IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO: 2022 01569 A4

NCN [2022] EWCA Crim 1812

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 3 November 2022

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE

MRS JUSTICE COCKERILL

MR JUSTICE CAVANAGH

REX
v
JAMIE DEAN BRADFORD

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MR OLAJIDE LANLEHIN appeared on behalf of the Applicant

J U D G M E N T
(Approved)

THE VICE PRESIDENT:

1. This applicant pleaded guilty on the day fixed for his trial to an offence of arson being reckless as to whether life was endangered. After an adjournment to obtain both a pre-sentence report and a psychiatric report, he was sentenced by Recorder Fields, sitting in the Crown Court at Luton, to 4 years 5 months' imprisonment. His application for leave to appeal against that sentence was refused by the single judge. It is now renewed to the full court.
2. The offence was committed at the ground floor flat of Anthony Summerfield, a disabled man with limited mobility. He and the applicant had known each other for some years but had fallen out. On the afternoon of 16 March 2021 the applicant rang Mr Summerfield and threatened to burn his mobility scooter and smash up his house. That evening the applicant was driven to the flat. Mr Summerfield was in the flat. His mobility scooter was parked outside and his lights were on. At least one person was in the flat immediately above.
3. The applicant made an unsuccessful attempt to break in, smashed a window and then used an accelerant to start a fire on an outside window ledge. He then departed, taking the can of accelerant with him.
4. Fortunately no serious damage was done before the fire went out. Mr Summerfield was not physically hurt. He was, however, badly affected by the incident. In a victim personal statement made about a year later he spoke of the fear he had felt at the time and had continued to feel ever since. Fears for his safety had caused him to leave the flat, which had been his home for 3 years and where he had a good support network of neighbours. He had subsequently moved home again because of fear that the applicant or his associates would find him. An important medical operation had been cancelled and rescheduled because of his changes of address. He said that the post-traumatic stress disorder from which he had already suffered had become severe since this incident. He was constantly anxious and on edge.
5. The applicant (now in his late 30s) had a number of previous convictions for offences of violence, disorder and damage. In October 2021 he was sentenced to imprisonment for an

offence of affray committed in September 2019.

6. Both the pre-sentence report and the psychiatric report referred to the applicant's substance misuse and excessive drinking over a number of years. The author of the pre-sentence report assessed him as presenting a high risk of harm to persons against whom he held a grievance. The consultant forensic psychiatrist diagnosed a mental and behavioural disorder due to polysubstance misuse, and moderate episodes of depression with anxiety symptoms, but did not make any specific psychiatric recommendations.
7. The judge was unwilling to accept a written basis of plea, in which the applicant claimed that he did not know anyone was in the property at the relevant time, without first hearing evidence. The applicant declined to give evidence.
8. The judge rejected a submission both by prosecution counsel and by Mr Lanlehin, who then appeared, as he does today, on behalf of the applicant, that the offence came within category 3B of the Sentencing Council's relevant definitive guideline. The judge placed it in category 1B, with a starting point of 6 years' custody and a range from 4 to 10 years' custody. He identified a number of aggravating factors. He accepted that the applicant had done well whilst in custody and was addressing issues in his life. He did not accept the assertion of genuine remorse on the part of the applicant.
9. The judge concluded that the appropriate sentence before credit for the late plea would have been 5 years 6 months' imprisonment. He reduced that by 10 per cent to reflect the guilty plea and made a further reduction of 6 months because of the particular difficulties faced by prisoners as a result of the Covid 19 pandemic. Thus he imposed the sentence of 4 years 5 months' imprisonment.
10. Mr Lanlehin submits that the sentence was manifestly excessive, in particular because the judge wrongly categorised the offence and so took too high a starting point, wrongly refused to accept that the applicant was genuinely remorseful, wrongly dismissed the rehabilitative work which the applicant had been undertaking in custody and failed to take account of the difficult conditions in prison. Mr Lanlehin goes on to submit that the judge was wrong to find that Mr Summerfield had suffered very serious psychological harm when there was no

expert evidence to that effect and when the applicant had made a recording of a phone conversation in which he alleged that Mr Summerfield was blackmailing him.

11. We are grateful to Mr Lanlehin for his very clear and well-structured submissions.

12. We consider first the categorisation under the guideline. The offence plainly involved category B culpability. The judge found that it involved category 1 harm because very serious psychological harm was caused to Mr Summerfield. As is made clear by the decision of this court in **R v Chall & Ors** [2019] EWCA Crim 865, expert evidence is not a necessary prerequisite of such a finding: a judge may make it if sufficient evidence is provided by a victim personal statement. In our view the judge was, just, entitled to make the finding in this case, having regard to the evidence of increased PTSD, constant anxiety, repeated house moves and consequent dislocation from the established support of neighbours. The starting point and category range were therefore as the judge identified them.

13. But even if the harm fell somewhat below the level of category 1, the suggestion that this was a case of "no or minimal" psychological harm and therefore in category 3 is, with respect, wholly unrealistic. This was on any view high in the range of significant psychological harm covered by category 2, for which the starting point is 4 years and the range 2 to 6 years. It will be noted that the sentence passed by the judge, before giving credit for the guilty plea, was below the starting point of category 1B and within the category 2B range.

14. There were many aggravating features of the offence: relevant previous convictions; the commission of the offence either whilst on bail or at least whilst under investigation for the 2019 affray; the planning and premeditation involved in the arson; the use of an accelerant; the motive of revenge; and the vulnerability of Mr Summerfield, who would have been placed in great peril if the fire had taken hold.

15. We do not accept the submission that the judge simply dismissed matters put forward in mitigation. The reality is that there was comparatively little mitigation. Neither the psychiatric report nor the pre-sentence report provided any basis for finding that the

applicant's culpability was to any significant degree reduced by his mental health issues. He is to be commended for the efforts he has made to address his alcohol and substance abuse and to better himself whilst in prison; and the judge rightly took that into account. The judge was nonetheless entitled to reject the claim of genuine remorse for committing this offence. That claim was inconsistent with the applicant's conduct in denying the offence and putting forward a defence of alibi between his arrest in March 2021 and his trial date in late January 2022, and in then pleading guilty on a basis which was rightly rejected by the judge. Moreover, nothing which the applicant was recorded as saying to the authors of the two reports displayed any appreciation of, or regret for, the harm he had caused to his victim.

16. It follows that a balance of the aggravating and mitigating factors justified a significant upwards movement from the starting point.

17. Finally, the judge did take into account the difficult conditions in prisons and made a significant reduction on that account.

18. For those reasons, grateful though we are to Mr Lanlehin for his helpful submissions, we reach the same conclusion as did the single judge. There is no arguable basis on which it can be said that the sentence was manifestly excessive. This renewed application accordingly fails and is refused.