



Neutral Citation Number: [2021] EWCA Crim 1485

Case No: 202101714 A4

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM CROWN COURT AT MINSHULL ST, MANCHESTER
HHJ T. LANDALE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/10/2021

Before :

MR JUSTICE LAVENDER
MR JUSTICE WALL

Between :

Jack Michael PADDON
- and -
REGINA

Appellant

Respondent

Mr Stuart Neale (instructed by Platt Solicitors) for the Appellant

Hearing dates: 7th September 2021

Approved Judgment

1. On 7 September this court considered the appellant's grounds of appeal against sentence upon which he had previously been given permission to rely. The appeal based on those grounds was rejected for reasons given at the time.
2. However, in the course of that hearing an application was made to allow the appellant to rely on a fresh ground of appeal, namely that he should have been afforded one third credit for his guilty pleas and not the twenty-five percent credit afforded to him by the judge. This application was made by Stuart Neale, counsel then instructed on behalf of the appellant due to the unavailability of trial counsel, Ian Metcalfe. We adjourned consideration of that application and ordered that witness statements be uploaded to explain the way in which the guilty pleas came to be entered. We indicated that we would then consider the application on the papers.
3. Since the last hearing we have had sight of witness statements from Naila Akhter, the appellant's solicitor, and Ian Metcalfe, the barrister who represented the appellant at his plea and sentencing hearings. We are now able properly to consider the application on the basis of the contents of those statements and the other material available to us on DCS.

The Law

4. The appropriate level of reduction of sentence for guilty plea is set out in the Sentencing Council's definitive guideline, "Reduction in Sentence for Guilty Plea". The general rule is that full (one third) credit should be reserved for cases in which a guilty plea is indicated at the first stage of proceedings, which is normally "*the first hearing at which a plea or indication of plea is sought and recorded by the court*". Thereafter the amount of credit available up until the day of trial is between twenty-five and ten percent depending on how close to the trial date the guilty plea is entered.
5. Section F of the Guideline sets out a number of exceptions to that general rule. These include at F1: "*Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made. In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal*".

The Facts

6. The chronology of the case is as follows:
 - a) The appellant was arrested on 18 February 2020. He was interviewed in the presence of an appropriate adult and denied the allegations. He agreed that he had driven his co-accused around the Tameside area on the night on which they committed the robberies but asserted that he had no knowledge that they were committing robberies and therefore he was not a party to the commission of them.

- b) He appeared before the MC on 10 December 2020 when his case was transferred to the CC. The sending sheet from the MC indicates that no indication of plea was given at that time.
- c) The PTPH at the CC took place on 7 January 2021. Arraignment was postponed until a psychiatric report was available.
- d) A psychiatric report was received by the appellant's solicitors on 24 February 2021.
- e) The appellant pleaded guilty on arraignment at a second PTPH on 26 February 2021.

The Submission

7. The submission made on behalf of the appellant is that there were concerns over his mental health at the time of his appearance at the MC and the first PTPH at the CC and that it was therefore reasonable for him not to enter guilty pleas until those concerns had been addressed by a psychiatrist. The guilty pleas were entered within 2 days of that report being received by his solicitors and his prompt actions once the report was to hand entitled him to full credit. This was, it was submitted, the first reasonable opportunity he had to enter those pleas.

The Evidence

8. The witness statement of Ms Akhter sets out her recollection of the MC hearing at which she acted as the appellant's advocate. She recalls the appellant talking to her of having mental health difficulties (no further details given) and of his talking about duress (again no details given). She accepts indicating to the court that the issue in the case was "*denies knowledge/participation*" (i.e. the issue raised by the appellant in his police interviews).
9. The witness statement of Mr Metcalfe records his instructions when he attended the CC on 7 January 2021 as being that the appellant had "*significant mental health issues*" but that he was likely to say that "*he had no knowledge of what his co-defendants were up to whilst away from his car*" (again, consistent with his police interview). However, when he saw the appellant, the appellant told him that "*he was in such fear of immediate death or serious injury (specifically of being stabbed with a knife by Mason Power) that he felt unable to abandon or refuse to accede to his co-defendants' request to provide them with transportation between the offences*". Mr Metcalfe sought an adjournment of the PTPH so that a psychiatric report could be obtained. He said that he had no personal doubts about the appellant's fitness to plead or his ability to understand his legal advice on what amounted to a defence of duress, but wanted to know whether there was any psychiatric evidence that the appellant was particularly susceptible to threats which might support a defence of duress. When Mr Metcalfe attended the second PTPH, which took place after receipt of the report which confirmed the appellant's fitness to plead and offered no assistance on the defence of duress, the appellant accepted that he could have distanced himself from his co-accused by driving away from them had he chosen to do so and thus that the defence of duress was unlikely to succeed. On that basis, he pleaded guilty to the offences.

10. Additionally we note from the Advice and Grounds of Appeal document prepared by Mr Metcalfe that he wrote “[the sentencing judge] indicated that she would make a 25% reduction in her sentence ... for his guilty pleas on first arraignment... I took and still take no issue with ... this level of credit for the defendant’s guilty pleas”.

Discussion and Conclusion

11. There was undoubtedly an opportunity for the appellant to enter or indicate his guilty pleas before he did. He could have indicated them at the MC or entered them at the original PTPH on 7 January 2021. The real issue is as to why that was not done.
12. In our judgment, had there been a proper issue as to his fitness to plead such that a psychiatric report was necessary before the appellant could have been given proper legal advice, a delay in entering the pleas would have been explicable and full credit should have been afforded to him. Likewise, had counsel thought that potentially there was a defence available to the appellant which could only be run on the basis of psychiatric evidence (e.g. diminished responsibility on a charge of murder).
13. However, in this case there was no real concern about fitness to plead. His solicitor had apparently been able to ascertain from him at the MC the nature of his defence and counsel at the PTPH was able to take instructions from him and advise him. Although the psychiatrist was asked to give an opinion as to the appellant’s fitness to plead as part of his report, this was no more than a confirmatory opinion. This was not a case in which real doubts existed on this issue.
14. We can understand how a psychiatric report might theoretically be used to explain the heightened reaction of a defendant with mental health issues to pressure being brought to bear on him and thus on the issue of duress. However, a defendant does not need psychiatric evidence to run such a defence. Most defences of duress are run at trial without any psychiatric evidence being presented. The appellant’s instructions at the PTPH were that he was subject to threats and that he felt he could not resist them. Counsel could have advised him as to the strengths and weaknesses of that position at the time of the PTPH without awaiting the report. A proper plea could then have been entered.
15. The appellant’s decision to plead guilty was the result of a second change of stance by him. In his police interviews and at the MC he indicated that he did not know what was happening. He abandoned that assertion at the PTPH when he said that he could not have resisted the pressure being brought to bear on him by his co-accused and acted out of duress. He abandoned that at the second PTPH. He might have done so because by that stage he felt that his defence was unlikely to succeed but his pleas were the result of a simple change of instructions nonetheless.
16. We conclude that this was a plea delayed not because the report was a necessary pre-requisite to advising the appellant of his legal position but in order to “*assess the strength of the prosecution evidence and the prospects of conviction or acquittal*” (Guideline section F1). That being so, only a reduced level of credit and not the full one third was appropriate when the pleas were entered at a later date.
17. We note that our conclusion that the appellant was afforded a proper level of credit for guilty plea coincides with the view taken by his advocate at trial in his Advice and

Grounds of Appeal. He is an experienced criminal advocate who would have had a full appreciation as to the background to these guilty pleas being entered. We are confident that, had there been a proper point to have been taken on the issue of credit, he would have advanced it in mitigation and then again on appeal.

18. Given our conclusions, we refuse permission for this point to be argued further.

