



Neutral Citation Number: [2024] EWCA Crim 1629

CASE NO: 201801253/A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT PLYMOUTH

HHJ LAWRIE T20177049/T20187035

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 19 December 2024

Before:

LORD JUSTICE LEWIS
MR JUSTICE GARNHAM
MR JUSTICE CONSTABLE

REX
V
LUKE VINCENT ROUSE

Computer Aided Transcript 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)

NON-COUNSEL APPLICATION

J U D G M E N T

1. MR JUSTICE CONSTABLE: The applicant renews his application for leave to appeal against a sentence of 11 years and three months imposed on 19 January 2018. The application for leave was originally accompanied by an application for an extension of time of 35 days. The single justice determined, in addition to the fact that the grounds of appeal were unarguable, that there was no good reason for the extension of time. This is because the delay was caused by the applicant on two occasions failing to attend on his legal advisers when visiting him in custody for the purposes of preparing his application for appealing. We agree that this does not amount to a good reason.
2. The renewal application before us is also out of time by some 2,170 days on the basis that the applicant had only recently found out that it was possible to renew his application. This similarly is not a good reason for extending time. The application to extend time is refused.
3. Nevertheless, for completeness we deal with the substance of the applicant's application for leave to appeal in circumstances where we consider that it is not reasonably arguable that the sentence imposed was manifestly excessive.
4. The applicant was sentenced to a total of 11 years and three months for a number of offences across three indictments as follows.

Indictment one

Count 1, wounding with intent, nine years' imprisonment.

Count 2, false imprisonment, nine years' imprisonment concurrent.

Count 4, burglary, one year's imprisonment consecutive.

Count 5, fraud, four months' imprisonment consecutive.

Count 6, fraud, four months' imprisonment concurrent.

Count 7, damaging property, two months' imprisonment concurrent.

Indictment two

Count 1, handling stolen goods, four months' imprisonment consecutive.

Indictment three

Count 1, attempting to escape from lawful custody, three months' imprisonment consecutive.

Count 2, assault by beating, four months' imprisonment consecutive.

Count 3, assault by beating, four months' imprisonment concurrent with count 1.

5. The subject matter of the counts on the first indictment relate to the complainant, Mr Kelly. He was a man in his forties who had learning difficulties. Mr Kelly had been allowing the applicant to stay at his flat in Plymouth in the weeks leading up to the offending as Mr Kelly had thought that the applicant was homeless.
6. On 1 April 2017 the applicant and others were at Mr Kelly's flat and had been taking drugs. It appears that the applicant subsequently took the view that Mr Kelly had been flirting with the applicant's girlfriend. The applicant called Mr Kelly a "nonce" and picked up a heavy torch and struck Mr Kelly to the head with it. The applicant thereafter got a knife and made Mr Kelly strip to his boxer shorts. The offending went on for about two hours during which time Mr Kelly tried to leave his flat. The applicant had ripped

off the wardrobe door and had used that to assault Mr Kelly who was also tied up with a broadband cable and made to lie on the floor where he had been struck. Threats had been made to cut off Mr Kelly's testicles and he was struck with a gas canister and a gas re-filler. He was burned with the lit spray from a deodorant. The applicant had also been described as putting a knife in Mr Kelly's mouth.

7. Mr Kelly's bank card was found and his PIN was demanded. Mr Kelly eventually fled his flat and was seen by a passerby at 2.00am. The applicant returned to the flat later and various items including a PlayStation and a phone were stolen. The stolen bank card was subsequently used to withdraw £430 which was used to book a Travelodge in Plymouth. The PlayStation and phone were subsequently taken to a Cash Converters.
8. Mr Kelly was taken to hospital where the most serious injury was noted to be a six centimetre laceration to his head which required nine staples. Dominic Kelly also had around ten knife wounds to his upper body and arms and numerous bruises.
9. The applicant was arrested on 19 April 2017. After a no comment interview he was alone with his solicitor in a room with a tape recording machine which he then smashed and tried to swallow some of the glass.
10. In respect of count 1 on the second indictment, the applicant had also handled a music mixer, a record deck and a pair of speakers which had been taken from a dwelling on 28 February 2017. Later that day the applicant had sold these items at Cash Converters using someone else's account.

11. In respect of the three counts on the third indictment, the applicant appeared on 20 April 2017 at Plymouth Magistrates' Court. When there he attempted to leap out of the dock of the court. Dock officers tried to prevent the applicant from escaping and the applicant then violently resisted those attempts by kicking out at the officers. A number of those kicks made contact with the officers including to the groin of one of the officers. The applicant subsequently pushed two officers down some stairs which led out of the dock. Three dock officers subsequently received medical attention for their injuries.

12. Counsel for the applicant, who did not appear on the renewal application, took no issue with the nine years' imprisonment given in respect of the false imprisonment given the aggravating features. He argued that it had been wrong to use the same aggravating features to reach a nine-year sentence in relation to the wounding with intent, although recognised that given this was concurrent it made little practical difference. Counsel accepted that the seven months consecutive in relation to the three counts on the third indictment could not be criticised. However, it was argued that the increase to 11 years and three months by the addition of consecutive sentences of one year for burglary, four months for fraud and four months for handling stolen goods was wrong in principle where the matters were intimately connected with the subject matter of count 1 and failing to take account of totality led to a manifestly excessive sentence.

13. False imprisonment is usually accompanied by a number of other offences including threats to kill, assault and theft. The usual course is for the false imprisonment to be taken as the lead offence with the other offences taken as aggravating features to the false imprisonment and given concurrent sentences. In the present case, whilst it would have

been open to the sentencing judge to conclude that the burglary and fraud were intimately a part of false imprisonment, such that these offences ought to have been taken account of as an aggravating feature of the false imprisonment and sentenced concurrently, in circumstances where after the false imprisonment had concluded the applicant returned to the property and carried out a burglary it was not an error to treat this offending separately. The judge was undoubtedly entitled, subject to the principle of totality, to deal with the subject matters of the second and third indictments consecutively.

14. If one were to approach the lead offence as the false imprisonment aggravated by the grievous bodily harm, the sentence of nine years for false imprisonment reflected a sentence of 12 years before credit for plea. There is no sentencing guideline which relates to false imprisonment. As made clear in Attorney General's Reference Nos 102 and 103 of 2014 [2014] EWCA Crim 2922 each case is fact-specific. In that case it was observed that even absent hostage-taking and demands for ransom, double figures will still be attracted regardless of the degree of violence meted out, although in the subsequent case of R v Croxall [2016] EWCA Crim 1344 it was pointed out that this was not authority for contention that every case must attract a starting point of 10 years.

15. In Attorney General's Reference Nos 92 to 93 of 2014 [2014] EWCA Crim 2713, the court identified the relevant factors for assessing gravity as including the length and circumstances of detention, including location and method of restraint, the extent of violence, the involvement of weapons, demands and threats to others, the effect on the victim and others, the extent of the planning, the number of offenders, torture or humiliation and any link to previous criminal behaviour and any particular vulnerability

of the victim.

16. There are clearly significant aggravating features in the present case. The victim was vulnerable and the offending took place in his own home. The violence inflicted was considerable and amounted to significant albeit not life-changing injuries. There was considerable humiliation and terrorising and conduct amounting to what can only be called torture. The victim was restrained and the applicant used the detention to extract financial benefits in terms of the bank card and its subsequent use.

17. Whilst each case turns on its own facts, Xiao BO Yan and Sin Jung Lin [2009] EWCA Crim 2686 may be illustrative in the present context. The defendants kidnapped and detained a university student to obtain money designated for his tuition fees and expenses. They threatened him with imitation handguns and punched him in the face. They held him over days and terrified him. Whilst this was more serious in that it was preplanned and the defendants successfully extracted some £14,000 and another £6,000 was sought, the violence inflicted on the victim was significantly less. Although the precise discount for a very late plea is not (inaudible), some discount was applied when arriving at a sentence of eleven-and-a-half years. On the basis of this case and particularly given the level of violence involved, the sentencing judge would have been entitled to impose a sentence in excess of 12 months in respect of the wounding with intent and false imprisonment without taking account of the subsequent burglary and fraud and prior to credit for plea. The sentences of one year and four months were not in themselves manifestly excessive and whilst the effect of the consecutive application led to a severe sentence, it was not manifestly excessive given the totality of offending. The

application for leave to appeal is therefore refused.

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