty to two offences: threatening another with a bladed article, contrary to s.139AA of the 1988 Act and assault occasioning actual bodily harm. On 18 November 2022, the appellant was sentenced by Ms Recorder Dhaliwal to a total term of imprisonment of 40 months. She imposed a term of 28 months for the assault, a concurrent term of 12 months for the offence under s.139AA, and a consecutive term of 12 months for the offence under s.139. The appellant appeals against sentence with the leave of the single judge.
2. We summarise first the circumstances of the offence under s.139 of the 1988 Act. On 14 March 2020 police attended a public house in the centre of High Wycombe to deal with a fight between a group of males. The police were given information about two men whom they followed. One of them was the appellant. The police saw him stop near some shops, bend down and leave a large Rambo-style knife in a doorway. The police seized the knife, which was wrapped in a bandana later found to contain the appellant's DNA. The appellant was arrested down the road minutes later. He admitted that he was present when the fight broke out, that he had been drinking and felt drunk. Otherwise, he answered no comment in interview.
3. The two other offences occurred during an incident in the McDonald's in High Wycombe town centre just before 4 am on 26 March 2022. A number of males including the appellant and a co-defendant Valentine were engaged in a verbal argument and were making physical threats to a Mr Bynoe. During that argument, the appellant pulled a pair of scissors from his pocket and stabbed Mr Bynoe, initially to the lower back whilst he was facing in the other direction. He received two wounds, one to his lower back and the other to the left thigh, each about a centimetre in diameter and deep enough for the fatty tissue to be seen. Once he realised that he had been attacked, Mr Bynoe picked up a chair and attempted to attack the

appellant with it. The appellant also picked up a chair, and a brawl broke out. Valentine attempted to join in and kicked out at a male but missed. He then became embroiled in a fight with two other males. The appellant fell to the floor and was then attacked. The appellant and Valentine ran and left McDonald's. The victim declined to provide a statement but attended hospital. Again the appellant answered no comment in interview.

4. The appellant was born on 17 August 2000. He was therefore 19 at the time of the offence in March 2020 and 21 at the time of the offences in March 2022. He had four convictions for twelve offences between May 2017 and January 2022. His relevant convictions included three offences of battery for which he received a 6-month referral order in May 2017, an offence under s.4 of the Public Order Act 1986 for which he received a 12 months' youth rehabilitation order in March 2018, and a further s.4 offence for which he received a 12-month community order in January 2022. He had not previously received a custodial sentence. He also had a youth caution for common assault in 2014.
5. The appellant places considerable reliance upon a pre-sentence report dated 16 March 2022 which dealt with the s.139 offence in 2020 and the appellant's disorders. The appellant had been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") when he was 5 and Autism Spectrum Condition ("ASC") when he was 16. During the interview the appellant was said to be deliberately evasive and dishonest about his possession of the knife, but the author considered that his understanding of the consequences of attempting to conceal the truth were likely to have been limited by his ASC. The appellant had attended specialist education, having needs related to speech, language and communication which impact on his behaviour. However, eventually he was excluded because of violent and aggressive behaviour. He attended vocational training with support, but that was terminated because of his disruptive and aggressive behaviour. He has never had paid employment. The appellant was breached for a failure to engage with an education, treatment and employment requirement of the community order. He regularly drinks to the point of intoxication but says that he has ceased to use drugs.
6. The appellant had lived at home with his parents and two younger siblings. It was reported

that the police were called after he threatened family members with a knife. However, the family has not wished to engage with the police. Similarly the appellant and his family had not engaged previously with mental health services when his school raised concerns.

7. The author of the report said that it can be difficult to communicate with the appellant. He is impulsive and has poor temper control. He has shown an inability to recognise when situations are escalating towards conflict. His ability to perceive potential consequences of his behaviour appear to be limited by his cognitive ability. During one interview the appellant was noticeably hyperactive with excessive body movement, and in this way other people can identify him as vulnerable. The author concluded that the appellant's neuro-developmental conditions have a significant impact on his thinking and behaviour. They inhibit his ability to learn and to change his behaviour.
8. But we also note that during this interview which took place on 9 March 2022, the appellant said that he had become more aware of the consequences of knife crime for victims and offenders "and that he would no longer carry a knife". The probation officer warned him that he would face a lengthy prison sentence if he harmed someone with a knife. Although the appellant acknowledged this point, the author remained concerned about his ability to consider consequences in situations where he is vulnerable, when challenged or in conflict, or under the influence of alcohol. The s. 47 assault and the s.139AA offence took place only two weeks after that interview.
9. The second pre-sentence report is dated 16 November 2022 and relates to those two additional offences. The author confirmed that he had read the first report. The appellant offered little meaningful explanation as to why he had committed those offences. His accounts were vague and unconvincing. He could or would not account for his decisions to have access to weapons. The author agreed with the assessment in the first pre-sentence report of the risk of serious harm. Both probation officers considered the appellant to be a dangerous offender. In the conclusions of the second report it was accepted that the appellant's developmental disadvantages (ASC, ASHD and slow learning) were mitigating factors, but there was no further discussion about the extent to which they afforded

mitigation.

10. In her sentencing remarks the judge said that the circumstances of the offence under s. 139 involved a risk of serious disorder and so fell within category 1A of the Definitive Guideline with a starting point of 18 months. That was aggravated by the attempt to dispose of the knife and alcohol. The guilty plea on the day of the trial attracted a credit of 10 per cent. As for the s. 47 offence, the scissors used to stab the victim in two places were a highly dangerous weapon and so culpability fell within category A. The injuries were serious in the context of a s.47 offence and so amounted to category 1 harm. The starting point was 2½ years. The s.139AA offence fell within category 1A because it had been committed in circumstances where there was a risk of serious disorder and so the starting point was 2 years. The offences were aggravated by the appellant having been on bail and subject to a community order and by his record of violence. A credit of 25 per cent was allowed for the guilty plea in relation to the s.47 offence.
11. The judge agreed with the probation officers that the appellant is a dangerous offender but said that no question of an extended sentence arose because she would not be imposing a custodial term of 4 or more years.
12. In arriving at the determinate sentences she imposed, the judge took into account the appellant's age, relative immaturity and his background, about which she had read in detail. She had regard to the appellant's previous limited record but also the way in which it had escalated more recently with the index and other offences.
13. We are grateful to Mr Molyneux for his submissions on behalf of the appellant. He submits that the sentence was manifestly excessive because:
  - (1) The appellant was still a young man.
  - (2) He was relatively likely convicted for relatively minor offences.
  - (3) He had pleaded guilty on both indictments.
  - (4) There was a considerable delay in relation to the first indictment due to Covid.
  - (5) Most importantly, the appellant had considerable neuro divergent conditions which played a significant role in his behaviour as explained in the two

pre-sentence reports.

### **Discussion**

14. The aggravating features in relation to the offences under s.139 of the 1988 Act justified a sentence in excess of 18 months before allowing for mitigation. Ultimately the credit for plea before arriving at a sentence of 12 months was only 10 per cent, so it can be inferred that the judge reduced the sentence by a substantial proportion to allow for both mitigating factors and totality.
15. The s.47 offence was a serious offence of its kind. There were two stabbings, one of which was plainly from behind. It was treated as the lead offence and aggravated by the concurrent sentence passed on the s.139AA offences. There was also the commission of those two offences whilst on bail and serving a community order together with a record of violence which had begun as minor but had seriously escalated. These matters plainly required a significant uplift from the starting point of 30 months.
16. The main issue for us is whether the judge failed to make an adequate reduction for mitigating factors so that the overall sentence finally passed was manifestly excessive. Those factors concerned age, relative immaturity and the developmental disorders. In so far as those disorders had inhibited the appellant's development, that is reflected in the allowance made for his immaturity. The delay in dealing with the March 2020 offence accounts for little, particularly as the appellant went on to carry out the 2022 offences and another offence in 2021. We also bear in mind that only a couple of weeks before the s.47 assault the first probation officer had warned the appellant about the punishment for knife crime after he said to her that he had become more aware of the consequences of knife crime for victims and offenders and that he would no longer carry a knife.
17. We have considered the guideline "Sentencing offenders with mental disorders, developmental disorders, or neurological impairments". Paragraphs 11 and 12 state:

“11. Culpability will only be reduced if there is sufficient connection between the offender's impairment or disorder and the offending behaviour.

12. In some cases, the impairment or disorder may mean that culpability is significantly reduced. In other cases, the impairment or disorder may have no relevance to culpability. A careful analysis of all the circumstances of the case and all relevant materials is therefore required."

18. Understandably, the authors of the pre-sentence reports did not attempt to apply those principles and there was no expert evidence to assist the court. Nevertheless, we would accept that ADHD and ASC may be relevant to culpability in the appellant's case when a conflict arises. But despite considerable efforts both authors of the pre-sentence reports were unable to find out from the appellant why he was carrying a Rambo knife or scissors for use as a weapon in the first place. From the material before the court, we consider that the disorders justified only a modest reduction in the sentences.
19. The sentence of 28 months for the s.47 offence implied a sentence of about 38 months after allowing for mitigation but before the 25 per cent credit for plea. We consider that the judge did not make a sufficient allowance for all of the mitigating circumstances, including age and immaturity, as well as the disorders to which we have referred, with the result that the sentence was manifestly excessive. We conclude that the sentence for the s.47 offence should be reduced by 6 months. Accordingly, we quash the sentence of 28 months' imprisonment for that offence and substitute a term of 22 months. The other sentences remain undisturbed. The effect is that the overall term of 40 months' imprisonment is reduced to 34 months, or 2 years 10 months. To that extent only the appeal is allowed.

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