

Neutral Citation No: [2017] EWCA 2226 (Crim)

No: 201703675/A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 15 December 2017

B e f o r e:

MR JUSTICE TEARE

HIS HONOUR JUDGE DEAN QC
(Sitting as a Judge of the CACD)

R E G I N A

v

FADHIL MISALATI

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Mr D McGonigal appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1. MR JUSTICE TEARE: On 7th July 2017, having pleaded guilty before magistrates to two offences of racially aggravated intentional harassment and one offence of racially aggravated common assault, the appellant was committed for sentence at the Crown Court. There was an irregularity concerning the certificate of committal which in respect of one offence failed to mention that the offence was racially aggravated. However, that irregularity has been cured by an amended certificate of committal.
2. On 28th July 2017 the appellant was sentenced to 15 months' imprisonment in respect of each offence to run concurrently. He has been granted permission to appeal against that sentence by the single judge. It is accepted that an immediate custodial sentence was appropriate, but it is said that the sentence was manifestly excessive. No pre-sentence report was obtained below and in the circumstances we do not consider that one is necessary on this appeal.
3. The offences took place on 6th March 2017 at the job centre in Manningham Lane, Bradford. At around 3.15 pm the appellant was in the waiting area. He was approached by a Mr Mahmood, a customer care officer. The appellant was carrying a cup of coffee and Mr Mahmood told him he had to drink it before he could attend his appointment. The appellant swore at Mr Mahmood. He said: "You Pakis clean toilets. Are you a Paki?" When Mr Mahmood said he was not, the appellant replied: "So you are a sand nigger."
4. At 3.30 pm the appellant attended his appointment with a work coach, Miss Ahmad. She had had to face encounters with the appellant previously and had had to warn him about his language. Miss Ahmad examined the appellant's record and said to him that it appeared he had not actually been looking for work. The appellant became abusive saying: "You have stolen my money. You Pakis stole my passport. You're a fucking devil. You're a motherfucker. You open your pussy to niggers." Miss Ahmad was wearing her hijab at the time and the appellant said: "You wear all of this but you are the devil inside." Miss Ahmad was scared and frightened. A security guard, Mr Amin came over and asked the appellant to leave the premises. The appellant called him a "Paki" and spat at him, although the spit missed.
5. The appellant is in his early thirties and has no previous convictions, but has three cautions in respect of damage to property and possession of drugs dating from 2005 to 2008. He is from Libya and has been in this country for some 15 years. He pleaded guilty at the first opportunity and, we are told, expressed remorse for his behaviour.
6. The judge rightly noted that the victims of the offences were public servants, that the language used by the appellant was foul, abusive and shocking and that the appellant's behaviour could not be tolerated in Bradford. He said that the required sentence had to be one which both punished the appellant and deterred otherwise. He said that without the racial aggravation the offences would have attracted a sentence of six months, but that the racial aggravation required an uplift of nine months. The judge said that 15 months on each charge concurrent was appropriate, having given credit for the plea of guilty.

7. On this appeal it is said that the sentence was excessive in circumstances where there was no actual physical injury or damage. The only threat of violence was the spit, there had been an early plea of guilty and the appellant had no previous convictions.
8. It is true that there was no actual violence, save for the spit. But one of the victims, the lady work coach, made a victim impact statement in which she said that she now requires security to be close by when a male is scheduled to attend. She was left feeling scared, upset and anxious. There were indeed three victims, all of them public servants and whose duties bring them in daily contact with the public. Those circumstances mean that the appellant's conduct was serious.
9. We agree that an immediate custodial sentence was appropriate, but the sentence of 15 months was the equivalent of a sentence of 22½ months after a trial. Although there were three offences against three public servants, we consider that a sentence of such length where the maximum sentence for each offence was 24 months and the appellant had no previous convictions was excessive.
10. We consider that the judge's sentence of 15 months was appropriate for these three offences against three public servants had there been a trial, but there had been a plea of guilty and so we consider that the appeal should succeed and that there should be substituted a sentence of 10 months' imprisonment on each count to be served concurrently.

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