IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 1436

CASE NO 202000470/A3 & 202000483/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 23 October 2020

LORD JUSTICE MALES
MR JUSTICE SPENCER
HIS HONOUR JUDGE AUBREY QC
(Sitting as a Judge of the CACD)

REGINA
V
SAJJAD HUSSAIN
ANAS KHAN

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The case of Hussain was heard as a Non-Counsel Application

Mr S Neale appeared on behalf of the Applicant Khan

J U D G M E N T

1. MR JUSTICE SPENCER: Sajjad Hussain, now aged 28, and Anas Khan, now aged 27, renew their applications for leave to appeal against sentence following refusal by the single judge. Khan's renewal was out of time by 12 days, but exceptionally we grant the extension in the light of the explanation provided by counsel in writing.
2. The applicants were sentenced on 17 January 2020 in the Crown Court at Manchester by His Honour Judge Leeming for serious offences of robbery and conspiracy to rob, and in the case of Khan for conspiracy to convert criminal property and conspiracy to handle stolen goods as well.
3. The total sentence for Hussain was 18 years' imprisonment. That was the sentence on count 2 (conspiracy to rob). There was a concurrent sentence of 16 years on count 1 (robbery). Hussain was convicted after a trial.
4. The total sentence in the case of Khan was 21 years' imprisonment. On count 2, conspiracy to rob, there was a sentence of 18 years' imprisonment. He pleaded guilty to that offence on the fourth day of the trial and was afforded 5 per cent credit for plea. On count 1 (robbery) the sentence was 10 years eight months concurrent. He had pleaded guilty to that offence at a very early stage and was afforded full credit of one-third for his plea. On count 3 (conspiracy to convert criminal property) the sentence was two years concurrent. He had pleaded guilty to that offence on the sixth day of the trial. On count 4 (conspiracy to handle stolen goods) he was sentenced to three years' imprisonment consecutive to the 18 years on the other counts. He pleaded guilty to count 4 on the fourth day of the trial.
5. There were two co-accused. Abubakir Iqbal was convicted on count 2 and sentenced to 21 years' imprisonment. Shazad Mahmood was also convicted on count 2 and sentenced to 17 years' imprisonment. No issue of disparity is raised.
6. We need summarise the facts only very briefly for present purposes.
   Between November 2018 and January 2019 these two applicants and the co-accused were responsible for a total of 11 robberies of cash from transit vehicles, across the northwest of England. The offending was predominantly in the northern parts of Greater Manchester, but also on occasions stretched into Derbyshire and West Yorkshire. The robberies were all very similar in their method. The robbers would approach the scene in a vehicle, disguised by false number plates. As a matter of inference those vehicles had been stolen for the purpose and disguised accordingly. As the transit guard was on his way to his vehicle carrying the cash box, one or more of the robbers would approach the transit guard on foot. On one occasion the guards were attacked while replenishing an ATM machine. The robbers would disguise themselves by wearing balaclavas or hoods and masks and gloves. They carried weapons such as a claw hammer or a lump hammer.
7. These were generally cash boxes being collected from retail premises, representing the takings from those premises. Generally the robberies took place on a Monday when the takings were likely to be greatest after the weekend. The guards had been trained to abandon the boxes if approached and threatened by robbers, rather than engage with them. Generally, the boxes were discarded by these guards under threat of the demands, supported by the threat of force and the presence of weapons. There were however occasions when the guards were struck with hammers. During one robbery an angle

grinder was produced and used to strike the guard. None of the guards was caused significant injury.

8. On each occasion at least one person was in a getaway car parked close behind to the cash in transit vehicle which was being targeted. The evidence from the later robberies at least suggested that the driver was probably the applicant Khan. Once stolen the cash boxes were quickly opened using a power saw brought for the purpose, and the cash removed.
9. In the first 10 robberies no one was immediately apprehended. However, in the final robbery on 31 January 2019 at a branch of the Nat West Bank in Halifax, these two applicants and the two co-accused were pursued as they drove away from the scene. Khan was the driver. The getaway car crashed into a bridge in the village of Rishworth in West Yorkshire and all four were detained. £25,000 in cash was found in the vehicle, together with a selection of number plates and a power saw. A knife was also recovered from the car.
10. Following their arrest, the four defendants were immediately charged with this final robbery and were soon produced in court. That was count 1 on the indictment. But it was only after a thorough and painstaking investigation that the evidence in relation to the other 10 robberies was pieced together for presentation as a conspiracy to rob (count 2).
11. There was evidence that on two occasions the applicant Khan was responsible for laundering cash taken from the robberies by the use of fixed odds betting terminals in bookmakers' offices. That gave rise to count 3 on the indictment. He did not himself go into the bookmakers to launder the cash but was present when others did so on his behalf. The value of the money laundered was relatively low, only some £760 could be identified, but it was plainly a substantial separate criminal enterprise on the judge's findings and was in any event charged as a conspiracy.
12. Count 4 on the indictment charged Khan with conspiracy to handle stolen vehicles. This was a completely separate conspiracy, hence the consecutive sentence on count 4. On 3 December 2018 a search of a breakers' yard operated by Khan and his brother revealed a large number of virtually new recently stolen vehicles. The vehicles had already been broken down into their constituent parts or were awaiting that operation and the parts were being moved on through the yard. The prosecution case was that Khan was responsible for the vehicles used by the defendants in the robberies and for the disposal of the vehicles afterwards through his yard, although no parts relating to any of the vehicles identified in the robberies were ever found in his yard. The total value of the vehicles recovered by the police evidencing the conspiracy to handle stolen goods was almost £125,000. The total value of the cash stolen in the robberies was nearly £91,000.
13. Hussain had no previous convictions. There was a pre-sentence report in his case in which he maintained his innocence of any involvement in any conspiracy to rob. He was a married man with two young children and another on the way. There were testimonials from neighbours of his, one of which described Hussain as being deeply remorseful, which was quite at odds with the pre-sentence report. Hussain's wife was suffering from ill-health and one of the children had some difficulties as well.
14. Khan had six convictions for 15 offences. In 2011 he was convicted of handling stolen goods and sentenced to a community order. In December 2014 he was sentenced to 22 months' imprisonment for possession of cannabis and cocaine with intent to supply. The

pre-sentence report in his case indicated that he accepted responsibility for his actions and was remorseful. His involvement, he had told the author of the report, had been triggered by a drug debt amounting to £40,000 owed to an Albanian gang. He had exhausted all legitimate avenues in finding sources of income to repay the debt. He told the author of the report that security vans were the easiest and quickest way to obtain large sums of money. He denied any knowledge of weapons being used in the robberies. He admitted to a certain level of detachment from the execution of the robberies themselves as his role was that of driver. There was a letter from his wife who was left to bring up the family on her own.

15. In his sentencing remarks, the judge described the offences as professionally planned commercial robberies involving a significant degree of planning, sophistication and organisation. Violence had been inflicted on two of the delivery drivers within the conspiracy. The judge was satisfied that the offending fell within Category 1A of the Sentencing Council Guideline for professionally planned commercial robbery. There was both higher culpability and greater harm. In every robbery but one the robbers were armed, and in the majority of the robberies the weapons were either claw hammers or lump hammers. In one of the robberies the driver had been struck on the head with a rubber mallet; in another the guard had been struck on the head with an angle grinder. Fortunately both guards had been wearing helmets and were uninjured. It was however undoubtedly higher culpability based on the production of weapons.
16. The judge was also satisfied that there was greater harm owing to the high value of the sums targeted or obtained. The total cash was over £90,000 and every cash box was capable of holding £25,000. Thus very high value sums were targeted and obtained. The judge accepted that there was no evidence that the guards had suffered very serious physical or psychological harm, which would be one of the factors justifying a finding of greater harm, although they would no doubt have been affected to some degree by their experience, as the victim personal statements demonstrated. A number of the guards described being shocked and shaken up by the robberies. One had suffered physical injury when he slipped and fell during the course of the robbery, sustaining cuts and bruises.
17. Under Category 1A the starting point in the guideline for a single offence of robbery was 16 years' custody with a range of up to 20 years. The judge identified a number of aggravating factors under the guideline. The offences were committed by a gang. Careful planning was involved. The vans were targeted and followed. The drivers were vulnerable and unarmed. In every case except one they were single crewed transit vehicles so the guard was alone. The offences were committed in broad daylight, often in busy shopping areas where members of the public were present. There was dangerous driving on occasions, putting other road users at risk. Balaclavas and other face coverings were worn in every incident. The vehicles used in the robberies were disposed of and never recovered, nor were the cash boxes.
18. In sentencing Khan for the conspiracy to convert criminal property, the judge had regard to the relevant Sentencing Council guideline for money laundering offences. Khan had played a leading role in group activity. There was significant planning to ensure only the machines close to the door and away from the cashiers were used. The offending was conducted over a sustained period and extended beyond the comparatively modest sum identified. The starting point under the guideline was therefore two years. That

sentence was made concurrent.

19. The judge was satisfied that a consecutive sentence for Khan was necessary on count 4 because it was a separate conspiracy to handle stolen vehicles. Under the relevant Sentencing Council guideline for Handling, there was Category A higher culpability: Khan was in overall control and had responsibility for the operation of the salvage yard. It was a professional and sophisticated operation. The handling of the vehicles must at times have been close to the point of theft. There were 14 vehicles in all. The value of the vehicles, conservatively, was £124,000. That made it Category 1 harm. The aggravating factors were the underlying offence of theft on each occasion and the deliberate destruction of serviceable vehicles and virtually brand new vehicles. The judge considered that a consecutive sentence was necessary to mark Khan's overall criminality, subject to the principle of totality.
20. The judge observed that principle by reducing from four-and-a-half years to three years the sentence which he would otherwise have passed on count 4. The sentence of two years on count 3, as we have indicated, was made concurrent. That was because it was part and parcel of the conspiracy to rob.
21. The judge considered in the case of each defendant whether it was necessary to pass an extended sentence for the protection of the public but was satisfied that a very lengthy determinate sentence would suffice.

Hussain

22. We deal first with the renewed application by Hussain. It is a non-counsel application. The grounds of appeal were that the judge failed to give weight to Hussain's lesser role and to the fact that he had no previous convictions and that the total sentence of 18 years was therefore manifestly excessive. As the single judge observed in refusing leave, counsel had advised that the grounds were "just arguable" and this was only lukewarm support for the possibility of an appeal. We agree with the single judge that even that level of support overstates the prospects. It is not remotely arguable that this total sentence of 18 years was manifestly excessive. The judge followed the Sentencing Guidelines and imposed a sentence which was just and proportionate for all the offending. He had presided over the trial and was ideally placed to assess Hussain's culpability and role. There is no merit in the application. Leave is refused.

Khan

23. We turn to the renewed application by Khan. Although originally listed as a non-counsel application, we are grateful to Mr Neale who has argued the application before us this morning. He came into the case when trial counsel retired from practice. The grounds of appeal were settled by trial counsel. The grounds were : first, the judge did not give sufficient credit for the guilty pleas entered by the applicant; second, the judge sentenced the robbery conspiracy as Category 1A when it should have been Category 2A; third, the judge gave insufficient regard to the principle of totality in imposing a consecutive sentence on count 4; fourth, the judge failed to give sufficient weight to the applicant's personal circumstances, in particular his lack of previous serious offending, his young age and the content of the pre-sentence report. For all these reasons it was submitted in the grounds of appeal that the total sentence of 21 years was manifestly excessive.
24. Mr Neale, on taking over the case, wrote an advice in support of the renewal of the

application for leave, addressing specifically the observations of the single judge, and suggesting that the single judge had not addressed the main focus of the grounds of appeal settled by counsel. In that written advice he said this:

i. "What strikes me is that the Single Judge has not given appropriate weight to the central submissions of Miss Massey that this case should have been regarded as Culpability, category A, and Harm category 2. The Single Judge said that he regarded such a submission as 'hopeless'.

ii. I respectfully beg to differ. In terms of harm, the injuries sustained by the victims were entirely commensurate with the type of physical and/or psychological harm suffered by victims in offences of this type. Equally, the detrimental effect on business was no more than is commensurate with offences of this type and cannot be categorised as; 'serious' which has to imply something beyond the norm for this type of offence."

25. It was on that basis that Mr Neale advised in favour of renewing the application for leave.
26. Before us this morning, in his oral submissions, Mr Neale has rather changed his focus. It is as well that he did so, because what he said in his written advice really does not accurately represent what the single judge said or indeed what the sentencing judge said in relation to category. The sentencing judge made it quite clear, as we have already indicated, that he was not suggesting that this was a case of serious physical or psychological harm. The sole basis on which he said there was Category 1 harm was the very high value of the sums targeted or obtained.
27. Mr Neale has submitted to us this morning that as well as looking at what was planned in the robberies in terms of aggravating factors, it should not be overlooked that there must have been some planning of what were really mitigating factors. For example, he says that in all 11 robberies there was no use or carrying of a firearm or a bladed weapon and no significant force was used. He says that in nine of the robberies although weapons were produced there was no actual violence by the use of a weapon to inflict injury. He suggests that where on two occasions one of the security guards was struck with a weapon, be it a lump hammer or an angle grinder, it is mitigation that the guard's head was struck when the head was protected by a helmet, rather than some unprotected part of the body. He relies on the fact that blows only to the protected head was how case was opened. It is quite true that this fact was outlined in the opening, but it remains serious aggravation that someone's head was deliberately struck with a weapon at all. We are not told with what degree of force. We find little merit in the suggestion that this indicated a wish not to cause injury: why on earth hit a security guard over the head at all?
28. It is suggested by Mr Neale that Khan, as the driver, may well have been unaware of the extent to which actual violence was used or threatened. He submits that the judge was in error as well for affording less than appropriate credit for plea. As the judge observed in the sentencing remarks, the pleas of guilty which were entered during the trial by Khan were entered during the course of the prosecution opening, albeit on day 4 of the trial.

Mr Neale submits that the judge was wrong to afford as little as 5 per cent credit in the circumstances, in a case as complex as this. He submits there should have been a recognition on the part of the judge of the realities of cases of this kind; the preparedness of the applicant to plead guilty when he did was not adequately reflected, nor indeed was the remorse he expressed in the pre-sentence report.

29. We have considered all these submissions carefully but we are quite unable to accept them. It may well be that taken individually the threshold of serious harm or indeed high culpability may not have been met in the case of each and every one of these individual robberies, but that is to lose sight of the fact that here the judge was sentencing for 10 robberies in the conspiracy and a further robbery in count 1. Mr Neale's suggestion that the overall sentence for all that offending should have been only towards the top end of the range for a single Category 2A robbery (up to 14 years) we think flies in the face of common sense.
30. We agree with the single judge that any argument that Category 2A rather than Category 1A adequately reflected the totality of the armed robbery activity is hopeless. The starting point before reduction by 5 per cent for the very late plea must have been in the region of 19 years on count 2, but that was perfectly proper to reflect the additional criminality of the money laundering conspiracy where the sentence of two years was made concurrent. The judge was careful to observe the principle of totality by reducing the length of the consecutive sentence on count 4.
31. There can be no complaint about the level of discount for the guilty pleas entered after the trial had begun. The Sentencing Council guideline on Reduction for Plea says that a guilty plea tendered on the first day of trial should attract a maximum of one-tenth credit and that the reduction should normally be decreased further, even to zero, if the guilty plea is entered during the course of the trial. The fact that the opening was still in progress when the pleas were tendered does not in any way alter the fact that these were pleas entered during the course of the trial. It is not as if what was being heard by the defendants or their counsel during the prosecution opening was a surprise to them, having regard to the very thorough way in which the case had been prepared and the opening which would have been served well in advance. It was a matter entirely within the judge's discretion, pursuant to the guideline, where within the bracket of 10 per cent to zero it was appropriate to pitch the credit appropriate for these pleas. In our judgment, it cannot be said that 5 per cent was either wrong in principle or rendered the overall sentence manifestly excessive.
32. Therefore, despite Mr Neale's valiant submissions, the renewed application for leave is refused.

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