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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 953



No. 202301247 A2
Ind. No. T20220682

Royal Courts of Justice

Thursday, 20 July 2023

Before:

LORD JUSTICE WILLIAM DAVIS
MR JUSTICE MARTIN SPENCER
HIS HONOUR JUDGE LICKLEY
(Sitting as a Judge of the High Court)

REX

V

KEEYAN THOMPSON

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MS E THOMBER appeared on behalf of the Appellant.

THE RESPONDENT was not present and was not represented.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1. The appellant's application for leave to appeal against sentence has been referred to the full court by the Registrar. We grant it.
2. The appellant is aged 18, having been born on 12 August 2004. On 8 February 2023, also when aged 18, he pleaded guilty to six counts of robbery and one count of attempted robbery. Sentence was adjourned for reports and it came before Recorder Broadfoot KC on 17 March 2023, when he was given an extended sentence of seven years, comprising a custodial term of four and a half years and an extension period of two and a half years in respect of count 8.
3. In respect of counts 1 to 4 and 7, the other robbery charges, and count 5, the attempted robbery charge, he received concurrent sentences of 40 months and two weeks' custody. He was also made subject to a surcharge of £190. However, this should have been £34, because of the appellant's age at the time of the offences and we correct that part of the order, accordingly.
4. The facts of these offences were as follows: Counts 1 and 2 relate to the robbery of NA, aged 19, and JW, aged 17 on the same route 250 bus on Streatham High Road, London SW16 at around 12.30 on 21 February 2022. Whilst both incidents were reported to the police through third parties, neither complainant gave a witness statement. However, the police were able to collect CCTV from the bus which showed the robberies taking place and they were able to identify the appellant from that CCTV. The two men go up to the top deck of the bus where four members of the public are sat. The appellant approaches JW whilst his accomplice approaches NA, before rejoining the appellant. The appellant sits next to JW, effectively trapping him in his seat. The other male stood behind them. JW can be seen to give the appellant his phone and the other male can be seen taking JW's AirPods from his ears.
5. After they had taken JW's property, the two men moved forward to NA and did the exact same thing to him. The appellant and the other man stand over NA, again trapping him in his seat, before he eventually hands over his mobile phone and AirPods. The two men then get off the bus at the next stop.
6. Count 3 relates to the robbery of AM, a 14-year-old schoolboy who was taking the 133 bus to school at around 8.20 in the morning on 10 March 2022. The appellant was seen boarding the bus, wearing his black coat with a distinctive orange zip. He goes to the top deck of the bus where he can be seen looking at the other children sat on the top deck before walking over to AM. AM describes how the appellant sat right next to him, despite all the other seats being available on the bus. He felt scared so he tried to move, but the appellant shoulder barged him back down into his seat and demanded his phone and pass code. He described that, although he did not see any weapon, and nor was any weapon produced or threatened, the appellant's hand was in his pocket and he was scared as he did not know what the appellant might have been carrying. As a result, AM handed over his mobile phone and the appellant got off the bus.
7. Count 4 relates to the robbery of JS, aged 24, on the 118 bus in Streatham on 18 March 2022 at about 11.30 in the morning. As above, in relation to counts 1 and 2, whilst the incident was reported to the police by a third party, JS, himself, declined to give a statement to the police. Again, CCTV was obtained and the appellant was identified as the person responsible. On the CCTC, the appellant, again wearing his distinctive coat, could be seen

sat on the back row of the top deck of the bus with two others. On a number of occasions, he and his accomplices can be seen to look out of the window towards the stop below and the appellant stands up and moves down the bus on at least two occasions before returning to his seat. It is apparent that he and his accomplices were on the bus waiting for a suitable victim to identify. JS then takes a seat, together with his 16-year-old autistic brother, a few rows in front of the appellant, who moves to sit behind him. The appellant's accomplices move nearby to JS as well: one sat next to the appellant and one sat across the aisle from JS' brother. Words were exchanged between the three men and JS, whereupon JS hands over his mobile phone and the three men, including the appellant, who could be seen to be holding JS' phone, get off the bus.

8. Count 5 relates to the attempted robbery of TK, a 16-year-old schoolboy who was making his way home from school at around 3 o'clock in the afternoon, via the 118 bus on 25 March 2022. TK did give a statement to the plc. TK was on the bus with some schoolfriends. The appellant can be seen to board the bus in company with an accomplice. They go to the top deck and approach TK and his friends. The appellant seeks to engage TK in conversation before demanding that TK hand over his phone and other belongings. TK refuses and the demand is made again. At the next stop, TK makes out that is where he was supposed to get off the bus, so he and his friends then alight from the bus.
9. Counts 7 and 8 relate to the robbery of KM, a 22-year-old student (count 8) and IA, a 25-year-old man (count 7). Both men gave statements. In relation to KM, on 4 April 2022, at approximately 1 p.m., he was travelling on the route 60 bus. The appellant in his distinctive coat can be seen to board the bus with two accomplices. They go to the top deck where the only passengers are KM and an unidentified lone female. They immediately head for KM. Having checked there was nobody coming up the stairs, they begin to harass him, asking him if he wanted to buy cannabis, before snatching his phone from his hand and demanding his password. When he refused to give it, he was punched several times to the face and neck. After the attack, he put his password into the phone and the three men got off the bus.
10. In relation to IA, later on the same day, 4 April 2022, at approximately 4 p.m., the appellant, with whom would appear to be the same two other males, board the number 264 bus. Again, they go to the top deck and surround IA, who was sat on his own towards the back of the bus. He describes that the males began by asking him where he was from before the appellant took his mobile phone out of his hand. One of the appellant's accomplices began to check his pockets for other belongings, but, other than a headphone case, IA had nothing else with him. The three males then got off the bus.
11. The offences were all committed when the appellant was still aged 17.
12. The appellant had nine previous convictions for 20 offences committed between 23 November 2019 and 23 June 2022. These included robbery for which he was sentenced to an eight-month referral order on 23 November 2019; robbery for which he was sentenced to a youth rehabilitation order on 26 February 2020; two offences of robbery for which he was sentenced to a youth rehabilitation order on 3 December 2020; and robbery for which he was sentenced to a youth rehabilitation order with an intensive supervision and surveillance programme on 2 February 2022, and an 18-month criminal behaviour order was also imposed on that date. He breached that youth rehabilitation order and, on 22 June 2022, received his first custodial term, a six-month detention and training order for other offences, which included a concurrent sentence for the breach.
13. Sentencing the appellant, the learned recorder applied the relevant sentencing guideline for robbery, assessing the offences to fall within category 2(b). That has a starting point of four years' custody and a sentencing range of three to six years. Because the offence under count

8 relating to KM involved the victim being physically assaulted and punched in the head and neck, the recorder took that as the lead offence for the purposes of sentence in totality, making the sentences in respect of the other counts concurrent.

14. The learned recorder considered the following aggravating factors to be relevant: the fact that she was sentencing for six robberies and one attempted robbery, rather than a single offence; the appellant's previous convictions for robbery; the vulnerability of a number of the victims, particularly AM and TK, who were young boys travelling to or from school; the element of planning; and the fact that, in relation to a number of the offences, there was group activity. For these reasons, in relation to count 8, the recorder reached a sentence of six years, which she reduced by 25 per cent as credit for the plea of guilty, giving a sentence of 54 months which she identified as the custodial period for the sentence. She further considered that the appellant met the criteria for dangerousness and she imposed an extended licence period of two and a half years, making a total of seven years. In relation to the remaining counts, she assessed that the sentences would have been four and a half years after a trial, which she reduced to 14 months and two weeks after giving credit for the plea.
15. On behalf of the appellant, it is contended by Ms Thornber, to whom we are very grateful for her written submissions, that the overall sentence was manifestly excessive by reason of the fact that:
 - (i) No or insufficient account was given to the appellant's age at the time that the offences were committed;
 - (ii) Insufficient account was taken of the appellant's substantial personal mitigation; and
 - (iii) The appellant should have been afforded a discount of one-third rather than 25 per cent for his pleas of guilty.

It is contended that, had these matters been properly considered, the sentence would or should have fallen below four years and would, therefore, not have qualified for an extended sentence as a result of dangerousness. We consider these in turn.

The appellant's age

16. Ms Thornber submits that, although the learned recorder stated in her sentencing remarks that she had considered the guidelines on sentencing children and young people and had borne the appellant's age very much in mind, no appropriate reduction appears to have been made. She refers to paragraph 6 of the guideline, which addresses the position where a defendant crosses the significant age threshold between commission of offence and sentence, as here. Paragraph 6 provides,

“6.1 There will be occasions when an increase in the age of a child or young person will result in the maximum sentence on the date of the finding of guilt being greater than that available on the date on which the offence was committed (primarily turning 12, 15 or 18 years old).

6.2 In such situations the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. This includes young people who attain the age of 18 between the commission and the finding of guilt of the offence but when this occurs the purpose of sentencing adult offenders has to be taken into account, which is:

- the punishment of offenders;
- the reduction of crime (including its reduction by deterrence);
- the reform and rehabilitation of offenders;
- the protection of the public; and
- the making of reparation by offenders to persons affected by their offences.

6.3 When any significant age threshold is passed it will rarely be appropriate that a more severe sentence than the maximum that the court could have imposed at the time the offence was committed should be imposed. However, a sentence at or close to that maximum may be appropriate.

17. Ms Thornber further refers to part 3 of the guidelines which provides a definitive Robbery Guideline to be applied with sentencing children and young people, and states:

“If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15.”

Ms Thornber submits that, in accordance with the above, the learned recorder ought to have imposed a sentence broadly within the region of one half to two thirds of the appropriate adult sentence, as the appellant was aged 17 at the time of the offence. Despite referring at various points throughout the sentencing remarks to the appellant’s age, she submits that it is not clear what discount, if any, was applied by the recorder to the sentence by virtue of the appellant’s young age at the time of the offending and how his age was reflected, insofar as his culpability was concerned.

18. We agree with these submissions. In our judgment, having (properly) reached a sentence of six years by reference to the appropriate adult guideline, the learned recorder should have reduced that term to take account of the appellant’s age before then applying an appropriate discount as credit for his pleas of guilty. We consider that an appropriate discount would have been one third, thereby reducing the sentence to one of four years before applying a discount for plea. In our view, such a reduction would also have been sufficient to take into account the appellant’s personal mitigation, which is, in many ways, bound up with his young age at the time of these offences.

Discount for the plea

19. The learned recorder applied a discount of 25 per cent as credit for the appellant’s guilty pleas, finding that he would have pleaded guilty at the pre-trial preparation hearing had it not been considered necessary first to obtain a report on the appellant’s fitness to plead. Ms

Thornber submits that, although the appellant did not enter guilty pleas at the first stage of the proceedings, his circumstances fell within section F1 at p.7 of the “Definitive Guideline, Reduction in Sentence for a Guilty Plea”. This provides,

“Further information, assistance or advice necessary before indicating plea

5.16 Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the child or young person’s ability to understand what was alleged, or otherwise made it unreasonable to expect the child or young person to indicate a guilty plea sooner than was done, a reduction of one-third should still be made. ...

In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is, in fact and law, guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal.”

20. We consider that an indication of the plea, subject to it being established that the appellant was fit to plead, could and should have been given earlier than it was in this case and, in the circumstances, the discount for plea was correctly assessed in our judgment at 25 per cent. This would have reduced the sentence to three years from four years.
21. We, accordingly, allow the appeal. We quash all of the sentences imposed at the Crown Court and substitute sentences of three years in custody on all counts concurrent. As stated the victim surcharge will be charged at £34.

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.