

RWARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.



IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT SNARESBROOK
(HER HONOUR JUDGE GRACE AMAKYE) [T20227907]

Case No 2024/00855/A1[2024] EWCA Crim 1321
2024

Tuesday 15 October

B e f o r e:

LORD JUSTICE JEREMY BAKER

MRS JUSTICE FARBEY DBE

THE RECORDER OF LEEDS

(His Honour Judge Kearl KC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

R E X

- v -

ZOHIRUL HAQUE

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Mr R Barrett appeared on behalf of the Appellant

Mr T Manhire appeared on behalf of the Crown

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 26 October 2023, in the Crown Court at Snaresbrook before HHJ Amakye and a jury, the appellant was convicted of one offence of robbery and one offence of possessing a firearm at the time of committing an offence. On 5 February 2024, the judge sentenced him for both of those offences and for one offence of possessing a controlled drug of class A, namely heroin. For the robbery, she imposed an extended sentence of 12 years comprising a custodial term of 10 years and an extended period of licence of 2 years. For the firearm offence, which related to an imitation gun, she imposed a sentence of 5 years' imprisonment, to run concurrently. For the drug offence, she fined the appellant £75 or 1 day's imprisonment, which was deemed to have been served by time spent remanded in custody. The total sentence was therefore an extended sentence of 12 years.

2. The appellant appeals against sentence by leave of the single judge. There is no challenge to the sentence for the drug offence. The grounds of appeal relate to the sentences for the robbery and possession of the imitation firearm.

Facts

3. On 3 October 2020 the appellant was stopped and searched by the police who found a small amount of heroin in his pocket. He subsequently pleaded guilty to the offence and was committed to the Crown Court for sentence. This offence was unrelated to his other offending and, as the sentence is not the subject of specific grounds of appeal, we need say no more about it.

4. On the morning of 24 November 2022 the appellant had entered a family run newsagents in the Bethnal Green area of London on at least one occasion. Working behind the counter at the time was a Mrs Patel and her twenty-one year old niece, Dhruvi Patel. The appellant returned to the newsagents at around 1.30 pm wearing goggles and a scarf obscuring his face. He produced an imitation gun which was around ten inches long and pointed it at the women whilst shouting that he would shoot if his demands for money were not met. He managed to take around £200 before running off.

5. Police officers were alerted after the shop panic button was operated. Officers attended the shop, and CCTV evidence of the offence was seized.

6. On 25 November 2022, police officers in the Bethnal Green area identified the appellant who was arrested. In interview the appellant denied being the person in the CCTV footage and was released as there was insufficient evidence at that stage to identify him as the perpetrator of the robbery. A further witness subsequently identified the appellant as being responsible for having committed the offence and the appellant was arrested again on 5 December 2022. The firearm used in the commission of the offence was not recovered but the Prosecution accepted that it was an imitation.

7. The appellant was aged 39 at the date of sentence. He had 9 previous convictions for much less serious offending. All his previous convictions related to offences committed in 2007 and 2008.

8. In relation to the imitation firearm, the appellant was convicted of an offence listed in Schedule 20 to the Sentencing Act 2020. At the date of conviction the appellant was aged 38. In accordance with section 311 of the Sentencing Act 2020, the judge was obliged to impose a minimum sentence of 5 years unless the Court was of the opinion that there were exceptional circumstances which related to the offence, or the offender, that justified not

doing so.

Sentencing Remarks

9. In her sentencing remarks, the judge applied the relevant sentencing guidelines for each offence. In relation to the robbery, she concluded that the offence fell within level A (i.e. high) culpability. There was – and could be – no dispute before her about the level of culpability which plainly fell within level A as the appellant had produced an imitation firearm to threaten violence.

10. In relation to harm, the judge noted that the Prosecution had in a written sentencing note suggested that the offence fell within category 2, i.e. the middle level of harm. She indicated that prosecuting counsel had in oral submissions accepted that the level of harm was category 1, i.e. the highest level. In a helpful Respondent's Notice, the Prosecution has informed this court that the judge misunderstood the position. The Prosecution did not accept that category 1 harm applied but had sought to assist the Court with a category range for a category 1A offence in case the judge herself concluded that category 1 harm applied. The Prosecution position remained that the robbery involved category 2 harm, which was also the appellant's position.

11. The judge did not agree with the parties but concluded that the level of harm fell within category 1 on the basis that Dhruvi Patel had suffered serious psychological harm. She concluded, therefore, that the robbery was a category 1A offence, with a starting point of 8 years' custody and a category range of 7-12 years' custody. She found that there were aggravating factors which made the offence more serious. The offending had involved significant planning in the form of the earlier visit or visits to the shop. The victims were females alone in the shop and so were vulnerable. The appellant had attempted to conceal his identity.

12. The judge had the benefit of a psychiatric report, a psychological report and a detailed pre-sentence report. We have considered those reports. They do not indicate that the appellant's culpability was reduced because of any mental health difficulties. There can be no criticism of the judge's approach to the reports.

13. The judge considered that the appellant met the test of dangerousness under the relevant statutory provisions such that he should be subject to extended licence. In this way, she reached the sentence of 12 years for the robbery comprising a custodial element of 10 years and an extended licence period of 2 years as we have already described.

14. In relation to the sentence for the imitation firearm, the judge said: "For the record, the firearm – imitation firearm – falls within category 2 [of the relevant guideline] because it is an imitation, and medium culpability, four years, with a range of two to six years." We have had difficulty in following these remarks which do not appear to tally with the guideline. Nevertheless, the sentence of 5 years for the imitation firearm offence was (in the absence of exceptional circumstances) the statutory minimum. The sentence for the imitation firearm offence was made concurrent to the robbery offence.

Grounds of Appeal

15. On behalf of the appellant, Mr Richard Barrett submits that the sentences for the robbery and the imitation firearm offence were manifestly excessive because the judge misapplied the sentencing guidelines when considering the level of harm and was wrong in her categorisation of the offences. He submits also that the judge did not pay sufficient regard to the mitigation advanced on behalf of the appellant.

Discussion

16. We deal first with the imitation firearm. There were no exceptional circumstances to warrant a lesser sentence than the five-year statutory minimum. No exceptional circumstances were advanced. Given that the judge imposed the statutory minimum sentence, any errors in categorising that offence were immaterial. The firearm sentence is neither manifestly excessive nor wrong in principle.

17. The real issue is whether the judge was right to categorise the robbery offence as having caused serious psychological harm to Dhruvi Patel. In *R v Chall* [2019] EWCA Crim 865, [2019] 4 WLR 102, this court held that expert evidence is not an essential precondition of a finding that a victim has suffered severe psychological harm. A judge may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a victim personal statement ("VPS") and may rely on his or her observation of the victim whilst giving evidence. Whether a VPS provides evidence which is sufficient for a finding of severe psychological harm depends on the circumstances of the particular case and the contents of the VPS.

18. In this case, the judge had the benefit of seeing and hearing Dhruvi Patel give evidence. We do not have that advantage. In accordance with *Chall*, we acknowledge that the judge was entitled to rely on her own observation. We have however been provided with a transcript of Dhruvi Patel's evidence. On the basis of what she said in evidence, we cannot understand how the judge could conclude that she had been caused serious psychological harm. There is nothing in the transcript to suggest that the robbery caused category 1 harm.

19. Dhruvi Patel provided a VPS in December 2023 in which she said that she felt really scared during the robbery and was left really shaken. She still had flashbacks and remained too scared to work in the shop. The process of giving evidence in court had brought back memories of what had happened in the shop.

20. We do not underestimate the effects of the robbery on Dhruvi Patel which included being too scared to go back to working in the family shop. Neither of the victims could have known that the gun was an imitation. As the CCTV powerfully shows, this was a terrifying offence for which the appellant could expect severe punishment. The seriousness of the offence was aggravated by (among other things) the appellant's attempt to conceal his identity. There was in truth no mitigation other than that the appellant had not offended for a long time and had not previously committed an offence of such seriousness. We reject the submission that the judge ought to have given these factors greater weight.

21. That said, we agree that there was insufficient evidence for the judge to conclude that the offence caused serious psychological harm and so the judge fell into error by treating the robbery as a category 1A offence. The judge ought to have categorised the offence as category 2A, which would reflect more than minimal but less than serious harm to Dhruvi Patel. The starting point for a category 2A offence is 5 years' custody. The category range is 4-8 years' custody. The judge's error means that the custodial element of 10 years was manifestly excessive and must be quashed. The seriousness of the appellant's offending and the overall impact on Dhruvi Patel means, however, that we would place the offence at the top of the category 2A range.

22. The judge was entitled to conclude that the appellant is dangerous. There is no realistic challenge to the extended licence period.

23. The result is that we quash the extended sentence of 12 years for the robbery. We substitute an extended sentence of 10 years, comprising a custodial term of 8 years and an extended licence period of 2 years. The sentences for the other offences remain unchanged and remain concurrent with the sentence for the robbery. To this extent, this appeal is allowed.

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

Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
