Case No: 200801233, 1238, 1350, 1353 & 1357 A2

Neutral Citation Number: [2008] EWCA Crim 2578

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Date: Friday, 10th October 2008

B e f o r e :

LORD JUSTICE TOULSON

MR JUSTICE GRIFFITH WILLIAMS

RECORDER OF WINCHESTER

Sitting as a Judge of the Court of Appeal Criminal Division

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R E G I N A

v

MARCUS HEADLAM, ODENE BECKFORD, AARON COX,

CRAIG HAMILTON, CARL MCFARLANE

- -

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Mr C Langley, Mr D R Tomlinson, Miss I Forshall, Mr A Frymann and Mr P Stanislas appeared on behalf of the **Appellants**

Mr E Lucas appeared on behalf of the **Crown**

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J U D G M E N T

1.
MR JUSTICE GRIFFITH WILLIAMS: On 23rd November 2007 the appellants were arraigned at the Crown Court at Blackfriars on an eight count indictment charging conspiracy to rob (count 1) and seven offences of robbery committed pursuant to the conspiracy alleged. Headlam pleaded guilty to count 7, the only substantive offence he faced; Beckford pleaded guilty to count 5, the only substantive offence which he faced; Cox pleaded guilty to counts 2, 3 and 8 -- the other substantive count he faced, count 4, was left on the file on the usual terms; Hamilton pleaded guilty to count 8,

the only substantive count he faced and McFarlane pleaded guilty to counts 4 and 8 -- the other substantive count he faced, count 7, was left on the file on the usual terms. In the case of each appellant count 1 was left on the file, again on the usual terms.

2.
On 4th February 2008 they were sentenced by His Honour Judge Pillay as follows: Headlam to 7 years' imprisonment; Beckford to 5 years' imprisonment; Cox to concurrent terms of 7 years' imprisonment; Hamilton to 5 years' detention in a young offender institution and in his case a Community Order to which we will refer later in this judgment was revoked; McFarlane was sentenced to concurrent terms of 6 years' imprisonment. In each case there was an order under section 240 of the Criminal Justice Act 2003 that the days spent on remand in custody would count towards sentence -- Headlam, 285 days; Beckford, 278 days; Cox, 290 days; Hamilton, 290 days and McFarlane, 290 days.

3.
They appeal by leave of the single judge. There were other co-defendants but neither their pleas or sentences are material or relevant to these appeals.

4.
The robberies, which were all committed by the appellants with each other or other young men of a similar age in South-East London between July 2006 and April 2007, formed part of a series of robberies on personnel involved in delivering and collecting cash in transit vehicles. Each of the robberies was committed in a similar manner. Typically three or more of the robbers would cruise round an area keeping an eye on cash in transit vehicles and their personnel and, if circumstances seemed opportune, one of them would approach the custodian carrying out a delivery or collection and would surprise the custodian, take the cash box from him and make good his escape. Whilst the robbery was being carried out, the other two or three would be standing nearby to lend support if necessary and once the cash box was stolen, they would proceed to a safe or secure location where the box would be broken into and an attempt would be made to extract the cash before the smoke or dye alarm was activated.

5.
On 6th July 2006 (count 2) a custodian was coming out of a branch of McDonalds when he was shoulder-barged from behind into the rear open door of the transit vehicle. A second male appeared and a third stood close by. The custodian was taken in a bear hug, thrown to one side and told to stay back. The robbers then made off with the cash box containing £3,020.

6.
On 13th July 2006 (count 3) a cash delivery officer was coming out of a supermarket when a man ran up to him shouting "Drop the box" repeatedly. The man grabbed the box and began to tug violently on it, but the custodian would not release his grip so a second man ran towards him. The custodian then released the box because he feared that the second man might have a weapon. The robbers made good their escape in a car but later that day the cash box, which had been empty, was recovered by the police who had been flagged down by two women who said that the box had been taken to their flat and the alarm was going off.

7.
On 3rd October 2006 (count 4) a cash delivery officer was at a supermarket when he became aware of someone running up behind him. That individual grabbed the cash box and shouted "Let go, let go". The custodian saw two or three others standing close by and released the box. The four men got into a

car and drove off. The cash box was later found open beside that car and a pair of pliers was found in the car.

8.
On 3rd October 2006 (count 5) a security driver was putting a box into the back of his van after making a collection at a book shop in Greenwich when he was pushed from behind to one side and the box was snatched. The robber made off with two others in the same car that had been used in the first robbery.

9.
On 3rd March 2007 (count 7) a robbery was committed on a Securitas delivery. As the custodian was returning to the van, having made a collection of £1,343 in cash and £1,095 in cheques, one of the robbers knocked him to the floor and the cash box was stolen. A Honda motorcar which Headlam was driving was seen by the police and was pursued. That pursuit came to an end when Headlam turned into a cul-de-sac and his car collided with a wall. He tried to make his escape but was arrested after a short chase and the cash box recovered.

10.
On 18th April 2007 (count 8) there was another robbery on a security officer. On this occasion the security officer did not release his grip on the cash box, which contained £15,000. As a consequence of that, he was punched several times in the face and knocked to the ground by one of the robbers. He suffered bruising and shock as a result and needed hospital treatment. The four men involved in that robbery were detained a short while after the robbery by surveillance officers.

11.
Following their arrests, the appellants declined to comment about their offending when interviewed, although the appellant Hamilton, at the time of his arrest, said "I just want to go to court and get it over with".

12.
In passing sentence, the learned judge said:

"It is conceded by the Crown that there was no elaborate planning by you in executing these robberies and, more importantly, that no firearms or weapons were used in order to achieve your aim. It is also conceded by the Crown that only limited force was used in order to seize the cash boxes and that it was more a threat of force which caused the custodians to release their valuable cargo.

The only exception to this was in relation to count 8 where the custodian Mr Pritchard was struck to the face by what he calls 'a flurry of bodies' resulting in injuries to his face which subsequently required hospitalisation. On this occasion there was some £15,000 in the cash box . . .

Finally, it is also conceded by the Crown that you each pleaded guilty at the first available opportunity and, to that extent, you are each entitled to full credit for those pleas."

The learned judge then explained why he was satisfied that the "dangerous offender" provisions of the Criminal Justice Act 2003 did not apply in the case of any of the defendants and continued:

"In sentencing each of you, I bear in mind inter alia the following. Firstly, your early pleas of guilty. Secondly, the fact that no weapons were used in the commission of these offences. Thirdly, save for count 8, only limited physical violence was used to execute these robberies. Fourthly, where it applies, the basis of plea upon which it was entered. Fifthly, the expressions of remorse and regret which are

evidenced by your letters to this court and the expressions of it in the probation reports and the contents of those Pre-Sentence Reports and all the other documentation placed before me in the course of mitigation. Finally, I of course bear in mind the mitigation advanced by your learned counsel."

13.
On behalf of the appellant Headlam, Mr Langley submitted that the facts of the robbery to which he pleaded guilty were such that a 7-year sentence on a plea of guilty cannot be justified, and that the starting point used by the learned judge before discounting the full credit for the guilty plea was too high. It was submitted that Headlam was the driver of the getaway car and so took no actual part in the taking of the cash box.

14.
Similar submissions were made on behalf of the other appellants, to the effect that they played subsidiary roles or had "peripheral" involvement in the robberies to which they pleaded guilty. We observe that those who take part in robberies and who play what are sometimes said to be secondary roles, in the sense that they were not the actual robbers but were merely present to lend support if necessary or were drivers of the getaway car, are as responsible for the robbery as the actual robbers themselves.

15.
On behalf of the appellant Beckford, Mr Tomlinson submitted that the offence of robbery to which he had pleaded guilty falls into the category of "less sophisticated commercial robberies" identified in the Definitive Guidelines on Robbery issued by the Sentencing Guidelines Council and that there were no aggravating circumstances to raise the offence to one of Level 2 seriousness. He submitted that insufficient weight was given to the appellant's guilty plea, his non-violent antecedent history and the limited part he played in the robberies.

16.
On behalf of the appellant Cox, Miss Forshall submitted that the 7-year sentence for the two offences of robbery to which he pleaded guilty was manifestly excessive and substantially exceeded the Guideline for Level 1 robberies, it being submitted that this appellant was involved in two Level 1 robberies. It was submitted that the sentence was excessive because the third robbery, which did involve the use of force, was not one which involved more than Level 2 seriousness identified in the Guidelines to which we will be turning shortly. Miss Forshall submitted that the sentence gave insufficient credit for the plea of guilty and the mitigation available to the appellant.

17.
On behalf of the appellant Hamilton, Mr Frymann submitted that the sentence did not adequately reflect the defendant's age (he was 19 years old and by some years the youngest of these appellants), his lack of relevant convictions, that he was a first time young robbery offender, that the robbery was of Level 2 seriousness, and that the sentence did not give full credit for his guilty plea. Mr Frymann referred us to previous decisions of the court, but as they are not guideline cases and merely illustrative of sentences passed on their particular facts, it is unnecessary for the purposes of this judgment to refer to them.

18.
On behalf of the appellant McFarlane, Mr Stanislas submitted that the appellant played a subsidiary role but, more importantly, he lacks relevant and recent previous convictions and the sentence did not reflect his positive good record, his epileptic condition and his pleas of guilty.

19.
We consider the Definitive Guidelines on Robbery issued by the Sentencing Guidelines Council. The Council identified five categories of robbery: street robbery or mugging, robberies of small businesses, less sophisticated commercial robberies, violent personal robberies in the home, and professionally planned commercial robberies. The categories of robberies of small businesses cover businesses such as a small shop or post office, petrol station or public transport or taxi facility. Less sophisticated commercial robberies cover a wide range of locations, extent of planning and degree of violence, including less sophisticated bank robberies or where larger commercial establishments are targeted but without detailed planning or high levels of organisation. The learned judge in his sentencing remarks made no reference to the Definitive Guidelines, although it is clear from the submissions of Mr Stanislas that he heard submissions from counsel based upon them and that there was, during the course of those submissions, discussion about them.

20.
The offending of these appellants does not fit easily into the second or third categories and is probably closer to the third category. The starting points in the Definitive Guidelines apply to the first three categories of robbery, and are based upon a first time offender who has pleaded guilty to one robbery.

21.
Three levels of seriousness are identified by reference to the degree of force or threat used and the value of property stolen. A Level 1 offence involves a threat and/or use of minimal force. A Level 2 offence involves the use of a weapon to threaten and/or the use of significant force. A Level 3 offence involves the use of a weapon and/or significant force where serious injury is caused.

22.
The aggravating factors identified include group offending, planning and the value of property stolen. We would add that we regard the targeting of those who deliver and collect cash to be an aggravating factor, although we accept the submission made by Miss Forshall in reliance upon the decision of this court in **Attorney General's Reference Nos 32, 33 & 34/2007** [2008] 1 Cr.App.R(S) 35, at paragraph 18 in the judgment of the court, given by Hughes LJ, that cash transit drivers fall into the category of a low level of vulnerability. We observe that the guidelines make it clear at G9 that the presence of one or more aggravating features would indicate a more severe sentence within the suggested range, and if the aggravating features are exceptionally serious the case will move up to the next level. The mitigating factors identified include personal mitigation, a first offence of violence, clear evidence of remorse and, with young offenders, their age. There is, of course, the important mitigation of a plea of guilty. Although the mitigating factors include peripheral involvement as a mitigating factor, for the reasons we gave earlier it has no application on the facts of this case.

23.
We observed during the course of counsel's submissions that this court was surprised that the prosecution had appeared to concede both that there was no elaborate planning and that the offending was opportunistic. The appellants played their respective parts in a campaign of robbery, targeting cash deliveries, going out and about looking for cash deliveries or collections. There was significant planning in the sense that the roles to be played by each participant were determined before the robbery was committed and once the decision was taken that the moment was opportune, the robbery was quickly and efficiently committed by a number of offenders who targeted what they hoped to be large amounts of cash. Mr Langley, during his submissions, told us that these cash boxes can contain up to £30,000 in money. It is not without significance that these offenders knew, and must have known, full well that the cash box had to be opened quickly to avoid setting off an alarm and the

discharge of smoke or dye. In the judgment of this court, these offences displayed a clear element of sophistication.

24.
We shall consider the cases of each appellant in turn, but before doing so we take this opportunity of thanking all counsel for their succinct and helpful submissions.

25.
The appellant Headlam was born on 20th March 1980 and so he was some days short of his 27th birthday when he committed the robbery on count 7 with two others, during which the custodian was knocked to the ground so that the cash box could be stolen. It is no mitigation that the police were nearby and so he was caught with the cash box in the car that he was driving. Although he had to be sentenced for only the one robbery, that offence has to be considered in the context of the other robberies. It is inconceivable that Headlam did not know of the other robberies.

26.
He has a very bad record. He has been convicted on 24 occasions of 44 offences, which include convictions of robbery in 1995, 1996, 1997 and 2001 and of attempted robbery in 1995 and 2001. In 2001 on his conviction for robbery and attempted robbery he was sentenced to a total of 9 years' imprisonment, so this offence was committed soon after his release from that sentence and when he would have been on licence. We are satisfied that the provisions of section 143(2) of the Criminal Justice Act 2003 apply in his case.

27.
The only real mitigation in his case was his plea of guilty, which was indicated at a very early opportunity and entered at the first opportunity. We are satisfied that there can be no criticism of a starting point of 10½ years' imprisonment in his case. While no weapon was used and such force that was used resulted in no actual injury, there were the aggravating features relating to the commission of the offence which we have identified, as well as his previous convictions for like offences and the fact that this offence was committed so soon after his release from prison for like offending. We are not persuaded that the sentence in his case was manifestly excessive and his appeal is accordingly dismissed.

28.
The appellant Beckford was born on 9th September 1981 and so was 25 years old when he committed the robbery on count 5 with two others. On that occasion the box contained no money. He has, on any view, a bad criminal record with 17 convictions for 27 offences, of which one was an offence of robbery, but that conviction was in 1997 and for that offence he was made the subject of a Community Order. We have concluded that section 143(2) should not apply in his case. Beckford has previously served custodial sentences but they were short sentences, served in 1998 and 2000.

29.
The Probation Officer reported his claim that he did not know what his co-offenders were going to do and only realised just before the robbery what it was that they were doing. The Probation Officer said that that was an account which lacked credibility. We agree. We have concluded that the starting point of 7½ years' imprisonment in his case was too high. With the aggravating features we have identified, we consider the appropriate starting point in his case was one of 6 years and so, giving credit for his early guilty plea, the sentence should be one of 4 years' imprisonment. We accordingly quash the sentence of 5 years' imprisonment and substitute for it a sentence of 4 years' imprisonment. To that extent his appeal is allowed.

30.
The appellant Cox was born on 23rd December 1978 so he was 28 years old when he committed the robberies on counts 2 and 3 and 29 years old when he committed the robbery on count 8. He was a participant with two others in the first robbery, with one other in the second and with three others in the third. In the first robbery a custodian was shoulder-barged from behind and then held in a bear hug and thrown to one side. In the second robbery, the custodian was threatened by the actions of the robbers into releasing his grip on the cash box. In the third robbery the custodian, who would not let go of the cash box, was punched repeatedly to the face and knocked to the ground sustaining injury.

31.
Cox has a history of 12 offences which included a conviction in 1997 for robbery which, we observe, was committed with Headlam and for which he was sentenced to 3 years' detention in a young offender institution. We are satisfied in his case that the provisions of section 143(2) of the Act should apply. We are not persuaded that the starting point of 10½ years was manifestly excessive for these robberies. He received the appropriate reduction for his early guilty plea and for the available mitigation. We observe that in his and other appellants' cases we have been provided with favourable prison reports, but that is what is to be expected of those who are serving prisoners, although the court does acknowledge that he is making the most of the opportunities which are being presented to him in prison. His appeal is accordingly dismissed.

32.
The appellant Hamilton was born on 27th June 1987 and so was 19 years old when he committed the robbery on count 8, the most serious of the offences, involving as it did the physical violence on the custodian which we have described. He is the youngest of the appellants and had only one previous conviction in November 2006 for an offence of possession of a weapon. He was made the subject of a Community Order for that offence and so he committed the robbery whilst subject to that order. That we consider to be an aggravating factor.

33.
We have concluded that insufficient regard was paid by the sentencing judge to his age and his lighter criminal record. The starting point for this appellant, with the aggravating features that we have identified, we have concluded should have been of the region of 5 to 5½ years. So allowing discount for the mitigation of his early plea of guilty and for the other mitigation in his case, the sentence in his case should be one of 3½ years' detention in a young offender institution. We therefore quash the 5-year sentence and substitute for it a sentence of 3½ years detention in a young offender institution.

34.
We come, finally, to the appellant McFarlane. He was born on 26th November 1981 so was 25 years old when he committed the robbery on count 4 and 26 years old when he committed the robbery on count 8. The robbery on count 4 was committed by four men whose threatening presence caused the custodian to let go of the cash box. We have already detailed the facts of the second robbery on count 8. Although he has three convictions for four offences, none are relevant and, in the judgment of this court, he can be dealt with effectively as a man of good character.

35.
In his case we have had particular regard to the contents of the Pre-Sentence Report from which it is apparent that he was exceedingly frank with the Probation Officer in describing how he came to be involved and about his involvement in the two offences. We have had regard to his employment record. It is an important consideration that he had had good employment for some four years and

that this offending, it would appear, was prompted by the fact that he was no longer able to earn as much money in that continuing employment because of his epilepsy.

36.
Our conclusion is that he does fall into a different category to the other appellants. We consider that the appropriate starting point for the two robberies in his case would be a total sentence of 6 years' imprisonment. Giving credit for his pleas of guilty in the matters of mitigation, we have concluded that the sentence in his case should be one of 4 years' imprisonment. It follows that the total sentence of 6 years' imprisonment is quashed and there will be substituted for it concurrent sentences of 4 years' imprisonment. To that extent his appeal against sentence succeeds.

37.
MR FRYMANN: My Lord, can your Lordship confirm that the 290 days deducted still stands.

38.
MR JUSTICE GRIFFITH WILLIAMS: In respect of those appellants whose appeals have succeeded, the provisions of section 240 will apply.

39.
LORD JUSTICE TOULSON: We repeat our thanks to counsel in this case. Court of Appeal advocacy is not easy. Anybody who wanted to study it would have done well to have been here because you have taken, fairly and properly, all the points which could sensibly be taken and you have done so with clarity and without repetition.