

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202203515/A4

[2023] EWCA Crim 1375



Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday, 8 November 2023

Before:

LORD JUSTICE STUART-SMITH
MR JUSTICE HOLGATE
THE COMMON SERJEANT
HIS HONOUR JUDGE MARKS KC

REX

V

JORDELL SOLOMON

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MISS S WRIGHT appeared on behalf of the Applicant

J U D G M E N T

1. MR JUSTICE HOLGATE: On 17 June 2019 in the Crown Court at Kingston upon Thames, before His Honour Judge Davies, the applicant, then aged 17, was convicted on a joinder indictment T20187183/T20197007 of three counts of robbery (counts 1, 12 and 13), attempted theft (count 2), two counts of handling stolen goods (counts 8 and 9), two counts of having an offensive weapon (counts 3 and 15), attempting to cause grievous bodily harm with intent (count 14) and damaging property (count 4). We will refer to this as the first indictment.
2. On 2 March 2022 before the same judge the applicant, then aged 20, was convicted on a joinder indictment T20207024/T20207185 of escape, contrary to common law (count 1), attempted robbery (count 2) and robbery (count 3). We will refer to this as the second indictment.
3. On 3 November 2022, before the same judge, the applicant, then aged 21 was sentenced to consecutive extended determinate sentences on count 13 of the first indictment and on count 2 of the second indictment of six years, comprising custodial terms aggregating to eight years and extended licence periods aggregating to four years. The judge imposed concurrent terms of four months' imprisonment for each of the offences of having an offensive weapon. He ordered that there be no separate penalty for any of the other offences.
4. A Youth Rehabilitation Order for nine months had been imposed on 8 March 2018. The judge revoked that order and re-sentenced the applicant by ordering no separate penalty.
5. The applicant renews his application for leave to appeal against sentence following refusal by the single judge. We are grateful to Miss Wright who appears *pro bono*.

The first indictment

Counts 1 and 3

6. On 11 July 2018 the applicant and his co-defendant, Robinson Charles-Mario approached the complainant, Graeme Smedley from behind as he walked alone to his vehicle at around 5.15 am. One of them struck the complainant to the back with a large pair of bolt cutters, causing him to fall to the ground in severe pain. Further attempts were made to hit the complainant with the bolt cutters as he lay on the ground. He managed to get to his feet and then ran to his girlfriend's home nearby. In the process he dropped the keys to his van which the two defendants picked up. The complainant had abrasions to the left side of his back and flank and abrasions to his left elbow, left hand, fingers and to his right hand.

Count 2

7. Having robbed the complainant of his van keys the applicant and Charles-Mario attempted to use them to steal the vehicle but they ran away when the complainant approached. They returned a second time causing the complainant to retreat. The applicant again tried to enter the vehicle but at this point the police arrived. Charles-Mario was detained at the scene but the applicant made off on foot.

Count 4

8. The applicant then climbed onto the roof of a nearby residential property. The owner was inside asleep with his wife and children. After remaining on the roof for a period the applicant eventually entered through a bedroom window, pulling a roller blind to the ground and damaging a dressing table.

Count 8

9. Mr Edward Stevenson had reported that he had been robbed of his iPhone, rucksack and

wallet in the early hours of 6 July 2018. The contents of the rucksack and wallet included two bank cards, a driving licence, £20 cash and items of clothing. The applicant was acquitted of this robbery. However during the robbery of Graeme Smedley on 11 July 2018 the applicant was carrying Mr Stevenson's rucksack. He discarded it when chased by the police. The rucksack contained Mr Stevenson's bank cards, wallet and other property along with the bolt cutters.

Count 9

10. At around 5.30 am on 8 July 2018 Mr Viswanathan was found lying face down near a bus stop by a taxi driver. He said he had no recollection of what had happened. He was bleeding from head injuries and no longer had his phone or bag. The applicant was acquitted of robbery but inside the same rucksack he was carrying on 11 July the police found three bank cards, a driving licence and a National Insurance card belonging to this victim, and other items belonging to both him and his wife.

Count 12

11. On 24 July 2018 the complainant, Helen Kennedy was walking alone through an underpass in Croydon at 8.30 am on her way to work. The applicant blocked her path and grabbed at her handbag. When the complainant continued to resist, the applicant repeatedly struck her on her arm. He then reached into his pocket. Fearful that he was about to produce a weapon, the complainant let go of the handbag and ran back out of the underpass. Members of the public found her sitting alone on the pavement, crying and shaking and they called the police. The applicant had stolen a shoulder bag, a purse with cash, numerous bank cards, car and house keys and an iPhone. These items were subsequently recovered.

Counts 13, 14 and 15

12. Around 10 minutes after the applicant had robbed Ms Kennedy, he approached the complainant Oliver Luna as he walked work through a different underpass. He was alone. Without saying anything the applicant produced a large knife which caused the complainant to attempt to run back out of the underpass. The applicant pursued him, grabbed him by the neck from behind and tried to take his rucksack. The complainant held onto the rucksack. The applicant then stabbed him twice in the back. The complainant released the rucksack and the applicant took it and cycled away. The rucksack contained a Microsoft phone, wallet and bank cards. All of the items were subsequently recovered.

The second indictment

Count 1

13. The applicant was arrested on 24 July 2018 in respect of the offences he had committed that day. He was remanded into custody on 9 August 2018. A warrant directing his transfer to a secure mental health unit at St. Bernard's Hospital was issued on 12 February 2019. He was awaiting sentence on the first indictment when, on 29 October 2019, he escaped by passing through an insecure door into an external courtyard, scaling a fence and then pushing through some plastic roofing. He remained at large for 14 days until re-arrested on 12 November 2019.

Count 2

14. On 4 November 2019 the applicant approached Eleanor McCormack as she walked alone across a railway footbridge shortly before 7.00 pm. The applicant suddenly went up to her from behind, holding a claw hammer over her head and demanding that she give him her things. When she refused he told her that he would kill her. The victim began

screaming loudly and he walked away.

Count 3

15. The next day, the applicant robbed the complainant Lisa Kiddy on the same railway bridge as she walked home alone shortly after 6.00 pm. The complainant had seen the applicant before she went onto the footbridge and had felt uncomfortable, removing her headphones. The applicant let the complainant pass him and then approached her from behind as she crossed the bridge. He grabbed her by the upper arm and held a claw hammer in the air. He demanded money and twice threatened to smash her if she did not comply. She handed over her iPhone and the applicant went through her handbag and pockets. He then walked away as passers-by approached the bridge.
16. We have read a number of victim personal statements describing the terrifying experiences of the complainants and the serious harm they have suffered.
17. The applicant was born on 19 September 2001. He had 13 previous convictions for 25 offences between May 2015 and February 2018. These included two offences against the person, threats to kill, five offences against property, including arson, one of theft and two weapon offences.
18. We have considered three pre-sentence reports, intermediary reports, a psychologist's report and a number of psychiatric reports.
19. The pre-sentence report in October 2019 described the applicant's difficult upbringing, his Autistic Spectrum Disorder and ADHD, his vulnerability and his earlier offending. The author assessed the applicant as posing a high risk of re-offending and a high risk of causing serious harm.
20. Three detailed psychiatric reports were prepared by Dr Kooyman in November 2020, March 2021 and May 2022. He has been the responsible clinician for the applicant for a

substantial period of time. He has referred to a number of attacks said to have been carried out by the applicant on members of staff and other inmates in the institutions where he has been held on remand since August 2018. The applicant has spent much time in care and separation units and sometimes hospital wings. Following a recommendation by Dr Kooyman the applicant was found a place in a new specialist medium secure autism unit in Northampton. He received treatment there under the Mental Health Act between April and October 2021. The experts concluded that he was not amenable to treatment. It was from this unit that the applicant escaped. Subsequently he was returned to HMP Wandsworth.

21. The applicant has been seen by a large number of psychiatrists. Their general view was that he was not suffering from a mental illness. They have said that reported psychotic symptoms were feigned. He has at least four of the six core traits of dissocial personality disorder including lack of empathy for others, a low threshold for aggression and an incapacity to experience guilt. His autism is not sufficiently severe to explain his violent offending. The doctor recommended a period of assessment for his personality disorder at Broadmoor, should they be willing to accept him, under an interim hospital order for three months. The doctor said he would not recommend an order under section 37 of the 1983 Act unless and until there was evidence that the applicant would benefit from hospital treatment.
22. The sentencing note from Miss Wright dated 22 November 2022 stated that following two interviews the applicant was deemed to be unsuitable for treatment at Broadmoor.
23. In his sentencing remarks, the judge explained how each offence should be categorised applying definitive guidelines wherever applicable. No criticism is made of his assessment. For the offences in 2018, the judge followed the approach of R v

Mohammed [2023] 1 WLR 1858 so that the sentences would be no more severe than would have been appropriate for his age and immaturity at the time of the offending. He also allowed for the fact that the applicant was still a young man at the time of the 2019 offences. The judge expressly had regard to the guideline for sentencing offenders with mental disorders. He took into account the applicant's very difficult and violent upbringing, autism, ADHD and personality disorder. He noted that the applicant was not suitable for a hospital order. The judge also said that he had taken into account the totality principle so that the sentences would be just and proportionate. He concluded that the applicant should be treated as dangerous and that extended custodial sentences were necessary.

24. Miss Wright prepared draft grounds of appeal and an advice in December 2022. She has explained in her oral submissions this morning why through lack of instructions it had not been possible for her to perfect those documents.

25. In summary, she submitted that the sentence was manifestly excessive because the judge:

1. Failed to give adequate weight to the applicant's personal mitigation.
2. Failed to apply the "Sentencing offenders with mental disorders, developmental disorders or neurological impairments" Guideline.
3. Failed to apply the totality principle.
4. Found the applicant dangerous with respect to the 2019 offences.

26. Her advice did not provide any reasoning in support of those bare assertions, other than to suggest that the overall custodial term imposed by the judge would have been equivalent effectively to a term of 12 years for an adult.

27. In refusing leave to appeal, the single judge said this:

"I have considered the papers in your case and your grounds of appeal. The judge had to sentence you for four robberies, one attempted robbery and several other offences. You were armed with different weapons when you committed these robberies and on one occasion you stabbed your victim in the back. You committed two of the robberies shortly after escaping from custody. You had previous convictions for robbery and for carrying knives.

Pursuant to the totality principle, the judge had to impose a total sentence which reflected all of your offending behaviour, but which was no more than was just and proportionate. That is what he did. Even allowing for your youth and your mental health difficulties, the sentence which the judge imposed was not manifestly excessive.

In all the circumstances, the judge was entitled to find you dangerous and to impose an extended sentence."

28. In our judgment, none of the proposed grounds of appeal against sentence is arguable.

We reach that conclusion after taking into account the oral submissions made on behalf of the applicant by Miss Wright this morning. We agree with the single judge. It is not arguable that the overall sentence imposed was manifestly excessive, given the serious nature of the robberies, particularly count 13 on the first indictment and those on the second, and the substantial aggravation from all the other offending and the applicant's antecedents. The judge properly reflected the applicant's personal mitigation and the totality principle in the sentences he passed.

29. Specifically we do not accept the submission advanced this morning that the offences in 2019 committed during the period of only 14 days when the applicant was at large do not represent an escalation in violence or did not qualify to be taken into account in the assessment of dangerousness. The circumstances we have summarised show that there was ample material before the judge, including those offences, to justify a finding of

dangerousness and to impose extended sentences. There is no merit, with respect, in this application for leave to appeal.

30. However the judge did make some jurisdictional errors which we should address. First, the Youth Rehabilitation Order expired on 8 December 2018, before the date of the first convictions on 17 June 2019. The judge therefore had no power to revoke that order (see paragraph 23(1) of schedule 7 to the Sentencing Act 2020) or to order that there be no separate penalty. We therefore quash that order.
31. Second, the judge did not refer to the statutory provisions applicable to the extended sentences. The Crown Court's record states that both sentences were passed under section 279 of the Sentencing Act 2020. In relation to count 13 on the joinder indictment T20187183/T20197007 the judge pronounced a term of imprisonment for four years. Given that the applicant was aged 17 when convicted, there was no power to pass that sentence. We therefore quash that sentence and substitute one appropriate to the applicant's age at the relevant time, namely an extended sentence of detention under section 254 of the Act, comprising a custodial term of four years and an extended licence period of two years.
32. As the applicant was aged over 18 and under 21 when convicted of count 2 on indictment T20207024/T20207185 the extended sentence should have been imposed under section 266 and not section 279 of the 2020 Act. We therefore quash the existing sentence on count 2 and substitute an extended sentence of detention in a young offender institution under section 266, comprising a custodial term of four years and an extended licence period of two years. That sentence is to run consecutively to the sentence imposed under count 13 on the first indictment.
33. Third, in relation to counts 3 and 15 of the first indictment, the applicant was aged 17

when convicted and so the judge had no power to impose imprisonment. We therefore quash the two concurrent terms of imprisonment and substitute detention and training orders of four months in each case, running concurrently with each other and with the extended sentences.

34. Lastly, the judge said that he made no order in respect of the victim surcharge. However the charge is mandatory and the circumstances in which it could have been reduced to 0 did not apply here. The mandatory charge was £30 but given that there is to be no reduction in the overall sentence imposed by the Crown Court, the effect of section 11(3) of the Criminal Appeals Act 1968 is that we are unable now to impose that charge.

35. We grant leave to appeal against sentence but solely to the limited extent of enabling those changes to the orders of the Crown Court to be made. Otherwise we refuse leave to appeal against sentence.

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

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