Neutral Citation Number: [2019] EWCA Crim 1415

Case No 201901433/A3

IN THE COURT OF APPEAL
(CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 July 2019

Before :

LORD JUSTICE LEGGATT

MR JUSTICE POPPLEWELL
AND
HIS HON OUR JUDGE JUDGE MARSON QC
(sitting as a Judge of the CACD)

R EG I N A
v
MAISON JAMES ARMSDEN-MCCLENNON
O

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Mr R Purchase appeared on behalf of **Armsden-McClennon**.
Mr M Garvey (Solicitor Advocate) appeared on behalf of **O**.

Judgment

Mr Justice Popplewell:

1. On the day of their trial in the Crown Court at Leicester, on 25 March 2019, the appellants each pleaded guilty to four counts on the indictment. Counts 1, 3 and 4 were charges of robbery. Count 2 charged assault occasioning actual bodily harm. McClennon (as we shall call him) was at the date of plea aged 18. O was aged 17.

2. On 2 April 2019 they were sentenced by His Honour Judge Martin Hurst as follows. In McClennon's case, on count 1 (robbery) three years' detention in a young offender institution. On count 2 (assault occasioning actual bodily harm) nine months' detention in a young offender institution, to run concurrently. On count 3 (robbery) four years' detention in a young offender institution to run consecutively. On count 4 (robbery) four years' detention in a young offender institution to run concurrently. The total sentence in his case therefore was one of seven years' detention in a young offender institution.

3. In the case of O, the sentence was as follows. On count 1 (robbery) two-and-a-half years' detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 . On count 2 (assault occasioning actual bodily harm) six months' detention under section 91 , to run concurrently. On count 3 (robbery) three years' detention under section 91 to run consecutively. On count 4 (robbery) three years' detention under section 91 to run concurrently. The total sentence in his case was therefore one of five-and-a-half years' detention under section 91 .

4. Each appellant appeals against sentence with leave of the single judge.

5. Counts 1 and 2 reflect an incident which occurred on 22 July 2018 when McClennon was about 17¾ and O was about 16¾. At about 6.30 in the morning, the complainant Mr Ali picked up McClennon in his car. They were known to each other. They drove to a garage where they bought beer which they drank together and smoked some cannabis. At some stage McClennon directed Ali to drive to O's house and to pick him up. The two appellants then decided to rob him. Their intention gradually became apparent to Mr Ali because he could see looks being exchanged between the two appellants and they were making comments like, "I'm the boss of this area, this is my estate, people do as I say." They were acting, as the judge put it, as "wannabe gangsters". McClennon was sitting in the front passenger seat. He grabbed Mr Ali round his throat in a headlock, choking him to the point where he briefly lost consciousness. O went to the driver's window, stole the car keys and threatened Mr Ali with a screwdriver. When Mr Ali came round and regained consciousness, he managed to snatch the keys back and ran off. Both the appellants chased him and they beat him to the floor. They continued to attack him, causing significant bruises including a black eye and significant grazing to his arms, legs and body. They took the car keys back and drove off in the car which contained Mr Ali's i-Phone and other items, including personal documents. The car and its contents were never recovered. The appellants were arrested shortly afterwards. They made no comment in interview and they were released pending further investigation.

6. Counts 3 and 4 reflect another robbery some three-and-a-half months later on 9 November 2018, by which time McClennon was aged 18 and O was not quite 17. On that occasion, these appellants were at a party in a flat above a chip shop, as were their two victims, Kyle Perry and Raees Jamal who had gone out onto a balcony to smoke shortly after arriving. The appellants and a third man approached them on the balcony and took out machetes which they had with them. They used the machetes to threaten the victims. The attackers made the two victims take off their clothes down to their boxer shorts in order to steal them and in the course of that held

the machetes close to their skin. They stole the clothes, together with a watch and a phone. They then left and stole Mr Perry's Audi A3 car in which they made off. Again none of those items including the car has been recovered. The attack was accompanied by bragging and threatening comments such as "You're in our end now" and "you don't belong here" and was clearly designed to be and was both threatening and humiliating.

7. Victim personal statements showed that that attack had a lasting financial and psychological effect. Mr Perry was left £1,000 out of pocket after payment of the insurance proceeds on his car and he lost almost the same amount again on items of clothing and personal jewellery which were uninsured. The incident has also caused his motor insurers to refuse renewal of cover and he has not been able to find affordable insurance so that he has been left unable to drive his replacement vehicle entirely as a result of this incident. The psychological impact on him has been significant. It has stopped him going out and socialising. It has made him withdrawn and subject to the onset of crying and panic attacks. It has changed his lifestyle to one in which he no longer socialises. He suffers nightmares and flashbacks seeing his attackers' faces.

8. Mr Jamal has also suffered the lasting psychological impact of the attack. His statement reveals that he is constantly on edge when at home or when out. He has become more reserved. It has affected his work and he finds himself constantly looking over his shoulder whenever he is out in public.

9. McClennon had six previous court appearances for 11 offences between 2017 and 2018. His relevant convictions included assaults, batteries and threatening with a bladed article in a public place. O had eight previous court appearances for 20 offences from 2017, with his relevant convictions including burglary, handling stolen goods, theft and possession of a bladed article. He had most recently been sentenced to an eight month detention and training order for two offences of having a bladed article on New Year's Eve 2018, a sentence which was current when he was being sentenced for the instant offences and to which they were made to run concurrently.

10. There were reports before the sentencing judge. As a result of their previous crimes both appellants were well-known to local youth offending services. A report from McClennon's case manager of 12 November 2018 confirmed that he generally attended his appointments, although he had missed some and had breached orders twice, and he had on the whole completed the rehabilitative programmes which had been identified for him under the youth rehabilitation orders to which he had been made subject.

11. A pre-sentence report on O identified that contributory elements for the offences for which he was being sentenced in January 2019 (which are not the offences with which we are concerned). Contributory elements towards those offences were his naivety and immaturity but mainly his longing to be liked and to be popular along with his inability to say no to his co-defendants. He had, as he accepted in that report, lied to Youth Services by previously telling them that he had been coerced into offending because he was forced by older offenders to go to Liverpool to sell drugs. He accepted that he had told the probation officers that simply in order to get them to treat it as a child protection issue and to stop him being sent to prison. There was, the author of the report said, no specific evidence that he was remorseful and he still failed to recognise the seriousness of his offending and was keen to blame others such as his mother, the police and social services. It was recorded that it was understood that he had ADHD and ODD (that is Oppositional Defiance Disorder) and that he had witnessed some early traumatic adverse

childhood experiences. He had a supportive family.

12. In sentencing, the judge identified the aggravating features of the offences. He put the July robbery in Category 2B, which has a starting point of four years and a range of four to eight years. In relation to the November robbery, the judge identified that it was the guideline for street robbery which provided the most helpful guidance rather than the guide for robbery in a dwelling which contains rather longer sentences because, as the judge said, this was not a case engaging the rationale behind the higher sentences in the guide for robbery in a dwelling, namely the protection of householders in their own homes. The judge observed that this robbery might just as easily have happened on the doorstep or the street as on the balcony of someone else's flat between people who were all guests. He said that applying the guideline for street robbery, this was a Category 2A offence because of the use of machetes to threaten and that therefore the starting point was five years with a range of four to eight.

13. He determined that the appropriate sentences for an adult after a trial would be four years for the July robbery and six years for the November robbery, to run consecutively, making a total sentence of 10 years. To this he applied a 10 per cent discount in the case of each appellant to reflect late guilty pleas, reducing it to nine years. He then deducted two years in the case of McClennon and three-and-a-half years in the case of O to reflect their youth and totality, and then split the total resulting sentences of seven years and five-and-a-half years respectively to impose consecutive sentences for each set of offences for each incident.

14. In the grounds of appeal which are advanced on behalf of the appellants, no criticism is made of the judge's categorisation of either of the robberies, nor is any criticism made of his 10 per cent credit for the late guilty pleas. We observe however that the judge ought to have applied that discount for pleas only after having arrived at what would otherwise have been the appropriate sentence, not (as he did) before any reduction required by the appellants' youth or other personal mitigation or questions of totality. The effect was to give an over-generous reduction in the sentence for these appellants.

15. The essential grounds of appeal in each case are that the judge took insufficient account of the principles of totality and failed to take sufficient account in each case of the appellant's young age and in O's case of the naivety and immaturity referred to in the pre-sentence report, with the result, it is said, that the total sentences were in each case manifestly excessive. Reliance is placed in each case on the Sentencing Council's Guideline on Sentencing Children and Young People and in particular on paragraph 6.46 which provides:

> "When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."

16. We start with consideration of the appropriate sentences for an adult offender after trial for each of the two robberies. The first had the following aggravating features: it was a group attack, it was accompanied by significant violence, both in choking the victim to a point of unconsciousness and in the sustained assault following a pursuit which put him to the floor and caused significant bruising and grazing. It was further aggravated by the significant financial

loss to the victim, including loss of the car itself and its contents, including an i-Phone and personal documents. These factors would in our view have justified a starting point above the guideline starting point of four years.

17. The second robbery also had a number of significantly aggravating features. It was a group attack; the machetes were not just used to threaten, which is what puts the offence in Category A, but also applied close to the skin of the victims; the attack was designed to inflict both humiliation and lasting fear and was conducted in such a way as to achieve that desire; it involved taking items of significant value - the car and the phones and the personal jewellery and watches; and it had a significant continuing psychological effect on both victims and a further impact for Mr Perry in his inability to use his replacement car because the incident had made affordable insurance impossible. Moreover, it was committed whilst on bail or at least when the appellants had been released for further investigation in the relation to the first robbery. These factors would justify a starting point well above the starting point of five years in the guideline for this category of offence.

18. These were quite separate episodes of criminal behaviour against different victims with different features, carried out several months apart. They clearly justified consecutive sentences and did not, in our view, call for a very large reduction for the application of the principles of totality. Accordingly, we can see nothing excessive, let alone manifestly so, in a total sentence of 10 years for an adult offender after a trial for the totality of this offending.

19. That leaves the appropriate reduction for the young age of the appellants and the immaturity of O and credit for pleas. On behalf of McClennon it is argued that he was entitled to a reduction of at least half of the sentence on the first robbery under the terms of paragraph 6.46 of the guideline which we have quoted because he was under 18 at the time it was committed. That is a mistaken submission. The guideline is inapplicable to him because it applies to those under 18 at the time of the conviction and he was 18 when he changed his plea in March 2019 at the beginning of the trial. Nevertheless, his young age at the time of the commission of the offences is a matter which calls for a significant reduction to the sentence which would be imposed on a more mature adult offender. That reduction must however be tempered by McClennon's poor record of prior offending which we have hitherto left out of account as an aggravating feature of the offences. In the circumstances, a reduction of two years from what was a justifiable sentence for an adult is sufficient for his youth and guilty plea and not such in our view as to result in a sentence in his case which is manifestly excessive.

20. In O's case the expressed reduction was of a period of three-and-a-half years, although the reduction was in practice one of almost four years as a result of the error of applying the 10 per cent discount at the wrong stage to the higher figure. That is in line with the guideline, especially taking into account his very poor record. In his case too we are unpersuaded that that has resulted in a sentence which is manifestly excessive. It takes sufficient account of his young age and guilty plea.

21. Accordingly, the appeals will be dismissed save for a technical correction in the case of O which makes no difference to his overall sentence. In his case the sentence on count 2, the charge of causing actual bodily harm, is unlawful. A sentence of detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 can only be imposed for an offender under 18 at the date of conviction who has been convicted of a crime for which the maximum sentence in the case of an adult would be at least 14 years.

22. Accordingly, in his case we will substitute on count 2 for the sentence of six months' detention, a sentence of no separate penalty. The appeals are otherwise dismissed.