

IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202202039/A1
[2022] EWCA Crim 1733

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 23 November 2022

Before:

LORD JUSTICE WARBY
MR JUSTICE GRIFFITHS
THE RECORDER OF LIVERPOOL
HIS HONOUR JUDGE MENARY KC
(Sitting as a Judge of the CACD)

REX
V
RICHARD HUNTER-SMITH

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MR J LITTLEHALES appeared on behalf of the Appellant

J U D G M E N T
(Approved)

LORD JUSTICE WARBY:

1. On 3 November 2021, Richard Hunter-Smith pleaded guilty to causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861. On 19 April 2022, he was convicted after a trial of four further offences: aggravated burglary, theft, having a bladed article, and driving whilst disqualified. On 10 June 2022, in the Crown Court at Leeds, he was sentenced for all five offences. Mr Recorder Gordon imposed a total sentence of 21 years' imprisonment.
2. This was made up of 10 years for the section 18 offence and 11 years consecutive for the aggravated burglary, with concurrent sentences of imprisonment of four months, 21 months, and four months respectively for the other three offences that we have mentioned. The appellant was also disqualified from driving for a period of 16 years and until an extended retest is passed. Orders were made for forfeiture and destruction of weapons.
3. Hunter-Smith now appeals against sentence with leave of the single judge.

The facts

4. The aggravated burglary and associated offences were the first in time. The facts were these. Shortly before 2.00am on 1 September 2021 the appellant and an associate called Lee Morton went to the home of Maureen Devanny, aged 78. While Morton waited outside, disguised by a face mask and wearing his jacket hood up, the appellant broke in the door. He went up the stairs, walked into Mrs Devanny's bedroom and turned on the light, waking her up. He was armed with a knife. He shouted: "I want your money. Get out of bed now or I'm going to cut you". When Mrs Devanny was slow to respond the appellant continued to shout and to demand car keys and money whilst ransacking the

- house. He spotted her handbag, her mobile phone and her keys and he took all three.
5. The appellant and Morton then stole Mrs Devanny's Vauxhall car from her drive and set off, with the appellant at the wheel. He later lost control of the car and it crashed into the front garden of another property, leaving the vehicle a total write-off. The pair made off on foot, leaving behind the knife, the purse, the keys, and some bloodstains on the windscreen which were later matched to the appellant's DNA. Morton was arrested near the scene. The appellant made good his escape.
 6. Less than two weeks later, on 13 September 2021, the appellant was with others in an Audi car when it was used as a weapon to assault Mason Rumney, the owner of a Chinese take-away. At about 9.45 pm the car mounted the pavement, was driven at Mr Rumney, and ran him down. The occupants got out. The appellant was armed with a pickaxe. He was heard to shout "get him". The victim fled into the take-away shop and tried to keep the door shut, but the appellant used the pickaxe to smash through the glass and began to assault the victim, shouting: "You're getting it, you're getting it." The police were called to the scene and on arrival found the victim amid a considerable quantity of blood. The court has viewed photographs of the scene.
 7. It proved that in the course of the assault the victim's right-hand thumb had been severed. It could not be re-attached as it had disappeared. The victim also received three gashes to the back of his head which had to be stapled and an open wound to his right foot with a fracture to the bone. The police later found the charred remains of a human thumb in a fire pit in the appellant's father's garden. The Audi car was found one street away from the scene and a machete was recovered.

Arrest and interview

8. The appellant was arrested on 18 September 2021. Interviewed about the earlier

offending, he admitted being at the scene of the crash but not driving the car and he said he had not been at Mrs Devanny's home. He continued to deny all those offences at trial.

9. Interviewed about the attack on Mr Rumney the appellant answered no comment to all questions, but he did plead guilty to the section 18 offence at the plea and trial preparation hearing in November 2021, attracting a reduction in sentence of 25 per cent.

Sentencing materials

10. The appellant was 26 years old at the time of sentence but had already accumulated 37 convictions for 77 offences. Twenty-eight of those were offences of dishonesty, three of them being dwelling burglaries. His first burglary convictions were both in 2013. He also had previous convictions for possessing an offensive weapon.
11. The prolific nature of the appellant's offending meant that the mandatory minimum sentencing regimes for burglary and for having a bladed article both applied, but as the sentences imposed were well above the minimum it is unnecessary to say more about that aspect of the matter. What does bear mentioning is that the appellant's most recent convictions were in March, May, July and October of 2020 for a variety of offences including shoplifting, burglary, harassment, possession of an offensive weapon and perverting the course of justice by harming a juror. As noted in the pre-sentence report, the last of those offences involved assault and intimidation of a victim. Moreover, these convictions resulted in sentences of imprisonment from which the appellant was on licence at the time of the offences with which we are concerned.
12. The pre-sentence report recorded the appellant's explanation of the section 18 offence. This was that it arose from a falling out between gangs of drug dealers. His intention had been, he claimed, to give the victim "a good hiding" by way of a warning but he said it had "got out of hand". He was assessed as posing a high risk of serious harm to known

adults. There was an addendum report ordered that does not seem to have reached the Recorder prior to sentencing but we have seen it and it contained nothing to assist the appellant, quite the contrary.

Sentencing

13. In careful sentencing remarks the Recorder dealt with the offending in date order. He applied the guidelines for aggravated burglary of 2012 (the 2022 guidelines had yet to come into effect). The Recorder identified the offence as one in Category 1 involving greater harm and higher culpability which yielded a starting point of 10 years' imprisonment with a range of nine to 13 years. The Recorder moved upwards from the starting point by one year to reflect the aggravating features, which he identified as the previous convictions and the timing of the offence. He found there was little if any mitigation. There was some expression of regret but little sign of any remorse. The appellant had contested the trial. Sentences of the length we have noted were then imposed for the other three offences on the same indictment. In the course of imposing those sentences the Recorder stated that in making them concurrent he was applying the principle of totality.
14. Turning to the section 18 offence, the Recorder identified the case as one of Category 1 harm because of the loss of a thumb on the victim's dominant hand which was an irreversible injury and a permanent disability which would doubtless have a long term effect on the victim's ability to work and carry out day-to-day activities. Culpability was high, given the attack was a group activity involving significant premeditation and a highly dangerous weapon, in all probability the machete that was found at the scene and it was a prolonged assault. In addition, the Recorder was sure that this was a revenge attack. The category starting point was therefore one of 12 years' imprisonment with a

range of 10 to 16 years.

15. The Recorder determined that this offending was aggravated by the previous convictions and again there was little or no mitigation. The appropriate sentence after a trial was identified as one of 15 years' imprisonment. That was reduced to 11 years to reflect the plea of guilty. The Recorder said that the sentence had to be consecutive because the offending was entirely separate but made a further reduction of one year to reflect the principle of totality.

The grounds of appeal

16. For the appellant, Mr Littlehales, who has appeared before us today, takes no issue with the sentence for the burglary and associated offences viewed in isolation, nor does he quarrel with the discount for plea. He advances two main grounds of appeal.
17. The first is that the notional sentence of 15 years after a trial for the section 18 offence was excessive. It is accepted that the case was in Category 1A, but it is said that the increase of three years above the category starting point cannot be justified by the injury, which although serious and significant was not life-threatening; nor could such an increase be justified by the aggravating feature of the appellant's antecedents which included only two offences of violence, only one of which involved a weapon.
18. Secondly, Mr Littlehales submits that the total sentence failed properly to reflect the principle of totality. There is no quarrel with the Recorder's decision to make the sentence consecutive to one another, but it is submitted that the overall notional sentence before reduction for guilty plea was one of 25 years which is said to be unjust and disproportionate for offences neither of which is at the very top end of the scale. The argument is that the judge could and should have adjusted both sentences downward to a greater extent than he did.

Assessment

19. We are very grateful to Mr Littlehales for his clear and cogent submissions today and we have given careful consideration to all the points he has made in writing and on his feet in court today. We do bear in mind the overall length of this sentence, which is very significant, but we find ourselves unpersuaded that we should interfere.
20. We think it important not to lose sight of a number of points. First, an offender seeking to challenge a sentence for several offences may not “bank” one aspect and then challenge others with a view to reducing the total. This court will look at each element of the sentence and as a whole. In this case, that requires us to examine first the sentencing for the burglary of Mrs Devanny and related offences.
21. Not only was the burglary the appellant's fourth such offence, there were also other aggravating factors that were unquestionably present and may have been in the Recorder's mind but were not expressly mentioned by him. The appellant played the leading role in the offending, his companion was disguised, and it took place in the middle of the night. Moreover, as Mr Littlehales conceded in his written grounds, the offending was committed when the appellant was on licence; the custodial sentence that he was serving did not end until 6 February 2022.
22. Further, the burglary was just one of four offences on the same indictment. The Recorder's approach was to take the burglary as the lead offence with concurrent sentences for the other three. That meant the sentence for the burglary had to reflect the overall criminality. The bladed article offence was clearly an aspect of the burglary itself and taken into account in sentencing for that aspect of the matter, but the overall criminality included further and separate offending of a serious nature which clearly justified a significant uplift in the lead sentence. In all these circumstances an increase of

just one year above the category starting point was modest indeed. But that is explained by the Recorder's reasoning. As we have mentioned, he took account of totality by reducing the overall sentence at that stage of the process.

23. As for the section 18 offence, our assessment is that the Recorder's initial three-year uplift from the category starting point was justified by the nature of the offending and the aggravating features. The amputation, with its life-long effects, placed the case firmly in harm Category 1. There were multiple features of high culpability. The Recorder identified no fewer than four of the guideline features. He might have added the use of the car as a weapon. As the guideline says, such a case may merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features. The Recorder was entitled to conclude that this was appropriate here. Here there were also two aggravating features: not only the previous convictions that were mentioned by the Recorder but also the commission of the offence whilst on licence. There was nothing by way of mitigation to weigh in the balance against those matters.
24. In our judgment, the totality principle was given full and proper effect in this case by the combination of the reduction for totality made by the Recorder when dealing with the first indictment and his further one year reduction in the sentence for the section 18 offence. Accordingly, the appeal against sentence is dismissed.

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

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