

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202304331/A3
[2024] EWCA Crim 472

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday, 19 April 2024

Before:

LORD JUSTICE WARBY
MRS JUSTICE MCGOWAN DBE
HER HONOUR JUDGE KARU
THE RECORDER OF SOUTHWARK
(Sitting as a Judge of the CACD)

REX
V
DYLAN JOHN WOOD

Computer Aided Transcript 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 N HAMMOND appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

1. Dylan John Wood, aged 35, appeals against a sentence of 20 months' imprisonment imposed on him in the Crown Court at Leeds on 23 November 2023.
2. The facts of the case can be shortly stated. On 19 November 2021 the appellant was disqualified from driving for a period of two years under the totting-up process. On 27 July 2023 in breach of that disqualification he drove an Audi Q7 car which, on his account, he had rented from a friend. He took it to meet up with an ex-partner and the appellant's 18-month-old son and then later the same day he drove with a different woman to eat at a golf club in Leeds.
3. On 28 July 2023 at around 7.00 pm the appellant and another man were in the same Audi car when they chased a third man from a service station at Skelton Lake Services to a Texaco garage where they got out of the car and assaulted the man. In the course of an attack which according to eyewitnesses lasted several minutes, the appellant used a baseball bat to strike the victim several times. He used such force that he broke the bat in two. Witnesses were understandably alarmed. One of them who worked in the garage activated the security system and put the garage into lockdown.
4. These events were reflected in an indictment containing three counts: driving whilst disqualified (count 1), having an offensive weapon (count 2) and affray (count 3). The appellant pleaded guilty to all three counts at the plea and trial preparation hearing and was sentenced the same day by His Honour Judge Khokar.
5. The appellant had a bad record comprising 22 convictions for 41 offences between 2004 and 2020. These reflected a mixture of offences of violence, dishonesty and vehicle crime. The offences of violence included, most prominently, robbery and possessing an imitation firearm for which in 2013 he was sentenced to eight years' imprisonment. He

had two previous convictions for driving whilst disqualified and without insurance, one in November 2019 when he was sentenced to 12 weeks' imprisonment and one in 2020 when he received a community order.

6. It was against this background that the appellant's Counsel, Mr Hammond, realistically acknowledged at the sentencing hearing that it was not necessary to adjourn the case for the preparation of a pre-sentence report.
7. In his sentencing remarks, having briefly outlined the facts of the offending, the judge made clear that he had taken on board all the mitigation advanced by Mr Hammond but considered the greatest mitigation was the pleas of guilty for which he would allow a 25 per cent reduction. He stated that he would keep the sentences as short as he possibly could on the basis that this was a chance for the appellant to mend his ways, if he was thinking of doing so. The judge then passed a sentence of four months' imprisonment for the driving offence and imposed a driving disqualification.
8. For the other two offences, which were linked to one another, the judge passed sentences that were concurrent with one another but consecutive to the four months for the driving offence. Treating the affray as the lead offence, he passed a sentence of 16 months' imprisonment on count 3, with six months concurrent for the offensive weapon on count 2. The total was thus one of 20 months' imprisonment.
9. The grounds of appeal settled by Mr Hammond contained a challenge to the 16-month total for counts 2 and 3 but leave to appeal on that ground was refused by the single judge and that aspect of the application has not been renewed. The single judge did give leave to argue that the sentence for the driving offence was manifestly excessive.
10. In support of that ground Mr Hammond has made the following points. The prosecution had submitted that the offending in this case fell into guideline Category 3, there being

low harm and low culpability. That category has a starting point of a low-level community order and a range going up to a medium-level community order. The defence did not challenge that categorisation which Mr Hammond submits was correct, yet the judge's notional sentence after a trial must have been in excess of five months. That is at the top end of the range for a Category 1 offence involving high-level harm and high culpability. It also comes close to the statutory maximum sentence for the offence which is one of six months.

11. We see force in much of this. The case plainly did fall within Category 3. It did of course exhibit a significant statutory aggravating feature, as Mr Hammond has conceded: the appellant had previous convictions for driving whilst disqualified, as well as other driving offences. In all the circumstances the judge cannot be criticised for concluding that the custody threshold was crossed, nor could complaint have been made had the judge ruled that the aggravation raised the case into Category 2. But the case could not, in our judgment, properly have been placed in Category 1. The top end of the range for a Category 2 offence is 12 weeks' custody before reduction for guilty plea. Accordingly, the sentence of four months that was actually imposed does not give effect to the judge's stated objective of passing the least possible sentence and is excessive.
12. Our assessment is that the appropriate sentence after allowing for the guilty plea and taking account of totality is one of two months' imprisonment. We therefore quash the sentence of four months on count 1 and substitute a sentence of two months' imprisonment. That brings the total sentence to one of 18 months' imprisonment and not 20 months.
13. It is then necessary to address the question of disqualification. As so often in this court this has its complexities.

14. The guideline explains how disqualification should be dealt with in a case such as this.

The first step is to determine the appropriate period of discretionary disqualification using the guideline figures. For a Category 2 case the guideline range is six to 12 months. Step 2 is to add the unexpired period of any disqualification that is current at the date of sentence. Here that was some three months and three weeks. Step 3, where the court imposes immediate custody, is to take account of any custodial sentence which the court imposes at the time of the disqualification. The statutory provisions are in sections 35A and 35B of the Road Traffic Offenders Act 1988 and the methodology is explained in Needham [2016] EWCA Crim 455, [2016] 1 WLR 4449 and in particular at paragraph 28.

15. In this case, given our conclusions and the applicable release provisions, the appropriate course would be to add to the discretionary disqualification an extension period of one month pursuant to section 35A and an uplift of eight months pursuant to section 35B.

We thus arrive at an appropriate period of disqualification of 24 months.

16. The court record shows that the period actually imposed was one of 18 months. We have therefore considered whether the substitution of the higher figure we have just mentioned would contravene section 11(3) of the Criminal Appeal Act 1968. We have concluded that it would not.

17. A comparable situation arose in one of the cases dealt with in Needham where the court concluded that having reduced the custodial term it was possible to impose an upward correction of the disqualification period without offending section 11: see paragraphs 132 and 142-143. We take the same view in this case.

18. In this case, as in Needham, we also take into account what we regard as the clear intentions of the sentencing judge. What he said according to the transcript is this:

You will be disqualified from driving for a period of 18 months. There is the disqualification period for the offence itself and it is further extended by the prison sentence which I am about to pass."

Those words make no mention of the unexpired portion of the existing disqualification or the four-month sentence which the judge had by then imposed on count 1. We do think however that they clearly indicate an intention to impose not only a discretionary disqualification of 18 months but also an extension to reflect the time which the appellant would spend in custody as a result of the sentences which the judge went on to pass on counts 2 and 3. Although the judge did not specify the additional period to be added, we are confident that he intended a disqualification of at least 26 months.

19. In the event we dispose of this issue as follows. We quash the disqualification of 18 months on the court record and substitute a disqualification of 24 months, comprising a 15-month discretionary disqualification, an extension period of one month pursuant to section 35A and an uplift of eight months pursuant to section 35B of the 1988 Act.
20. To the extent we have explained this appeal is allowed. All other ancillary orders remain.

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