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IN THE COURT OF APPEAL
CRIMINAL DIVISION
ON APPEAL FROM THE CROWN COURT
LEEDS
MR RECORDER KEALY KC T20210529 / T20220459 /
T20220456 / T20220086
CASE NO 202300962/B1



[2024] EWCA Crim 941

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 17 July 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE STACEY

THE RECORDER OF WOLVERHAMPTON
(HIS HONOUR JUDGE MICHAEL CHAMBERS KC)
(Sitting as a Judge of the CACD)

REX

V

GURRAJ SINGH MATHARU

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MR I KHAN appeared on behalf of the Appellant.

J U D G M E N T

MRS JUSTICE STACEY:

1. The appellant appeals against sentence with leave of the single judge. On 24 February 2023, in the Crown Court sitting at Leeds, before Mr Recorder Kealy KC, the appellant fell to be sentenced for various offences arising out of four separate indictments, having previously pleaded guilty on 3 November 2022,. It was a complex sentencing exercise for eight indictable offences and a number of Schedule 51 driving matter offences for disparate matters which were committed on various dates between 1 June 2019 and 7 January 2022. He had not been charged with the offences that occurred in 2019 until May 2021 and much of the subsequent delay was because the appellant was not fit to plead and able to enter pleas until the autumn of 2022. There was no transcript of the sentencing hearing and the Recorder's sentencing remarks. The DARTS equipment was faulty and although a hand-held recording device was placed in the court, it has not been possible to transcribe it. Neither counsel nor the Recorder had kept a note of what was said beyond recording the sentences passed. This Court does however have the benefit of the written sentencing notes prepared by both counsel, a pre-sentence report, a number of psychiatric reports, together with all the prosecution papers.
2. The appellant received a total sentence of 6 years' imprisonment made up as follows:
For the first indictment (T202105294), for having a bladed article (a machete) on 22 September 2019 (count 2), he received an immediate term of 9 months' imprisonment; for being concerned in the making of an offer to supply a Class B drug (count 4), a sentence of 9 months' imprisonment concurrent to the sentence for the bladed article, and for being concerned in the making of an offer to supply a Class A drug (count 5), an immediate term of imprisonment of 4 years to be served concurrently to the other two

sentences.

3. For the second indictment (T20220459), for dangerous driving, which occurred on 13 July 2021 (count 1) he was sentenced to an immediate term of imprisonment of 12 months and disqualified from driving for 3 years with an uplift of 2 years pursuant to *R v Needham & ors* [2016] EWCA Crim 455 and section 25B of the Road Traffic Offences Act 1988. It was also recorded that he would remain disqualified until an extended test was passed. For the offence of driving whilst disqualified (count 2), he was sentenced to a term of 3 months' imprisonment and his driving licence was endorsed, and for the related summary offence of driving whilst over the prescribed limit of alcohol, a term of 3 months' imprisonment and a disqualification from driving for 3 years imposed. The sentences were ordered to be served concurrently to each other and consecutive to the sentences for the first indictment.
4. For the third indictment (T20220456), the appellant was sentenced to 9 months' imprisonment for each of two counts of assault occasioning actual bodily harm, which took place on 20 August 2021, which were ordered to run concurrently to each other and consecutive to the sentences for the first indictment.
5. For the final and fourth indictment (T20220086), the appellant had been indicted for stalking involving serious alarm and distress. However, he pleaded guilty to the lesser offence of stalking contrary to section 2A of the Protection from Harassment Act 1997, which was acceptable to the prosecution. The offence took place between April 2021 and January 2022. He was sentenced to a term of 3 months' imprisonment to be served

consecutively to the sentence for the first indictment. A restraining order for an indefinite period was imposed in respect of three complainants involved in the third and fourth indictments and a deprivation order was made for the bladed article (the machete in the first indictment) and forfeiture and destruction of the drugs and related paraphernalia was also ordered.

6. The facts were these. In relation to the first indictment, on Sunday 22 September 2019, a member of the public reported a disturbance of four men in Moorfield Road, Armley, Leeds. It was reported that one of the men had wielded a machete and threatened an unidentified male with it. Police were informed that the machete had been placed in a bag and that three of the males involved were sat on a wall. Firearms officers attended the scene and arrested the appellant and two co-accused. The appellant was found in possession of a bag which contained a machete and was also found in possession of two mobile phones: a personal mobile and a “burner” phone. Following his arrest, the burner phone was analysed. There were sent messages from 22 September which revealed that the phone had been used to offer cannabis for sale (count 4 of the joint indictment). The prosecution also alleged that the phone had been used to offer cocaine for sale during a 3-month period between June and September 2019, which was disputed by the appellant. The matter was committed to the Leeds Crown Court.

7. The facts relating to the second indictment are as follows. On 13 July 2021, whilst the appellant was on bail to the Leeds Crown Court for the first indictment, police officers observed him driving a black BMW dangerously. He failed to stop for the officers who were in an unmarked vehicle but had activated their blue lights. The appellant was

pursued by officers and he was observed driving through multiple red lights, driving at excessive speeds of up to 100 miles per hour in a 30 mile per hour area, driving on the wrong side of the road and overtaking vehicles when it was not safe to do so. Eventually he lost control of the vehicle on the slip road of the M606 and it collided with the barriers. He was then observed climbing into the passenger side of the vehicle and, on arrest, tried to claim that he was the passenger. He then failed a roadside breath test. At the time he was also disqualified from driving.

8. The facts relating to the third indictment are that on 20 August 2021, in the early hours of the morning, the appellant was invited to the address of a friend, Naomi Gillmore. Also present was Anees Mahmood. On arrival, he was intoxicated and verbally aggressive. He was asked to leave several times as there were children asleep at the property. When he refused, Ms Gillmore tried to remove him from her property. He threatened her with a bottle, punched her to her mouth and pushed her to the floor, where he continued to assault her. Ms Mahmood shouted at the appellant to stop and whilst pulling him off Ms Gillmore, she herself was knocked to the floor and hit her head. There followed another attempt by Ms Gillmore to remove him from her property. She was again taken to the floor and punched to the head several times. The appellant eventually left, but then regained entry to the property. He took Ms Gillmore to the floor for a third time and started to strangle her with his arm and punched her to her ribs. He then punched Ms Mahmood once to the nose with a closed fist and headbutted her. Ms Gillmore had bruising to her eye, sore ribs and a cut lip and Ms Mahmood had a swollen nose.
9. For the fourth indictment, the facts were these. Between April 2021 and January 2022

the appellant engaged in the stalking of Stacey Gaughan. His behaviour included sending numerous abusive and threatening messages to her through various Snapchat accounts, delivering handwritten letters to her and her neighbours and leaving flowers and a vibrator on her doorstep. He accused Ms Gaughan of being pregnant with his child and hiding the baby from him, which was not true. He deposited random amounts of money into her account of small sums and left shopping bags containing baby clothes on her doorstep in the middle of the night. He was remanded in custody in January 2022.

10. In terms of antecedents, the appellant was 28 years old at conviction and 29 at the time of sentence. He had seven convictions for 20 offences spanning from 2013 to 2021. His relevant convictions included convictions in 2016 and 2018 for dangerous driving, for which he had received 16 months' imprisonment and 18 months' imprisonment respectively.
11. In a pre-sentence report, the appellant accepted full responsibility for the stalking matters, the drug offences and the driving offences. However, he claimed to have been acting in self-defence in relation to the assaults and said that he had entered a guilty plea simply to get it over and done with. He stated that the machete was an ornamental souvenir which he only had on him because he was moving house. At the time of the assault and stalking offences the appellant had recently returned to the community having spent 3 months in a Mental Health Unit with drug induced psychosis. He was not taking his prescribed medication, was drinking to excess, smoking cannabis and said he was not getting enough sleep.

12. The appellant has obtained employment in the prison and achieved enhanced status in the Prison Incentive Scheme. He presented as motivated not to reoffend and had completed courses on anger management and coping with change.

13. The appellant stated that his mental health began deteriorating in 2017. However the pre-sentence report writer noted that he had engaged in a pattern of aggressive behaviour prior to 2017. Although the appellant's mental health was linked to the commission of the offences there were aspects of his thinking and behaviour linked to the offending which needed to be addressed which were unrelated to mental health issues. He was assessed as posing a medium risk of being reconvicted within the next 2 years. He had a low risk of serious recidivism and a low risk of being convicted of a seriously harmful offence. He posed a medium risk of serious harm to his named victims if he stopped taking his medication and he was at a medium risk of serious harm to his immediate family, children linked to intimate relationships and members of the public and staff. His response to previous supervision had been assessed as poor because of his further offending. However, he had attended his previous probation appointments. The report writer considered that the appellant could be managed in the community and this could be achieved with a non-custodial sentence with 30 rehabilitation and activity requirement days and with GPS monitoring for a 3-month period.

14. In addition to the psychiatric reports that had addressed the appellant's fitness to plead, a report had been prepared by Dr Waheed on 6 February 2023 specifically addressing mental health and culpability. He was diagnosed as suffering from a severe mental

health illness of paranoid schizophrenia which it was said to be highly probable he was suffering from during the period of the offences. He was however non-compliant with his treatment plan and abused marijuana between January 2019 and January 2022. It was said that his impairment was such that he would not have appreciated the nature and quality of his actions or understood that his actions were wrong, and it was said by Dr Waheed that it was highly probable that his mental health directly impacted on his offences. No details were provided.

15. Five grounds of appeal were advanced of which only two are pursued today. The first is that the Recorder had wrongly categorised the appellant as having a significant, rather than a lesser, role in the offence of being concerned in the supply of Class A drugs or, in the alternative, should have assessed his role as being at the very bottom of the range for a significant role. Secondly, insufficient regard had been had to totality, when standing back and looking at the sentence overall.

16. As there is no transcript of the sentencing remarks, it is not possible to know why the Recorder preferred the prosecution submissions that the appellant had a significant role in being concerned in the supply of the Class A drug of cocaine and rejected the defence submission that there was only one message that could be attributed to him which was consistent with a lesser role and no evidence that he had either an expectation of significant financial gain or a good understanding of the operation.

Discussion and Conclusion

17. As noted above, this was a difficult sentencing exercise. Although Mr Khan's

submission that there was only one message in the appellant's phone of his being concerned in the supply of the Class A drugs, which appears at odds with the evidence of the prosecution drugs expert (DC Batters), we give the appellant the benefit of the doubt and, whilst we accept that there were more messages than just the one, it is not possible to be sure that the appellant had a very good understanding of the scale of the operation. But he will inevitably have had an expectation of significant financial gain. We place his role in the enterprise as being at the lower end of the significant role category. On the first indictment, there is significant aggravation from the possession of the machete at the time of the offending and we note that he was in a group with others, carrying a bladed article, whilst wearing a stab proof vest and amongst reports by members of the public of concerns of public order. Furthermore, the offence was committed in the context of Class A and Class B drugs offences.

18. We conclude that this was a significant role category, of a category 3 offence, the starting point is 4 years and 6 months with a range of 3 to 7 years. Some discount for offering, rather than having actually supplied, should be made and totality is also relevant. Also relevant is the appellant's mental health, but we do not accept that the report by Dr Waheed is sufficient to establish that he had reduced culpability and was in the middle of a psychotic episode at the specific time of the offence notwithstanding that the condition was long-standing. The report is too vague and imprecise to sustain such a conclusion. But standing back and looking at the offences overall, that the sentence for the drugs offence of being concerned in the supply of a Class A drug is manifestly excessive. The nominal sentence, after trial, should have been 4 years (in other words, a 6-month overall reduction downward, discount from the starting point) on account of

totality, mental health and the more limited involvement of the appellant which, after applying a 25 per cent discount for his guilty plea at the plea and trial preparation hearing, would result in a final sentence of 3 years in relation to that count. The other sentences are not either individually or when standing back, looked at overall, manifestly excessive. The effect of our conclusion is to reduce the overall sentence from 6 years to 5 years by imposing a sentence of 1 year less than that imposed by the judge in relation to count 5 in the first indictment.

19. The applicant had previously been disqualified from driving until passing an extended test by the Crown Court sitting at Leeds on 22 June 2018, following an offence of dangerous driving. The appellant's 3-year disqualification from driving was obligatory, since no special reasons were advanced as to why the provisions of section 34(3) of the Road Traffic Offences Act 1988 should not apply. The applicant had a previous relevant conviction within the preceding 10 years. Whilst the extension period of 2 years imposed pursuant to section 35B was appropriate for the Recorder's sentence as it was with a total of 6 years' imprisonment, that now stands to be reduced as a consequence of our reducing the sentence for the drugs offence making an overall sentence of 5 years. Pursuant to s.34 of the Road Traffic Offenders Act 1988 ("RTOA 1988") the disqualification period 3 years was correctly imposed, but with the reduced term of imprisonment the extension period should be 6 months pursuant to s.35A (RTOA 1988) and a further 12 months pursuant to s.35B of that Act making a total period of disqualification of 4 years and 6 months.
20. The appellant was already disqualified from driving at the time of the commission of the offences in the second indictment and the imposition of disqualification until he passed

an extended driving test was contrary to section 37(7) (b) RTOA1988, which states that the court shall not make such an order whilst the offender is already so disqualified.

21. Accordingly the appeal is allowed to this extent. The sentence on count 5 of the first indictment (T20210529) is quashed and replaced with a sentence of 36 months' immediate imprisonment, making a total sentence of five years; the extension period to the 3-year period of disqualification from driving imposed pursuant to s.35A and s.35B RTOA 1988 are quashed and replaced with an uplift extension period of 18 months comprised of 6 months pursuant to s. 35A and 12 consecutive months under s.35B RTOA 1988. Thirdly, the order disqualifying the appellant from driving until an extended test is passed is quashed. The overall sentence therefore is that of 5 years' imprisonment.

22. LADY JUSTICE MACUR: Mr Khan, no doubt you will explain to Mr Matharu, as we have said, the appeal has been allowed. The overall reduction is one of 12 months. The difference in the disqualification period takes into account the reduction in the custodial sentence and therefore includes the extension period in the uplift because of the consecutive sentences.

23. MR KHAN: Thank you.

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