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IN THE COURT OF APPEAL

CRIMINAL DIVISION

NCN: [2021] EWCA Crim 433

CASE NO 202002445/A4



Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 2 March 2021

Before:

LORD JUSTICE SINGH
MRS JUSTICE WHIPPLE DBE
THE RECORDER OF WESTMINSTER
HER HONOUR JUDGE DEBORAH TAYLOR
(Sitting as a Judge of the CACD)

REGINA
V
MICHAEL CHARLTON

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MR N ROBINSON appeared on behalf of the Appellant

J U D G M E N T

MRS JUSTICE WHIPPLE: On 8 September 2020 the appellant, who was then 42 years old, pleaded guilty to one count of possessing an imitation firearm with intent, contrary to section 16A of the Firearms Act 1968, and one count of robbery, contrary to section 8 of the Theft Act 1968. He was sentenced at Leicester Crown Court on 18 September 2020 by Miss Recorder Levett. She imposed a term of three years' imprisonment for the firearms offence to run concurrently with the term of eight years' imprisonment for the robbery. Consequential orders were made which are not relevant for present purposes.

The appellant appeals against that sentence with limited leave of the single judge, who also granted a representation order for counsel. There is one ground of appeal before this court: that the sentence imposed was manifestly excessive in that it failed to accord any or any significant credit for the appellant's personal mitigation.

The facts in brief are these. At around 11 am on 1 March 2019 the appellant entered a newsagent called Mercer's on Welford Road in Leicester. Maisie Meachem was working behind the counter at that newsagent. At the time the appellant entered she was serving another customer who then left the shop, leaving her alone in the shop with the appellant. The appellant came before her, he was wearing a hood and a Balaclava so that only his eyes showed. He was carrying what appeared to be a firearm in a clear plastic bag. Miss Meachem thought it was a sawn-off gun. He held the gun to his shoulder, pointing the gun at Miss Meachem and aggressively shouting "open the till, open the till". Miss Meachem screamed and the appellant leaned over. He started grabbing notes from the till. As he did so, Miss Meachem pressed the assistance buzzer to alert a colleague who was working in the back room. The appellant continued to grab at the notes, putting the gun on the counter. He then turned and ran from the shop. He got away with between £170 and £180 and a lottery win slip. Miss Meachem followed him and saw him

get into a vehicle. She took the licence number of that vehicle which she gave to the police. The incident was caught on CCTV.

Subsequent enquiries showed that the appellant had travelled up from Bournemouth that day to Leicester in a stolen vehicle. Before he entered Mercer's newsagents he had looked at a number of other shops, apparently then choosing to enter this one. He was arrested on 14 March 2019 and gave no comment interviews.

Miss Meachem's victim personal statement is dated 12 February 2020, almost a year later. It was before the court on sentence and before us now. She states that she took some weeks off work before returning. The newsagents is a family business so she had to go back to work there. At the time of that statement she remained panicky and suffered from anxiety. She was taking anti-depressants prescribed by her GP and was struggling to get over what happened. She gave examples of where panic and anxiety had overcome her and described how this event had had a significant effect on her and her family.

In passing sentence, the judge applied the guideline for less sophisticated commercial robbery.

The judge also considered the guideline for reduction for a guilty plea. For the firearm offence she considered R v Avis [1998] 1 Cr.App.R 420. On the effects of the pandemic she referred to R v Manning [2020] EWCA Crim 592.

The judge noted the appellant's terrible record for dishonesty offences and said it was clear that he had no thought for the impact of his actions on others. It was accepted that he had a tragic history but he had to bear in mind the misery he caused through his offending was great and was something he had to control.

The judge put the robbery in Category 1A of the guideline. We interpose to say that there is no appeal against that categorisation.

The judge noted that the offending was aggravated by the previous convictions, that the appellant

was on licence at the time, that there was significant planning, a Balaclava was used, that this was a small business which had been targeted during the late morning while members of the public were about and that the loss was significant in the context of a family business. That meant the starting point was increased considerably.

The judge said that there were no statutory mitigating factors, but all that had been said on the appellant's behalf was taken into account. With regards credit for plea, it was accepted that there had been difficulties in obtaining instructions and so 20 per cent credit was given. Again, we interpose to say that there is no appeal against this amount of credit for guilty plea.

The judge said that after a trial the sentence for the robbery would have been 10 years but with 20 per cent credit for the plea the sentence was eight years' imprisonment. For the firearm offence, which formed part and parcel of the robbery, the sentence was three years' imprisonment concurrent.

The issue on this appeal is whether that sentence was manifestly excessive bearing in mind the appellant's personal mitigation. The details of the appellant's past and personal mitigation are included in an expert psychiatric report dated 12 August 2020 authored by Dr Shanaya Rathod, consultant psychiatrist. We have been reminded of that personal mitigation by Mr Robinson who appears for the appellant today, the key points of personal mitigation being set out in his grounds of appeal. We thank Mr Robinson for his commendably succinct submissions before us today.

The appellant's parents separated when he was around three or four. The appellant describes his father as an alcoholic. His stepfather came into his life when he was five. The appellant describes emotional and physical abuse from his parents. His stepfather was abusive towards his mother. He left school at 15 and was thrown out of his home. He developed

a drug habit, becoming dependent on heroin from around 1995 when he was in his early twenties, having started taking drugs in his late teens. He has tried and has been dependent on other class A drugs too. He married in 2009 but his wife died tragically in a house fire. She had significant mental health problems and he was her carer. He has a 10-year-old daughter who was adopted because he was unable to care for her.

He has spent much of his adult life in prison. During a time in prison in 2017 he tried to kill himself. He had become dependent on 'Spice' whilst in prison. He had been released from prison in February 2019 and had gone to an approved premises in Bournemouth on licence and that was when this offence was committed. His release from prison had caused an abrupt stop to his Spice supply and it was at that point that he started hearing voices and started having paranoid thoughts. He had the benefit of a Methadone script at this time.

So far as this event was concerned, he remembered leaving Bournemouth thinking aliens were chasing him on the motorway. He said he was frightened and had not been able to get his Methadone before leaving Bournemouth. He could not remember going to the shop to commit the robbery.

Dr Rathod describes him as suffering from mental and behavioural disorders due to abuse of substance. She said his description was of depression and anxiety over the years which may have been associated with his poor social environment and use of drugs. She said that his description of psychosis was possibly due to his withdrawal from Spice. The symptoms of psychosis could, in her view, "be considered a disease of mind causing defect of reason". However, Dr Rathod considered the actions comprising the offences in this case to be complex, such as to require a degree of thinking "indicating that at some level he may have known what he was doing". He was fit to plead, she thought, but "his capacity

to make decisions about right or wrong might have been clouded by the symptoms of psychosis and the need to get away. It is also possible that his symptoms might have clouded his ability to think about the consequences of his actions, as he felt threatened by the aliens and therefore wanted to run away." On the matter of intent, Dr Rathod concluded that his capacity to form an intention would have been "significantly affected" by his need to get away and she said this: "While he may have had the mental capacity to form intent, he would have been guided by the delusions of persecution." It was, she thought, "highly likely that his capacity to form intent and to weigh up the consequences of his actions were guided by the symptoms of psychosis and his need to get away."

The appellant's story, coming from an abusive home and then falling into drug dependency at an early age, is unfortunately not an unusual one in cases which come before this court. A life of crime followed from a disadvantaged beginning. The appellant fell to stealing to fund his drug habit. He has also suffered significant life effects such as the death of his wife and the bereavement that followed.

The appellant was, by Dr Rathod's own commentary, aware at some level of what he was doing when he carried out the robbery, threatening violence with an imitation gun. Dr Rathod suggests he "may" have known what he was doing. We would go further, as did the judge, self-evidently from her remarks. From the facts of this offence, it is clear that it was planned and deliberate, and that the appellant did know what he was doing. The offence involved stealing a vehicle, travelling some distance, looking for a suitable business to rob, arming himself with an imitation weapon and concealing his appearance, then robbing the premises in broad daylight in the middle of the day when the shop was empty of customers. The appellant's mental health issues, to a large extent self-inflicted by long term drug dependency and possibly by the failure to pick up a Methadone

prescription to which he was entitled, cannot in these circumstances weigh very heavily in his favour when it comes to sentence.

If the offence had fallen to be sentenced after 1 October 2020, the judge would doubtless have been referred to the Sentencing Council's Guidelines on Sentencing Offenders with Mental Disorders, Developmental Disorders or Neurological Impairments. The judge may in that case have been considered whether the appellant's mental health issues reduced his culpability for this offence. But that guideline was not in force at the material time. In any event, the medical evidence before the judge to the extent that it sought to link the offending to the appellant's mental health problems was weak. We have set out relevant passages already.

Instead the judge approached the matter, as she was invited to do, as an issue of personal mitigation. The robbery guideline itself lists mental disorder not linked to the offence as a mitigating factor. The appellant's mental disorder was linked to the offence, at least in the opinion of Dr Rathod and at least to some extent. It was still mitigation, but for reasons set out already it was not strong mitigation.

The judge did not say in terms how much credit she had given the appellant for his personal mitigation. She stated only that she had taken it into account. But her notional starting point after a trial without any credit for personal mitigation was plainly in excess of 10 years' custody. There was good reason for the judge to go up in the range for this offence to a notional point in excess of 10 years before taking account of mitigating and guilty plea. The circumstances of the offence were serious. The offence was seriously aggravated by the appellant's previous convictions. He has 13 convictions for 23 offences, most of them for theft, including a number of dwelling house burglaries and some for violence. Further, he was on licence when the offence was committed, having

very recently been released from prison and at the time accommodated in an approved premises. The attack was planned. There was an element of targeting because Miss Meachem was alone at the till and the appellant concealed his identity with a Balaclava.

In our judgment this offence, approached as it was as the lead sentence for both offences charged, might well have attracted a sentence of 11 years or more before reducing for personal mitigation and plea. The starting point of 10 years after taking account of personal mitigation was within the range and was not unreasonable. The resulting overall sentence of eight years, giving credit for plea, was not manifestly excessive. We dismiss this appeal.

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

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