

Neutral Citation Number [2019] EWCA Crim 1075

No: 201804483/A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 12 June 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE MARTIN SPENCER

HIS HONOUR JUDGE PICTON

(Sitting as a Judge of the CACD)

R E G I N A

v

COREY THEON ALLARD

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Miss N Chbat appeared on behalf of the **Appellant**

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: Over the course of three trials in the Crown Court at Aylesbury, this appellant was convicted of a number of very serious offences. On 5 October 2018 consecutive extended sentences were imposed upon him, amounting in total to an extended sentence of 26 years, comprising of a custodial term of 21 years and an extension period of five years. He appeals against his total sentence by leave of the single judge.
2. The appellant was born on 23 March 1997 and so is now 22 years old. The offences with which the court is concerned were all committed when he was aged 20. Serious though they were, we can for present purposes summarise the facts quite briefly. We shall do so in chronological order. Intending no disrespect, we shall refer to people only by their surnames.
3. On 2 September 2017 the appellant and his co-accused Green went to the flat of an acquaintance. Others present included Eedle and Gary. After a period of initial high spirits, there was a sudden change of atmosphere when Green began to argue with Gary. Eedle tried to leave but was prevented from doing so by Green, who brandished a knife towards him and demanded that he empty his pockets. In fear, Eedle tried to escape through the window of the lounge. He was grabbed from behind by Green, who held onto his legs and tried to go through his pockets. Eedle's head and shoulders were projecting through the window. The appellant, by now outside the building, punched him in the head at least twice.
4. The appellant was arrested on 19 October 2017. He made no comment when interviewed under caution. He was then released on bail and so was on bail at the time of the subsequent offences. On indictment T20187045 the appellant was convicted of offences of attempted robbery of Eedle and assault occasioning actual bodily harm to Eedle.
5. On 11 January 2018 the appellant was seen riding a motorcycle which had been stolen two months earlier. The person who saw him, Allnutt, recognised the motorcycle and rang its rightful owner (Martin) to alert him. Arrangements were then made by telephone for Allnutt, accompanied by Wilson, to meet the appellant and his friend O'Brien, ostensibly with a view to buying the motorcycle from them. Martin then joined that meeting and identified himself as the rightful owner of the motorcycle. A struggle began between Martin and the appellant, in which Martin put the appellant to the ground. The appellant then shouted to O'Brien to "get the blade, bring the blade" and O'Brien stabbed Martin in the buttock. Wilson grabbed the appellant and struggled with him on the ground. O'Brien then stabbed Wilson in the chest. Both the injured men were taken to hospital. Martin had suffered a stab wound to his hip. Wilson had suffered a puncture wound to his chest which resulted in a pneumothorax. On indictment T20187012 the appellant was convicted of an offence of wounding Wilson with intent to do him grievous bodily harm.
6. About a month later, on 13 February 2018, police officers in an unmarked police vehicle saw the appellant driving a Vauxhall Astra. He was accompanied by Burke and, as it later transpired, Green. The police officers saw what appeared to be a drug deal being carried out from the Astra. They followed the Astra intending to stop it

when it reached a less busy area. However, Burke then leaned out of the window and appeared to realise that police officers were following. The appellant stopped the car in an area where there were many people, including children. The officers pulled in at an angle which prevented the Astra from moving forwards. One of the officers, Gavin, ran towards the passenger side of the Astra with his baton extended. The appellant reversed the Astra away from the police car and then drove forwards at speed directly at Gavin. Realising that collision was inevitable, Gavin jumped onto the bonnet of the Astra. He was propelled from the bonnet to the roof. After holding on for a short time he rolled off the roof and landed in the road head first. His colleagues found him bleeding from a head injury and unresponsive.

7. Meanwhile, the appellant continued on his way at speed, driving dangerously in an attempt to get away. The Astra was later found abandoned. CCTV footage showed that the appellant and Burke had attempted to wipe the car down, succeeding in removing some but not all relevant fingerprints. It also showed that Green had been a passenger in the rear of the car.
8. Having successfully escaped from the scene, the appellant stayed for two nights in hotels before being found and arrested. Examination of his mobile phone revealed evidence that he had been dealing in cannabis. On indictment 20187023, the appellant was convicted of wounding Gavin with intent to resist or prevent the lawful apprehension of himself and with dangerous driving. He pleaded guilty to being concerned in supplying a controlled drug of class B.
9. Wilson, the victim of the stabbing on 11 January 2018, made a victim personal statement a few days later in which he indicated that he had been in hospital for five days and expected to be off work for about six months which would cause him severe financial hardship. He was at that stage suffering with constant flashbacks. His sleep was badly affected. He was frightened to answer the door at home in case something similar happened again and he was reluctant to leave the house.
10. Gavin made two personal statements relating to the consequences of his being struck by the Astra. In the first, made about three weeks after the events, he described injuries to his neck and to the back of his head which had resulted in a small dent in his head. He complained of extreme stiffness and muscle fatigue and an inability to move his head for several days. He had returned to duties but continued to suffer from a stiff neck and felt under great strain. He did not like to think about the incident because he could so easily have been killed. In his second statement, made five months after the events, Gavin said that the incident with the appellant had occurred only about a week after an unrelated incident in which Gavin had been injured whilst pursuing a criminal. He spoke of his continuing fear that he could easily have died when struck by the Astra. He felt that he could have dealt with the earlier incident, and with subsequent threats made to him and his family, but for the fact that he had also been run over by the appellant. He recorded that a recent psychological test had indicated he was suffering a high level of stress and he had been advised that PTSD was likely to be an issue later in his life. He was still suffering from an extremely stiff neck at least twice a month. He felt that the incident had left a lasting psychological and emotional mark which would stay with him all of his life.

11. The appellant had a number of previous convictions. When he was aged 18 he was fined and made subject to community orders for offences of possession of drugs, theft and possession of a knife. Some months later, still aged 18, he committed offences of possessing an offensive weapon and failing to answer bail. He was ultimately sentenced for those offences on 27 July 2017, when a total of 12 weeks' imprisonment suspended for 12 months was imposed. The appellant was subject to that suspended sentence at the time of the present offences.
12. A pre-sentence report indicated that the appellant continued to deny the offences, making it difficult to make a thorough assessment of his reasons for committing them. The author of the report noted however a pattern of anti-social behaviour linked to peer association, and recorded that the appellant acknowledged that this was a problem for him and an influence on his overall offending behaviour. The author also noted that the appellant showed no remorse and seemed to lack insight into or empathy with the effect of his offending on his victims. The appellant described his childhood as a good one with stable love and care from his mother. He had however been disruptive at school and it seems that his associations with others had led to his being the victim of a knife attack, after which, he said, he carried a knife for his own protection. The author of the report expressed the view that the appellant required work to address his thinking and his behaviour in order to reduce the likelihood of re-offending and the risk of serious harm which he currently posed. The appellant stated that he wanted to make changes to his life in order to avoid spending his life in prison, although the author of the report doubted whether he was yet sufficiently motivated to achieve this. The appellant recognised that he would receive a custodial sentence and expressed an intention to make constructive use of his time in custody, in particular by obtaining training.
13. The judge had presided over all of the trials and was therefore in the best position to assess the appellant's overall criminality. She also had to sentence a number of co-accused. In the appellant's case, she made a finding of dangerousness, which is not challenged in this appeal. She gave careful consideration to the relevant sentencing guidelines. She regarded the robbery on 2 September 2017 as a Category 2B offence in the street robbery guideline, aggravated by the appellant's previous convictions and the fact that he was under the influence of alcohol at the time. She took into account that it was an attempted robbery rather than a completed offence. She imposed for that offence an extended sentence of five years, comprising a custodial term of four years and an extension period of one year. She imposed no separate penalty for the offence of assault occasioning actual bodily harm to Eedle.
14. The wounding with intent of Wilson on 11 January 2018 involved both greater harm and higher culpability, giving a starting point in the guideline for offences of wounding with intent to do grievous bodily harm of 12 years' custody and a range from nine to 16 years. The judge indicated that viewed in isolation, the least sentence commensurate with the seriousness of that offence was 10 years in the case of an adult offender. Having regard to totality, she imposed a consecutive extended sentence of 10 years, comprising a custodial term of eight years and an extension period of two years.

15. As to the wounding with intent of Gavin on 13 February 2018, the judge again had regard to the guideline for offences of wounding with intent to do grievous bodily harm and concluded that this was a Category 1 offence. The judge acknowledged that the physical injuries suffered by Gavin were not particularly serious in the context of the offence, but referred to his victim personal statements to explain the full effects of the offence upon him. The offence was aggravated by the subsequent attempt to dispose of evidence by wiping down the Astra. In isolation, that offence required a sentence of at least 12 years' imprisonment. Again having regard to totality, the judge imposed for it a consecutive extended sentence of 11 years, comprising a custodial term of nine years and an extension period of two years. She imposed a concurrent determinate sentence of one year's imprisonment for the dangerous driving and eight months' imprisonment for being concerned in the supply of a controlled drug. She disqualified the appellant from driving for 18 months, on the basis of a disqualification for the minimum term of 12 months for the offence itself, extended under section 35A of the Road Traffic Act 1988 by six months in respect of the 12-month sentence for the offence of dangerous driving. As to a further uplift under section 35B of the 1988 Act, the judge indicated that she would not impose any further disqualification because she felt it would be excessive and because she did not know when precisely the appellant would be released from his sentence.
16. Thus, the total extended sentence imposed by the judge was, as we have indicated, 21 years' custody and an extension period of five years.
17. Two grounds of appeal against sentence are advanced, and we are grateful to Miss Chbat for the care and skill with which she has set them out in her written and oral submissions. First, she submits that the judge was wrong to treat the offence of wounding Gavin with intent to resist arrest as a Category 1 offence under the guideline in respect of wounding with intent to do grievous bodily harm. Counsel submits that the offence should have been categorised as one of higher culpability but lesser harm and so placed in Category 2, with a starting point of six years' custody and a range from five to nine years. Secondly, Miss Chbat submits that the judge failed to have sufficient regard to totality. She notes as a matter of arithmetic that the judge reduced the sentences which would have been appropriate for the individual offences viewed in isolation from 26 years to 21 years' custody. She submits that such a reduction did not adequately reflect totality in all the circumstances of this case. She further submits that a total custodial term of 21 years was in any event excessive in all the circumstances, in particular having regard to the appellant's young age.
18. We have reflected on those grounds of appeal. The guideline for offences of wounding with intent to do grievous bodily harm did not strictly apply to this offence of wounding Gavin with intent to resist arrest. But it was obviously appropriate for the judge to consider it, and it would have been inappropriate to refer instead to the guideline for offences of unlawful wounding contrary to section 20 of the Offences Against the Person Act 1861 - see Haywood [2014] EWCA Crim 2006 and Smith [2018] EWCA Crim 2393.
19. It must however be kept in mind that the sentencing levels in the wounding with intent guideline reflect the fact that the guideline relates to cases in which the offender

intended to cause really serious injury. It follows that in that guideline the greater harm factor of "injury which is serious in the context of the offence" relates to injury which has in fact been caused, as opposed to injury which was intended or likely to be caused. An intention to commit more serious harm than actually resulted from the offence is a factor identified in the list of considerations relating to culpability.

20. Whilst we do not underestimate the significant physical and psychological injury caused to Gavin, it fell in our view somewhat below the high level which can properly be regarded as injury which is serious in the context of a section 18 offence. We therefore accept Miss Chbat's submission that this offence was to be equated with a Category 2 offence under the guideline. That said, however, we regard the level of injury as in itself justifying an increase in the Category 2 starting point of six years, taking it high in a range which goes up to nine years. It is then necessary to consider no fewer than five aggravating features: the appellant's previous convictions; the fact that he was subject to a suspended sentence and on bail; the fact that the victim was a police officer acting in the execution of his duty, as the appellant must have known; the commission of the offence in a busy area where others, including children, were put at risk of injury and were exposed to a distressing and frightening sight; and the attempt to conceal or remove evidence. Taking all those matters together, the judge was in our view entitled to move above the Category 2 sentence range.
21. The principal issue, in our view, is that of totality. The judge had a very difficult sentencing process to conduct, involving a number of defendants and a number of serious offences and she clearly approached her task with considerable care. There is no doubt that a substantial total custodial term was necessary, nor is there any doubt that the judge was entitled to make the finding of dangerousness and entitled to conclude that one or more extended determinate sentences were necessary. We conclude however that the judge made insufficient allowance for totality in a case in which the seriousness of the offending has to be set in the context of the appellant's young age. Although an adult, he was only 20 at the material time. His previous convictions when analysed were less serious than at first appears, and it is noticeable that his convictions only began when he was aged 18. That is a somewhat unusual pattern of offending, and we therefore think it significant that the pre-sentence report indicates a clear problem of the appellant associating with undesirable influences. That report also gives some limited ground for thinking that the appellant is beginning to recognise the need to follow a different course in the future and has some motivation to do so. These considerations lead us to the conclusion that just and proportionate punishment for the overall offending could have been achieved without imposing a total custodial term of 21 years, which was equal in length to the entire span of the appellant's life as at the date of sentencing.
22. The judge's approach of imposing three consecutive extended determinate sentences was not unlawful but it may give rise to difficulties in the future in considering when the appellant will be eligible for consideration for release on licence. Given that we are persuaded that there should be some reduction in the total custodial term, we think it appropriate also to vary the structure of the sentencing.

23. In all the circumstances and giving increased emphasis to totality in the context of the appellant's young age, we allow this appeal to the following extent. On indictment T20187045, we quash the extended sentence imposed for the offence of attempted robbery and substitute for it a determinate sentence of three years' imprisonment. As before, there will be no separate penalty for the offence of assault occasioning actual bodily harm.
24. On indictment T20187012, we quash the extended sentence imposed below and substitute for it an extended determinate sentence of 20 years, comprising a custodial term of 15 years and an extension period of five years.
25. On indictment T20187023, we similarly quash the extended sentence imposed below and substitute for it an extended determinate sentence of 20 years, comprising a custodial term of 15 years and an extension period of five years.
26. The concurrent determinate sentences for dangerous driving and for being concerned in supplying a controlled drug remain as before, as does the period of disqualification from driving.
27. The extended sentences which we now impose on indictments 7012 and 7023 will run concurrently with one another, but consecutively to the determinate sentence on indictment 7045.
28. The effect of these sentences is that the appellant will first serve half of the three-year sentence for attempted robbery. He will then serve the concurrent custodial terms of 15 years, becoming eligible for consideration for release on licence after he has served 10 years of those terms. It will be for the Parole Board to decide whether he is to be released at that stage or at any later stage prior to completion of the total custodial term. When released, he will remain on licence for the remainder of his total sentence and for a further five years thereafter.
29. Miss Chbat, I hope that the structure and effect of our sentences is clear to the appellant, but no doubt you will be speaking to him after the hearing and you will be able to assist him if he is in any doubt about it. The practical effect from his point of view is of course to bring forward by a significant margin the earliest date at which he will be eligible for consideration for release.
30. MISS CHBAT: Yes, my Lord.
31. LORD JUSTICE HOLROYDE: The learned judge below, for reasons which are apparent from the transcript, did not have an opportunity to address directly to the appellant her wish that he recognise the need to put these matters behind him and to do what he can to show that he is safe to be released before he has completed the totality of his term. We echo the view she expressed in that regard.

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