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IN THE COURT OF APPEAL
CRIMINAL DIVISION



NCN: [2023] EWCA Crim 771

CASE NO: 2023 00509 A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 21 June 2023

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE JACOBS

RECORDER OF LONDON
HIS HONOUR JUDGE LUCRAFT KC

REX

v

CALLUM CURTIS JOHNSON

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MR D WATTS appeared on behalf of the Appellant

J U D G M E N T

MR JUSTICE JACOBS:

1. On 18 November 2022 in the Crown Court at Sheffield the appellant pleaded guilty to a single offence of attempted robbery contrary to s.1(1) Criminal Attempts Act 1981. On 27 January 2023 he was sentenced by Ms Recorder Davies to an extended sentence of 6 years, comprising a 4-year custodial term and a 2-year extended licence period. He now appeals against sentence with the leave of the single judge.

The facts

2. On 19 October 2022, the complainant Timothy Halliday, who was aged 65 at the time, was driving home from Manchester in his electric BMW. The car had a digital key and was powered by electric charge. At around midnight Mr Halliday stopped at a car park in Eldon Street in Sheffield to charge the car. He sat in his car whilst it was charging and noticed a male, the appellant, who was not wearing a top, walking around the front of his vehicle. Mr Halliday was concerned, but the appellant went out of sight. Mr Halliday then noticed that his car had stopped charging.
3. He got out of his car to investigate. The appellant stepped out from behind the charger. Mr Halliday asked him what he was doing and they had a conversation about the car. As Mr Halliday walked towards the charger to re-start the charge, the appellant walked towards the car door and tried to get in. Mr Halliday then tried to stop him, and there was a struggle during which Mr Halliday was spun round with force and ended up on the floor. The appellant then tried to start the car but could not work out how to do so without the digital key. There was a conversation between them through the closed window of the car as the appellant panicked at not being able to start it. Once he realised he could not start the car, he tried to get out, but he could not. Mr Halliday instructed him how to get out. The appellant exited the vehicle and told Mr Halliday to give him the key. At this point a police officer arrived at the scene and the appellant ran off. The incident lasted around 5 minutes. Mr Halliday sustained cuts and grazes and pain to his head.
4. Two police officers had been investigating another incident earlier that evening and asked CCTV operators to follow the appellant from the scene. He was located at the Salvation Army Hostel in the centre of Sheffield. Police attended and he was arrested. En route to custody he told the officer he did not know why he had done what he did and he should not have done it. At the custody desk he apologised and said he did not mean to do it and did not mean to hurt Mr Halliday. He then made no comment in interview. In due course he pleaded guilty to the offence, and it was accepted by the prosecution and the recorder that his plea justified the full 33 per cent reduction from the sentence that would have been imposed after conviction at trial.

The sentencing materials and sentence

5. The appellant was aged 35 at sentence. He had 11 convictions for 17 offences spanning from 2004 to 2022. His earlier offences included affray, possessing Class C drugs, resisting a constable, driving offences and common assault. In 2011 he was sentenced to 3 years' imprisonment for a s.20 wounding. In 2017 he was sentenced to 4 years' imprisonment for robbery. This was a robbery on a 91-year-old man, who had won some money at a casino and was on his way home on a mobility scooter. The appellant had followed him, twisted his arm, and robbed him. His most recent offences were for criminal damage and possessing a knife in a public place. For the latter he was sentenced to 3 months' imprisonment on 8 November 2022. The present offence was committed whilst he was on bail awaiting sentence for that knife offence after having pleaded guilty in

late October 2022.

6. A pre-sentence report was available to the judge. The appellant did not emerge well from that report, and there was very little in there which provided any encouragement for the future or any substantial mitigation. The appellant said, contrary to his plea, that he had no intention to rob the car. He attributed his behaviour to having been given a spiked drink by an unknown female when waiting outside the chicken shop; a suggestion which the author of the PSR unsurprisingly found to be questionable. When asked about the impact on the victim, the appellant said he did not know, "but he'll be OK"; adding "He's fucked in the head - I'm not though". The PSR author had accessed previous probation records which had highlighted concerns around the appellant's mental health, which was considered to be linked to cocaine and cannabis use. The prison authorities indicated that there were no current concerns about his mental health, although there had been such concerns during a previous term of imprisonment, as we have said, and there had been a suicide attempt in the past. On the positive side, the appellant had engaged well with probation when on licence for the robbery offence. The author concluded that the appellant posed a high risk of causing serious harm to others, with lone/elderly/vulnerable males seemingly targeted by him. The author's conclusion was that the nature and seriousness of the offence, alongside the established pattern of violent offending, required a period of imprisonment to manage current risk.
7. The victim had made a personal statement. He described being unnerved and this turning to fear as the incident started. On his way home, he replayed the event over and over in his mind and thought that he had acted foolishly in trying to defend his car. After a few weeks, he said that he was able to come to terms with what had happened and had learned lessons should such a situation arise again. He described himself as being mentally strong enough to get past that. Mr Halliday expressed concern that, for many people, situations such as these can be life-changing events. The effect of his statement however was that this has not been life-changing for him. He is obviously a robust individual, as shown by his ability to drive home to Manchester after the incident and what he said in the victim personal statement.
8. The Crown submitted at the sentencing hearing that this was a Category 2B offence under the applicable sentencing guidelines with a starting point of 4 years and a range of 3-6 years. There was also potentially available an extended sentence if the minimum custodial term would be 4 years and if a finding of dangerousness were to be made.
9. The recorder considered this was indeed a Category 2B offence, interpreting Mr Halliday's statement as describing a more than minimal psychological effect. She referred to the appellant's previous offending, and the fact that he was on bail when the offence was committed. She identified aggravating features of the offence in addition to his previous convictions: the location and timing of the offence late at night, and the high value of the BMW that he was trying to steal. She had previously referred to the fact he was on bail, and there was also a clear implication he was under the influence of drugs or alcohol at the time. She concluded that the appellant was dangerous and that a custodial sentence of 4 years with a 2-year extension period was therefore appropriate.

The argument on appeal

10. On behalf of the appellant, Mr Watt submits that this was not a Category 2B offence. It was a case of minimal force, meaning that it was C for culpability. There was no or minimal physical harm to the victim, meaning it was category 3 for harm. Since the correct classification was 3C, the relevant guideline provided for a starting point of 1 year with a range of a community order to 3 years. He also pointed out that this was an attempt: the complete offence of robbery was not committed. A 4-year custodial term was therefore

inappropriate, bearing in mind the appellant's guilty plea. An extended sentence was therefore not available, and in any event, he submitted that the Recorder was wrong to consider the appellant dangerous for the purpose of the extended sentence provisions.

Discussion

11. In relation to the length of sentence, we consider that the submissions of Mr Watts have some force. We consider that the recorder was justified in her conclusion that this went beyond the use of minimal force. Mr Halliday was involved initially in a struggle and was then subjected to force which caused him to fall to the ground. However, we can see that the degree of force in the present case was close to being minimal, and therefore the case only just came within category B for culpability. We do agree, however, that there was minimal physical or psychological harm to the victim. It was therefore Category 3B under the guideline with a starting point of 2 years and a range of 1-4.
12. We consider that, even bearing in mind this was an attempt, the aggravating features of this case are such that a sentence at the top of that range, prior to credit for plea, is appropriate. The appellant had a record for violence and indeed other offences. That record is a serious one. The appellant had only recently completed his 4-year sentence for robbery. That case involved the targeting of a lone vulnerable individual, and so did the present case. This offence was carried out late at night. It involved an attempt to steal a high value car. The appellant had only recently been granted bail for the knife offence, and the present offence was committed whilst under the influence of alcohol or drugs. Accordingly, we consider that a 4-year sentence prior to credit for plea is appropriate. Indeed, in view of the aggravating features of this case, including the previous convictions, we would have formed the same view even if this was a category 3C offence.
13. Since the appellant is entitled to full credit for his plea, the sentence should be reduced from 4 years to 32 months' imprisonment. That means that an extended sentence cannot be imposed.
14. Accordingly, we allow the appeal against sentence, and substitute for the sentence imposed a sentence of 32 months' imprisonment. The appellant will be entitled to be released after having served half of that sentence but will then be on licence and liable to recall if further offences are committed or the licence conditions are not adhered to.

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