



Neutral Citation Number: [2021] EWCA Crim 294

Case No: 202100155 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT NOTTINGHAM
HHJ Sampson

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/03/2021

Before:

THE RT HON THE LORD BURNETT OF MALDON,
LORD CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE WILLIAM DAVIS

and

SIR ALAN WILKIE

Attorney General's Reference No. 1/2021
Under Section 36 of
The Criminal Justice Act 1988

REGINA

Appellant

- v -

FRANCIS JUNIOR WELLINGTON

Respondent

Ms K Broome (instructed by The Attorney General) for the Appellant
Mr A Langdale QC (instructed by The Johnson Partnership Solicitors) for the Respondent

Hearing date: 24 February 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on 5 March 2021.

The Lord Burnett of Maldon CJ:

1. On 16 December 2020 in the Crown Court at Nottingham the offender, Francis Wellington, was sentenced to a total of 5 years' imprisonment by HH Judge Sampson. He was then 37 years old. The sentence was imposed in respect of four indictments encompassing six offences. HM Solicitor General now applies to refer the sentence as unduly lenient. We give leave.
2. The first indictment ("the drugs indictment") contained two counts. First, Conspiracy to Supply a Controlled Drug of Class A, contrary to section 1(1) of the Criminal Law Act 1977 for which the offender received a sentence of two years' imprisonment; and secondly, Possessing a Controlled Drug of Class B, contrary to section 5(2) of the Misuse of Drugs Act 1971 for which he received a concurrent sentence of one months' imprisonment.
3. The second indictment ("the malicious communication indictment") also contained two counts. First, Damaging Property, contrary to section 1(1) of the Criminal Damage Act 1971 for which the offender received a sentence of one months' imprisonment; and secondly, sending a Malicious Communication, contrary to section 1 of the Malicious Communications Act 1988 for which he received a sentence of two months' imprisonment. They were concurrent with each other and with the sentences on the drugs indictment.
4. The third indictment ("the violence indictment") contained a single count of Inflicting Grievous Bodily Harm, contrary to section 20 of the Offences Against the Person Act 1861 ("the 1861 Act") for which a sentence of 18 months' imprisonment was imposed consecutively.
5. The fourth indictment ("the blackmail indictment") contained a single count of Blackmail, contrary to section 21(1) of the Theft Act 1968 for which the offender received a consecutive sentence of 18 months' imprisonment.
6. It was in that way that the total sentence of five years' imprisonment was arrived at. 456 days were ordered to count towards that sentence as a result of a combination of days spent on remand in custody and on bail subject to a qualifying curfew. That very large figure was the result of the drugs indictment relating to events which occurred on 9 March 2016. We shall return to the chronology of these prosecutions, but the result is that the offender has been released on licence from custody having served half the sentence.
7. The complaint of the Solicitor General is that the sentences imposed in respect of the drugs indictment and the blackmail indictment were unduly lenient and that overall, the sentence for this catalogue of offending should have been much longer. The offence of possession with intent to supply was caught by section 110 of the Powers of Criminal Courts (Sentencing) Act 2000 ("the 2000 Act").

The Facts

The Drugs Indictment

8. The conspiracy concerned taking cocaine from Erith in South East London to Nottingham for onward supply. The offender's involvement related to a single journey in March 2016. On 9 March he and his then girl-friend, Karla Bird, drove from London to a retail park in Hemel Hempstead. Karla Bird's young children were in the car with them. In Hemel Hempstead they met her brother, Kelvin, and another man who had travelled together from Nottingham. Kelvin provided the offender with a telephone number for a man called Lee. He then returned to Nottingham taking his sister's children with him. The offender and Karla Bird drove to Erith where they met Lee in a car park. After a brief conversation he left the car park. The offender and Karla Bird spent the next four hours in and around the car park. They were in regular telephone contact with Kelvin Bird. Shortly after 20.30 they drove from the car park to a nearby street in Erith where they met Lee. He passed a package into their car. The offender and Karla Bird then drove to Nottingham. Their car was stopped by police on the outskirts of Nottingham. The package handed over by Lee was under the driver's seat. It contained 229 grams of cocaine of 84% purity. The street value of the drugs was between £22,900 and £30,760. The DNA of the offender and of Karla Bird was recovered from the outside of the package. At the offender's home a small quantity of cannabis was found in a bedside cabinet. In interview the offender denied any knowledge of any drugs.

The Malicious Communication Indictment

9. From May 2016 the offender was in a relationship with a girl named Hannah Bexon. Over a period of 10 days in November 2016 the offender sent her a series of abusive and threatening text messages. They threatened serious violence against her, others and to property. He was arrested. During the charging process at the police station he punched at a protective screen in the custody area. A computer monitor worth £300 was knocked to the floor and broken.

The Violence Indictment

10. On 19 February 2020 the offender spent the day with an old friend, Paul Cheema, in Derby. Over the course of the day the offender drank about four pints of strong lager and was behaving oddly. At the end of the evening Mr Cheema suggested that the offender should stay overnight at his home which he did sleeping on a sofa. The next morning Mr Cheema woke to find the offender fully dressed standing over his bed shouting "who is under the sheets?" The offender then punched him, put him in a headlock and grabbed his mouth breaking his jaw and pulling out a large number of teeth. As Mr Cheema tried to fight back, the offender picked up a large mirror and smashed it over his head causing cuts and then dragged him into the hall. Mr Cheema was able to break free and called the police. He was later treated with surgery and has suffered adverse psychological harm.
11. The offender was not interviewed when arrested because he said that he was hearing voices and that he wanted to hurt himself and others. This attack has been associated with a psychotic episode of some sort. He was originally indicted for an offence of

causing grievous bodily harm with intent contrary to section 18 of the 1861 Act. It has understandably had a profound impact on Mr Cheema.

The Blackmail Indictment

12. Thomas Cramman was an old school friend of the offender. They had no contact after November 2019 when the offender accused Mr Cramman of having an affair with his girlfriend. By April 2020 the offender was remanded in custody at HMP Nottingham. On 12 April 2020 at around lunchtime the offender spoke to his girlfriend. Using her telephone as a bridge he gave instructions to two men to go to Mr Cramman's parents' home. The plan was for the men to ask Mr Cramman's mother to call her son and to tell him to pay the offender £5000. If the money was not paid, Mr Cramman was to be told that they "would break the life out of him". The two men went to the parents' home. One of the men went to the door of the house. By chance Mr Cramman was at the address with his children. When he answered the door the man asked him to come outside. Mr Cramman refused at which the man threatened him. He said that the offender had sent him and that Mr Cramman owed Francis "5 bags". Mr Cramman said that he owed no money to which the response "a hit's been put out on you, you either pay the money or you get shot". The man then left. Mr Cramman was well aware of the offender's criminal past and connections. He was very concerned for the safety of himself and his family. He immediately contacted the police.
13. The man reported back to the offender via the offender's girlfriend. The offender said that the man should have dragged him out of the house. "Next time just drag him out of the yard bruv". The content of the calls to and from the prison was retrieved from the prison recording system. The offender was interviewed. He denied the offence.
14. Mr Cramman made a statement in October 2020 describing the continuing effects of the offence. He and his family remained anxious. He no longer went to places where he thought that the offender might know people. He was always wary when out in public. His ex-partner was considering selling the home they used to share because the offender knew that address. He concluded "What happened on the 12th April was awful and frightening and as a result I am still frightened for the safety of my family and especially my children. I hope this prosecution is the end of the matter and everyone can move on with their lives. I want nothing more to do with Francis or anyone connected to him. I am worried that Francis won't let his go and I am deeply concerned about what happens when he is released from prison."

The course of the proceedings

15. The offender was tried in relation to the drugs indictment between April and June 2018. He was convicted of possession of cannabis. The jury could not agree in relation to conspiracy to supply cocaine. A re-trial was fixed for 2 September 2019. The trial was adjourned because the offender at this point was an in-patient at Calverton Hill Hospital having been detained under the Mental Health Act. The next trial date identified was in September 2020. This was vacated due to the Covid-19 pandemic. On 11 November 2020 the case was listed for mention. The offender pleaded guilty in circumstances to which we shall have to return.

16. The malicious communication indictment originally charged the offender with coercive and controlling behaviour and common assault together with criminal damage. The offender pleaded not guilty at the PTPH in January 2017. On 2 May 2017 the count of sending a malicious communication was added to the indictment and the offender pleaded guilty to that offence and to criminal damage.
17. The offender was not arraigned on the violence indictment until 17 August 2020. Prior to that the offender's solicitors had indicated that a psychiatric report needed to be obtained before arraignment. On arraignment the offender pleaded not guilty. The prosecution then took the initiative and indicated in writing that for pragmatic reasons a plea of guilty to inflicting grievous bodily harm contrary to section 20 of the 1861 Act would be acceptable. On 2 September 2020 a second count was added to the indictment and the offender pleaded guilty.
18. In relation to the blackmail indictment, the offender pleaded guilty at the PTPH. That was on 3 September 2020.

The hearing on 11 November 2020

19. The indictment charging conspiracy to supply cocaine was listed on this day at the defence request to invite the judge to give a *Goodyear* indication. The defendants who were party to the request were the offender, Karla Bird, Kelvin Bird and Lee. The judge gave an indication in relation to all defendants save the offender. Those defendants had no or no relevant previous convictions. Because of the long delay since the offence and because of the personal circumstances of the defendants, the judge indicated the custodial sentences which had to follow would be suspended.
20. In relation to the offender, the judge invited the comments of the prosecution on the categorisation of the offence for the purposes of the relevant. Prosecution counsel suggested that the offence would fall within "Category 3, Lesser Role" although the judge suggested it was on the cusp of Category 3 and Category 2. The guideline suggests a range 2 years to 4 ½ years custody for a Category 3, Lesser Role offence with a starting point of 3 years. The judge noted in the exchange that the top end of Category 3 for these purposes was 4 ½ years' imprisonment and the bottom of Category 2, 3 ½ years.

"In the case of Francis Wellington, his situation is much more complicated. There are outstanding matters he faces, including a matter of blackmail and he is a third strike Class A drug offender. Ordinarily, there would be a minimum sentence of seven years for the conspiracy offence alone. I am asked to consider first whether there would be course for taking an exceptional course within the meaning of the statute in his case and, secondly, to give a *Goodyear* indication, notwithstanding the outstanding matters. I cannot give a *Goodyear* indication, the matter is far too complex and unclear at the moment. If all matters are before the court, then I simply make this observation. If it were before me, I would be sympathetic to the submission that the seven-year automatic sentence should not apply in relation to the drugs matter. That is to give no indication as to the overall sentence as all, but I would want to

have all outstanding matters before me and resolved in his case.”

Antecedents

21. The offender has 11 convictions for 26 offences dating between 25 August 1998 and 28 July 2018.
22. The most relevant are:
 - 8 May 2003: Supplying a controlled drug of Class A, heroin, on 2 August 2002. Guilty plea. Sentenced to 3 years’ imprisonment.
 - 15 July 2008: Seven offences of supplying a Class A drug, both heroin and cocaine, between 24 September 2007 and 2 October 2007. Guilty pleas. Sentenced to 66 months’ imprisonment on all counts concurrently. This was a test purchase operation during which the offender supplied drugs to undercover officers on four occasions. The amounts were street deals of both heroin and cocaine.
 - 16 September 2014: Concerned in the supplying of a controlled drug on 10 October 2013. Plea unknown. Sentenced to 33 months’ imprisonment. The offender and another male were stopped in a car in Aberdeen. When the offender was searched he was found to be in possession of £1205 in cash. The other male was in possession of 11 wraps of cocaine containing a total of 14.1g and 14 wraps of heroin containing a total of 21.7g. The combined street value of the drugs was £1500.
 - 28 July 2018: Pursued a course of conduct which amounted to harassment on 26 July 2018. Guilty plea. Sentenced to four week’s imprisonment wholly suspended for 12 months.

Medical evidence

23. As we have indicated, arraignment in relation to the violence indictment was delayed whilst a psychiatric report was obtained. It was never provided to the court or relied upon. The day before the offender was to be sentenced in relation to all matters, his counsel uploaded three documents to the Digital Case System. These were said to “give the best summaries of events” in relation to the offender’s mental health.
24. The first document in time was an assessment dated 26 August 2019 by a trainee doctor at a psychiatric hospital in Nottingham. The offender had been admitted under section 2 of the 1983 Act after jumping from a six foot wall and injuring an ankle. He was unknown to mental health services but reported having been prescribed anti-depressants two years before. The offender said he was mistrustful of people and was running away from people plotting against him when he jumped from the wall. He denied hearing voices or seeing things. He reported to long-standing history of taking cocaine and cannabis. The report contained no opinion about the offender’s mental state, noted that he was not depressed but that “there were formal thought disorders”.

25. The second document was a form completed by a ward administrator and gives a discharge date of 20 September 2019. The document is dated 23 September 2019. The form contained a tick box section indicating risk factors. Major mental illness was one option. This was not ticked. Drugs and aggression were the two boxes which were ticked. It is noted that the offender remained on pain relief for his injured ankle needed “follow up and support from crisis”.
26. The third document was a discharge summary after the offender had been an in-patient at the same hospital. He was seen in the hospital on 13 February following an overdose. He was discharged but returned on 26 February. In the meantime, he had attacked Mr Cheema. The offender later discharged himself against medical advice on 12 March 2020. The document was prepared by the discharging clinician. The clinical summary stated that the offender had suicidal thoughts. The offender reported hearing voices and experiencing low mood for some time. He also reported panic attacks for the past 2 to 3 months which came on suddenly and resolved spontaneously. The clinician stated that there was “no evidence of long term mental illness so given working diagnosis of mental and behavioural disorder due to psychoactive polysubstance use”. The clinician said that the offender would “continue to present with risk of presenting as agitated and aggressive impulsive behaviour mainly driven by his personality disorder traits and substance use”. The conclusion was that medication would not deal with the problems “unless he abstains from substances for a considerable period”.
27. For completeness we mention the evidence of the offender’s mother. She noted a deterioration in his mental health *after* his arrest in 2016 and that his behaviour continued to be erratic after his release from hospital in 2019.

The judge’s sentencing remarks

28. The judge set out his reasons for imposing the total sentence of five years’ imprisonment concisely. We can set out the significant passage in full:

“The prosecution place you in the role of a lesser participant in the conspiracy, and I sentence you on that basis. Unfortunately for you, one complicating factor is the fact that you are a third strike Class A supplier. That would mean a minimum seven-year sentence. However, I am persuaded that at the time and, indeed, at all relevant times, you were suffering from significant mental illness. During the course of these proceedings that has perhaps become exacerbated, and there have been occasions when you have had to be sectioned. It is principally because of the mental health history that I am prepared to take what is an exceptional course, and that is to find that it would be unjust to apply the Section 110 provisions. What that means is this; the starting point is that you were involved on a lesser basis. However the position is aggravated considerably by the fact of your previous convictions. I have already taken into account your mental health. I take into account the mental health position in relation to all of the offences. The Section 20 and the blackmail and, indeed, the malicious communications. I have to take into account the

question of totality, and I do so. I take into account the Covid crisis and the conditions that pertain within the custodial setting. It has to be custody, it has to be custody of some length. Many of these sentences have to be consecutive. However, I temper them because of the factors I have just outlined, Covid and totality in particular, and because of the mitigating factors Mr Langdale has presented to me. I also take into account the fact of your guilty pleas and the timing of those guilty pleas. I am pleased to hear that your descent into mental health problems has been arrested. Mr Langdale describes you as "fully medicated", and because you are lucid, he says you are remorseful. I am prepared to accept that."

29. The judge went on to set out the individual sentences in relation to each indictment. We infer that the judge approached the sentence for possession with intent to supply by locating the sentence within Category 3, Lesser Role and moving to the bottom of the range. He described the offence involving Mr Cheema as "particularly bad". Beyond identifying the length of the sentence the judge did not describe his view of culpability for the offence of blackmail.

Discussion

30. Miss Broome on behalf of the Solicitor General (who did not appear below) submits that whilst it was open to the judge to disapply the minimum term of seven years' imprisonment provided for the drugs offence by section 110 of the 2000 Act he was wrong to conclude that in 2016 the offender "was suffering from significant mental illness." Still less is there any basis for a conclusion that the mental illness was causative of the drugs offending. She submits that the offender's mental illness was part of the background mitigation (and clearly in part causative of the attack on Mr Cheema) which could inform the sentencing exercise and contribute towards a conclusion that the statutory minimum sentence need not be applied. The other factors surrounding this case, in particular the delay in the final resolution of the drugs indictment offences, the offender's keeping clear of further drug offending and the impact of custody resulting from Covid-19 were all, she accepts, capable of supporting the conclusion that seven years' imprisonment would be unjust for the drugs offence. She submits that if, as appears likely, the judge located the drugs offending in Category 3, Lesser Role, the significant previous similar offending should have resulted in a substantial uplift from the starting point of three years. That said, from the exchanges at the hearing on 20 November it seems that the judge had in mind a starting point of between 3½ and 4½ years. Moreover, as she reminds us, this offence was committed whilst the offender was on licence. The guilty pleas on the drugs indictment came after there had been a trial and before a retrial. The scope for any discount for that plea was limited.
31. In relation to the blackmail, Miss Broome submits that it was carefully planned and orchestrated. It was motivated by money. It has caused very serious distress and continuing worries for the victim and his family. The judge failed to address these aggravating factors or reflect them in the sentence.
32. Mr Langdale QC submits that each of the sentences imposed by the judge was appropriate in the light of the offending and having regard to the mental health

problems suffered by the offender. The judge cannot be faulted for taking the benign view he did of the drugs indictment and the overall sentence of 5 years was right. He reminds us that the offender has now been released. To return him to prison, particularly given the continuing effects of the Covid-19 pandemic, would create a substantial double jeopardy. Unless the sentence imposed by the judge was very significantly wrong, it would not be fair to order the offender's return to prison.

33. Before turning to the sentences themselves we note Mr Langdale's argument that the Solicitor General has departed from concessions made below and not properly explained why. We do not agree there has been any such departure. The prosecution agreed with the proposition that the drugs conspiracy should be categorised by reference to a Lesser Role with the harm falling between Category 2 and Category 3 because of the quantity of drugs. There was no concession in relation to the application of Section 110 of the 2000 Act. There was no concession, even were the judge not to apply the minimum term, that the sentence should not be substantially raised to reflect the previous offending.
34. He also submits that the prosecution should have either provided its own medical evidence or joined issue in some other way if it was to be suggested that the evidence provided on behalf of the offender did not support the broad contentions suggested on his behalf. We do not consider that this is a case in which the prosecution could or should have said or done something about the medical evidence relied on by the offender at the sentencing hearing. If in reality it did not bear out the proposition which it was said to support, it was not for the prosecution to obtain their own medical evidence or to invite the sentencing court to adjourn to obtain further evidence. The prosecution made no positive case in relation to the offender's mental health.
35. The judge was not referred to the guideline which became effective on 1 October 2020 entitled "Sentencing Offenders with Mental Disorders, Developmental Disorders, or Neurological Impairments". Leaving aside its discussion of disposals tailored to those with mental health disorders, the guideline explains how sentencing the mentally ill requires the court to consider whether the impairment or disorder reduces culpability. That will only be the case if there is sufficient connection between the impairment etc. and the offending. "Useful questions", as the guideline puts it (para 15), include whether the offender had impaired ability to exercise judgement, to make rational choices or to understand the nature or consequences of his or her actions. In short, there may be offending of which mental illness was a significant cause and otherwise where the mental illness was incidental to the offence in question. Sometimes, the mental impairment or disorder will substantially reduce culpability, sometimes not. If it does, there will be an impact of the sentence and often a significant one; but even if it does not, mental illness may be relevant, not least because of the impact of a custodial sentence on an offender (as to which see, para 22 of the guideline).
36. We turn then to consider the sentences imposed by the judge and begin with the sentence imposed in relation to the conspiracy to supply cocaine. In our view the approach taken by all parties to the role of the offender was relatively generous. Since his part in the conspiracy involved him travelling from London to Hemel Hempstead, from Hemel Hempstead to Erith and, having collected the cocaine, from Erith to Nottingham, he must have had some awareness of the nature and scale of the

operation. It is a reasonable inference that he engaged in this exercise for payment. These are features associated with a significant role. At the very least the offender was someone playing a lesser role but with some elements of a significant role. As has been said by this Court repeatedly since *Healey* [2012] EWCA Crim 1005 the drug guideline must not be regarded as consisting of a series of hard-edged boxes. Drug offending must be considered by reference to a sliding scale without hard lines. We have seen that the judge largely adopted that approach at the hearing in November 2020 when he placed the offence between two categories of harm giving a range of 3½ to 4 ½ years' custody.

37. Considering the conviction in Scotland, this was the offender's fourth conviction for supply of Class A drugs since 2003. The sentence imposed in Scotland had yet to expire when he engaged in the conspiracy in March 2016. The aggravating effect of the previous convictions was very significant indeed. Even without the operation of Section 110 of the 2000 Act, a sentence greatly in excess of 2 years was justified.
38. The principal factor relied on to reduce the sentence was the offender's mental health. With respect, we conclude that the material available to the judge did not support the suggestion that mental illness played any part in the offender's participation in the conspiracy. The other matters relied on by Mr Langdale provide little substantive mitigation. The delay in the case stems largely from the fact that the offender contested the case at the first trial and withheld his plea until very shortly before sentence. The co-accused were sentenced to similar terms of imprisonment as that imposed on the offender but the terms were suspended. None of the co-accused had any previous convictions of any relevance and certainly none for drug supply. The extent of their personal mitigation was not the same as the offender's. In those circumstances we do not accept Mr Langdale's submission that our consideration of the sentence imposed on the offender should be affected by the sentences imposed on the co-accused.
39. Many judges would approach the sentence for the drugs conspiracy on the basis that multiple offending of this sort was precisely what Parliament had in mind when legislating for a minimum term and that the circumstances of this case would not make it unjust to impose it, save for a modest reduction to reflect the guilty plea. The Solicitor General has, with commendable fairness, not suggested so firm an approach. He does not seek to disturb the disapplication of section 110 as a matter of principle. In our judgment, and on any view, a sentence of 2 years' imprisonment for this aspect of the offending was unduly lenient. Taking into account such mitigation as was available, including the impact of custody on this offender as a result of his mental illness, we consider that the sentence for this offence should be 5½ years' imprisonment.
40. We do not need to trouble with the offending relating to Hannah Bexon. That is not to diminish its significance to her at the time. The sentence imposed was modest and ordered to run concurrently with the sentence on the drugs conspiracy. It does not affect the overall outcome of these proceedings.
41. The Solicitor General has not sought to argue that the sentence of 18 months' imprisonment for the section 20 offence should be increased, something this court would have power to do under section 35 of the Criminal Justice Act 1988 even though the offence is not one that independently can be referred to the Court of

Appeal. It was common ground that, in view of the plea of guilty and the mental health background to this offence that sentence, necessarily consecutive, should stand. We agree.

42. Mr Langdale submits that the offence of blackmail was at the lower end of the spectrum for such offences. He drew our attention to the decisions of this Court in *Banjo* [2013] EWCA Crim 2757 and *Ceesay* [2013] 1 Cr App R (S) 10. It is common ground that the guilty plea at the Pre-trial Preparatory Hearing should result in a reduction of 25%. He submits that, viewed on its own, the sentence was far from lenient.
43. We are satisfied that the authorities relied on by Mr Langdale on behalf of the offender in respect of the offence of blackmail do not provide us with helpful guidance on the facts of this case. For instance, in *Banjo* [2013] EWCA Crim 2757 the offence was committed by someone acting alone in an unsophisticated and unplanned manner whereas this offence was planned and involved the defendant and three others. An important factor will always be the nature of the threats made and the ability of the offender to follow through with those threats. *Murphy* [2019] 2 Cr App R (S) 13 emphasises that each case of blackmail is fact specific and that of particular relevance are the nature of the threat, the nature of the demand and the anguish and distress of the victim. *Murphy* was a nasty case with an appropriate starting point of 4 years' custody. That is a reasonable description of the circumstances here. An innocent man at his parents' home with his children was suddenly confronted by a stranger (with a second man as back-up) making serious threats of violence to extort money. The victim was seriously distressed by the threats with a continuing effect on his family. The offender committed the offence when he was in custody awaiting trial for other matters. His use of his girlfriend and two others shows that he acted in a sophisticated and serious way. He remained in earnest after the first visit of those over whom he clearly had some control. The mental health difficulties affecting the offender were substantially under control at the time of this offending and, in any event, do not go to reduce his culpability for this calculated and serious offence.
44. We conclude that the sentence imposed by the judge taken on its own was unduly lenient. Allowing a 25% discount for the appropriate sentence for this offence would have been about 3 years' imprisonment. However, like the judge we must have regard to the proportionality of the overall sentence and therefore we impose a consecutive sentence of 2 years' imprisonment. The impact of custody on this offender because of his mental illness has been accounted for in the sentence for the drugs offence. The medical evidence suggests that his problems result, at least in part, from substance abuse. That will be avoided in prison and he will have appropriate medication. We recognise that a return to custody will bear heavily on this offender but have concluded that the sentence imposed by the judge was unduly lenient, and that an overall sentence of 9 years' imprisonment is appropriate for the totality of his offending, having regard to all matters. There is no basis for declining to increase the sentence accordingly.