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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2022/00769/A4
[2022] EWCA Crim 1016

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 5th July 2022

B e f o r e:

LORD JUSTICE GREEN

MR JUSTICE SPENCER

SIR NIGEL DAVIS

R E G I N A

- v -

JASON BRIAN WOOD

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Mr K Waitt appeared on behalf of the Appellant

J U D G M E N T

Tuesday 5th July 2022

LORD JUSTICE GREEN: I shall ask Sir Nigel Davis to give the judgment of the court.

SIR NIGEL DAVIS:

1. The appellant is a man now aged 30. He appeals, by leave of the single judge, against a sentence totalling nine years and four months' imprisonment following his guilty pleas at various stages to a number of counts on two separate indictments and on matters the subject of a committal for sentence.

2. The way in which the sentences in what, on any view, was a complex matter were actually pronounced on 27th January 2022 in the Crown Court at Canterbury by a Recorder, and as then subsequently inputted on the court record has given rise to particular difficulties.

3. The sentences as imposed, according to the court record, were as follows. On indictment T20217070, on count 1 (attempting to cause grievous bodily harm), the recorded sentence was three years and six months' imprisonment. On count 3 (attempting to cause grievous bodily harm), the sentence was three years' imprisonment, to run consecutively. On count 5 (having an offensive weapon), the sentence was eight months' imprisonment, to run concurrently. In addition, there was an offence of failing to surrender, which attracted a sentence of three months' imprisonment, to run consecutively.

4. On the matters committed to the Crown Court for sentence, S20210335, on offence 1 (assault on an emergency worker), the sentence was one month's imprisonment, to run consecutively to the other sentences. On offences 2 and 3 (obstructing a constable and failure to surrender), no separate penalty was imposed.

5. On the second indictment, T20210399, on count 1 (possessing a controlled drug of Class A with intent), the sentence, according to the court record, was two years and six months' imprisonment, to run consecutively. On count 2 (possessing a controlled drug of Class B), the sentence was 50 days' imprisonment, to run concurrently. On count 3 (having an article with a blade or point), the sentence was five months' imprisonment, to run concurrently. No separate penalty was imposed for driving without a licence, using a vehicle without insurance, and for breach of a community order.

6. The total sentence, according to the record sheet, was thus one of nine years and four months' imprisonment. In addition, the Recorder disqualified the appellant from driving until he passed an extended test.

7. For present purposes, the background facts need not be set out in any very great detail. So far as the matters the subject of the committal for sentence were concerned, on 4th December 2019 police officers had attended an address in Margate occupied by the appellant's then partner. When admitted, the officers noted a loft hatch which was open. A police officer climbed the ladder and saw the appellant hiding in the loft. There was then a confrontation. The officer drew his taser. The appellant shoved the officer, and cuts and bruises were caused to the officer's shins. The appellant refused to come out of the loft when ordered to do so and there followed a struggle with other officers. He was eventually restrained with the use of a taser.

8. So far as indictment T20217070 was concerned, the position was this. In the early hours of 21st December 2020 the appellant was at an address in Margate. Amongst others present were a woman called Tiffany East and a man called Michael Hodgetts. It is clear that a considerable quantity of drink was being consumed and there were incidents between some of the group. At

all events, the group ended up outside the address. The appellant started to talk about someone wanting to fight him. The appellant then launched a sustained attack on Miss East and Mr Hodgetts. Much of it was caught on CCTV. The Recorder was entirely justified in describing the assaults as "shocking" and "sickening". The appellant delivered numerous punches and kicks to the body and head of both Miss East and Mr Hodgetts, in some instances when they were both on the ground. At some stage, Mr Hodgetts seems to have become unconscious. Further, the appellant had smashed a bottle and had threatened at least Miss East with it. Ultimately, Miss East was able to take Mr Hodgetts away to the other side of the road. However, the appellant followed and again violently attacked them.

9. Miss East suffered very significant bruising to her face, as well as a cut to her left hand. Mr Hodgetts sustained a cut to his lip. In the result the injuries, though very unpleasant, proved not to be particularly serious, but that was purely a matter of good fortune.

10. The appellant was arrested at the scene. In due course, when he was interviewed he declined to comment.

11. So far as indictment T20210399 was concerned, the position was that on 12th November 2021 the appellant had been spotted riding a stolen motorcycle in Margate. He was joined at some stage by two men. Observing police officers suspected that a drug exchange was taking place. The appellant sought to escape, but a taser was used and he was arrested. He and his bike were then searched. The police recovered a quantity of cocaine, a clip bag containing cannabis, digital scales, a tick list, a bladed lock-knife and £3,750 in cash. Checks confirmed that the appellant had no driving licence and no insurance. Indeed, he was at that time subject to a previously imposed order of disqualification from driving.

12. Unfortunately, the appellant has a very poor record. He has 12 convictions for 18 offences,

dating back to 2005. Such offences included burglary and theft, crimes of low level violence, possession of Class A drugs, and driving offences. For the most part he had received community orders or suspended sentences, although he was sentenced to a term of nine months' imprisonment for a driving offence. All the indications are that at the time he was wholly dependent upon drugs, although it is right to record that, most commendably, he seems to have confronted his drug addiction whilst he has been in prison and has made determined attempts to break himself of this habit. It may be noted, however, that the current offences had all been committed whilst the appellant had been variously on bail or subject to a previously imposed community order.

13. In passing sentence, the Recorder had been referred to the relevant guidelines issued by the Sentencing Council. He had accepted that the offences of attempting to cause grievous bodily harm had been prolonged and persistent, and that they fell within category 3A of the relevant guideline relating to section 18 offending. That gives a starting point of five years' custody, and a range of four to seven years, for one substantive offence following a trial.

14. The Recorder found that in relation to the drugs offences the appellant had had a significant role, and that this was a category 3 "significant role" case, with a starting point under the relevant guideline of four and a half years' custody and a range of three and a half to seven years following a trial.

15. In passing sentence the Recorder referred to the background detail concerning the assaults. He commented, as we have said, that the incident was "sickening". He stressed the number of punches and kicks that were seen to be administered and rightly emphasised the fact that the bottle had been broken. The Recorder found that the assaults had been persistent and prolonged. He described them as "vicious and cowardly". He went on to say this:

> "These were assaults on two people who were offering you no aggression and it would be quite wrong, in those circumstances, for the court to sentence you on a concurrent basis in respect of those assaults."

16. The Recorder then turned to deal with the facts concerning the drug offence. He found that the appellant had a significant role and was a trusted street dealer.

17. The Recorder then indicated that he had to step back and consider, applying totality principles, whether the entire sentence was proportionate.

18. So far as the matters committed for sentence were concerned, the Recorder imposed the sentences which are duly set out in the court record.

19. Turning to the indictment T20217070, the Recorder indicated that so far as the assault on Miss East was concerned (count 1), the sentence, following trial, would have been one of five years' imprisonment, but "I give you 20 per cent discount, and that sentence is reduced to four years' imprisonment as a consequence". So far as the assault on Mr Hodgetts was concerned (count 3), the Recorder indicated that he would have imposed a sentence, following trial, of four and a half years' imprisonment, but with 20 per cent credit for the guilty plea, that sentence was reduced to one of three years and seven months' imprisonment, which was ordered to run consecutively to the sentence on count 1. On this aspect of his sentencing remarks, the Recorder concluded:

> "So the sentence in respect of the two attempts to commit grievous bodily harm amounts to seven years and seven months."

He also dealt with the failure to surrender matter.

20. The Recorder then turned to T20210399. He said that, following a trial, he would have

sentenced the appellant to a term of five years' imprisonment, but taking account of all matters and giving credit of 25 per cent, he would have reduced that to three years and nine months' imprisonment. He then imposed, on the face of it, sentences for the possession of cannabis of 63 days' imprisonment, to run concurrently, and for possession of the bladed article, a sentence of six months and three weeks' imprisonment, to run concurrently. The total sentence on that indictment was described as one of three years and nine months' imprisonment, to run concurrently to the previous sentence. This gave, the calculated, a total figure overall of 11 years and eight months' imprisonment. The Recorder then went on to say this:

> "… I have to ask myself, 'Is a total of 11 years eight months a disproportionate sentence, given that all these matters are sentenced together?' and I have come to the conclusion that it is, taking all factors into consideration and everything that I have heard in mitigation. It seems to me – and it is in my discretion – that a sentence of broadly 80 per cent of the gross figure of 11 years eight months is an appropriate totality sentence and that amounts to one of a total of nine yeas and four months' imprisonment."

Thus the Recorder had at that stage pronounced an overall sentence of nine years and four months' imprisonment, albeit he had not factored that discount specifically into any of his individual sentences on the individual counts, as previously pronounced. The Recorder then proceeded to impose a disqualification from driving, until the appellant had passed an extended driving test.

21. It will, therefore, be noted that the sentences pronounced by the judge on each individual count do not in a number of instances align with the sentences subsequently recorded in the court record. Thus, on the face of it and after giving credit for the guilty pleas, the Recorder had imposed consecutive sentences on the two counts of attempting to cause grievous bodily harm matters of four years, and three months and three years and seven months' imprisonment respectively; whereas the court record shows sentences of three years and six months and three

years' imprisonment respectively. For the drugs offence the Recorder had, on the face of it, imposed a sentence of three years and nine months' imprisonment. But the court record shows two and a half years' imprisonment. There were also certain other differentials with some of the other sentences imposed on the lesser matters.

22. What, by inference, appears to have happened is this. By reference to the individual sentences expressly pronounced by the Recorder, the court clerk, when completing the court record, had to factor in the Recorder's subsequent global announcement made towards the end of his sentencing remarks that the figure should be 80 per cent of the global figure to reflect totality. The sentences on the individual counts were thus, it is to be inferred, variously and administratively reduced on the court record to reflect that: which gave rise to the overall sentence of nine years and four months' imprisonment, which is indeed 80 per cent of the "gross figure" of eleven years and eight months' imprisonment, as the Recorder had indicated was his intention.

23. However, not only was all this done administratively and not in open court but it also, with respect, was done to an extent arbitrarily. Thus, for example, the sentences for the offences of attempting to cause grievous bodily harm, as shown in the court record, were not 80 per cent of the pronounced sentences of four years, and three years seven months' imprisonment respectively. Likewise, the sentence on the drugs matter, as shown on the court record, was not 80 per cent of the figure of three years and nine months' imprisonment, as pronounced by the Recorder in open court. Various other discrepancies of a like nature in the sentences also appear on various other of the counts before the Recorder. We have to say that such a procedure was illegitimate and involved a departure from the requirement to pronounce in open court the final sentence on each count: see *R v Whitwell* [2018] EWCA Crim 2301; [2019] 1 Cr App R(S) 29.

24. None of these points or potential criticisms featured in the written grounds of appeal advanced by Mr Waitt on behalf of the appellant. Instead, the focus of his arguments, as indeed of his oral argument before us this morning, was that the overall sentence was excessive. He makes particular complaint of the imposition of consecutive sentences on the two counts of attempting to cause grievous bodily harm. Those were, he said, all part and parcel of one incident and should in principle have attracted concurrent sentences, albeit suitably adjusted to reflect the fact that there were two victims. Mr Waitt also, to some limited extent, complained as to the Recorder's finding that the appellant had played a significant role in the drugs matters. He sought to say that there were elements of a lesser role, and he stressed that the appellant at that time was to an extent under the influence of those who supplied drugs to him and that he did what he did in order to pay for his drugs habit. As to that last point, however, we can see no error in the Recorder's approach or evaluation.

25. We do agree that it might have been orthodox to impose concurrent sentences on the two counts of attempting to cause grievous bodily harm, although we certainly would not go so far as to say that the Recorder was disentitled in law from imposing consecutive sentences. But ultimately, and as Mr Waitt acknowledged, what matters here is totality, both with regard to the sentences on the two matters of attempting to cause grievous bodily harm and with regard to the overall sentence on all matters.

26. In this regard, we cannot ignore the mismatch between the Recorder's specific pronouncement as to the individual sentences stated in court and the resulting sentences shown on the court record, designed to achieve an administrative solution for the Recorder's bald global direction to the effect that the ultimate global overall figure was to be 80 per cent of the "gross figure". As we have said, the recorded sentences on the court record, also and in any event, did not precisely reflect 80 per cent of the individual sentences as pronounced by the Recorder.

27. All that said, we do also have concerns that very bad – indeed shocking – as these offences of attempting to cause grievous bodily harm were, the figures suggested by the Recorder were too high, having regard to the circumstances of the case and having regard to the guideline. We also, at least to some limited extent, should bear in mind that these, as it turned out, were offences of attempt and not the substantive section 18 offences.

28. Viewed in the round, and in order to ensure legal correctness in the sentencing procedure – and perhaps also to remove any lingering sense of unfairness on the part of the appellant – we consider that we should interfere. In doing so, we bear in mind considerations of totality.

29. We impose the following sentences in substitution for those, on the face of the record, imposed by the Recorder. On indictment T20217070, concerning in particular the two matters of attempting to cause grievous bodily harm (and bearing in mind, as we say, considerations of totality) we think that the appropriate overall sentence in all the circumstances should have been in the region, following trial, of seven years' imprisonment, and having regard also to the offence involving the broken bottle. With credit of 20 per cent for the guilty plea, and rounding off to a limited extent in favour of the appellant, that gives rise to a figure of five years and six months' imprisonment. We accordingly substitute sentences of five years and six months' imprisonment on each of counts 1 and 3 on that indictment. We see no reason to differentiate in this regard between the two offences. Those sentences are to run concurrently with each other. On count 5, the sentence of eight months' imprisonment will stand, as shown on the court record, and will continue to run concurrently. The consecutive sentence of three months' imprisonment for the failure to surrender will also stand.

30. On the matters committed for sentence under S20210335, the consecutive sentence for offence 1 of one months' imprisonment will stand, as will the direction that there will be no

separate penalty on offences 2 and 3.

31. On indictment T20210399, the sentence as shown on the court record for count 1 (possessing Class A drugs with intent) of 30 months' imprisonment will stand and will continue to run consecutively to the other sentences. The sentences on counts 2 and 3, as shown on the court record, will continue to stand and will continue to run concurrently.

32. The overall sentence thus becomes one of eight years and four months' imprisonment, which this court considers to be appropriate to the circumstances of this particular case. The appeal is allowed to that extent accordingly.

33. There is, unfortunately, one other matter. The Recorder in effect imposed an indefinite disqualification from driving until the appellant passed an extended re-test. However, at the time the appellant was in fact already subject to a disqualification order until he passed an extended re-test. That sentence had been imposed on 3rd May 2017. It seems, in such circumstances, that no further disqualification order could have been made by the Recorder: see section 36(7) of the Road Traffic Offenders Act 1988. Consequently, the disqualification order made by the Recorder must be quashed.

34. That being so, the court must – and we can see no special reasons to the contrary in this case – then order penalty points to be added to the driving record of the appellant by reference to the offences of driving without insurance and without a licence, and in accordance with section 44 and section 28 of the Road Traffic Offenders Act 1988. Accordingly, there will be an endorsement of seven penalty points on the appellant's driving record to reflect those matters. In view of the reduction in the other sentences which this court has directed, the imposition of an endorsement in this regard does not, we apprehend, infringe section 11(3) of the Criminal Appeal Act 1968.

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

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