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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2019] EWCA Crim 2019



No. 201901495 A2

Royal Courts of Justice

Wednesday, 23 October 2019

Before:

LADY JUSTICE SIMLER DBE
MR JUSTICE GOOSE
HIS HONOUR JUDGE SLOAN QC
(Recorder of Newcastle)

REGINA

v

ROSS DAWSON

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MR A J CAUDLE appeared on behalf of the Appellant.

THE RESPONDENT was not represented.

J U D G M E N T

MR JUSTICE GOOSE:

1 On 29 March 2019 in the Crown Court at Snaresbrook, Her Honour Judge Canavan sentenced the appellant, Ross Dawson, who is aged 33, to an Extended Sentence of 35 years pursuant to section 226A of the Criminal Justice Act 2003, comprising a custodial term of 30 years and an extended period of 5 years. That sentence was imposed in respect of five indictments to which the appellant had pleaded guilty.

2 In granting leave to appeal sentence, the single judge limited permission to the length of the custodial term and refused an appeal in respect of the Extended Sentence or the licence period.

3 The appellant's sentence was made up as follows:-

Indictment T20177072 – (the First Indictment) possession of an item specified in section 40D (3B) Prison Act 1952 (count 1), six months' imprisonment; blackmail, contrary to section 21(1) Theft Act 1968 (counts 2 to 8), six years' imprisonment on each count, concurrent with each other and with the sentence on count 1;

Indictment T20187042 – (the Second Indictment), robbery, contrary to section 8(1) Theft Act 1968 (count 1), seven years and 10 months' imprisonment concurrent; having an article with a blade or point, contrary to section 139(1) and (6) Criminal Justice Act 1988 (count 2), 12 months' imprisonment concurrent;

Indictment T20187487 – (the Third indictment) robbery, contrary to section 8(1) Theft Act 1968 (count 1), five years' imprisonment concurrent; having an article with a blade or point, contrary to section 139(1) and (6) Criminal Justice Act 1988 (count 2), 12 months' imprisonment concurrent;

Indictment T20187050 – (the Fourth indictment) robbery, contrary to section 8(1) Theft Act 1968 (count 1), seven years and 10 months' imprisonment concurrent; driving whilst disqualified, contrary to section 103(1)(b) Road Traffic Act 1988 (count 2), four months' imprisonment concurrent;

Indictment T20177746 – (the Fifth Indictment) aggravated burglary, contrary to section 10(1) Theft Act 1968, an Extended Sentence of 35 years.

4 The co-accused, being a juvenile, also pleaded guilty to the aggravated burglary offence and was remitted to the Juvenile Court for sentence disposal.

5 The facts of these offences in chronological order may be shortly stated. In June and July 2016 the appellant, whilst serving a prison sentence for an offence of robbery, committed the offences in the First Indictment. He was a serving prisoner at HMP Hewell in Worcestershire. On 13 June 2016 he produced a knife after targeting a vulnerable prisoner and cut him on the back of his hand, punching him in the face and demanded £500. The appellant produced an illicitly obtained telephone (count 1) which he gave to the victim and directed him to call his sister to demand money. The appellant spoke to the sister and threatened to stab her brother and send others to attack her family at her home address (count 2). The threats were taken seriously, and she contacted her partner (count 3) in her attempt to satisfy the appellant's demands for money. At around the same time the appellant also made the prisoner contact his former partner, demanding money and with threats of violence. He used the phone himself to contact victims to enforce the threats (count 4). In July 2016 another vulnerable prisoner was identified by the appellant whilst at HMP Hewell. He blackmailed that prisoner, his friends and relatives, demanding money and threatening to slash the prisoner if his friends and family did not make any payments. These payments comprised counts 5 to 8 on this indictment.

- 6 After the appellant's release on licence from this sentence and whilst under investigation he committed further offences. On 4 July 2017 he carried out a robbery whilst in possession of a knife. These offences comprise counts 1 and 2 on the Second Indictment. The victim was a taxi driver in the Dagenham area where he was contacted in the early hours of the morning to collect the appellant and a female from an address in Romford and take them to Brentford. The appellant used the female as a ploy to carry out the intended robbery. During the journey the appellant said the female passenger was feeling unwell and asked for the driver to pull over. The appellant then punched the driver to the head and demanded money, then produced a machete and pointed it to the victim's stomach. The victim suffered from a blood-clotting disorder and was particularly concerned about being injured. He gave the appellant all the money he had. The appellant got out of the vehicle, went to the driver's side and again punched the driver to the head. He pulled him out of the taxi, threw him to the ground where he punched him again and throttled him. He demanded the keys to the car and then attempted to drive it away, leaving the victim in the road. The vehicle would not start so the appellant and his accomplice ran off. The victim suffered two black eyes, swelling to his face and a loosened tooth. He also sustained grazes to his elbows and bruising to his back with an aching jaw, face and ribs.
- 7 On 15 July 2017, eleven days later, the appellant carried out a further offence of robbery with a knife (these being counts 1 and 2 on the Third Indictment). The call was made by a female for a taxi in the early hours of the morning in the Romford area. When the driver arrived at the pickup address, he found the appellant and another male. The appellant was asked to pay in advance for the journey but he demanded that the taxi driver reverse his vehicle for a few yards, saying his sister had money for the taxi. The appellant produced a knife and told the driver that if he did not do as he was told he would be hurt. He threatened to push the knife into the neck of the driver and demanded money and his belongings. The victim gave him cash and the appellant then stole his wallet.
- 8 One week later, on 22 July 2017 the appellant carried out a further offence of robbery together with driving whilst disqualified. These offences comprised counts 1 and 2 in the Fourth Indictment. In these offences the victim was an 87-year old female who was targeted by the appellant as she left her home to get into her car. The appellant, together with a 15-year old female, approached her. Using the juvenile as part of this planned robbery, the appellant claimed the juvenile was pregnant and asked the victim for a lift home. She agreed and drove both the appellant and the juvenile in her car. The appellant gave directions for the journey which took the victim further away from her home. She became very concerned when he took the driver to open countryside, where there were no people or dwellings. The appellant told the victim to stop the car whilst he leant forward from the back seat, pushed her out of the way and took the keys from the ignition. Fortunately for the victim, a member of the public drove passed the scene and observed the victim to be in some distress. He saw the appellant push her out of the vehicle and then drive off at speed. The appellant was a disqualified driver. The juvenile was left at the scene. Upon the arrival of the police, a bag which she carried was searched and a knife with a 10-inch blade was found. The juvenile claimed that she was forced to carry the knife by the appellant who had driven off. The victim's car was not recovered until 12 days later, abandoned and with false number plates.
- 9 On 3 August 2017 the appellant committed an offence of aggravated burglary comprising the Fifth Indictment. The juvenile in the previous offending had been placed into foster care with a family in Ilford, East London. During the evening she returned to the foster home, having gone missing during the day. She was permitted to enter the home by the 31-year old daughter of the foster family, who had returned home from work. Shortly afterwards the appellant together with another male were allowed to enter the house by the juvenile. Both

men went upstairs to confront the daughter of the foster family. The appellant threatened her, taking her telephone from her and making demands for money and gold. He instructed his accomplice to remain with her whilst the appellant went downstairs and searched for jewellery, passports and cash, and ransacked the home. The other man produced a knife from his jacket and began to search the belongings of the daughter in her bedroom, holding the knife to her throat. He became more aggressive as she called for help from the juvenile foster child. When the appellant reappeared with the property he had stolen wrapped in a pillowcase, he began to search the daughter's room for items whilst she was held at knifepoint. A threat was made to stab her. The appellant demanded to know where the money and jewellery was kept in the house. The appellant told her to stand up and he forced her into a headlock, strangling her until she lost consciousness. When she regained her senses, she was alone in the room. She called the police.

- 10 It follows from this chronology that all of the offences in the Second to Fifth Indictments were committed whilst the appellant was on licence after his release from custody.
- 11 The appellant later pleaded guilty to these offences and was given a discount on his sentences to reflect the time of the guilty pleas. In respect of the Second, Third and Fourth Indictments a full one-third discount was applied. In respect of the Fifth Indictment, twenty-five per cent discount was applied. In respect of the First Indictment, ten per cent discount was applied, due to plea being entered on the day of trial.
- 12 The appellant, who was born on 21 November 1985, has 14 convictions for 47 offences, 28 of which are theft-related offending, including burglary, theft and aggravated vehicle taking. He has received custodial sentences also for robbery offences in 2007 and 2010, when he was sentenced to 90 months' imprisonment. In 2015, during the licence period after his release from the 2010 sentence, the appellant committed a further offence of robbery for which he was serving a custodial sentence when he committed the blackmail offence described above.
- 13 In imposing sentences for each of the offences, the judge indicated that a sentence of imprisonment to cover all of the offending would be imposed, with all other sentences being ordered to run concurrently. After applying discounts for pleas of guilty, those sentences were determined as set out above. Further, the judge reached the sure conclusion that the appellant was dangerous, so that an Extended Sentence of imprisonment, under section 236A of the Criminal Justice Act 2003 was necessary. Having determined that the total custodial sentence for all offences was 30 years' imprisonment, an Extended Sentence of 35 years was imposed, including a five-year extension period. The appellant does not seek before this court to challenge the finding of dangerousness or the extension period.
- 14 The appellant's grounds of appeal are confined therefore, to the substantive sentences leading to the custodial term of 30 years. It is submitted on behalf of the appellant by Mr Caudle in an attractively brief submission, that the determinate sentences involved adopting too high a starting point before discount for plea, or they were increased to an extent that did not properly reflect the aggravating or mitigating factors. Further, it is argued that the sentence for the aggravated burglary in the Fifth Indictment, was manifestly excessive when fixed at 30 years, even taking into account the total offending. Further, it is submitted that the judge failed to take into account the principle of totality.
- 15 It is beyond obvious that this pattern of offending by the appellant was extremely serious and merited a substantial custodial sentence. Each offence committed by this appellant in the five indictments is a serious offence, but taken together comprise criminality to a disturbing extent. In this most difficult sentencing exercise the judge correctly identified the

relevant sentencing guidelines and the appellant does not seek to challenge the categorisation of each offence and starting point.

- 16 We turn to the factors taken into account by the judge when she arrived at each of the substantive sentences. In the First Indictment - the possession and blackmail offences - no guidelines were available from the Sentencing Council. However, there is no criticism of the sentence of six years' imprisonment on each of the seven counts of blackmail concurrently, or the six months' imprisonment concurrent for the possession offence. Given that the offending occurred when in prison, the appellant unlawfully possessing a knife and also a mobile phone with which to carry out the offending, any challenge to the sentence on its own would be without any merit.
- 17 The second to fourth indictments involve offences of robbery against vulnerable victims. The first of these robbery offences was against a taxi driver who was threatened with a knife and then pulled out of his vehicle and attacked, being punched and throttled. As a category 1A offence, it has a starting point of 8 years and a range of up to 12 years. This offence required a substantial increase in sentence, given the aggravating factors. Those included the appellant's previous conviction for a similar offences of robbery; that he was on licence for a prison sentence for a similar offence and on police investigation for blackmail offences; he had targeted a lone taxi driver in the early hours of the morning and had significantly planned the offence, including a young female to act as if she was unwell. There was little to be said by way of mitigating circumstances. Increasing the sentence, before discount for plea, to 12 years for the offence of robbery with 18 months concurrent for the weapons offence, cannot be criticised and is entirely merited.
- 18 The second robbery offence in the fourth indictment was of an 87-year old victim outside her home. The categorisation for this offence as 1B under the Guideline is accepted by the appellant, providing a starting point of 5 years' imprisonment with a sentence of up to 8 years. The aggravating factors are similar to those in the first robbery offence and include his previous convictions for robbery; the deliberate targeting of an elderly lady on her own; the significant planning of the attack, involving taking a knife to the scene and hiding it in the bag of a juvenile; using a vulnerable child as a distraction in order to carry out the offence; directing the victim to drive to a deserted area to carry out the robbery with the intention of leaving her while stealing the car. The impact upon the victim means that she has been profoundly affected by it in the later years of her life. Each of these significantly serious aggravating factors justify increasing the sentence into category 1A and the sentence adopted by the judge of 12 years before plea discount. Again, there is little by way of mitigation to reduce the sentence which, after discount, provided a sentence of 7 years and 10 months' imprisonment for the robbery and four months' imprisonment concurrently, for the driving whilst disqualified.
- 19 In the third indictment a further robbery was committed, this time on 15 July 2017. It was another offence involving a taxi driver targeted in the early hours of the morning. The category for this offence is accepted by the appellant to be 2A, with a 5 years starting point and a range of up to 8 years. Similar aggravating features apply to this offence as the others. The judge concluded that the sentence on this offence would have been 8 years' imprisonment, with 18 months' imprisonment concurrently for the weapons offence before credit for plea. The judge discounted the sentence to 5 years for the early plea.
- 20 The aggravated burglary offence in the fifth indictment was a particularly serious offence, involving two men and a knife being taken into the home of a vulnerable juvenile whom the appellant had used when committing some of his other offences. It is agreed by the appellant that this is an offence involving greater harm and higher culpability, with a starting

point of 10 years and a range of sentencing up to 13 years. The profound effect upon the victim of this offence is clear from the Victim Personal Statement. Violence was used upon her, strangling her to unconsciousness after threatening her with a knife. There is clear evidence that the appellant gained enjoyment from the violence he used. This offence merited a movement upwards within the range to its maximum 13 years. Whilst the judge concluded that the seriousness of this offence merited a substantially higher increase beyond the top of the range within the Guideline, to a sentence of 20 years' imprisonment, which after discount for plea left 15 years' imprisonment, the criticism of this sentence is that it is substantially in excess of the top of the range of sentencing under the Guideline. With this submission we agree. With respect to the Judge in this difficult sentencing exercise, we are persuaded that the sentence for this offence was too high.

- 21 In arriving at the custodial term of the Extended Sentence, the judge chose the aggravated burglary offence as the lead sentence and aggregated all offending within it. This approach is usually appropriate, but in this case, it may have caused the judge to fall into error. In our judgment, a sentence of 20 years' imprisonment for the aggravated burglary before plea discount was substantially too much. Whilst this was clearly a very serious offence of its type, the sentence should have been up to the top of the range at 13 years. Further, whilst imposing an aggregate sentence, the custodial term of 30 years was also in our judgment excessive.
- 22 Accordingly, we allow this appeal and amend the sentence, so that the Second, Third and Fourth Indictments will be concurrent with each other, but consecutive to the First Indictment: being offending which occurred after the appellant's arrest on the first Indictment. The Fifth Indictment will be served consecutively to that sentence, reflecting the serious and different nature of those offences.
- 23 Therefore, the sentence of 6 years' imprisonment on the First Indictment T20177072, (the blackmail offences) will be served consecutively to the concurrent sentences on the Second, Third and Fourth Indictments T20187042, T20187050 and T20187487 (the robbery offences) of 7 years and 10 months' imprisonment, making a total of 13 years and 10 months' imprisonment. Consecutive with that sentence will be an Extended Sentence on the Fifth Indictment T20177746, (the aggravated burglary indictment) of 14 years' imprisonment, comprising a 9-year custodial term (13 years' imprisonment before plea) with an extended licence of 5 years.
- 24 This means that the sentences on the First, Second, Third and Fourth Indictments remain unchanged, save that the sentences on the Second, Third and Fourth Indictments, being concurrent to each other, will now be consecutive to the First Indictment, making a determinate sentence of 13 years and 10 months. The sentence on the Fifth Indictment is quashed and in its place a consecutive Extended Sentence of 14 years internally concurrent, with a 9-year custodial term and an extended licence of 5 years.
- 25 Therefore, the appellant's sentence is reduced to a determinate sentence of 13 years and 10 months in respect of which the appellant will serve half, followed by an Extended Sentence of 14 years of which 9 years is the custodial term. When the appellant has served half of the determinate sentence, he must then start to serve two-thirds of the Extended Sentence custodial term, before the Parole Board will consider his release up to a maximum of nine years in custody. To that extent, this appeal is allowed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.