

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

Neutral Citation Number: [2020] EWCA Crim 1692

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2020/02611/A3



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 8th December 2020

B e f o r e :

LORD JUSTICE SINGH

MR JUSTICE GARNHAM

HIS HONOUR JUDGE PICTON

(Sitting as a Judge of the Court of Appeal Criminal Division)

ATTORNEY GENERAL'S REFERENCE

UNDER SECTION 36 OF

THE CRIMINAL JUSTICE ACT 1988

R E G I N A

- v -

BRADLEY HOBAN

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Miss C Pattison appeared on behalf of the Attorney General

Mr S Dryden appeared on behalf of the Offender

J U D G M E N T

Tuesday 8th December 2020

LORD JUSTICE SINGH:

Introduction

1. This is an application on behalf of the Attorney General, under section 36 of the Criminal Justice Act 1988 ("the 1988 Act"), for leave to refer to this court a sentence which he considers to be unduly lenient.
2. On 16th March 2020, in the Crown Court at Teesside, the offender pleaded guilty to arson being reckless as to whether life is endangered, contrary to section 1(2) and (3) of the Criminal Damage Act 1971; sending an electronic communication with intent to cause distress or anxiety, contrary to section 1(1)(a) of the Malicious Communications Act 1988; and acting in breach of a restraining order, contrary to section 5(5) of the Protection from Harassment Act 1997.
3. On 17th September 2020, he was sentenced by Her Honour Judge Sherwin to a total of three years' imprisonment. The sentence imposed for the offence of arson was three years' imprisonment. Concurrent sentences of six months' imprisonment were imposed for each of the other two offences. A restraining order prohibiting communication and other acts in respect of Katie Collin was imposed until further order. This replaced the existing restraining order. An appropriate victim surcharge was also imposed.

The Factual Background

4. The offender and Katie Collin started a relationship in March 2019. That relationship ended in August 2019.
5. On 22nd August 2019, the offender pleaded guilty to assaulting Miss Collin and for putting her in fear of violence. He was sentenced to a total of 12 weeks' imprisonment and a restraining order was imposed. An earlier suspended sentence order was activated, which led to a total sentence of 20 weeks' imprisonment.
6. On his release from prison, the offender contacted Miss Collin. They resumed their relationship, but after a short time the offender became jealous and possessive. This was exacerbated by his use of illegal drugs.
7. On 14th February 2020, Miss Collin received a text message wishing her "Happy Valentine's Day". She replied: "How many times do I have to say leave me alone?" The offender continued to contact her by telephone. She answered some of the calls. He wanted to know who she was seeing. He said that he was going to her home and that she had to watch out, because when he got hold of her, he was going to kill her and throw acid in her face. During one of the calls on 14th February, he told Miss Collin that he was going to "stab her dad up, petrol bomb her house, and burn her dad's car". He telephoned on approximately five more occasions when this threat was repeated.
8. On the evening of 14th February, he consumed approximately one litre of vodka. He left his home address just after 11pm. On 15th February, shortly after midnight, Miss Collin received a telephone call from a friend, stating that her house was on fire. The offender had set alight a parked car on the driveway of her home using what has been described as a petrol bomb. The fire spread to two other vehicles parked on the driveway. They belonged to her father, David Collin and two of her brothers, Harry and Charlie Collin.

9. Harry and Charlie Collin were present in the house at the time of the incident. They heard a car door slam followed by two loud bangs, similar in sound to a firework. They went outside and tried to extinguish the fire using a garden hose. The fire brigade arrived a short time later and put out the fire.

10. A fire investigator concluded that the damage had been caused by a deliberate ignition. Damage to the cars was estimated at more than £58,000. There was smoke damage to the garage doors. The living room of the house was damaged because of the heat emanating from the car that was parked nearest to the window.

11. The offender was arrested at the scene. He was heavily intoxicated and in a distressed state. He apologised. When interviewed, he answered "No comment" to all questions asked.

12. The offender was born on 23rd February 1997 and is now aged 23. He has nine convictions for 14 offences committed between 10th May 2016 and 22nd August 2019.

13. When the offender first appeared at the Teesside Magistrates' Court on 17th February 2020, he indicated guilty pleas. The case was sent to the Crown Court at Teesside and he was remanded in custody.

14. On 16th March 2020, at the plea and trial preparation hearing, he pleaded guilty to the three offences.

15. The sentencing judge had before her Victim Personal Statements from Katie Collin, her father and her brothers. She also had a psychiatric report by Dr Pratish Thakkar, a consultant forensic psychiatrist, dated 20th July 2020. Finally, she had a pre-sentence report prepared by Julie Pawson, dated 11th March 2020.

The Judge's Sentencing Remarks

16. The judge observed that the offender was "rather immature" for his age. It was clear from the psychiatric report that he suffered from an emotionally unstable personality disorder and from depression.

17. The judge had regard to the definitive guideline issued by the Sentencing Council for offences of arson. She concluded that this was a culpability B offence because it was a case of recklessness, not with an intention to endanger life. So far as harm was concerned, she concluded that this was a category 2 offence, because the fire was set to the car and not to the house as such, but that it fell at the top end of that category, given how the fire spread and the fact that there was an obvious risk of this taking place.

18. The judge took into account the offender's previous convictions which, she acknowledged, were a statutory aggravating feature. She also bore in mind that he had acted under the influence of alcohol at the time that he committed the offences. The judge was of the view that had there been a trial, the sentence for the offence of arson would have been one of four and a half years' imprisonment. She gave maximum credit for the guilty plea, reducing the sentence to one of three years. She then imposed concurrent sentences of six months' imprisonment for each of the other two offences. That made the total sentence, as we have said, one of three years' imprisonment.

The Submissions on behalf of the Attorney General

19. On behalf of the Attorney General it is submitted by Miss Pattison that the fundamental

issue relates to the length of the sentence imposed for the offence of arson. It is accepted that the offender was reckless as to whether life was endangered, and therefore this case fell into culpability category B.

20. As to harm, it is submitted that there was a significant to high risk of very serious physical and/or psychological harm. There was also a significant to very high value of damage caused. Both these factors indicate that the case fell between categories 1 and 2.

21. Further, it is submitted that there were the following aggravating features:

(1) Previous convictions, including convictions for offences committed against Miss Collin and against an ex-partner. Terms of imprisonment and restraining orders had been imposed in the past.

(2) A failure to comply with current court orders. The index offences were committed in breach of a protective order.

(3) The use of an accelerant, which was described as a "petrol bomb". We would observe that on behalf of the offender Mr Dryden has submitted that that may be an unduly emotive term. Certainly on the evidence before the court, petrol was used. We are not convinced that it ought to be described as a "petrol bomb".

(4) The offence was committed in a domestic context. In her oral submissions at the hearing before us today, Miss Pattison has particularly emphasised this aspect of the case. We would emphasise that offences committed in the context of domestic abuse are certainly not to be belittled.

(5) The offence was committed late at night.

(6) There was a degree of planning.

(7) Multiple people were endangered.

(8) The offence was committed whilst the offender was under the influence of alcohol.

(9) The impact of the offence on others, including family and friends.

22. It is acknowledged by Miss Pattison that there were mitigating factors:

(1) The offender had psychiatric difficulties.

(2) He was immature for his age.

(3) He was determined to address his offending behaviour.

Further, it is accepted that the discount of one third for a guilty plea was appropriate in this case.

The Sentencing Guidelines

23. Our attention has been drawn to the definitive guideline on "Arson/Criminal Damage with

intent to endanger life or reckless as to whether life endangered", which applies to all offenders aged 18 or over who are sentenced on or after 1st October 2019. A single offence of arson, falling within category 2B, has a recommended starting point of four years' custody, with a range of two to six years.

24. It is not suggested that the relevant criteria under the dangerousness provisions were met in this case.

25. Our attention has also been drawn to the definitive guideline on totality; and the definitive guideline on the overarching principles on domestic abuse, which applies to all offenders aged 16 or over who are sentenced on or after 24th May 2018. In summary, and rightly, it is submitted that the domestic context of the offending behaviour makes the offending more serious.

26. It is accepted on behalf of the Attorney General that when she considered each offence individually, the judge correctly identified and applied the relevant definitive sentencing guidelines. She correctly considered that the starting point for the offence of arson being reckless fell at the top end of category 2B. The judge adjusted the starting point of four years' imprisonment to one of four and a half years to reflect the presence of aggravating and mitigating factors and the totality principle, before allowing credit for the guilty pleas. Nevertheless, it is submitted on behalf of the Attorney General that the presence of the aggravating factors in this case merited a significant upward adjustment from the starting point.

27. Having identified a starting point that was too low, it is submitted that insufficient weight was given to the presence of aggravating factors and the totality principle; and that too much weight was placed on the mitigating factors. It is submitted that, taking into account mitigation and credit for the guilty pleas, the overall custodial term of three years was substantially too short and did not sufficiently reflect the overall seriousness of this offending, particularly bearing in mind that there were sentences to be imposed for two other matters. It is accepted by Miss Pattison that they could properly be made concurrent, but she submits that that meant that a further upward adjustment was called for in relation to the main sentence.

28. In conclusion, therefore, it is submitted by Miss Pattison that the sentence was unduly lenient and that leave should be given by this court to make a reference.

The Submissions on behalf of the Offender

29. On behalf of the offender, Mr Dryden makes the following submissions. He submits that a number of the aggravating factors on which the Attorney General relies involve a measure of double counting. The offender's previous convictions, the breach of a protective order, the domestic context, and the impact on family and friends all ultimately relate, he submits, to the breakdown of the relationship between the offender and Miss Collin. It is submitted that the offender's drunken condition, which it is accepted was an aggravating feature, is inconsistent with any great degree of planning, although Mr Dryden rightly accepts that there was an element of planning in this case.

30. Mr Dryden emphasises that the offender was immature for his age and that he suffered from an emotionally unstable personality disorder, with features of depression. At the oral hearing before us, he has emphasised that the offender had no history of pyromania and that he had not previously served anything like the length of custody which was now imposed upon him. The longest custodial sentence he had previously served was one of 20 weeks, imposed on 22nd August 2019. Overall, it is submitted by Mr Dryden that the judge applied her mind to

all relevant factors and that, having regard to the relevant guidelines, her overall sentence did not fall outside the range of sentences which were reasonably open to her.

The Approach to be taken by this Court

31. In giving the judgment of this court in *Attorney General's Reference No 4 of 1989* (1990) 90 Cr App R 366, Lord Lane CJ said (at page 371):

"The first thing to be observed is that it is implicit in the section [section 36] that this court may only increase sentences which it concludes were *unduly* lenient. It cannot ... have been the intention of Parliament to subject defendants to the risk of having their sentences increased – with all the anxiety that this naturally gives rise to – merely because in the opinion of this court the sentence was less than this court would have imposed. A sentence is unduly lenient, we would hold, where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate ... it must always be remembered that sentencing is an art rather than a science; that the trial judge is particularly well paced to assess the weight to be given to various competing considerations; and that leniency is not in itself a vice. That mercy should season justice is a proposition as soundly based in law as it is in literature." (emphasis in original)

Lord Lane CJ went on to state that, even where this court considers that a sentence was unduly lenient, it has a discretion as to whether to exercise its powers.

32. In *Attorney General's Reference No 132 of 2001 (R v Bryn Dorian Johnson)* [2002] EWCA Crim 1418, [2003] 1 Cr App R(S) 41, the judgment of this court was given by Potter LJ. At [24] he said:

"... there is a line to be drawn ... between the leniency of a sentence in any given case and a sentence which is 'unduly' lenient, in the words of the statute. ... The purpose of the system of Attorney-General's References in particular cases seems to us to be the avoidance of gross error, the allaying of widespread concern at what may appear to be an unduly lenient sentence, and the preservation of public confidence in cases where a judge appears to have departed to a substantial extent from the norms of sentencing generally applied by the courts in cases of a particular type."

Conclusions

33. In the present case, the main offence was arson being reckless as to whether life was endangered. The judge imposed a sentence of three years' imprisonment, after giving full credit for guilty pleas. No complaint is or can be made about that reduction. Complaint is made that

a starting point of four and a half years after trial was unduly lenient, having regard to the aggravating features and totality, particularly bearing in mind that sentence had to be imposed for two other offences. The sentences of six months' imprisonment on each of those offences were made concurrent.

34. No real complaint is or can be made about the judge placing this offence in category 2B of the relevant guideline, although she placed harm at the top end of category 2. The judge did go above the starting point recommended in the guideline for a single offence of arson (four years' custody). The sentence was, therefore, well within the range recommended in the guideline, and above the suggested starting point. She reached four and a half years after taking account of both the aggravating and mitigating features: in particular, the evidence of the offender's mental health issues and his immaturity for his age.

35. While other judges might properly have taken a higher starting point after trial, and some might consider the sentence to have been lenient, we do not consider that the total sentence of three years' imprisonment was unduly lenient.

36. Accordingly, we refuse the application for leave to refer the sentence under section 36 of the 1988 Act.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk
