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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Neutral Citation Number: [2020] EWCA Crim 669

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 6 May 2020

VIRTUAL HEARING

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE WILLIAM DAVIS

MR JUSTICE NICKLIN

R E G I N A

v

AARON SMITH

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Mr T Chaize appeared on behalf of the **Applicant**

J U D G M E N T

MR JUSTICE NICKLIN:

1. This is a renewed application for permission to appeal against the sentence imposed on the applicant by His Honour Judge Gold QC at Lewes Crown Court on 18 October 2019. On 1 August 2019, the applicant had pleaded guilty to two counts of aggravated burglary committed with a co-defendant, Lee Mayne. The Judge imposed an extended sentence with a custodial term of 12 years and an extension of 4 years on both defendants for both offences to be served concurrently.

Facts

2. On 3 April 2019 the defendants drove to an address in Eaton Road in Brighton. The property was occupied by a woman named Xi Ping Chen who was a friend of the resident. When the doorbell rang Ms Chen answered it expecting to see her friend. She was instead confronted by the applicant and Mayne. One of the men held a knife. She was pushed back inside the flat and demands for money were made. Ms Chen took £180 cash from her handbag and passed it over. Unhappy with this amount one of the defendants began to hit her. The second male pushed Ms Chen into another room and onto the ground. Further demands for money were made. The second male grabbed her handbag and a struggle ensued. While still on the ground, Ms Chen was kicked in the head and fell unconscious. Mr Chaize realistically accepts that this can be treated as grievous bodily harm. When she came around, the defendants had left and her handbag was missing. Ms Chen's friends, Sophia Chang returned to the property. Later that evening, Ms Chang received a telephone call from one of the defendants stating that they would be prepared to return the handbag for £200. They arranged to meet but the exchange did not actually take place as the defendants would not pass back the handbag and Ms Chang refused to give them the money. The defendants drove away. The matter was reported to the police.
3. The defendants went on to commit a further aggravated burglary that same evening. Meroing Cao lived at an address in Lower Rock Gardens in Brighton with her partner John Sanbrook. At around 20.30, the door buzzer rang. Ms Cao opened the front door slightly and saw the applicant and Mayne standing outside. They forcefully kicked the front door and walked inside, both were carrying knives. They demanded money whilst gesturing with weapons. Mr Sanbrook gave them £185 from his wallet. They demanded more. One snatched Mr Sanbrook's iPhone and said, "I'll fucking kill you, I'll fucking stab you". Ms Cao was attacked by one of the defendants while in her bedroom. She was struck to the head and kicked to the floor. A knife was held to her neck. She sustained a cut to the side of her mouth. The second male dragged her by her hair whilst still demanding money. They searched the rest of the flat. Mr Sanbrook unsuccessfully attempted to call 999. In addition to the money and the iPhone, the defendants stole a MacBook Pro laptop, another iPhone, some jackets, Mr Sanbrook's passport and a drill kit. They left the address at about 20:40 and

drove away. A total of £1,185 cash was stolen from the address, as well as £150 worth of euros.

4. On 4 April (i.e. the following day) Ms Chen was taken to the Royal Sussex County Hospital after it became apparent that she had sustained a serious head injury. Medical staff advised her that she had concussion with internal bleeding. Ms Chen did not stay in the hospital because she was a Chinese national and was concerned about the prospect of a large medical bill.
5. The two offences were committed within hours of each other. The victims were vulnerable, easy targets. The offences were planned, knives were used and both victims were subject to violence. In the pre-sentence reports prepared for the Court both defendants sought to blame each other.

Sentence

6. The sentencing Judge was satisfied that the offences were planned, knives were used in the commission of both offences and the two female victims were subjected to violence. The Judge treated the applicant and Mayne as equal partners. Both had known exactly what was planned and each played a full and enthusiastic part in the commission of the offences.
7. The applicant was 28 and had a poor record, albeit that there was nothing of the seriousness of these offences. The Judge considered the question of dangerousness and concurred with the assessment of the probation officer that he did pose a significant risk of causing serious harm to the public. He considered that an extended determinate sentence was appropriate and that after trial the custodial term would have been one of 18 years' imprisonment. The applicant was entitled to full credit for his guilty plea, which was identified by the Judge as his only real mitigation. That reduced the custodial element to 12 years' imprisonment. The Judge passed an extended sentence of 16 years, comprising of a custodial term of 12 years and an extended licence period of 4 years on each count concurrent. The same sentence was imposed on Mayne.

Appeal

8. The applicant seeks permission to appeal this sentence on three grounds.
 - i) First, the Judge refused to consider the applicant played a significantly lesser role than his co-accused in both offences and/or played no part in a joint enterprise to inflict grievous bodily harm in the second offence.
 - ii) Second, the Judge refused to consider the applicant as an individual when considering the imposition of an extended sentence. The Judge merely dealt with the applicant as part of a joint enterprise whereas all three victims stated they were subject to physical violence by Mayne alone.

- iii) Third, a sentence of 18 years' imprisonment, before discount, was manifestly excessive.

Decision

9. In agreement with the single Judge, we reject the first two grounds. The applicant fell to be sentenced in relation to both offences on the basis that he was engaged in a joint enterprise with his co-accused and the Judge was perfectly entitled to treat them as equal partners in these crimes with equal responsibility with the harm that was caused. While the applicant complains that the Judge, and the author of the pre-sentence report, had not properly understood the evidence of the applicant's role and taken into account that the witnesses did not suggest that he had personally inflicted the violence upon them, nevertheless the judge was entitled to conclude that there was little purpose to be served by seeking precisely to apportion blame between the applicant and his co-accused. By any view he was involved in or complicit in the violence that was part and parcel of the offences which occurred. Certainly, by the time of the second offence, the applicant was well aware of the level of violence that was likely to be used in the commission of the offence.
10. In relation to the third ground, the single Judge considered that these were very serious offences, involving multiple features of greater harm and higher culpability, when the Sentencing Guidelines came to be applied. On those guidelines, the indicative starting point for a single offence was 10 years' imprisonment with a range of 9 - 13 years. A sentence towards the upper end of the category range would therefore have been justified in relation to each of these offences taken individually. The single Judge considered that a sentence of 18 years for the two offences, although stern, reflected the numerous aggravating features of the offences: the victims were at home and sustained significant injury from violence involving a weapon; the premises in which the offences took place were deliberately targeted; there was a significant degree of planning with a weapon present at entry to the premises and the offences took place as a group attack. Taken together with the other aggravating features present, such as the applicant's previous convictions, the single Judge considered that a sentence of 18 years' imprisonment was not manifestly excessive.
11. Having regard to the starting point of 10 years on the Sentencing Guidelines, a sentence, before discount, of 18 years' imprisonment was almost double. Even allowing for the aggravating features, of which there were many, and the fact that the applicant was being sentenced for two nasty offences, we are satisfied that this sentence was manifestly excessive. In our judgment a sentence of 15 years' imprisonment, before discount for guilty plea, properly reflects the overall seriousness of the offences taken together.
12. There is however no basis on which to challenge the Judge's conclusion that the applicant was dangerous. Although he did not expressly consider whether the

determinate sentence that he imposed represented sufficient protection of the public, we are satisfied in light of the pre-sentence report and the applicant's previous convictions and the nature and circumstances of the offences that were committed, that an extended sentence was necessary and more than justified. There is no complaint about the period of the extended licence.

13. For those reasons, therefore, we grant permission to appeal. We quash the sentence imposed by the Judge and substitute an extended sentence of 14 years which consists of a determinate sentence of 10 years' imprisonment and an extended licence period of 4 years on each count concurrent with each other. To that extent the appeal is allowed.

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

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