

NCN: [2019] EWCA (Crim) 1133

No: 201802911 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 6 June 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE LAVENDER

HIS HONOUR JUDGE EDMUNDS QC

R E G I N A

v

MATTHEW MARK XAVIER

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Non-Counsel Application

J U D G M E N T

LORD JUSTICE SIMON:

1. This is a renewed application for leave to appeal against sentences passed in the Crown Court at Norwich on 23 March 2018 by His Honour Judge Andrew Shaw following refusal of permission to appeal by the single judge, who also refused an extension of 84 days required to bring the application out of time.

2. The sentence on count 1, causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861, was an extended sentence of 16 years, comprising a custodial term of 12 years and a 4 year extended period of licence. On count 2, a further charge of section 18 assault, he was sentenced to a concurrent term of 4 years' imprisonment. On count 3, which charged doing acts tending and intended to pervert the course of justice, he was sentenced to a concurrent term of 12 months' imprisonment.

3. The assaults involved the stabbing of the two victims in the back as the applicant sought to enforce a drugs debt. He was assisted in this by a co-defendant named Ashley Lloyd, who pleaded guilty to count 2 and was sentenced to a term of 45 months' imprisonment.

4. The victim of the count 1 assault was Thomas Roberts and the victim of the count 2 assault was David Wynn. These two men went to Dereham to purchase crack cocaine from Lloyd knowing that they owed money to the applicant and that if he found them he was likely to attack them. The two defendants lay in wait for them with the intention of attacking them when they appeared. As they did so, the applicant opened the car door and attacked them with a screwdriver and a pair of scissors. This continued notwithstanding their promises to pay the money. Thomas Roberts was stabbed in the back and David Wynn was dragged out of the car

into a nearby alley where he was kicked, punched and stabbed in the back. Both victims were treated in hospital for their stab wounds.

5. While remanded in prison for these offences the applicant made arrangements by telephone to persuade the victims not to give evidence against him. Unknown to him, his numerous telephone calls were being monitored. At some point David Wynn promised to withdraw his statement and plans were then put in place to suborn Thomas Roberts. In the end, the victims adhered to their statements and the applicant pleaded guilty to count 3, which had been added to the indictment.

6. The judge described the attacks on the two vulnerable drug users and the physical injuries caused to them. Although it was a frenzied and sustained attack, the wounds were relatively minor, albeit amounting to serious bodily injury. He also described the attempts to persuade David Wynn to withdraw his evidence and his change of plea when it was clear that David Wynn would give evidence for the Crown.

7. His case had been listed for sentence in March 2017 but he then sacked his counsel and applied to change his plea, making allegations which required his counsel and solicitor to give evidence. The application to change the plea took up to a day of the court's time and was rejected.

8. The sentencing judge approached the section 18 offences on the basis they were offences of lesser harm and greater culpability. There can be no criticism of this approach. The assault was premeditated, involved the use of weapons and was directed to vulnerable victims, each of which are factors indicating higher culpability.

9. On this basis, the starting point would have been a term of 6 years with a range of 5 to 9 years. But, as the judge made clear, there were aggravating factors. At the age of 60 the applicant had spent his life committing crimes: 55 court appearances for 105 offences, including crimes of violence, drug offending and dishonesty. Increasingly long sentences had done nothing to deter his criminality. He was a committed and professional drug dealer, and enforced his illegitimate business with violence.

10. The grounds of appeal assert that the judge was wrong to place the section 18 offence in category 2. This is unarguable. There were at least the three factors we have already identified.

11. It is also said the judge failed to take the principle of totality into account. If he had given 10 per cent credit for the pleas then the judge must have started at over 13 years, which was significantly outside the range for category 2 offending.

12. This is true as a matter of calculation. But it fails to take into account the overall criminality of an offender with a very bad record, committing two violent offences as part of his drug dealing enterprise. It was, as the single judge put it, violence inflicted in pursuit of organised crime with the additional feature that it was followed by sustained attempts to pervert the course of justice.

13. The applicant was warned that the court might make a loss of time order if the application was pursued. His response was that he believed his application had merit and was not vexatious. We disagree. There was no merit in the application. It was the applicant's attempt to take advantage of the system.

14. Accordingly, we make a 28 day loss of time order.