



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2025] HCJAC 10
HCA/2024/595/XC

Lord Justice Clerk
Lord Matthews
Lady Wise

OPINION OF THE COURT

delivered by LORD BECKETT, the LORD JUSTICE CLERK

in

CROWN APPEAL AGAINST SENTENCE

by

HIS MAJESTY'S ADVOCATE

Appellant

against

EK

Respondent

Appellant: Keenan KC, AD; the Crown Agent
Respondent: Lenehan KC, McTaggart; John Pryde & Co (for Sloane & Co)

6 February 2025

Introduction

[1] This is a Crown appeal against a purported extended sentence of 6 years and 4 months with a custodial term (detention) of 3 years and 4 months. There are two grounds: the undisputed incompetent imposition of an extended sentence raised as a point of law and undue leniency. After hearing submissions we sustained the first ground of appeal and

imposed sentence of new, an extended sentence of 7 years with a 4 year custodial term, backdated to 15 April 2024. We now give our reasons.

Procedure

[2] The respondent was 15 when he committed the crimes charged. He appeared on petition on 15 April 2024 and was remanded in custody. On 10 September 2024, still 15, he pled guilty relatively early to two charges on a section 76 indictment at the High Court in Glasgow. He had indicated his intention to plead guilty some 4 months or so after first appearance.

[3] Both crimes were committed in Glasgow on 12 April 2024. Charge 1 was an assault to injury with a knife and charge 2 culpable homicide resulting from a single punch causing a man of 70 to fall, his head striking the ground with fatal consequences. Charge 2 was aggravated by the respondent being subject to an undertaking, given very shortly beforehand, to appear at Glasgow Sheriff Court on 30 April 2024 on charge 1.

[4] Following an adjournment for a Criminal Justice Social Work Report, the trial judge passed sentence on 18 October 2024. He reasoned that, taking account of the appellant being 15 years and 5 months old at the time of the offence, an appropriate sentence on charge 1 would have been detention for 2 years and, on charge 2, detention for 4 years. In order to take account of the total of the sentences and the risk presented by the respondent, resolved to impose a single (*in cumulo*) extended sentence. Allowing for the cumulative effect of the sentences, he envisaged a notional custodial term of 5 years. Allowing for the respondent's pleas of guilty, he reduced it by one third. Sentence was backdated to 15 April 2024.

The circumstances of the offences

Charge 1

[5] Acting along with another person, the respondent entered a shop at about 4pm where the complainer, aged 65, was working with two others. He challenged the complainer to come outside, accusing him of providing alcoholic drinks to an under aged girl. The respondent and his accomplice directed the two men outside where, during an altercation, the respondent removed a knife from his trousers and made a slashing motion towards the complainer, striking him on the arm, causing a 1 inch laceration to his left bicep that required stitching. The respondent and another person ran away. He was later arrested at his home at about 8pm before being released by the police 11.15pm on an undertaking to attend court on 30 April. The knife was a substantial weapon with a blade of 23-24 cm, about 9 inches.

[6] On his release, the police contacted the respondent's mother who picked him up, intending to drive him home. When she asked him what had happened, he got out at traffic lights and departed.

Charge 2

[7] On charge 2, the deceased was 70 when he died. He had been drinking heavily since the afternoon and stopped beside an unoccupied parked car used by the respondent's father. The respondent, not long after leaving his mother's car, came across the scene on foot and accused the deceased of urinating on his car. As could be seen on CCTV footage, the respondent punched him on the head, once, with fatal consequences. The deceased had been drinking heavily and this may have contributed to his demise, albeit the cause was the violence used by the respondent.

Circumstances of the respondent and CJSWR

[8] The respondent is now 16. Prior to his remand in a secure unit, on 15 April 2024, he had lived with his mother and two younger siblings. He has a large and supportive family and is particularly close to his mother. He had social work support from February 2024 in response to allegations of offending. Treatment for anxiety was part of the proposed input. At school he could struggle to control his anger and was referred for counselling. He had not caused trouble at school for a long time prior to his remand.

[9] Criminal records suggested that he had two allegations of assault against him, one dated January 2023 and another in 2024, and there were a small number of other police charges. He was also charged with threatening and abusive behaviour arising from his conduct in the secure unit on 8 September 2024.

[10] The respondent had smoked cannabis on 12 April 2024 but was not intoxicated. He acknowledged that he had visited the shop of the complainer on charge 1 to confront him about information he had received from a young female friend about a conversation she had with the complainer. He regretted his use of the knife and told his father about it when he went home. He was very remorseful for the loss of life he had caused. He recognised the impact of his actions on the family of the deceased. He has suffered nightmares since he committed this crime. He may suffer from mild depression. He was making good progress with his education in the secure unit. He engaged in constructive activities. He is considered to have suffered developmental trauma with his parents' difficult relationship a significant factor. He can be hyper-vigilant to threat. He had engaged well with the Specialised Interventions Team in the secure unit. There had been some allegations of outbursts of violence and disorder during his time there.

[11] The respondent was assessed as presenting a high risk of violent offending with risk to others given a pattern of alleged recent offending, the gravity of the offences he committed and the harm caused; all demonstrating poor impulse control and the use of violence to manage his anger. Post-release supervision would be appropriate.

Submissions

Crown

[12] With reference to the Criminal Procedure (Scotland) Act 1995, section 210A(1)(a)(ii), the sentence imposed for a violent offence being less than a custodial term of 4 years was incompetent. The risk of harm presented by the respondent was such that an extended sentence was necessary in order to protect the public from serious harm from him. The court should quash the sentence and impose a different sentence, namely an extended sentence with a custodial term of more than 4 years.

[13] The court should also find the sentence imposed unduly lenient as it failed adequately to punish the respondent and express disapproval for his conduct. Both crimes were unprovoked. The respondent had left home with a knife, and later determined to confront the complainer on charge 1. He had used it to cause an injury requiring suturing. The incident started in the complainer's shop, albeit the assault occurred outside in the street.

[14] Charge 2 involved an unprovoked attack on a man of 70, vulnerable by his age and state of intoxication, punching him and killing him. Sentences imposed at first instance in *HM Advocate v Reid*, 16 December 2010, unreported, and *NRL v HM Advocate* [2025] HCJAC 4, both single charge culpable homicide cases, suggested that the sentence imposed

fell below the range reasonably open to the sentencing judge; *HM Advocate v Bell* 1995 SCCR 244.

Respondent

[15] Senior counsel observed that the respondent, still 16, was assessed as having a below average level of cognitive functioning. Despite that, he was maintaining excellent attendance for schooling and proving a pleasure to teach. He had made good progress in the secure unit and was making better choices of friends. He was working hard, advancing his education and was taking advantage of rehabilitative facilities. The report confirmed his considerable remorse and insight into the consequences of what he had done on charge 2. The court may conclude that an extended sentence is appropriate but it should be no longer than necessary, particularly in light of his progress. The decision in *NRL*, founded on by the Crown in written submissions, involved a number of aggravating circumstances absent in the respondent's case. In *NRL*, there was a prolonged attack; it began with a head-butt; punches continued to rain on the deceased; the incident only ended when *L* was pulled away; and such force was used that *L* broke a bone in his hand. *L* had previously attacked a bus driver at his work.

[16] If sentencing of new, the court would have to consider an allowance for the early plea. There had been two petitions despite the two offences occurring on the same day. Difficulties with legal aid held up the taking of instructions to resolve the case, which nevertheless came notably early, well in advance of indictment.

Decision

[17] Both of the crimes committed were serious and merited detention. Charge 1 involved the use of a knife to cause injury, albeit not of a severe kind. Charge 2 could not have had graver consequences. A family is left grieving the sudden and wholly unjustified loss of a man of 70 who was deeply loved, as his sister explained in her heartfelt statement.

[18] On the other hand, the respondent was a young offender, 15 at the time of the crime and when sentence was passed, and fell to be treated differently from a person aged 25 or over. Given his age, any sentence should be less than would be imposed on an adult. He has greater prospects of rehabilitation than an older person and is to be regarded as less culpable. As someone under the age of 18, his best interests are a primary consideration. These principles have been recognised in the judgments of this court for over 20 years eg *Kane v HM Advocate* 2003 SCCR 749; *Hibbard v HM Advocate* 2011 JC 149; *NRL* at paras [28] - [32].

[19] Nevertheless, the gravity of his offending on both charges, and the exceptionally grave harm caused on charge 2, was such that detention and a period of extension was necessary in order to protect the public from serious harm in a way which ordinary licence conditions could not be expected to achieve. The sentencing judge was correct in concluding that an extended sentence was required.

[20] For a crime of violence, the minimum sentence of detention permitting an extended sentence is a custodial term of 4 years; 1995 Act section 210A(1)(a)(ii). As the sentencing judge candidly acknowledged in his report, the sentence imposed was accordingly incompetent and we quash it and impose sentence of new.

[21] Sentencing can be particularly difficult in cases of culpable homicide where the harm caused can be disproportionate to the violence used. In the whole circumstances, detention

was inevitable but it required to be no more severe than necessary to achieve appropriate purposes of sentencing in this case; Scottish Sentencing Council, Principles and Purposes Guideline.

[22] We have considered the circumstances of the cases on which the respondent founded. In *Reid*, the accused had formed part of a large group who intimidated and then caused the death of a delivery driver in the highly aggravating circumstances described in the opinion of the court in *NRL* at para [30]. In *NRL*, the respondent had previously been charged with assaulting a bus driver and then engaged in a sustained incident assaulting another bus driver who was simply doing his job, providing a service to the public. There is force in senior counsel's distinction between this case and *NRL*. Whilst it is true that there was no second offence on the indictments featuring in *Reid* and *NRL*, the crimes of culpable homicide had more aggravating features than are present in this case.

[23] Whilst it caused death for which the respondent bears criminal responsibility, there was a single punch on charge 2, albeit sufficiently forceful to cause the deceased to fall to the ground and strike his head with fatal consequences. Noting also the terms of charge 1 and its aggravating circumstances, we are not persuaded that the sentencing judge erred in his selection of the individual sentences; 4 years on charge 2 and 2 years on charge 1. We do not consider that he showed undue leniency.

[24] We consider an appropriate sentence for the two charges, taking account of the totality principle ie the need for sentencing to be fair and proportionate, to be an extended sentence of 8 years and 6 months with a custodial term of detention for 5 years and 6 months. We make allowance for the plea of guilty. Whilst it came relatively early, four months or so after first appearance, it cannot be said that it was tendered at the earliest opportunity; *Geddes v HM Advocate* 2015 SCCR 230. We shall reduce the combined sentence

to an extended sentence of 7 years with a custodial term of 4 years and an extension period of 3 years.

[25] In light of the sentence we imposed, we did not consider it necessary to include a further element for the breach of undertaking. As before, sentence was backdated to 15 April 2024.