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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202200928/A1

NCN: [2022] EWCA Crim 1293



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Tuesday 9 August 2022

Before:

LORD JUSTICE WARBY  
MRS JUSTICE O'FARRELL DBE  
MRS JUSTICE CUTTS DBE

REGINA  
V  
LUKE IBBETSON

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MR J WALKER appeared on behalf of the Applicant

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

## **LORD JUSTICE WARBY:**

1. This is an application for leave to appeal against sentence following refusal by the single judge. The applicant is Luke Ibbetson, now aged 20.
2. In January 2022, on what would have been the date of his trial in the Crown Court at Teesside, he pleaded guilty to one offence of robbery, contrary to section 8 of the Theft Act 1968 and one of unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861. He was sentenced on 2 March 2022 by His Honour Judge Carroll. For the robbery the judge passed an extended sentence of detention for 10 years, comprising a custodial term of seven years and two months and an extended licence period of two years and 10 months. For the wounding there was a concurrent sentence of three years' detention in a young offender institution.
3. The charges arose from an incident in which the applicant robbed and stabbed Kye Hutchinson, aged 17. On 5 August 2020 Hutchinson had come across an abandoned van containing some bags of white powder which he thought was cocaine. He contacted a friend, Shahinsha Sainudheen, to see if he was interested in buying. A price of £200 was agreed and the two arranged to meet the following morning near Hutchinson's home in Billingham to exchange the goods for the money.
4. Sainudheen did not come alone. He arrived at the meeting point in a taxi with two others: Darren Dixon and the applicant. Upon arrival, Sainudheen stayed in the taxi. The others got out. Dixon stayed by the taxi while the applicant approached Hutchinson with the money. The "cocaine" was handed over, but not the money. There was a brief discussion about the quality, whereupon the applicant stabbed Hutchinson in the abdomen with a sharp implement which he was later to say was a chisel. As for Hutchinson, although he made his way back home he was seriously injured and swiftly taken by ambulance to hospital where the wound proved to be life-threatening. The implement, or chisel, had punctured Hutchinson's stomach and bowels and caused him to lose a third of his blood. He spent six hours in surgery in order to stabilise his condition.
5. The sentencing judge had two victim impact statements from Hutchinson which explained that he continued to suffer abdominal pain at the site of the injury, sometimes suffering stomach pains for hours. He also had psychological aftereffects in the form of lost confidence, lost sleep, anxiety about the applicant coming after him again, nightmares and flashbacks. He had been diagnosed with PTSD. He was taking medication and undergoing counselling but with limited benefit. He had dropped out of college and given up his bar job. He had been assessed as unfit for work. He had stopped playing football which was a regular pastime before. He had stopped going out, when he had previously done so every day.

6. As for the applicant, he had made his way back to the taxi and left the scene. He was later identified by Hutchinson via a Facebook picture and a formal identification procedure. When the applicant was arrested at his home the police found a screwdriver and a machete in his bedroom. In interview he answered no comment to all questions, and he contested the case until the day of trial when he entered the full facts guilty plea.
7. Sainudheen and Dixon were also charged but no evidence was offered against either of them and not guilty verdicts were entered.
8. At the time of the offending the applicant was just shy of his 19th birthday. By the time of sentence he had turned 20. Despite his relative youth he had accumulated eight previous convictions for 13 offences between 27 February 2017 and 13 February 2020. His criminal behaviour had escalated over time, leading in the first instance to youth rehabilitation orders but resulting in custodial sentences for more serious offending later on. His most recent convictions were on 15 October 2019, when he was sentenced to 16 months' detention for robbing a taxi driver at knifepoint, and 13 February 2020, when he was convicted and sentenced to three months' detention consecutive for an offence of handling which took place before that robbery offence. The effect of those sentences was that the applicant was on licence at the time of the robbery and wounding with which we are now concerned; indeed he had only recently been released from the custodial portion of those sentences.
9. The pre-sentence report recorded a propensity to settle disputes by the use of violence and weapons. It reported that during his recent spell in custody the applicant had received several adjudications as a result of using unnecessary violence, including the use of improvised weapons on other inmates. He was assessed as presenting a high likelihood of re-offending, a high risk of serious harm to the general public and known adults, and a medium risk of harm to other prisoners.
10. The applicant had admitted to the Probation Officer that his behaviour had become progressively more serious. He sought to explain this as due to drug use and PTSD that he had suffered as a result of being the victim of crime. He had complex educational needs and was assessed as having "low maturity" which would need intervention.
11. Sentencing the applicant, the judge treated the robbery as the lead offence, with the wounding offence as an aggravating feature for which a concurrent sentence was imposed to avoid double-counting. Applying the guideline for street robbery the judge placed the offence in culpability Category A because of the use of a weapon to inflict violence and harm Category 1 because of the serious physical and psychological harm caused to the victim. The category starting point for an adult was eight years' custody with a range of seven to 12 years.
12. The aggravating features identified by the judge were the applicant's previous

convictions, the fact that the offence was committed whilst he was on licence, and the wounding offence. For those matters the judge would have increased the notional sentence after a trial to one of 10 years. But there were three mitigating factors, namely the applicant's age, his relative lack of maturity, and his own underlying psychological problems stemming from being the victim of crime himself. Those matters were treated as balancing out the aggravating features, thus bringing the notional sentence back to one of eight years. A 10 per cent reduction to reflect the guilty plea at trial resulted in a custodial sentence of 86 months.

13. The judge assessed the applicant as dangerous and for that reason imposed an extended licence period of two years and 10 months, bringing the total to 10 years. A concurrent term of three years' custody was imposed for the offence of wounding.
14. Two grounds of appeal were advanced in writing by Mr Walker, who appears for the applicant. The first was that the judge was wrong to place the robbery offence in the uppermost sector of the relevant sentencing bracket. It was said that the starting point of eight years before reduction for plea was much too high for the offence under review, especially for such a young offender. This morning Mr Walker has conceded that this ground of appeal has little (if any) merit and concentrated his argument on the second ground of appeal. That is that the judge's finding that the applicant was dangerous was wrong and based upon factors that had been referred to in the pre-sentence report but were wrongly taken into account by the judge when he should have left them out of account.
15. We do not consider either of these grounds to be arguable. In our judgment the judge's approach to sentence cannot fairly be impeached.
16. Before the sentencing judge, Mr Walker had submitted that the wounding should be treated as the lead offence and the sentence for robbery correspondingly reduced. That was an ambitious submission which the judge rejected and it was not been renewed in this court. In his written grounds Mr Walker accepted that there was what he called "strict adherence" to the robbery guideline. It was argued that this nonetheless resulted in a sentence that was manifestly excessive. We cannot accept that, and we consider that Mr Walker's second thoughts expressed today were the better ones. We agree that the judge applied the guideline correctly. The Sentencing Act 2020, section 59, obliged the judge to follow the robbery guidelines unless he considered that this would be contrary to the interests of justice which he plainly did not. We find ourselves in the same position.
17. As to the question of dangerousness, the main complaint is that the pre-sentence report referred to the fact that the applicant had been arrested and released under investigation for an offence of murder. This was said in writing to be an "unproven and potentially baseless allegation which has not been scrutinised before a court of law" and hence outside the scope of the relevant enquiry into dangerousness which is provided for in

relation to this offence by section 308(2) of the Sentencing Act.

18. We need not decide whether reliance on such matters is permissible because the reasons the judge gave for his sentence made no reference to the point. We find ourselves unable to accept Mr Walker's submission that this point may nonetheless have been a primary driver of the judge's conclusion. Indeed we decline to infer that he relied upon a point that he did not express.
19. We are satisfied in any event that the judge's finding of dangerousness was amply justified by other material before him to which he did expressly refer. The escalation in the applicant's offending was manifest and admitted by him. His propensity to use weapons for aggressive purposes was demonstrated by the knifepoint robbery in 2019, his behaviour when in custody and the gratuitous nature of the instant offending perpetrated shortly after his release. In addition there were the weapons found when he was arrested.
20. Whatever might be the underlying reasons for this behaviour there was nothing before the judge to suggest that those underlying reasons had ceased to operate or that they would do so in the short to medium term. The conclusion that the applicant posed a substantial risk of serious harm to members of the public from the commission of further specified offences, such that an extended sentence was appropriate, was supported by all these considerations and by the expert assessment of the Probation Officer, which was detailed, rational and persuasive.
21. Mr Walker has submitted today that young people develop and change as they mature, which is certainly true as a general proposition and recognised by applicable sentencing guidelines. But this was a young man of nearly 19 at the relevant time and there was nothing, as we have said, to indicate that in his case there was a prospect in the foreseeable future of a significant change in the pattern of behaviour that he had demonstrated thus far.
22. For these reasons we agree with the view of the single judge that, to quote him, "the learned judge was right to find the applicant dangerous and despite the applicant's age and immaturity the sentence imposed was not arguably manifestly excessive". The renewed application is therefore refused.