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Neutral Citation No. [2022] EWCA Crim 1637

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202202233/A1

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 1 December 2022

Before:

LORD JUSTICE DINGEMANS

MR JUSTICE JOHNSON

THE RECORDER OF LIVERPOOL

HIS HONOUR JUDGE MENARY KC

(Sitting as a Judge of the CACD)

REX

V

PETER ROBINSON

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MISS S HIRST appeared on behalf of the Appellant

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. The appellant, who is now a 36-year-old man, appeals against sentence with leave of the single judge.
2. On 21 October 2021 in the Crown Court at Newcastle-upon-Tyne, the appellant pleaded guilty to the offence of attempted robbery. No evidence was offered against him on count 1, which was an attempted rape and which it is necessary to refer to in the light of some of the submissions made on the appeal against sentence, and a not guilty verdict was entered. On 6 July 2022 in the Crown Court at Newcastle-upon-Tyne the appellant was sentenced to six years and nine months' imprisonment for the attempted robbery.
3. There are three grounds of appeal. The first is that the judge incorrectly placed the offence in Category 1A. The second is that the judge took no account of the fact that the appellant had pleaded guilty to an attempted robbery, rather than the full offence of robbery, and the third ground is that there had been no reduction in sentence for any of the other mitigation that the appellant had raised with the judge.

Factual Background

4. As far as the factual background is concerned, at 11.30pm, so when it was dark and at night, on 20 August 2021 the complainant, who was 30 years old at the time, was walking along a road in the Bensham area of Gateshead. The complainant had been walking alone and knew the area well. As she passed a take-away shop she said she noticed the appellant, whom she did not know, entering a take-away shop and exiting it a short time afterwards. The complainant then heard footsteps behind her and so she began to walk faster. As the complainant got nearer her home she was grabbed by the coat by the appellant from behind and after a struggle, she was dragged into an alleyway.

It is at that stage that there is CCTV which shows her and the appellant at the entrance to the alleyway.

5. Once in the alleyway the appellant threw the complainant to the ground with such force that the complainant's shoes came off and one of her legs was grazed. The complainant began to scream and her screams were loud enough to attract some passers-by, one of whom had heard the appellant demand some money from the complainant. The complainant was later to report to the police that the appellant had been shouting to her about "money" and that the appellant's penis had been exposed. The incident had been caught on CCTV, as already noted.
6. After the offence the appellant could be seen walking away from the alleyway and can be seen on CCTV to be wearing a face mask and to pull a hooded top over his head. At this time there were Covid restrictions in force. A further witness had been passing in a van and thought he heard screaming and pulled his van over. He and another occupant of the van went to investigate. That person and the other occupant of the van subsequently found the appellant and detained him and he was taken to the home of the complainant where she identified him as being her attacker.
7. The appellant was detained until the police arrived and the appellant was interviewed. He said he had been walking and had seen a female who he did not know walking in front of him. The appellant claimed that he had no contact with that female and then a van had pulled up and two men had jumped out and attacked him. The appellant explained that the top button of his jeans had come off and he had been using a makeshift cable as a belt. The jeans were subsequently examined by the police and the appellant's account in that respect verified.
8. When shown the CCTV the appellant denied that it was him who had been captured on it

and stated that he had been under the influence of cannabis.

9. In her victim impact statement made some five months after the attack, the complainant recorded that she had been unable to function, unable to leave the house without company, unable to go out after dark and she was unable to walk her children to school. She felt like a prisoner in her own home. She jumped when there was a knock on the door. She had needed medication, and therapy which she could not yet afford, and she felt as if her and her family's life had been ruined by the appellant. It is also right to record, as it has been emphasised in the submissions, that the complainant complained about the decision to drop the charge of attempted rape and it was also apparent that the complainant believed that she had been about to be raped.

Categorisation

10. The judge categorised this as a 1A offence. This was because the judge said there was serious physical and/or psychological harm caused to the victim, which is harm Category 1, and there was use of very significant force in the commission of the offence, which is culpability A. That gave a starting point of eight years and a range of seven to 12 years. It is right to record that there was only some grazing to the complainant's left leg, but it is apparent from the victim personal statement that there was very serious psychological harm to the complainant who was terrified by the incident and who is suffering continuing psychological injury. The appellant points out that this was because the complainant mistakenly believed that the appellant would rape her, but this was not a surprising belief in circumstances where she had been followed, dragged into an alleyway and pushed to the ground by a person whose penis was exposed. The appellant's penis was exposed because his makeshift belt of a wire cable had failed and he was dressed, according to those who intervened to help the complainant, like a tramp. The appellant

was in that state because of his drug misuse and deteriorating mental health. However, we do not accept that the fact that the complainant was mistaken about the appellant's motives for the attack meant that her fear and psychological state should be left out of account. It was the appellant who decided to attack the complainant as she was walking alone at night and drag her to the alleyway. Her fear and psychological reaction was caused by the appellant's criminal actions as he attempted to rob her. The appellant is being sentenced for the harm his criminal actions caused to the complainant.

11. As far as the use of very significant force for the purpose of the guidelines is concerned, the appellant took hold of the complainant's coat and succeeded in dragging her into an alleyway despite her struggles to get free. Indeed one passer-by thought the complainant was being dragged by her hair but that was plainly a mistaken impression at night. This of itself may not have been very significant force but the appellant then pushed the complainant to the ground with such force that her shoes came off and her left leg was grazed. In our judgment the judge was entitled to find that this was the use of very significant force which places this into Category 1A.

Attempted robbery

12. We turn next to address whether the fact that this was an attempted robbery makes any difference. It is clear that the robbery was in fact not completed so that the appellant was convicted on his own plea only of attempted robbery and not robbery. We also accept that in many cases a reduction to acknowledge that the offence was only attempted and not completed will be appropriate. All however depends on the circumstances. In this case the harm done was to the complainant by the appellant walking behind her, dragging her to the alleyway, throwing her to the floor and the complainant's subsequent psychological harm. All of that was completed and inflicted. The offence was only not

completed because of the intervention of third parties. The judge was right not to make a reduction in this case; compare R v Joseph [2001] 2 Cr.App.R (S) 88.

Reduction for mitigation

13. That brings us to the third ground of appeal and the complaint that mitigation has been left out of account. Complaint is made that the judge did not reflect the appellant's personal difficulties or other mitigation including remorse evidenced by the comments that he had made set out in the pre-sentence report which we have read.
14. The judge balanced aggravating and mitigating factors before deciding to increase the sentence from the starting point of eight years to 10 years. The judge identified aggravating factors and in particular relevant previous convictions. The appellant had 17 previous convictions for 25 offences spanning from January 2001 to 27 November 2018. They included relevant previous convictions for theft and related offences. In particular on 27 November 2018 in the Crown Court at Durham the appellant had been sentenced to two years' imprisonment for an offence of robbery and that had been another attack on a lone female. The judge said that this attack was planned and targeted in the sense that he had seen the complainant and followed her. That account described accurately what had occurred and the judge did not say that there had been extensive planning.
15. In our judgment the judge did take account of mitigation. The judge said in terms:
 - i. "... part of your personal mitigation here shows that you are finally, of your age of 35, beginning to develop some form of limited ... insight, into how this woman must have felt on this night."
16. The judge said that she would factor in the programs which were enabling the appellant to deal with his drug problem and of course it was the drug problem that had led to the deterioration of the appellant's mental health. The judge considered that the aggravating

factors outweighed the mitigating factors and justified the increase before discount for plea. That was a conclusion which was open to the judge on the materials which were before the judge.

17. The judge then gave a full discount of one-third credit for plea. That might have been considered merciful considering when the offer to provide guilty pleas was made but plainly there can be no complaint about that.

Conclusion

18. For all the reasons set out above, this appeal is dismissed. We are very grateful to Miss Hirst for the excellence of her written advice and oral submissions.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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