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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202003250/A4

NCN: [2021] EWCA Crim 261

Royal Courts of Justice

Strand

London

WC2A 2LL

Tuesday 23 February 2021

LORD JUSTICE DAVIS

MR JUSTICE SPENCER

MR JUSTICE BOURNE

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

REGINA

V

PAUL LAMB

DAVID JOSEPH LAMB

JAMES LAMB

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MR B LLOYD appeared on behalf of the Attorney General.

MS R HEDWORTH appeared on behalf of the Offender Paul Lamb.

MR J HEDWORTH appeared on behalf of the Offender David Lamb.

MR C KNOWLES appeared on behalf of the Offender James Lamb.

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

1. LORD JUSTICE DAVIS: The Solicitor General seeks to challenge sentences on the grounds that they are unduly lenient. We grant leave in this case. There are three offenders concerned: Paul Lamb (now aged 53), David Lamb (now aged 51) and James Lamb, son of Paul Lamb (now aged 27).
2. The three offenders had been charged with attempted murder and in the alternative wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861. In addition, James Lamb had been charged with two counts of having an article with a blade or point and Paul Lamb had been charged with one count to like effect.
3. At a plea and a trial preparation hearing on 14 February 2020 the offenders all entered pleas of not guilty in Newcastle Crown Court to counts 1 and 2. Paul Lamb also pleaded not guilty to count 5, being the count of having an article with a blade or point. James Lamb pleaded guilty to counts 3 and 4, being counts of having an article with a blade or point. A trial date was fixed for 6 July 2020, although that had to be vacated as a result of Covid impacts.
4. On 18 September 2020, on the application of two of the offenders by way of seeking a Goodyear indication, there was a hearing before HHJ Adams in the Crown Court. The judge indicated that, unusually perhaps, as he said, he would be prepared to give a Goodyear indication in this particular case. Having done that, the judge indicated that the sentence would not exceed 11 years' imprisonment before personal mitigation was taken into account. On that day all of the offenders then pleaded guilty to count 2, being the alternative count of wounding with intent and Paul Lamb also pleaded guilty to count 5. The prosecution thereupon offered no evidence upon the count of attempted murder.
5. On 27 November 2020 the offenders were each sentenced to 6 years 9 months' imprisonment on count 2 and various shorter concurrent sentences were imposed upon the other counts. The judge indicated in the course of his sentencing remarks, to which we will come, that he thought it appropriate that each offender should receive the same sentence.
6. The background facts in essential summary are these. Paul Lamb and David Lamb were brothers and James Lamb, as we have said, was Paul Lamb's son. It seems plain that there had been something of a history between the three offenders and the victim of the attack, namely a man called Wayne Brown. The offenders maintained that Wayne Brown had a history of bullying David Lamb, involving physical violence and demands for money, moving into his house and so on. Further, it was stated that there had also been significant violence inflicted on others, including James Lamb. However, there was no basis of plea and the judge was not required to make any specific factual findings as to the full story by way of background; the judge nevertheless accepted that there had been significant background, involving bullying and assaults and so on the part of Wayne Brown.
7. Just before 3 o'clock in the afternoon on Saturday 11 January 2020 Mr Brown had been in the company of David Lamb at an address in Gateshead, the home of a woman called Michelle Gibson. Others also had been visiting there. There was evidence that, at that stage, Wayne Brown appeared to have been bullying David Lamb within the property at the rear of the address and indeed then punched David Lamb. David Lamb is much smaller than Mr Brown. It was stated that the argument may have concerned money, said to be owed by David Lamb to Mr Brown, although his position was that no money

was in fact owed at all, rather it was simply being demanded by Mr Brown.

8. At all events Mr Brown got much the better of David Lamb, repeatedly punching and kicking him. No weapons however were involved and Mr Brown then went back inside the house. David Lamb had then telephoned Paul Lamb; the result of which was that Paul Lamb, together with James Lamb, travelled to that address in their car, arriving quite soon after the telephone call had been made. They took with them two Samurai swords and a hunting knife. It was suggested, although no specific finding was made, that they had previously acquired those weapons as forms of defence against any prospective attacks by Mr Brown. At all events those were the weapons they took.
9. On arrival at the address Mr Brown was then beckoned (most probably by David Lamb) into the rear yard. There he was then confronted by the offenders Paul and James Lamb, each of whom was in possession of a Samurai sword. As the judge found, those two would, at that stage, certainly have realised that Mr Brown was himself unarmed. The two then immediately began to attack Mr Brown with the swords, inflicting wounds as they did so. During the course of the attack the sword being used by the offender James Lamb buckled as it was being used to stab the victim. Having lost that sword James Lamb then returned to the vehicle to collect and arm himself with the knife (a form of hunting knife) and then, having returned, used it to inflict multiple deep penetrating wounds to the victim's neck.
10. As for David Lamb, the evidence was that he did not himself physically participate in the fight; but there was evidence that he had encouraged Paul Lamb and James Lamb, knowing of course that they had weapons with them and that they were being used. At all events there was evidence, and it was accepted by the judge, that David Lamb was heard at one stage to shout: "Best thing finish him off otherwise he'll come back and do us" during the attack. Afterwards, the three left the scene. After returning home, they made attempts to conceal the weapons, although these were subsequently found.
11. As for Mr Brown, he sustained life-threatening injuries. Indeed he suffered a cardiac arrest on the way to hospital and required intubation and surgery in the ambulance. He very nearly died. He required significant surgery. He lost his spleen. He was in intensive care for a number of days. The injuries had unquestionably been life threatening. He remained in a serious and unstable condition due to uncontrollable bleeding and was required to be returned for surgery on several occasions. He had to have a tracheotomy. Not only has he lost his spleen, but in addition there has been permanent scarring and also there is long-term restrictive movement in his left arm and he will constantly be on medication in the future. He had in fact required 37 units of blood and 37 units of plasma during his various surgical procedures. He continued a pattern of recovering and relapsing within the Intensive Care Unit until eventually removed from a ventilator on 11 February 2020 and being discharged from hospital on 18 February 2020. In his victim personal statement he also described the long-term psychological effects on him of the incident that day.
12. Before the judge there were pre-sentence reports, and a psychological report so far as James Lamb was concerned. The overall assessment was that findings of dangerousness were not required.
13. So far as David Lamb was concerned, the indications were that he had a significant number of problems; indeed he appears to have been an alcoholic at the time and needed care and there were various psychiatric issues so far as he was concerned.

14. So far as the offender James Lamb was concerned, the psychological report referred to in effect his "sensitive and vulnerable" nature, to the fact that he had been driven in effect to the end of his tether by Mr Brown's previous conduct and, as the psychologist was to say, was "in a very disturbed state of mind that day". The impact of Mr Brown's previous behaviour on the offender Paul Lamb was in broadly similar terms.
15. James Lamb has no previous convictions of any kind at all. Indeed the assessment was that what he did that day was wholly out of character. Paul Lamb does have a number of relatively old previous convictions but none involving violence and of no very great importance for present purposes. David Lamb unfortunately has many previous convictions, some involving violence: for example convictions for robbery, others involving burglary and the like.
16. For the purposes of sentencing, the judge clearly had to have regard to the Definitive Guideline on Assault issued by the Sentencing Council. The judge was to accept, and it has not been disputed, that this s.18 assault was properly to be categorised as category 1 for the purposes of the guideline. So far as greater harm is concerned, here unquestionably there was injury which was serious in the context of the offence: the injuries had in fact been life threatening. Furthermore, as the judge was to find, there had also been a sustained or repeated assault on the victim. So far as factors indicating higher culpability was concerned, clearly here weapons had been used. The judge was to indicate there had been a degree of premeditation, but did not find that it was significant. A factor indicating lower culpability, and much pressed before the judge, was that here there was "a greater degree of provocation than normally expected". The judge of course was required to keep within the limits of his indication given at the previous Goodyear hearing.
17. There was lengthy debate with counsel before the judge came to pass sentence. In the course of that debate Ms Hedworth, counsel appearing then as now for Paul Lamb, amongst other things, saw fit to say that she:
18. "... do make a bold submission that this is a very unusual case... Your Honour will know that as from January of this year, any sentence imposed for [7] years would have the effect that the sentence imposed would not be half, it would be two-thirds served and I would invite perhaps your Honour to take that into account when determining what the appropriate length of sentence would be in this case."
19. Mr Knowles, counsel then as now appearing for James Lamb, also adopted that submission as part of his submission:
  - i. "... I know your Honour will have in mind not only the impact of *Manning* [that is with regard to Covid] but also the recent changes to the sentencing regime.
  - ii. [THE JUDGE]: We are not meant to have regard to that. The release provisions are of no concern to sentencing judges.
  - iii. MR KNOWLES: Of course they are not in terms of guidance that is proffered but one looks at it on the basis that this is a very unusual case."
20. We observe that before he came to pass sentence the judge said:

- i. "... just so that everyone is aware, it will be a sentence which is shorter than seven years."
  
21. When he passed sentence the judge dealt with the background facts very fully and thoroughly. So far as the mitigation by way of the asserted provocation was concerned, the judge accepted that there was:
  - i. "a very significant background, going way back, a long way back before this day in question, on the day in question, David Lamb had clearly been assaulted ..."
  
22. The judge indicated that the matter was within category 1: although of course there had to be a significant reduction for the provocation which he had found.
23. The judge then indicated, as required by the guideline, what the starting point was to be. For category 1, the guideline stipulates a starting point of 12 years' custody with a category range of 9 to 16 years' custody. The judge took what is perhaps a slightly unusual approach, in that having taken a starting point of 12 years' custody, he then first went down significantly because of the factor indicating lower culpability, being a greater degree of provocation than normally expected. He then went up a little for other aggravating factors and then down again for other mitigation which he identified: ending up with a figure, before credit for plea of 20%, of eight-and-a-half years. Consequently and before giving credit for plea the judge's ending figure was a figure which was actually below the bottom of the range set out in the guideline. The judge then went on to explain that in the circumstances that he thought an appropriate course to take was to pass the same sentence with regard to each offender and in the circumstances imposed the sentences which we have mentioned.
24. On behalf of the Solicitor General Mr Lloyd, who did not himself appear in the proceedings below, submits that these sentences were unduly lenient. He submitted that this was clearly, as the judge found, a category 1 case, necessitating the starting point of 12 years' imprisonment. He then drew attention to what he said were the numerous aggravating factors, quite apart from the matters which had a part to play in terms of the categorisation. Here, he said, this had a degree of planning; weapons, in the form of two swords and a knife, had been taken to the scene; there was then the combined attack on the unarmed Mr Brown, who had first been lured outside; and then the parties had returned home and sought to conceal the weapons used. Furthermore, quite apart from the seriousness of the injuries at the time, there has been a long-term and ongoing impact upon Mr Brown. It is said that overall, given all the circumstances, the judge should have gone up towards the very top of the range before then coming back, by way of giving credit for the mitigation, in particular the provocation and such other mitigation as was available: in particular perhaps, with regard to James Lamb given his previous good character and so on.
25. On behalf of the offenders counsel variously were prepared to accept that this sentence was generous, or disputed that these sentences were unduly lenient. It was not disputed before us that the judge was entitled to impose the same sentence on each offender,

- although obviously different points could be made with regard to each of them.
26. We need to make one initial point. At the Goodyear hearing, as the transcript shows, counsel then appearing for the prosecution adopted an essentially neutral position and, for example, made clear that he did not accept the level of provocation for which the offenders were arguing. However, counsel then appearing for the prosecution did not make any reference to the powers of the Attorney General to refer the sentence on the ground that it might be unduly lenient any sentence imposed consequent upon what had been indicated at a Goodyear hearing.
  27. In written submissions on behalf of at least two of the offenders it is suggested to us that that in effect precludes the challenge now, on the footing that the offenders were in some way misled, or, at all events, they had a legitimate expectation that the sentences imposed would not be referred to the Court of Appeal by the Attorney General. Indeed Mr Hedworth (counsel appearing for David Lamb) in his written submissions has gone so far as also to assert that David Lamb would not have pleaded guilty had he thought there was a risk of a Reference.
  28. To the extent that those objections were pursued, this Court simply will not entertain them. True it is that under the Goodyear procedures, as the case of Goodyear itself stresses, counsel for the prosecution should, in cases where the point is applicable, draw the judge's attention to remind him of the power of the Attorney General to refer. But the Goodyear case itself also specifically makes clear that it is the responsibility of defence counsel to advise their clients of the possibility of an Attorney General's Reference and also specifically to advise their clients that they should not plead guilty unless they accept guilt. Mr Hedworth in fact informed this court that he considered that he had complied with his professional obligations.
  29. Consequently the present objections of this kind simply will not pass muster in this Court.
  30. It has in fact on numerous occasions been made clear in this Court that a failure by counsel for the prosecution to remind the judge of the availability of the powers to refer does not vitiate any subsequent challenge to the sentence being unduly lenient - see for example Attorney General Reference No 48 of 2006 (R v Farrow) [2007] 1 Cr App R(S) 90. Put another way, if it be the case that any of the offenders here had an expectation that there would be no Reference to this court then it was not a "legitimate" expectation.
  31. Having disposed of that matter, we then turn to the substance of this Reference. As we have said, this unquestionably was a category 1 case, with a starting point of 12 years it unquestionably then had to move up significantly because of all the many serious and aggravating factors in this particular case. We agree with the submission of Mr Lloyd that those matters take this case up towards the top of the range of 16 years indicated as available by the Sentencing Guideline. But then, of course, there was the mitigation which was available to these offenders and not least in the form of the very grave provocation they had endured by reason of Mr Brown's prior conduct. We do not think that it can be said that the provocation arose on the day in question, if taken on its own. Here, in effect, the two, that is to say Paul Lamb and James Lamb, had been summonsed by David Lamb in effect to "sort out" Mr Brown. But the true gravamen of the provocation is that this was a culmination of the background in which Mr Brown had been physically assertive and dominating and bullying and, perhaps worse, over a significant period of time.

32. James Lamb also of course had the significant mitigation of lack of previous convictions and it was clear that he was very remorseful about what he had done and he also had the observations made in the psychologist's report. Paul Lamb, too, although he had previous convictions, had been out of trouble for a significant amount of time, although, as we have said, David Lamb unfortunately had a very poor record indeed.
33. We have to say that we have some doubts as to whether the provocation was quite of the order as the judge appeared to have assessed it: although we must of course have regard to his evaluation of the position. Even so, and giving full weight to the mitigation that was available and, in particular, the provocation, we think that an ending figure, before credit for plea, of not less than 12 years should have been taken in this particular case. The fact of the matter is that these offenders took matters into their own hands. We can understand the disinclination of people in their position not to go to the police. But here, for example, James Lamb was caring for his uncle; he would have had access to Social Services and one would have thought that, if only by way of caring for his uncle, the opportunity would have been there to tell Social Services of the kind of bullying and so on that David Lamb had been suffering. But that did not happen; instead they chose to do what they did on this particular day, in effect taking the law into their own hands. The result was, as Mr Lloyd submitted, a case of extreme violence.
34. That being so, and with all respect to the judge, this sentence was not simply very lenient, it was, in our judgment, unduly lenient. Indeed, it is striking that the judge, for no real explained reason, ended up with a figure of below the bottom of the range for then giving credit for the plea. That simply does not properly reflect the gravity of this offending, even giving full weight to the degree of provocation involved.
35. Given the inevitable length of the sentence, Covid conditions in prison, although of course very unfortunate for any offender who currently is in prison, can only have a limited impact. However, we will also, to the extent that we feel possible, have regard to the fact that the judge clearly did desire to show a degree of leniency. Of course, we entirely to put out of account is the impact of any release date so far as these offenders are concerned, depending on whether or not the sentence exceeds 7 years.
36. Taking the view, as we do, that these sentences are unduly lenient, we consider that it is our duty to increase them. In our judgment, giving credit of 20% for plea, as the judge was prepared to do, we think that the least sentence that can properly be imposed upon each of these offenders (and we will not distinguish between the three of them any more than the judge did because of the variety of factors involved) is one of 9 years' imprisonment. Accordingly, those will be the sentences substituted on count 2, the other sentences will stand and the appeal of the Solicitor General is allowed to that effect.
37. LORD JUSTICE DAVIS: Are there any points arising?
38. MR LLOYD: No. Thank you my Lord.

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