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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT STOKE ON TRENT
(HIS HONOUR JUDGE GODFREY) [01GD1399523]

Case No 2024/02507/A5
[2024] EWCA Crim 1098

Thursday 12 September 2024

B e f o r e:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE HOLGATE

MR JUSTICE ANDREW BAKER

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E X

- v -

CORTEZ WATSON-BERRY

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr A Richardson appeared on behalf of the Attorney General
Mr N Bonehill appeared on behalf of the Offender

J U D G M E N T
(Approved)

Thursday 12 September 2024

LORD JUSTICE HOLROYDE:

1. Cortez Watson-Berry, to whom we shall refer as the offender, has just attained the age of 19. When he was aged 17 and 18 he committed serious offences, for which he received a total sentence of three years and nine months' detention in a young offender institution.

2. His Majesty's Solicitor General believes that sentence to be unduly lenient. Application is accordingly made, pursuant to section 36 of the Criminal Justice Act 1988, for leave to refer the sentencing to this court so that it may be reviewed.

3. The offences were committed on three separate occasions over a period of about five months. We can summarise the facts briefly.

4. On 24 June 2023, when the offender was aged 17 years 8 months, he was in possession of a bladed article, namely a lock-knife. In the early hours of the morning he made a 999 call in a distressed state, asking for an ambulance to come to his father. It emerged that the offender had used a knife to inflict at least five serious stab wounds to his father's back and a slice wound to his ear. Initially, the offender was charged with attempted murder, but he maintained that the injuries had been inflicted in defence of himself or another after his father had first sexually assaulted the offender and then physically assaulted his mother. In the event, the prosecution did not pursue the more serious charge. On 24 July 2023, in the Crown Court at Basildon, the offender pleaded guilty to an offence contrary to section 139 of the Criminal Justice Act 1988. We shall refer to that as the "Basildon offence".

5. The offender was on bail for the Basildon offence at the times of his subsequent offending.

6. On the afternoon of 24 October 2023, six weeks after his 18th birthday, the offender committed what we shall call "the October robbery". Wearing hoods and surgical masks, he and two others attacked a young man who was walking along a busy street. They repeatedly punched and kicked their victim, including with heavy punches to his head, which caused swelling, and they robbed him of an expensive coat and £600 in cash. That offence was committed just three months after the offender had entered his guilty plea at Basildon.

7. Less than two weeks later, the offender, together with the same two co-offenders, committed what we shall call "the November offences". He responded to a Snapchat advert by a Mr Primett, who was selling expensive electrical bicycles, and arranged to meet him to buy two of the bicycles. Mr Primett and his stepfather drove to the appointed place in a van with the bicycles in the back. They were met by the offenders, one of whom was wearing the coat which had been stolen in the October robbery. One of the offender's accomplices put a machete through the open window of the van and held it against the throat of Mr Primett's stepfather. The offender produced an imitation firearm and held it against Mr Primett's stomach. The third man also brandished a machete and threatened to kill Mr Primett, saying that he had killed before. These threats were intended to, and unsurprisingly did, secure compliance. The two bicycles were removed from the van and the offender and his accomplices fled on them. One of the bicycles was later recovered from the offender's home when he was arrested on 8 November 2023.

8. Mr Primett provided a Victim Personal Statement in which he said that the robbery had made his pre-existing anxiety problems much worse. He had been unable to work at all for about three weeks afterwards because of anxiety and panic attacks, and some seven months later could still only work for a few days a week. He was scared for his family and scared to go out in London. His hopes of starting a business selling electrical bicycles had been

dashed, and he had been left in debt because he had borrowed to buy the bicycles which were stolen.

9. His stepfather also provided a Victim Personal Statement in which he said that he too suffered stress and flashbacks. The robbery had affected his whole family, who no longer felt safe in their home, and he had incurred substantial expense in increasing security at his house.

10. The offender was charged with two offences of robbery, two of possession of a bladed article and one of possession of an imitation firearm at the time of committing an indictable offence, contrary to section 17(2) of the Firearms Act 1968. He denied all those offences, but pleaded guilty to possession of a small amount of cannabis which had been found at his home. He stood trial in the Crown Court at Wood Green, and on 20 April 2024 was convicted of all charges.

11. Before these offences the offender was of previous good character.

12. At the sentencing hearing on 12 June 2024, His Honour Judge Godfrey was assisted with a pre-sentence report and a number of character references.

13. The judge considered the Sentencing Council's relevant definitive sentencing guidelines. He treated the November robbery as the lead offence and imposed concurrent sentences for all the other offences.

14. The judge noted that the Basildon offence was committed when the offender was only 17 and was his first offence. He emphasised, rightly, the different sentencing regime which applies to children. Applying the youth guideline, he said that there was a reasonable chance

that the offender would have received a non-custodial sentence if sentenced as a child for that offence alone.

15. The judge regarded the October robbery as a category 2B offence, with a guideline starting point of four years' custody and a range from three to six years. The offence was aggravated by the high value of the property stolen.

16. In relation to the November offences, the judge found that Mr Primett had suffered serious psychological harm, albeit at the lower end of the scale of such harm in category 1, and he assessed the November robbery as a category 1A offence, with a starting point of eight years' custody and a range from seven to 12 years. It was, he said, a terrifying incident, aggravated by the significant planning, the high value of the property stolen, and the leading role played by the offender. He noted that the firearms offence in itself would attract a guideline starting point of four years' custody, with a range from two to six years.

17. The mitigating factors identified by the judge were: the offender's youth; the absence of previous convictions; the significant trauma which the offender had suffered in the past, in particular being the victim of a stabbing when he was an adolescent; the character references which showed a positive side to the offender; and the fact that the offender had very recently become a father of twins, although at the time of sentencing he had not yet seen his children.

18. As to youth, the judge noted, rightly, that attaining the age of 18 was not a "cliff edge", and that many of the considerations which would apply in the Youth Court remained relevant to a young adult who was still maturing.

19. The judge also had regard to totality. He recognised that the sentences he was imposing were "significantly more lenient" than those appropriate for an adult. He said that he would

order the sentences to run concurrently "in view of the mitigation in your case". He imposed the following concurrent sentences: three years and nine months for the November robbery; two years for the firearms offence; six months for each of the November bladed article offences; no separate penalty for the cannabis offence; and two years for the October robbery. The sentence for the Basildon offence, which was later adjusted following a slip rule hearing to correct an error as to the court's powers, was a Detention and Training Order for four months.

20. On behalf of the Solicitor General, Mr Richardson submits that the total sentence failed to reflect the serious and repeated offending and was unduly lenient. In particular, he submits that the starting point for the judge's sentencing for the November robbery was too low; it was then not adjusted upwards, as it should have been, to reflect the aggravating factors; it did not adequately reflect the seriousness of other offences, which were committed on separate occasions but for which concurrent sentences were imposed; and finally, the judge made too great a reduction for youth. In the course of developing those submissions, Mr Richardson emphasises that the practical effect of the way the judge approached sentence was that the sentence for the lead offence was not materially increased to reflect the October robbery at all. Mr Richardson submits that the total custodial term should have been much longer; that the judge should have found the offender to be a dangerous offender; and that the judge should have concluded that an extended sentence was necessary and appropriate.

21. Mr Bonehill, who represents the offender in this court as he did below, emphasises that the judge had heard the trial, including seeing the offender in the witness box for a period of about a day, and had read all relevant material about the offender. He therefore emphasises that the judge was in the best position to assess the overall criminality, the level of the offender's maturity, and the weight properly to be given to the personal mitigation. He submits that the judge took account of all relevant matters, including dangerousness. He points out

that the judge's categorisation of the November robbery was in accordance with the submissions made by counsel then appearing for the prosecution.

22. We are grateful to both counsel for their extremely helpful submissions on both sides. We have summarised those submissions very briefly, but we have considered them all.

23. As was recently observed by this court in *R v ZA* [2023] EWCA Crim 596, [2023] 2 Cr App R(S) 45, the sentencing of children and young persons is invariably complex and difficult. The judge was correct, as we have noted, to sentence on the basis that the offender had not become a fully mature adult on his 18th birthday. The material before the judge justified him, in our view, in treating the offender as somewhat less mature than his peers. The character references plainly showed a much better side to the offender's character. It is a sad feature of this case that in the family or employment settings, despite the difficulties of his childhood and the absence of a father figure, the offender appears to be a caring, thoughtful and industrious young man, and we see no reason to doubt his expressed wish to become a responsible parent to his very young children. But when in the company of his peers, he has shown himself capable of committing these very serious crimes. The sentencing process faced by the judge was, therefore, a very difficult one.

24. Looking first at the Basildon offence, it is true that the surrounding circumstances provide a stark illustration of the risks of serious injury when a knife is unlawfully carried and produced. However, the offender was only to be sentenced for the possession offence, not for any offence of unlawful violence. Having regard to his age and the fact that it was his first offence, we agree with the judge that a non-custodial sentence may well have been imposed if a Youth Court had dealt with that offence in isolation. Fairness then requires that the offender should be sentenced on the basis that a custodial sentence was not necessary, and should not be penalised more heavily for this offence because he later committed further

offences. It would therefore be inappropriate to increase the total custodial term to reflect the Basildon offence.

25. In relation to the robbery offences, we see no reason to differ from the judge's categorisation of them under the guideline. The November robbery was, in our view, properly regarded as meriting an initial downwards adjustment from the guideline starting point to reflect the fact that the psychological harm suffered by the unfortunate Mr Primett, though certainly serious, was not as serious as the psychological harm caused in many other cases in this category.

26. We bear very much in mind that the judge had presided over the trial at Wood Green and therefore had the feel of the case. We commend his clear statement of his approach, and we understand why he wished to be lenient. We have hesitated to interfere with his judgment as to the appropriate total sentence, and we are reluctant to have to increase that total. With all respect to the judge, however, we are driven to the conclusion that we must do so.

27. Each of the two robbery offences required an upwards adjustment from the guideline starting point to reflect the fact the aggravating features rightly identified by the judge and the fact that the offender was on bail at the time of those offences. The imposition of concurrent sentences was not wrong in principle, but the lead offence had to reflect the overall criminality of serious offences committed on separate days.

28. Making every allowance for totality, the least total sentence which would be appropriate for a mature adult, before consideration of mitigation, would in our view be of the order of 11 years' imprisonment. The personal mitigation was, in our view, substantial and a further significant reduction had to be made to reflect the offender's youth. But even giving as much weight as we can to those matters, we conclude that the total sentence could not properly be

less than six years' detention in a young offender institution.

29. It follows that the total sentence imposed by the judge was unduly lenient.

30. Given that the sentence should have been one of at least six years' custody, it was also necessary for the judge to consider the issue of dangerous. We must accordingly do so.

31. Having regard to the circumstance of the offences and to the assessment of risk contained in the pre-sentence report, we take the view that the offender can properly be regarded as dangerous for sentencing purposes. We therefore go on to consider whether an extended sentence is necessary for the protection of the public, as the Solicitor General submits that it is.

32. In this regard, we think it important to take into account the fact that the offender had no previous involvement in the criminal justice system and no previous experience of custody. There is, in our view, a realistic prospect of maturation while the offender is serving his sentence, and we are encouraged to read of the family support which he enjoys. In our judgement, the increased custodial term which we regard as inescapably necessary will provide sufficient protection for the public.

33. For those reasons we grant leave to refer. We quash the sentence of 45 months' detention in a young offender institution imposed for the November robbery (count 2 of the Wood Green trial indictment) as unduly lenient. We substitute for it a sentence of six years' detention in a young offender institution. All other concurrent sentences and orders remain as before.

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

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
