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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202101731/A4

NCN: [2021] EWCA Crim 1132

Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 13 July 2021

LORD JUSTICE SINGH

MR JUSTICE JOHNSON

HER HONOUR JUDGE DHIR QC

(Sitting as a Judge of the CACD)

**REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988**

REGINA

V

AKEEL AURANGZAB

Computer Aided Transcript of Epiq Europe Ltd,  
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Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)  
MR P RATLIFF appeared on behalf of the Attorney General.

MS A TAYO appeared on behalf of the Offender.

**J U D G M E N T**

LORD JUSTICE SINGH:

***Introduction***

1. This is an application on behalf of the Solicitor General for permission to make a Reference to this Court, under section 36 of the Criminal Justice Act 1988 ("the 1988 Act").
2. On 12 April 2021, in the Crown Court at Wolverhampton, the respondent pleaded guilty to two offences, assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861 (count 2) and dangerous driving, contrary to section 2 of the Road Traffic Act 1988 (count 3). These counts were added to the indictment at that time. At the plea and trial preparation hearing, on 2 July 2020, he had pleaded not guilty to count 1, which alleged attempting to inflict grievous bodily harm, contrary to section 1(1) of the Criminal Attempts Act 1981. He was convicted of that offence after a trial which finished on 14 April 2021.
3. On 14 May 2021 the respondent was sentenced as follows by Mr Recorder Upward QC. On count 1, there was a sentence of 3 years' imprisonment; on count 2, there was no separate penalty; on count 3, there was a sentence of 9 months made concurrent, so making a total sentence of 3 years' imprisonment. A victim surcharge order was made. The respondent was disqualified from driving until an extended test is passed for a total period of 3 years and 6 months, comprising a discretionary period of 2 years under section 34 of the Road Traffic Act Offenders Act 1988, and an extension period of 1 year and 6 months, which was recorded as being made under section 166 of the Sentencing Act 2020 ("the Sentencing Code"). This was in error as the respondent was convicted of an offence for which disqualification from driving is obligatory. Accordingly the provisions of the Road Traffic Act 1988 (as amended) continued to apply. In this case the discretionary period of disqualification of 2 years should have been recorded as being extended by a period of four-and-a-half months, that is half the custodial sentence on count 3 of 9 months (see section 35A). There should also have been an uplift to take account of the custodial sentence on count 1 of thirteen-and-a-half months under section 35B. That would bring the total period to 2 years plus 1 year and 6 months, as was the intention of the sentencing court, and that would have been in accordance with the decision of this Court in R v Needham [2016] EWCA Crim 455; [2016] 1 WLR 449.
4. The respondent was also made the subject of a restraining order until further order. There is no issue about this before this Court but it should be noted that the order was erroneously recorded in the Crown Court as having been made under section 5 of the Protection from Harassment Act 1997, which had been repealed by the time of the sentence in this case. The order should have been recorded as having been under section 360 of the Sentencing Code. The error does not affect the validity of the order (see paragraph 4 of schedule 27 to the Sentencing Code).

***The Facts***

5. The facts have been set out in the Final Reference from the Solicitor General and are agreed. The offender and victim were cousins who lived in Stourbridge. There had been a long-running family dispute in respect of which the offender and victim were on opposing sides. At around 12.30 on 27 November 2019 the victim and his brother were walking in Stourbridge. They noticed the offender at a junction in a silver Volkswagen Passat. The offender looked straight at the victim's brother. As they continued to walk

the offender drove past them and out of sight. Approximately 5 minutes later they saw the offender's vehicle again, this time in the car park of a shop. They walked past the shop and continued down the road. They then noticed the offender's vehicle parked at the bottom of the hill facing towards them.

6. It was common ground at the trial that the offender was aware of the route the victim and his brother were taking. The victim and his brother continued to walk and crossed the road, which was a narrow single lane carriageway abutted by residential properties. They then heard the Passat engine revving and saw the vehicle driving at them at speed. It was clear to the victim that the offender was aiming at them. The offender drove his vehicle straight at the victim and his brother. This aspect of the incident was captured on CCTV. The vehicle was driving at considerable speed and did not slow down. The offender's own estimate was that he was travelling at 50 miles per hour. The speed was such that the vehicle's rear nearside wheel left the road surface before mounting the pavement. The vehicle partially mounted the pavement in order to strike the victim, who did not have time to get out of the way because of the vehicle's speed. The victim's brother narrowly avoided being hit. The offender made no attempt to change the vehicle's course. The victim was struck by the vehicle with real force. His body struck and smashed the windscreen. He was propelled several metres into the air, rotating 360 degrees twice before landing on the other side of the road. The offender drove away from the scene without stopping. He drove his vehicle to a rural location. Within an hour he had set fire to it in order to destroy evidence. He caused himself burn injuries in the process.
7. The victim was taken to hospital. He did not sustain any broken bones or fractures but did suffer bruising and grazing to his back and arms and also cuts and grazing to both legs. He suffered ongoing pain to his back and legs which caused him problems with walking. He received physiotherapy for his injuries.
8. On 29 November 2019 the police attended a flat in Lye following a report the offender was at that address. The offender was arrested and taken to hospital for treatment for his burn injuries. When interviewed he answered "no comment" to all questions.

### ***Relevant Sentencing Guidelines***

9. Under section 59(1) of the Sentencing Code the sentencing court must follow any relevant Sentencing Guideline unless it would be contrary to the interests of justice to do so. We must also make reference to the provisions of section 52(6), which provides that the court must identify any sentencing guidelines relevant to the offender's case and (a) explain how the court discharged any duty imposed upon it by section 59 or 60 and (b) where the court was satisfied it would be contrary to the interests of justice to follow the guidelines to state why.
10. At the material time when sentence was passed in this case the relevant guideline was that issued by the Sentencing Council on offences of assault in 2011. It has since been replaced by a new guideline with effect from 1 July 2021. It has, however, been common ground before us that the relevant guideline for present purposes was that in force when the sentence was passed.
11. Before the Recorder it was common ground that, if this offence had not been an attempt but had been the completed offence of causing grievous bodily harm, contrary to section 18 of the Offences Against the Person Act 1861, the appropriate category in the guideline

in force at the time would have been category 2, because there was lesser harm but higher culpability. For an offence in that category the guideline recommended a starting point of 6 years' custody, with a suggested range of 5 to 9 years.

### ***Sentencing Remarks***

12. The sentencing judge had before him a victim personal statement. In this the victim explained how the offence had a detrimental impact on his physical and mental well-being: he no longer felt safe or at ease and was afraid for his life. He suffered intense anxiety, found it difficult to leave home and could not socialise with friends or participate in his previous hobbies. He continued to experience great discomfort because of the impact on his back and found it difficult to sleep. He was receiving medication for his physical and mental injuries. The offence, he said, had caused significant distress to his family, who were also in fear for his life. As a consequence of the offending he felt extremely vulnerable. The offending had a huge negative impact on the quality of his life and his mental and physical health.
13. The offender had no previous convictions or cautions recorded against him and a number of character references were submitted for the purposes of the sentencing exercise. The sentencing judge also had a pre-sentence report dated 5 May 2021. The report said that the offender continued to deny intending to hit or harm the victim but, as at his trial, claimed he wanted to scare the victim and his brother because they had sworn at him. He provided for his family financially and was the legal carer for his father. In the report he was assessed as having a low likelihood of re-offending and a lower likelihood of serious re-offending but he was assessed as a medium risk of causing serious harm to known adults, particularly the victim and his brother.
14. In his sentencing remarks the Recorder noted that it was simply good fortune that the offender did not fall to be sentenced for murder. Whilst the injuries in fact sustained were not great, the victim continued to suffer. The Recorder took into account the offender's good character, the fact that the offence had taken place nearly 2 years previously, the decision of this Court in R v Manning [2020] EWCA Crim 592 on the relevance of the current pandemic to sentencing and the effect that the sentence would have upon the respondent's family.
15. The Recorder did not set out his findings in respect of whether the victim had verbally abused the offender, as the offender claimed but the victim and his brother denied or whether the attack was premeditated. In particular, we must note that the Recorder regrettably did not refer to the Sentencing Guideline. He did not identify a starting point, set out any reduction to reflect the fact that this was an attempt rather than a completed offence, nor did he refer to the aggravating features which had been set out before him in the Sentencing Note prepared by the prosecution.

### ***The Approach to be taken by this Court***

16. The approach to be taken by this Court on an application such as this under section 36 of the 1988 Act is well established. It was set out in the judgment of this Court in Attorney-General's Reference (No 4 of 1989) (1990) 90 Cr App R(S) 366 at 371, by Lord Lane CJ. He said:

"A sentence is unduly lenient... where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."

17. 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 exercise its powers.

***Submissions for the Solicitor General***

18. On behalf of the Solicitor General it is submitted by Mr Ratliff that the sentence of 3 years' imprisonment on count 1 was unduly lenient. It is submitted that, although the victim's physical injuries were not serious and fell short of grievous bodily harm, if the offence had been completed, there would have been serious physical injury or perhaps even death. Further, the victim suffered significant psychological injury. In relation to culpability it is submitted that there was a significant degree of premeditation. Further, a vehicle was used as a weapon. It is also submitted that the following factors increased the seriousness of the offence. First, there was a risk of serious injury to the victim's brother. Secondly, the location of the offence, which was a narrow carriageway on a residential street. Thirdly, the timing of the offence, which was shortly after midday, when it was likely that other members of the public would be in the area. Fourthly, there was a concerted effort to dispose of evidence by setting fire to the vehicle.
19. It is recognised that there were mitigating features as well. This was an isolated incident; the offender had no previous convictions and there was evidence before the court of a positive good character. Our attention has been drawn to decisions of this Court in relation to sentencing for attempts, in particular R v Laverick [2015] EWCA Crim 1059, at paragraph 15 (William Davis J); Attorney-General's Reference (R v Zaheer) [2018] EWCA Crim 1708, at paragraph 19 (Davis LJ); [2019] 1 Cr App R(S) 14 and Attorney-General's Reference (R v Muthuraja) [2019] EWCA Crim 1740, at paragraph 21 (Holroyde LJ). The general principle is that a sentence for an attempted offence will ordinarily be less than the sentence for the substantive offence itself but the degree of reduction which is appropriate will depend on the circumstances, including the stage at which the attempt failed and the reason for non-completion.

***Submissions for the Respondent***

20. On behalf of the respondent we have had submissions from Ms Tayo. She points out that the Recorder had the benefit of observing the offender while he gave evidence and throughout his trial. She also points out that he had a detailed Sentencing Note from the prosecution and was referred to the decisions of this Court in R v Manning and also R v Uddin [2021] EWCA Crim 641. She submits that the case of Uddin was more serious than the present one but that in that case a sentence of 5 years' imprisonment was upheld on an appeal.
21. In our view each case turns on its own facts. We do not find any general principles set out in that judgment. Further, it must be recalled that that was an appeal against sentence and not an application to refer a sentence on the ground that it was unduly lenient.
22. Ms Tayo reminds this Court that the question is not whether other judges might have imposed a different sentence but whether the sentence imposed falls outside the range

which a judge applying his mind to all the relevant factors could reasonably consider appropriate. She points in particular to the following features of the case. First, the incident lasted only a matter of seconds. The victim was, fortunately, able to stand up and walk around and he declined the offer of an ambulance to take him to hospital. Secondly, the offence arose, she submits, from an element of provocation in terms of what she describes as vile finger gestures from the offender's cousins. Thirdly, the offender panicked and set fire to his own vehicle to destroy evidence but in the process of so doing he suffered severe burns to his own face and body. Fourthly, he has lost all hope of realising his dream of becoming a pilot, having previously been studying aviation and airline management. Fifthly, he has lost his job as a delivery driver. In all the circumstances Ms Tayo submits that having regard to the principle of totality the sentence imposed was apposite and was certainly by no means unduly lenient.

### *Conclusions*

23. No issue is taken about there being no separate penalty on count 2, nor is there any issue that the Recorder was entitled to make the sentence on count 3 concurrent. The question which arises is whether the sentence on count 1 was unduly lenient. We have reached the conclusion that it was, having regard to the seriousness of the offence and even after taking into account the mitigating features. The fact that the offence was not completed was not the result of anything which this offender did or did not do. It was fortunate that the victim did not suffer very serious injury, or even death. Further, we do not consider that this was a case in which any material reduction was warranted to reflect the current pandemic in view of the length of the sentence which we think was required. Since Manning, this Court has made it clear on a number of occasions that a reduction will not necessarily be called for where the likely sentence is a long one. If this had been a completed offence a sentence well above the starting point of 6 years in a category 2 case would have been justified. We nevertheless need to reflect the fact that this was an offence of an attempt and not the completed offence.
24. In all the circumstances, we consider that the minimum sentence which was required on count 1 was 5 years' imprisonment. Accordingly we grant permission to the Solicitor General to make a Reference to this Court, we quash the sentence of 3 years on count 1 and substitute one of 5 years. We leave the other sentences as they were. That makes a total sentence of 5 years' imprisonment. This may have consequences for the other orders that were made in the Crown Court and we will invite submissions from both counsel in a moment. Our preliminary view is that in order to reflect the intention of the sentencing court and also the consequence of the sentence that we have now submitted on count 1, the disqualification from driving ought to reflect the following features. First, we think that the discretionary period should remain one of disqualification for 2 years. There needs to be an extension of that to amount, we think, in total to half of the custodial sentence of 5 years, namely two-and-a-half years. We think that, subject to submissions from counsel, the way in which that would have to be structured is for there to be an extension period under section 35A of four-and-a-half months, which is half the sentence on count 3 but an uplift period under section 35B of 2 years one-and-a-half months taken together. Those would then amount to two-and-a-half years being half the sentence of 5

years. Subject to submissions from counsel, we think therefore that the total disqualification period would be four-and-a-half years.

MR RATLIFF: My Lord I agree. Thank you.

LORD JUSTICE SINGH: Do you want to say anything Ms Tayo?

MS TAYO: My Lord no.

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

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