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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 523

CASE NO 202002922/A4

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 24 March 2021

LORD JUSTICE DINGEMANS

MR JUSTICE SPENCER

HIS HONOUR JUDGE PATRICK FIELD QC

(Sitting as a Judge of the CACD)

REGINA

V

MARK ANTHONY ZOTH

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NON-COUNSEL APPLICATION

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

1. MR JUSTICE SPENCER: This is a renewed application for leave to appeal against sentence, following refusal by the single judge.
2. On 23 October 2020 in the Crown Court at Preston, the appellant (now aged 33) was sentenced by His Honour Judge Knowles QC to a total of 28 months' imprisonment made up as follows. For an offence of having an article with a blade or point contrary to section 139(1) of the Criminal Justice Act 1988, the sentence was 16 months' imprisonment. There had been a late plea of guilty to that offence. For an offence of assault occasioning actual bodily harm, contrary to section 47 of the Offences Against the Person Act 1861, there was a sentence of 9 months' imprisonment consecutive. For a racially aggravated offence of causing harassment, alarm or distress, contrary to sections 28 and 31 of the Crime and Disorder Act 1988 the sentence was 3 months' imprisonment, again consecutive. These latter two offences had been committed while on bail for the first offence. The applicant had been committed for sentence to the Crown Court in respect of those two offences having entered a guilty plea in the Magistrates' Court for which he received full credit.
3. The first offence in time was committed on 18 January 2019. The appellant ordered a taxi to take him from his home in Troy Street, Blackburn, to The Farthings public house. During the journey the applicant told the taxi-driver that he had had an argument with someone at the public house and was going back there to stab that person. The applicant was sitting in the front passenger seat. The taxi-driver could see that the applicant was hiding something down his left side. The applicant then produced a knife and showed it to the taxi-driver. It was a large kitchen knife with a blade about 8 inches long. The taxi-driver tried to dissuade the applicant from using it. He pleaded with him not to do so. At the end of the journey the applicant paid the fare, got out of the taxi and walked towards the public house. The taxi-driver was so concerned that he telephoned the police to report what had happened.
4. Police officers attended the applicant's home address where they found the applicant and the knife. In interview he denied that he had produced the knife in the car. He was bailed. He appeared at the Magistrates' Court on 31 October 2019 and was sent for trial to the Crown Court. At a hearing in the Crown Court on 5 December he pleaded not guilty. The case was adjourned for trial and he was granted unconditional bail.
5. The remaining two offences were committed whilst on bail, just over two weeks later on 23 December 2019. The applicant had been at the home of a man called Ward; another man, Michael Seddon, was present. They had all been drinking together throughout the day. At one stage the applicant and Seddon argued over some missing alcohol. The police were called and the applicant was required to leave. Later the applicant returned to the address and became verbally abusive towards Ward. Seddon intervened and got the applicant in a headlock. The applicant twisted himself out of the headlock. He bit Seddon on the left cheek and punched him to the head five or six times. Police officers attended again and arrested the applicant as he was leaving the address. As he was being taken to the police van, and for a second time in the custody suite, the applicant racially abused PC Ahmed calling him a "nigger" and "a fucking Paki". In interview the applicant admitted these offences, saying he was drunk at the time.
6. There was a victim personal statement from the police officer. He had been particularly upset and distressed by the racist abuse.
7. The applicant had a very bad record for offences of possessing bladed articles and

offensive weapons, with three separate convictions in 2008, 2010 and 2018. In 2008 the weapon was a meat cleaver which he was brandishing, making threats to people he had overheard making disparaging comments about him at a party. In 2010 the weapon was a knife. In 2018 he armed himself with a kitchen knife when he found he was being chased after causing criminal damage to a car. The pre-sentence report described these offences as bearing "stark similarities" to the current offence, demonstrating that the applicant would intentionally arm himself with a knife or a weapon as a means of threatening others with whom he felt aggrieved, or as a means of perceived self-defence.

8. In passing sentence the judge said that on this occasion the applicant had armed himself with a knife and booked a taxi with the express purpose of going, in drink, to stab a man in a public house. That is what he told the taxi-driver he intended to do, showing him the knife. Under the relevant Sentencing Council Guideline there was higher culpability because it was a bladed article and category 2 harm. The starting point under the guideline was 6 months and the range up to 12 months' custody, but the judge concluded that the following aggravating features took the offence to the very top of the range and beyond: first and foremost the applicant's previous convictions, particularly for carrying weapons; committing the offence in drink; deliberately arming himself for the purpose of going to the public house and showing the knife to the taxi-driver and not being put off by his pleading to desist. The judge said there would be reduced credit of somewhere between one-tenth and one-fifth. The sentence was 16 months, suggesting that the starting point was in the range of 18 to 20 months after trial. That was by no means excessive in the circumstances.
9. The judge described the biting as a particularly unpleasant form of the offence of assault and the applicant was fortunate that the injury was not much more serious. We have seen ourselves a photograph of the prominent bite wound to the victim's cheek. The offence was aggravated by drink and very seriously aggravated by the fact that it was committed whilst on bail. As a category 2 offence the starting point under the relevant guideline was 26 weeks and the range up to 51 weeks' custody. A sentence above the range would have been justified. The judge allowed credit of one-third; the sentence was 9 months.
10. For the racially aggravated abuse of a police officer doing his duty the sentence was 3 months' imprisonment, again with credit of one-third for the early guilty plea.
11. The judge expressly took into account current prison conditions. He also had regard to the letter the applicant had written expressing his intention to change his ways. The judge took into account the delay. He said in terms that he had regard to totality but each sentence had to be consecutive, making a total of 28 months.
12. The grounds of appeal, settled by counsel who represented the applicant below, focus principally on the sentence for the knife offence in the taxi. It is submitted that the judge was wrong to go above the range of 12 months for category 2. The grounds of appeal did not challenge the sentence for assault occasioning actual bodily harm, nor, as we read it, the racially aggravated disorderly behaviour. It is conceded that consecutive sentences were appropriate but it is said that the totality of the sentence was manifestly excessive.
13. The applicant, in correspondence with the Registrar on renewal of this application, still insists that he had made no mention to the taxi-driver of his intended use of the knife: he had not threatened to use the knife on anyone; he had simply explained to the taxi-driver

that he had fallen out with someone at the pub. We observe that if this were true, there would have been no need for the taxi-driver to take the very responsible step of calling the police.

14. In refusing leave the single judge said this:

"You were sentenced to 16 months on a late guilty plea for possession of a knife. You had it with you in a taxi when you were in drink. You produced it to the taxi driver and announced to him that you planned to use it on someone in a pub with whom you had fallen out. The threat was credible to the extent that he reported you to the police for making it. You have many previous convictions which reveal in you a propensity to resort to threats and violence and carry offensive weapons when it suits your purpose to do so. The judge was not only right to categorise your crime as falling within category 2A of the relevant guideline but also to find that the circumstances of this case and your terrible history meant that he should sentence outside of the normal range for offences of that category. He explained why he was doing so. The sentences for the offences of assault and racially aggravated harassment are unexceptional. They were committed on bail and against the criminal background to which I have already referred. The total term cannot be said to be manifestly excessive."

15. We entirely agree with that analysis. The total sentence of 28 months' imprisonment was just and proportionate. There is no arguable merit in this appeal and the renewed application is refused.

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

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