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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202301882/A1
[2023] EWCA Crim 1434

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday, 12 October 2023

Before:

VICE-PRESIDENT OF THE COURT OF APPEAL, CRIMINAL DIVISION
LORD JUSTICE HOLROYDE
MRS JUSTICE McGOWAN DBE
MRS JUSTICE STEYN DBE

REX
v
JASON GRAINGER

REFERENCE BY THE CRIMINAL CASES REVIEW COMMISSION UNDER SECTION 9
CRIMINAL APPEAL ACT 1995

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MISS L O'BRIEN appeared on behalf of the Appellant
MISS V AILES appeared on behalf of the Crown

J U D G M E N T
(Approved)

1. THE VICE-PRESIDENT: The Criminal Cases Review Commission, to whom we are grateful, have referred this case to the court pursuant to section 9 of the Criminal Appeal Act 1995. The Reference takes effect as an appeal against sentence.
2. The appellant and his co-accused Trendell were convicted in 2018 of offences of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861, and false imprisonment. It is unnecessary to go into detail about the shocking facts. It suffices to say that the two accused detained and tortured their victim over several hours using a knife, scissors and an electric iron to inflict severe physical injuries and causing him severe psychological trauma.
3. On 12 October 2018, in the Crown Court at Maidstone, they were each sentenced to life imprisonment, pursuant to section 225 of the Criminal Justice Act 2003. The judge specified a minimum term of 10 years in the case of this appellant, who had a previous conviction for a similar offence, and eight years in the case of Trendell.
4. Both men appealed against their sentences. In June 2019 this court, differently constituted, allowed appeals to the extent of reducing the minimum terms to eight years and six years respectively. The judgment of the court on that occasion is publicly available: [2019] EWCA Crim 2507. We need not repeat all that was said in it. We note however that it included a citation of section 82A of the Powers of Criminal Courts (Sentencing) Act 2000, which was in force at the time of the conviction and sentencing of the appellant and his co-accused. That section provided that when imposing a life sentence under section 225 of the 2003 Act, the minimum term to be specified should be such as the court considers appropriate taking into account, amongst other things, the effect that section 240ZA of the 2003 Act would have had if the court had imposed a

determinate sentence of imprisonment. The effect of section 240ZA(3) in the case of an offender who received a determinate sentence of imprisonment was to entitle him to credit for the number of days when he had been remanded in custody in connection with the offence.

5. At the time of their sentencing, both men had been remanded in custody for significant periods. Unfortunately, it appears that no one referred to that fact at the sentencing hearing, and the judge failed to take account of the effect which section 240ZA would have had if she had imposed a determinate sentence. There was a similar collective oversight at the 2019 appeal to this court.
6. Mr Trendell raised that oversight with the Criminal Cases Review Commission, who referred his case to this court. This court allowed Trendell's appeal against sentence to the extent of reducing his minimum term by the number of days he had been remanded in custody. The judgment of the court is reported at [2022] 4 WLR 38, [2022] EWCA Crim 267. Again, we need not repeat all that is there said. We will however refer to three passages in the judgment.
7. First, at paragraph 9 the court indicated that the provisions formerly contained in section 82A of the 2000 Act have been replaced by those in section 323 of the Sentencing Code, but that the provisions are materially the same and that the outcome of the appeal would not have been different if the provisions of the Sentencing Code had been applicable.
8. Secondly, at paragraph 11 the court explained that the automatic crediting of time spent in custody, pursuant to section 240ZA, applies when a court imposes a determinate sentence but not when it imposes a discretionary life sentence and specifies a minimum term.

9. Thirdly, at paragraphs 17 to 18 the court gave the following guidance as to the approach to be adopted in circumstances such as these:

"17. ... it is not correct to say that a court imposing a discretionary life sentence and making a minimum term order is required to give credit for the time spent on remand in custody. The duty of the court, consistently with section 82A of the 2000 Act and now with section 323 of the Sentencing Code, is to impose such minimum term as it considers appropriate, taking into account amongst other things what the effect of section 240ZA would be if it were imposing a determinate sentence. The statute requires the effect of section 240ZA to be taken into account, but gives the court a discretion as to how it is taken into account. If Parliament had not intended to confer any such discretion, and instead to impose a mandatory requirement that each day spent on remand in custody must count towards the minimum term, it could easily have said so.

18. However, although a court has that discretion, it will, in our view, generally be appropriate to reduce the minimum term by the precise number of days which the offender has spent remanded in custody for the relevant offence or an associated offence. That is because it will generally be appropriate, in the absence of any compelling reason to the contrary, to make the same reduction in respect of time on remand as would automatically be made pursuant to section 240ZA if a determinate sentence were imposed. It will also generally be appropriate, in the interests of transparency, to make clear that the reduction reflects the precise period of remand in custody."

10. Following that judgment, the Commission promptly and properly informed this appellant of the successful outcome of Trendell's appeal. In the result, the Commission referred the case to this court. So it comes about that today, five years to the day after the sentencing hearing, we have heard helpful submissions from Miss O'Brien on behalf of the appellant and Miss Ailes on behalf of the respondent. The respondent properly does not oppose the appeal.

11. It is common ground between the parties that so far as the failure to take into account the

effect of section 240ZA is concerned, there is no material distinction between this appellant and Trendell. We agree with that analysis. We also agree with the parties that there is nothing in the circumstances of this appellant's case which would make it appropriate to depart from the usual approach. We conclude accordingly that the judge should have taken into account the period of 199 days when the appellant was remanded in custody by deducting precisely that period from the minimum term which would otherwise have been specified.

12. We therefore allow this appeal to the following limited extent. The sentence of imprisonment for life stands unaltered but we quash the minimum term of eight years and substitute for it a minimum term of seven years 166 days.

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

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