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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 WARWICK
(MR RECORDER STEELE KC) [T20210109]

Case No 2024/03576/A5
NCN: [2025] EWCA Crim 172

Wednesday 5 February 2025

B e f o r e:

LADY JUSTICE WHIPPLE DBE

MRS JUSTICE McGOWAN DB

HIS HONOUR JUDGE THACKRAY KC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

HASHIM VANIA

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Mr N Baki appeared on behalf of the Appellant

J U D G M E N T

Wednesday 5 February 2025

LADY JUSTICE WHIPPLE:

1. On 10 April 2021 the appellant pleaded guilty to one count of dangerous driving, along with ancillary driving offences of driving without insurance, without a licence and with excess drugs in his blood. At that stage he offered no plea to various counts on a separate indictment, namely: count 1 (attempted robbery), count 2 (assault occasioning actual bodily harm), and count 3 (having an offensive weapon, in relation to which the appellant had offered a plea which was not acceptable to the Crown).

2. In consequence, the applicant stood trial on counts 1, 2 and 3 in the Crown Court at Warwick before Mr Recorder Steele KC and was convicted.

3. The sentencing hearing took place on 19 December 2023. The appellant, who was by then aged 24, was sentenced by the Recorder to seven years' imprisonment on count 1, with concurrent terms of two years' imprisonment on each of counts 2 and 3. He was sentenced to three months' imprisonment, to be served consecutively, on the dangerous driving. No separate penalty was imposed for the ancillary related driving offences. His total sentence was one of seven years and three months' imprisonment. Various ancillary orders were made as to which no issue arises.

4. The appellant appeals against sentence with the leave of the single judge. He also seeks a short extension of time to bring that appeal, which application the single judge has referred to the full Court. In circumstances where the appellant has leave to argue his appeal, we simply grant the extension of time sought, noting that it is a short period for which there is a reasonable explanation.

The Facts

5. Counts 1, 2 and 3 are the subject of an incident which took place shortly after midnight on Wednesday 30 May 2018, when Vlad Olareanu was walking home through the city centre when he was approached by the appellant (then aged 19), who was with two others, namely Isa Mahmood and Awais Zaman (both of whom were then aged 16). The group asked Mr Olareanu the time. When Mr Olareanu went to look at his watch, one of the group grabbed his wrist. The appellant told Mr Olareanu to give him the watch, and then punched him in the face. Mahmood and Zaman joined in the attack and held Mr Olareanu down while the appellant continued the assault.

6. The initial part of the attack was captured on CCTV. The appellant was seen to point to an alley, where the attack continued out of view of the camera. The appellant used a knuckleduster to hit Mr Olareanu to his cheekbone, face and head. He told Mr Olareanu not to scream, or he would be punched harder. When Mr Olareanu fell to the ground, the group kicked him to the head and body. Mr Olareanu shouted for help from a passing taxi.

7. The group ran away in the opposite direction. Mr Olareanu's watch had by now fallen to the ground and was not taken, so that the charge was one of attempted robbery. The violence on Mr Olareanu was reflected in count 2. The appellant's possession of the knuckleduster was the subject of count 3.

8. Mr Olareanu sustained bruising, and the knuckleduster left an impression to the left side of his face. His left eye was bruised and swollen, and he was unable to see out of that eye for some time.

9. The group of three, including the appellant were arrested a short time later. There was CCTV footage of the appellant walking along prior to the attack on Mr Olareanu punching

the knuckleduster into his hand, before he handed it to Zaman.

10. Mr Olareanu identified the appellant as the one with the knuckleduster, following an identification parade on 11 January 2019.

11. The dangerous driving and ancillary offences occurred on 26 September 2020. At around 10.30 pm, two police officers were parked on Swan Lane. The appellant pulled up on that road and his vehicle was recognised by the police from previous dealings with him. The appellant saw the police, turned around, waved at them and drove off. He was wanted over a breach of tagging order and so was followed by the police. He drove at an excessive speed on the wrong side of the road and overtook vehicles that were waiting at traffic lights. He drove through a red light and at one point nearly lost control of his vehicle. He was found in a van opposite his parked vehicle. He did not comply with his arrest and was tasered. He was found to be over the prescribed drug limit. He had no driving licence and no insurance.

12. He pleaded guilty to the driving offences on a basis that the offences were linked with the attempted robbery in 2018. He said that there were people in a car nearby with weapons who were trying to attack him and that he had driven dangerously in an attempt to get away from them.

Sentence

13. By the time of sentence, the appellant was aged 24. He had been only a few weeks over his 19th birthday at the date of the attempted robbery, and he was aged 21 when he committed the driving offences. He has one previous conviction for possession of cannabis.

14. The Recorder had before him a pre-sentence report which was dated 25 September 2023. The appellant had recounted to the author of the PSR that Mr Olareanu was to blame for the

attack. The appellant said that he had acted in self-defence following racist comments by Mr Olareanu who was drunk at the time. The author of the PSR noted that these features had not been mentioned by the appellant either in interview or in his Defence Case Statement. At the same time the appellant said that he had played no part in the attack which had been instigated by Mahmood and Zaman. He said that the driving was a response to him being targeted by gang members for pleading not guilty to the attempted robbery and that he had driven in order to escape from them. The author of the PSR report said that the appellant posed a medium risk of re-offending and a medium risk of seriously harmful offending within two years. The author had concerns about managing the risk posed by the appellant in the community.

15. The Recorder also had a number of character references in support of the appellant which amply demonstrated the contribution that the appellant was making to his family and community. He also had a lengthy letter of remorse written by the appellant to the Court, in which the appellant set out the various ways in which his life had changed since the time of the attempted robbery and indicated a desire to move on from that, expressing shame about what had occurred that night.

16. In his sentencing remarks the Recorder identified the attempted robbery as the lead offence. He noted that it was only just an attempt because the watch had fallen to the ground before the group had run off, and that was the only reason the watch had not been taken. The Recorder said that the appellant was the leader of the group; Mahmood and Zaman were some years younger (only 16 at the time). The Recorder said that Mr Olareanu had been alone and was a vulnerable figure as he walked home through the city centre in the early hours of the morning.

17. The Recorder categorised the attempted robbery as high culpability, falling within harm

category 2. That gave rise to a starting point of five years' custody, in a range of four to eight years. The aggravating features were: the targeting of the victim; the leading role; the use of a dangerous weapon; the infliction of harm on the victim's head; kicking the victim when he was on the ground; and the fact that the victim was vulnerable and alone in the city centre in the early hours of the morning.

18. The mitigating features were identified as: the appellant's youth; his personal circumstances in terms of his promising career prospects and family commitments; his remorse; his effective good character; and the supportive character references.

19. The Recorder said that the appropriate sentence for the offence of attempted robbery was one of seven years' custody.

20. In describing counts 2 and 3, the Recorder said that they were "vicious". He said that the offence of assault occasioning actual bodily harm (count 2) fell within category 2A of the guideline, with a starting point of 18 months' custody and a range of 36 months to two and a half years. For that offence he imposed a sentence of two years' imprisonment, to be served concurrently. The offence of possessing an offensive weapon fell into category A1, with a start point of 18 months' custody and a range of one year to two and a half years. For that offence he imposed a sentence of two years' imprisonment, to be served concurrently.

21. Turning to the driving offences, the Recorder said that the sentence had to be consecutive, because this was separate offending. The sentence on that would have been four months' imprisonment, but with credit for the guilty plea, that reduced to three months' imprisonment. He imposed no separate on the ancillary driving offences on account of totality.

22. The total sentence was therefore one of seven years and three months' imprisonment. Mahmood and Zaman were each sentenced to 18 months' immediate custody for their part in the first incident involving Mr Olareanu.

23. By grounds of appeal that were drafted by Mr Megarian KC, the following points are advanced: first, that insufficient weight was given for the appellant's good character; second, insufficient weight was allowed for the five years' delay between the offence and disposal; and third, the learned Recorder erred in finding that the offence fell close to the top of the sentencing range.

24. Mr Baki has appeared this morning for the appellant. He has adopted and advanced those grounds in helpful and succinct submissions. He focuses in particular on the mitigating factors present in this case, arguing that they were given insufficient weight by the Recorder.

Discussion

25. Mr Baki agrees that the Recorder was right to place the attempted robbery into category A2 of the guideline. That gives a start point of five years' custody.

26. In our judgment, the Recorder was right to go up from that starting point to reflect the aggravating factors he had identified. We emphasise that the attempted robbery was the lead offence to reflect, in addition to the attempt to steal Mr Olareanu's watch, the use of significant violence on the victim (separately charged as count 2), and the persistent use of the knuckleduster to inflict that violence (separately charged as count 3). The use of the knuckleduster was in some ways much the more significant part of the appellant's offending and undoubtedly warranted a significant increase from the category start point. The offending, taken as a whole, was vicious and serious. No one watching the part of the attack caught on CCTV could fail to be affected by the random nature of the attack on Mr Olareanu,

as well as the persistence and significance of the violence inflicted.

27. Accordingly, we would not criticise the Recorder's identification of seven years as the appropriate figure to take account of aggravation. But we accept Mr Baki's submission that there was here also significant mitigation which needed to be weighed in the balance. First, the appellant was only just 19 when he committed this offence. Secondly, the appellant was a man of effective good character, with one unrelated offence standing against him on his record. Thirdly, during the five years or so between the attempted robbery and his being sentenced for it, the appellant plainly had turned his life to good use. During that period he had married; he had a child who was only just a baby at the point of sentence; he was in gainful employment; and he was contributing in various ways to friends, family and his community. He was 24 years of age at the time of sentence, and presented as a different person at that point. Fourthly, he expressed regret for his earlier actions.

28. The picture presented at sentence was not a completely pure one, because the appellant had in the meanwhile committed the driving offences, which were themselves serious and tended to suggest some lack of insight into his criminality. Secondly, he had made unfortunate comments to the author of the PSR to the effect that he had acted in self-defence at the time of the offending, and that he had been provoked into it. These comments were unwarranted and doubtless played in the Recorder's mind when it came to sentence. We, too, have taken account of them.

29. Nonetheless, in our judgment the appellant was entitled to credit in particular for his young age at the time of the attempted robbery and for the notable progress that he had made in the five years since the commission of the attempted robbery.

30. We conclude that the various aspects of mitigation were not given sufficient weight by

the Recorder. In our view, the mitigation present in this case roughly balanced off against the aggravation.

31. We therefore quash the sentence of seven years' imprisonment on count 1 and substitute a sentence of five years' imprisonment. The sentences on the other counts remain unaltered.

32. We turn to the issue of disqualification from driving in light of the reduction in the custodial element of his sentence. The reduction is from an aggregate period of seven years and three months to a one of five years and three months' imprisonment. We impose an aggregate period of disqualification of 40 months, which is made up in the following way.

33. We impose a discretionary period of 12 months' disqualification for the dangerous driving. We note that the appellant was also sentenced (albeit to no separate penalty) for driving with excess drugs in his blood, which carries a mandatory period of disqualification, so for that offence we impose a concurrent term of 12 months' disqualification.

34. Pursuant to section 35A of the Road Traffic Offenders Act 1988, we impose an extension period of one month to represent roughly half (rounded down) of the custodial term of three months imposed for the driving offences.

35. We impose an uplift, under section 35B of the Road Traffic Offenders Act 1988, of 27 months. The uplift is calculated in the following way. The term of imprisonment for the attempted robbery is five years, of which the appellant can expect to serve up to half (ie 30 months). However, he spent 90 days (3 months) on remand on qualifying tag. Once those days are taken into account, the he appellant is likely to serve 27 months in custody for the attempted robbery. That is the period of uplift we impose.

36. The combination of discretionary disqualification, extension period and uplift come to an aggregate period of 40 months' disqualification from driving. The appellant will need to take an extended test before he is eligible to apply for a new driving licence at the end of his period of disqualification.

37. This appeal is allowed to the extent outlined.

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

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