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Neutral Citation No. [2023] EWCA Crim 1084

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202301545/A1

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 2 August 2023

Before:

LORD JUSTICE DINGEMANS  
MR JUSTICE GOOSE  
MRS JUSTICE FARBEY DBE

REFERENCE BY THE ATTORNEY GENERAL UNDER  
S.36 OF THE CRIMINAL JUSTICE ACT 1988

REX  
V  
YUSEF MOHAMED

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MR A RICHARDSON appeared on behalf of the Attorney General  
MR N MAJID appeared on behalf of the Offender

J U D G M E N T

LORD JUSTICE DINGEMANS:

1. This is the hearing of an application for leave to refer sentences which His Majesty's Solicitor General considers to be unduly lenient.
2. The respondent, Mr Mohamed, pleaded guilty to two offences of robbery and one offence of unlawful wounding on 20 February 2023 in the Crown Court at Cardiff. He was of previous good character and was entitled to full credit for his pleas.
3. On 12 April 2023 he was sentenced by the Recorder of Cardiff to an overall sentence of four years eight months, made up of concurrent sentences of three years four months' imprisonment for the first count of robbery, four years eight months' imprisonment for the second count of robbery and two years' imprisonment for the unlawful wounding. A sentence of four years eight months with full credit was the equivalent of a sentence of seven years after trial.
4. It is submitted on behalf of the Solicitor General that the overall sentence was too low. The judge should have characterised this as a Category 1 and not Category 2 offence. There should have been a greater uplift for aggravating factors and for the second offence.
5. It was submitted on behalf of Mr Mohamed that the sentence was not too low. There had been full credit for pleas, there was substantial personal mitigation and the sentence had been correctly calculated.
6. We are very grateful to Mr Richardson and Mr Majid for their helpful written and oral submissions.

**The factual circumstances**

7. The first robbery took place on 22 November 2022 when the victim, a 77-year-old lady

whose name it is not necessary to give, visited the Les Croupier Casino at Leckwith Retail Park. She attended the casino alone and gambled there through the evening. She won £850 during the course of the evening and CCTV footage shows her collecting those winnings and being observed by Mr Mohamed who was standing behind her in the queue.

8. The victim left the casino at about 5.00 am and travelled back to her home in Barry. She was followed on the journey by Mr Mohamed who was driving his own taxi. When the victim arrived at her home, she parked her car outside her front door. She got out of the car and was confronted by Mr Mohamed who forcefully grabbed her handbag. He then ran back to his vehicle and drove away. The victim's handbag had contained £850 in cash, a mobile telephone, her glasses, her keys and other items. As her keys had been taken she had to knock on the door of her house to be let in and her husband was able to let her in.
9. The second robbery and the unlawful wounding took place on 8 January 2023 when the victim attended the same casino. She left at about 3.45 am and was again followed by Mr Mohamed to her home. On this occasion what transpired was seen on CCTV that had been installed at the victim's home following the robbery on 22 November 2022. We have been shown the footage this morning very helpfully by Mr Richardson. The footage shows that Mr Mohamed approached the victim outside her front door in what appears to be a sort of car port. Her bag was over her shoulder. Mr Mohamed grabbed the bag and the victim was pulled to the floor. The victim was then dragged along the floor by Mr Mohamed until she released the handbag and Mr Mohamed ran away. As a result of being pulled to the floor the victim sustained a wound above her left eyebrow which required at least six internal stitches and 14 external stitches and she suffered a fracture to

her thumb. The victim has been left with a permanent facial scar and we have seen photographs of that.

10. In the morning of 8 January 2023, Mr Mohamed was arrested. His car was searched and the victim's car key and mobile phone were recovered. He was interviewed and he stated that he worked as a mini-cab driver and had been working on 7 to 8 January but could not remember what time he started. He then answered no comment.

**The sentence**

11. Mr Mohamed is a 38-year-old man who was of previous good character. He lived with his wife and mother, both of whom had health issues and were dependent on him for care. Mr Mohamed had started a restaurant business which had failed and he had developed a persistent gambling habit after suffering a family bereavement. There were numerous character references provided on behalf of Mr Mohamed talking about his qualities as a friend and neighbour and his remorse. The pre-sentence report identified that there was an element of minimisation of his offending but the judge found that there was genuine remorse.
12. A victim personal statement outlined the effect of the offences on the victim. She was scared and anxious. She had lost a camera containing family photos. She felt petrified by the second attack and described the painful medical treatment for her hands and face. She spoke of being withdrawn, nervous and depressed. She now slept with the light on and would only go out with a family member. She would not return to the casino. She was worried that Mr Mohamed might attack her again after release.
13. At the sentencing hearing below prosecution counsel provided a note which submitted that for the purposes of the sentencing guideline the two robbery offences fell within harm Category 2 and culpability Category B. The note submitted that the unlawful

wounding offence fell within Category 3 and Culpability A of the offence-specific guidelines.

14. At the sentencing hearing itself, different prosecution counsel submitted that the harm in count 2 (the second robbery) in fact fell within harm Category 1. Defence counsel submitted that the categorisations in the previous note were correct and that count 2 should fall within Category 2 harm.
15. When sentencing, the judge said that she would pass a lead sentence in respect of count 2 with an uplift to reflect counts 1 and 3. She found that count 2 fell within Culpability Category B because none of the Category A or C matters applied. The judge found that harm was less easy to categorise, noting that the victim had a scar and she was caused significant psychological harm. It sat, the judge found, on the cusp of Category 1 and 2. The judge found that the offending was aggravated by the fact that the offender targeted a vulnerable victim for a second time in relation to count 2, there was some planning (albeit not significant planning) and the fact that the offending took place outside the victim's home address.
16. The judge found that the offence was mitigated by the previous good character and took into account the fact that the offender was the sole primary carer for dependant relatives. The judge indicated that after a trial the sentence passed on count 2 would have been one of seven years. Allowing a one-third credit for guilty pleas the sentence was four years eight months. In relation to count 1 the sentence after trial would have been five years. With credit for plea that was reduced to three years four months. In relation to count three, the offending fell within Culpability A and harm Category 2. The sentence after trial would have been three years and a one-third credit brought it down to two years. The sentences on counts 1 and 3 were concurrent with count 2 because the overall

sentence of seven years reflected all of the criminality.

17. Since sentence, a prison report has been made available to this court which shows that Mr Mohamed has been a model prisoner and his risk of re-offending is very low. Mr Mohamed is struggling with the fact that because of the length of his sentence he cannot be considered for home detention curfew.

#### **The offence-specific guideline**

18. The guideline provides three culpability categories: A, for high, B for medium and C for lesser culpability and three harm categories: 1, 2 and 3. It was common ground that the offence was Culpability B and it is therefore not necessary to set out the categories, although Mr Richardson submitted that the judge's approach to Culpability B had been generous. In our judgment, in circumstances where the judge needs to be sure of a higher culpability factor before sentencing for that category, the judge approached the guideline in relation to culpability properly.
19. The dispute lies in relation to the harm categories. Harm Category 1 applies where there is serious physical and/or psychological harm caused to the victim or a serious detrimental effect on the business. Harm Category 2 applies where there is a case where characteristics for Categories 1 or 3 are not present. Harm Category 3 applies where there is no or minimal physical or psychological harm according to the victim and no or minimal detrimental effect on the business.
20. Category B1 has a starting point of five years and a range of four to eight years. Category B2 has a starting point of four years and a range of three to six years. It is notable that the starting points of Category B1 of five years and Category B2 of four years are very close together.

#### **The appropriate sentence**

21. In our judgment the judge adopted a permissible approach in treating count 2 as the lead offence and increasing that sentence to reflect all of the criminality, having regard to the Sentencing Council Guideline on Totality and issues of proportionality.
22. In our judgment, the issue of whether the second offence of robbery was Category 1 or Category 2 was finely balanced and although the scar could have been described by some judges as serious physical harm, the judge was entitled to find that it was on the cusp of the two categories. That would give a starting point of four-and-a-half years for count 2, being halfway between Category 1B (five years) and Category 2B (four years). That starting point needed to be increased to reflect the aggravating factors of planning, targeting an elderly victim, following the victim to her home, the fact that the offending took place at night and the location of the offending outside the victim's home. There were important mitigating factors of previous good character, remorse and the fact that Mr Mohamed was acting as a carer for his wife and mother. Some judges may have considered that they balanced out, others may have taken the aggravating factors to lead to a slight increase on the four-and-a-half year period.
23. There then needed to be an increase to reflect the separate criminality and harm of the robbery on count 1, which was the first robbery, and the unlawful wounding, while being careful to avoid double-counting the physical and psychological factors before discounting for totality. In our judgment we are unable to say that an increase of two years six months, if aggravation and mitigation balance out, or two years if aggravating and mitigating factors had led to an increase of the starting point to five years for the other offending, having regard to principles of totality and proportionality was unduly lenient. It might have been merciful, it might have been lenient, but it was not unduly lenient, and we refuse leave to make the application.

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