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**Neutral Citation No. [2024] EWCA Crim 745**

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202401788/A3

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday, 28 June 2024

Before:

LORD JUSTICE DINGEMANS  
MR JUSTICE HOLGATE  
HER HONOUR JUDGE NORTON  
(Sitting as a Judge of the CACD)

REFERENCE BY THE ATTORNEY GENERAL UNDER  
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX  
V  
MAXIMUS QUARTEY

Computer Aided Transcript of Epiq Europe Ltd,  
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MISS C HOLE appeared on behalf of the Attorney General  
MISS R BECKER appeared on behalf of the Offender

J U D G M E N T  
Approved

LORD JUSTICE DINGEMANS:

**Introduction**

1. This is an application by His Majesty's Solicitor General for leave to refer a sentence which he considers to be unduly lenient. We grant leave for all the reasons that follow.
2. The respondent, Mr Quartey is aged 18 having been born on 29 August 2005. On 14 December 2023 he pleaded guilty to three offences of robbery which had all taken place in Bishop's Stortford on 2 November 2023 when Mr Quartey was aged 18 years and two months.
3. On 18 April 2024 Mr Quartey was sentenced to 24 months' custody for count 1, with a concurrent six months' custody for counts 2 and 3, all suspended for 24 months, with 250 hours unpaid work to be completed within 18 months and 30 days' rehabilitation activity requirement.
4. Miss Hole on behalf of the Solicitor General submits that the total sentence imposed was unduly lenient because the judge did not impose a sufficient uplift to account for counts 2 and 3 when applying totality, allowed too great a reduction from the starting point for the defendant's age and mitigation, erred by applying an additional reduction for matters which had already been taken into account earlier in the sentencing exercise and suspended the sentence without proper application of the imposition guideline.
5. Miss Becker on behalf of Mr Quartey submits that the judge's approach was permissible, that there was very real and important mitigation, the sentence was properly suspended and so far as it is relevant to an exercise of discretion, Mr Quartey is doing very well on the suspended sentence order that was imposed on him. We are very grateful to both Miss Hole and Miss Becker for their helpful written and oral submissions.

### **The factual background**

6. All of the offences took place on 2 November 2023 when it was dark in Bishop's Stortford, Hertfordshire. Mr Quartey, as already indicated, aged 18 years and two months travelled from North London with at least three others in order to commit street robberies. They brought with them balaclavas which they wore during the offences. It is apparent from all the materials that were before the judge, including a basis of plea that was not contested, that Mr Quartey was pressurised to participate in these offences on the basis that he was alleged to owe monies after he had sold trainers which were said to have been mis-described. Mr Quartey denied that but was still put under pressure to pay debts.
7. The first robbery took place at about 16.50 hours and that formed count 3. Mark Haggart, who was an 18-year-old student was walking near the river in Bishop's Stortford. He crossed a bridge. He was listening to music through his Airpod earphones. He was wearing one earphone and the other was in a case in his hand. Four men surrounded him and one, accepted to be Mr Quartey, shouted, "give me your phone". He and one of the others grabbed Mr Haggart and pushed him, shouting, "give me your phone". Mr Haggart felt threatened and handed over his phone. Mr Quartey asked what kind of phone it was and Mr Haggart told him it was an iPhone 13. Demands were made for the PIN, which was provided. Mr Quartey took Mr Haggart's AirPods case from his hand and another person shouted, "give me the other headphone", which was handed over. All four then ran away. The mobile phone taken was worth about £600 and the AirPods were worth about £250.
8. The second robbery took place at 17.20 hours and that was about 30 minutes after the

first robbery and was the subject of count 2. LM, who was 15 years old and therefore has the benefit of anonymity, was walking from Link Road car park to a nearby gym. He was approached by what he thought were between four and six men who shone a torch at him. The group were dressed in black, wearing balaclavas. They surrounded him. Two put their hands into his jacket pockets and searched him and a third patted down his leg. They were saying, "give us your phone". In fear he gave them his phone and also the pass-code. One of the group turned off the feature which would allow the phone to be tracked. One of the group then grabbed a silver-coloured chain around LM's neck and pulled at it. LM then undid it and the person took it away. The mobile phone was worth about £265 and the silver necklace about £9.99. The necklace was later recovered.

9. The third robbery took place at 17.25 hours, so about five minutes after the second robbery, and was the subject of count 1. Mr Eaton, who was 20 years old, had left his work place at about 5 o'clock and he was walking along a path beside the river towards a skate park. He was wearing headphones. He saw a group of four males. He walked around them but was grabbed by Mr Quartey, another person grabbed his arm and a third was pacing and saying, "If you fuck around with us you're getting shanked" that was a threat of violence with a weapon, although no weapon was produced.
10. The males went through Mr Eaton's pockets, stole cash from his wallet, took his phone and forced him to put in his pass-code. They tried to reset his phone but were unable to do so. One of them noticed his Santander app and forced Mr Eaton to open it. On seeing the balance some of the men started to jump around excitedly. Mr Eaton also said one of the men recorded the bank balance on his own phone and said they had hit the jackpot. There was a dispute about whether that was Mr Quartey, which the judge said it was not necessary to resolve given Mr Quartey's acceptance of a leading role.

11. The men asked where the nearest cash point was. Mr Eaton said it was at Waitrose, knowing that Waitrose would at least be busy. They walked him to the cash point and one put the card into the cash point confirming the PIN. They withdrew £250 in cash and then there was an argument between the men about how the money was to be divided. They then took turns to use the phone to transfer money into their own accounts and that included £500 to Mr Quartey's account and a further £1,850 between the other three, so a total of some £2,600 was stolen.
12. Mr Quartey then came up to Mr Eaton and said he felt bad doing what he did but that he had his reasons. It seems, doing the best we can, that this was a cryptic reference to the pressure that he felt he was under. It is at this point that Mr Eaton believed that Mr Quartey had removed his balaclava, although CCTV later recovered from Waitrose showed that he had removed his balaclava before arriving at the cash point. Mr Eaton pleaded with Mr Quartey to return his phone and Mr Quartey did give it back to him. Mr Eaton then ran away. The apology and the return of the phone to Mr Eaton showed that in some respects Mr Quartey was not acting as a normal robber.
13. Mr Quartey was arrested in Hertford on 14 November 2023, 12 days after the robberies had been committed. He was interviewed the following day. He accepted participation, saying he had been having issues with men over a debt and had been told to attend Cheshunt Rail Station to meet a group of people.
14. Two days later on 16 November 2023 Mr Quartey first appeared in the Magistrates' Court and his case was sent to the Crown Court. Not guilty pleas were indicated which given the way matters then turned out was unfortunate because guilty pleas at that stage would have justified a discount of one-third rather than one-quarter.

15. On 14 December 2023, less than a month later, Mr Quartey entered guilty pleas at the Pre Trial Preliminary Hearing. A pre-sentence report was ordered and the case adjourned for sentence. A basis of plea was uploaded. The case was listed for sentence on 9 February. There were difficulties with the pre-sentence report because the report writer was not the person who signed it off and there were alleged inaccuracies. When the case was listed on 26 March 2024 the issue of the basis of plea was considered for the first time and the inconsistency with part of Mr Eaton's evidence was also noted. A Newton hearing was directed. On 18 April the case was listed for a Newton hearing but in the event Mr Quartey accepted most of the contents of Mr Eaton's statement, including that he was a ringleader in the robbery which formed count 1 and the case therefore proceeded to sentence without evidence being called.
16. Mr Quartey had a single previous conviction for possession of a bladed article which had taken place on 31 May 2023 and that was shortly before his 18th birthday. He had been sentenced on 24 August 2023, again just before his 18th birthday, and a four month referral order was imposed. This offence was therefore committed during the currency of that order but, as was fairly identified during the course of the submissions, it was apparent that Mr Quartey had not had much time to benefit from the sentence that had been imposed.
17. There were victim personal statements. Mr Eaton provided a statement describing himself as being scared and the fact that he now had to pay to get lifts home, which was costing him a great deal of money and he was petrified of this happening again. LM did not provide a victim personal statement. Mr Haggart did, and said that he had been unable to afford to replace his headphones and had only recently taken out his mobile phone contract and therefore still had to pay the £600 value of the phone.

18. There was a second pre-sentence report which was obtained. In that report Mr Quartey stated by way of background that he sold trainers to unknown individuals weeks before the offence who later accused him of selling fake footwear and then began extorting money, saying that he owed them £3,000. A friend had advised that he should meet with the group which Mr Quartey believed in retrospect was a set up.
19. The pre-sentence report writer noted that Mr Quartey expressed great remorse for his actions which she assessed to be genuine. She found that he demonstrated insight into the level of harm that his behaviour had caused. She concluded that the offences were influenced by negative peer associations and financial gain. The reducing youth violence and exploitation case manager who had worked with Mr Quartey expressed concern to the author of the pre-sentence report that he presented as vulnerable. There was other mitigation including the fact that he had expressed remorse at the time of the robbery to Mr Eaton, his age and the fact that when he had been imprisoned after these matters he had been attacked in prison (and we have seen the hospital records) and sustained a broken jaw and a greenstick fracture of the condyle on the other side of the jaw, suggesting considerable force in the punch which caused it. There were documents showing that he was at Barnet Southgate College studying for a B-Tech Level 3 National Extended Diploma, confirming him to be pleasant, well-mannered and forming good relationships. There was a character reference from the Youth Justice Service Manager and a letter from Mr Quartey expressing his remorse, a reference from the prison officer showing his positive behaviour and impact on the prison unit and also evidence from Miss King, a Reducing Youth Violence and Exploitation Case Manager from the London Borough of Camden. She set out her engagement with Mr Quartey and the extensive levels of support now available to him. Miss King attended court, and indeed she has

attended today and we are grateful for her presence, and she addressed the judge in the course of the sentencing exercise. She had met with Mr Quartey five times, spoke with him regularly, considered he was vulnerable because the offending was out of character, she addressed support and she expressed a view that he was different from those with whom she had normally worked, having so much motivation and potential.

### **The sentence**

20. When sentencing, the judge structured the sentence so that count 1 was the lead offence as being the most serious offence. That was placed into Category 2B on an agreed basis given the threat of the use of a knife, albeit it was not produced, and counts 2 and 3 were placed into the bottom of 2B and the top of 2C. The judge took a starting point of four years for the single offence of 2B. Allowing for totality the judge added another six months for counts 1 and 2, reaching an overall sentence of 60 months. Then taking all the matters in terms of age, youth, immaturity, change of mind, remorse, "the work you have done", including the evidence of Miss King she reduced that sentence to 40 months. Allowing a 25 per cent reduction for guilty plea the sentence was reduced to 30 months. The judge then indicated she could not suspend that sentence but said she had reflected and decided to reduce the sentence further, partly on the basis of the evidence of Miss King and partly as a result of the fact of the attack in prison. The sentence was reduced by a further six months to 24 months. The judge said she had considered the imposition guidelines and she then suspended the sentence and passed the sentences already indicated. It is common ground that the judge's further reduction should, if justified, have taken place before the discount for the plea and it is this step on which Miss Hole placed particular reliance in the course of the submissions.

### **This reference**



21. So far as the offence-specific guidelines are concerned, there is medium culpability where there is a threat of violence by any weapon which is not produced. A lesser culpability factor is where someone is involved through coercion, intimidation or exploitation, but it was common ground before the judge that this was Category 2B and it was also common ground that Mr Quartey had played a leading role in that aspect of the matter.
22. We therefore turn to consider the appropriate sentence in this case. In our judgment the judge was entitled and indeed it is common ground to take the four year starting point for Category 2B. The judge had to increase the sentence to reflect the two other offences, albeit that they were committed close in time, and was entitled to aggregate all of the criminality onto the lead offence. The judge increased the sentence of five years. If a Court took account of the vulnerability of LM, the planning, the balaclavas, the fact that this was after dark and group offending, it is difficult to get to a sentence of much below a sentence of six years before considering aspects of mitigation.
23. There were important aspects of mitigation. It is apparent from all the material that was not contested that the appellant was being exploited. He was just 18 at the time of the offending and albeit intelligent it is apparent that he was not worldly wise and incapable of resisting the pressure from others. He showed genuine remorse after the incident but more relevantly he showed remorse during the course of the incident and indeed handed back the telephone at the time. He was attacked in prison and he suffered serious injuries from that. There is evidence from Miss King showing the progress that he had already made at that stage.
24. However, doing all the best we can it is in our judgment impossible to take all of that mitigation and end up with a sentence which was a sentence of 24 months. The lowest

we have been able to get the sentence was, albeit restructuring it in an appropriate way, to a sentence close to the 30 months that the judge came to. In those circumstances the sentence of the judge was a sentence which, in our judgment, was unduly lenient.

25. That however is not the end of the matter. This is because there is a discretion in this court, having found that a sentence is unduly lenient, whether or not to make an increase in that sentence. We have been assisted by further information provided by Miss King. We have also had an additional letter addressed to us this morning from Mr Quartey. The important further material is that from Miss King which shows that Mr Quartey is making real progress on the suspended sentence order and rehabilitation activity days. He has attended job fairs, he has obtained job offers and he is avoiding and turning away from the life that he was beginning to live at the time before Miss King's assistance diverted him from it. In our judgment, and having considered all of the matters with care, we do not consider that this is a sentence which we should increase and therefore, for all the reasons given, we grant leave for the Reference, we find that the sentence was unduly lenient, but we exercise our discretion not to increase the sentence.

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

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