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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 1300



No. 202201071 A2

Royal Courts of Justice

Friday, 16 September 2022

Before:

LORD JUSTICE SINGH
MR JUSTICE FRASER
MR JUSTICE HENSHAW

REX
V
ROSS LAMBERT

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Opus 2 International Ltd.
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5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MS M SNOWDON appeared on behalf of the Applicant.

THE CROWN did not attend and were not represented.

J U D G M E N T

LORD JUSTICE SINGH:

- 1 This is an appeal against sentence brought with the limited leave of the single judge.
- 2 On 21 February 2022 in the Crown Court at Liverpool the appellant pleaded guilty to a charge of arson, contrary to section 1(1) and (3) of the Criminal Damage Act 1971. On 16 March 2022 the appellant, then aged 28, was sentenced by Mr Recorder Harris to an extended sentence of nine years, comprising four and a half years' custodial term and an extension period of four and a half years. He also made a restraining order to prevent the appellant contacting the victim in this case for twelve years and imposed a surcharge order.
- 3 The facts can be summarised as follows for present purposes. The complainant was Mr Stephen Gilmore. His Jaguar motor vehicle was targeted because he had wrongly been suspected in the community of being a paedophile. At 1.30 a.m. on 24 October 2021 two people approached the vehicle. The appellant had a hammer and smashed the window. The second male lit a petrol bomb and put it into the window which had been smashed. The fire was put out by the complainant who was in his house at the time and heard the banging outside and saw what had gone on. The appellant had wiped his hand on the bonnet of the car, having cut his hand while smashing the window and was identified through DNA which was recovered. He was arrested on 20 January 2022 but made no comment in interview. The total damage to the car was £13,000 and it was written off.
- 4 The appellant had 15 convictions for 22 offences between February 2007 and June 2018, including 12 offences against the person. The antecedents included offences of battery in 2007, 2008, 2015, 2017 and 2018. They also included an offence of assault occasioning actual bodily harm in 2008; and wounding, contrary to section 20 of the Offences Against the Person Act 1861 in 2009, for which he received an eight-month detention and training order. Most seriously, they included an offence of causing grievous bodily harm with intent, false imprisonment and kidnapping, for which on appeal there was substituted by this court a seven-year extended sentence, comprising a custodial term of four years and an extension period of three years. Initially, in the crown court there had been imposed an indeterminate sentence for public protection. That was in 2011. There were also offences of criminal damage in 2008 and 2009.
- 5 It is important, briefly, to pause to consider the facts of the previous section 18 offence, for which we have a police report. Those facts state that the appellant had with others assaulted a man hard to the face causing him to fall to the floor unconscious for a while. When he came around he was met by a barrage of punches and kicks from, amongst others, this appellant. When he attempted to run away in an effort to stop them kicking him in the face, he felt hot, scalding water being poured on to his stomach. He said that he needed to go to hospital, but this appellant said he was going nowhere and needed to be tortured, and started laughing. The abuse continued later with this appellant striking the victim several more times.
- 6 We have been reminded by Ms Snowden, who has appeared at this hearing for the appellant, that the appellant was only aged 17 at that time, and that offending was over 10 years ago. We have that well in mind.
- 7 In his sentencing remarks the Recorder said that the risks inherent in this type of misconceived and vigilante behaviour are obvious. The risk of the car exploding and causing damage to other property is also obvious. Fire is uncontrollable, especially when spread by a flammable liquid. This was a residential area and anybody trying to help, such as passers-by, the police, or other services would have been placed at risk. Further, the

Recorder said that the effect on Mr Gilmore was an aggravating feature. Mr Gilmore described himself as, "Feeling like a sitting target", and was looking to move home because of this incident. The loss of his car had also affected him financially.

- 8 The Recorder said that in accordance with counsel's submissions, this case fell into Category 2A by reference to the definitive guideline on such offences, giving a starting point of two years' custody with a suggested range of one to four years, but he continued that there were significant aggravating features. The appellant had committed this offence under the influence of alcohol and cocaine. Further, this was clearly a pre-planned, targeted attack designed to terrify Mr Gilmore regardless of the possible consequences if the fire had taken hold.
- 9 The Recorder took into account as aggravating factors the appellant's extensive and concerning criminal record, in particular, the previous section 18 offence to which we have referred. It should be noted that inherent in that sentence was a finding that the appellant was dangerous in the statutory sense. The Recorder also said that this offence justified a deterrent punitive and protective sentence to mark the seriousness of the offending and the risks to the public. The Recorder noted that the Pre-sentence Report said that there was an established pattern of intimidating, aggressive and violent offending. The appellant was assessed as a high risk of serious harm to known adults. He was also assessed as posing a high risk of serious harm to the public. He has a clear propensity to use violence in conflict at times of emotional challenge. Further, he clearly lacks insight into the risks that he poses and appears to lack internal self-control. The Recorder thus found the appellant to be dangerous.
- 10 On the other side of the balance, the Recorder had regard to the mitigation available to the appellant, in particular his guilty plea which entitled him to a 25 per cent discount. The Recorder had considered what was said in the appellant's partner's letter, which we have done as well. We have been reminded at this hearing in succinct and helpful submissions by Ms Snowdon, that limited though personal mitigation was, there was such mitigation available to this appellant. He has, as his partner said in her letter, supported her during a particular a period of illness. He had himself had an unhappy childhood, including domestic abuse.
- 11 The Recorder considered that although the appellant was dangerous, imposing a life sentence would be disproportionate in this case. Nevertheless, given the aggravating factors in the case, a starting point above the suggested range was appropriate. The Recorder said that if he had been imposing a determinate sentence, the least period of imprisonment he could have imposed was one of six years' imprisonment. After taking into account the guilty plea, that was reduced to four years and six months. The risk posed by the appellant, in the Recorder's opinion, necessitated an extended sentence with an extension period of four years and six months. The Recorder also imposed the restraining order which we have mentioned, as he found it to be necessary and proportionate in terms of the risk posed.
- 12 The only ground of appeal which is now pursued, leave having been granted on this ground only, is that it was wrong for the Recorder to take a starting point which was two years above the top of the range in the sentencing guideline, so that the overall sentence was manifestly excessive.
- 13 A second ground, for which leave was refused by the single judge, has not been renewed before the full court. That ground was that the Recorder was wrong to make a finding of dangerousness. It has rightly not been pursued before the full court.

- 14 The Sentencing Council, as we have mentioned, has issued a definitive guideline for offences of arson with effect from 1 October 2019. Step 1 is to determine the offence category by reference to culpability and harm. High culpability (A) includes cases where there is a high degree of planning or premeditation and the use of an accelerant. Category 1 harm cases include where there is serious physical and/or psychological harm caused, serious consequential economic or social impact of the offence or high value damage is caused. It was common ground before the Recorder that this was a Category 2 case in terms of harm because it did not fall within either Category 1 or Category 3 which covers cases where there is no or minimal physical and/or psychological harm caused and low value damage is caused.
- 15 We would pause to remark that this case could have been regarded as a category 1 case, certainly once one has regard to the aggravating features, or it could properly have been regarded as being on the cusp between Categories 1 and 2. In any event, the suggested range in a Category 2A case is one to four years' custody. As the recorder observed, it is then possible to go above the starting point when one has regard to the very serious aggravating features in this case.
- 16 In our judgment, the Recorder was entitled to take a starting point of six years and then reduce that by 25 per cent to reflect the guilty plea. Accordingly, we have come to the conclusion that the sentence passed was not manifestly excessive.
- 17 For the reasons we have given this appeal is dismissed.

CERTIFICATE

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CACD.ACO@opus2.digital*

This transcript has been approved by the Judge