

IN THE COURT OF APPEAL  
CRIMINAL DIVISION



CASE NO 202300645/A4

Neutral Citation Number: **[2023] EWCA Crim 807**

Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Friday 9 June 2023

Before:

LADY JUSTICE MACUR

MR JUSTICE CHOUDHURY

MR JUSTICE CONSTABLE

REX

V

BUZZ SMITH

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Computer Aided Transcript of Epiq Europe Ltd,  
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MR S ROUTLEDGE appeared on behalf of the Appellant.

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

MR JUSTICE CHOUDHURY:

1. On 29 November 2022, the appellant pleaded guilty to two counts of assault occasioning actual bodily harm and one count of theft. On 31 January 2023, the appellant was sentenced to 14 months' imprisonment for each of the assaults and 6 months concurrent for the theft. The total sentence was therefore 28 months' imprisonment. He now appeals against that sentence with the leave of the single judge.
2. The background to this matter was as follows. The appellant is now aged 31. He was aged 29 at the time of the offence. Complainant 1 was 17 years old at the time of the offence. Just after 9.00 pm on 8 April 2021, complainant 1 was walking along a cycle path close to the Brockley Whins Metro station. He was using his mobile phone when he was approached by the appellant. The appellant aggressively asked complainant 1 for a "fag". When complainant 1 said he did not have any cigarettes, the appellant punched him in the face, knocking him to the ground. The appellant demanded complainant 1's iPhone and bag. Complainant 1 handed his iPhone to the appellant who repeatedly asked what was in the bag. Before complainant 1 could hand it over the appellant ran off towards a nearby footbridge. Complainant 1 felt confused and for a while did not know what to do. He saw the appellant on the footbridge and decided he would walk back to the Metro station to seek help there. He pressed a "Help" button and reported the assault. Upon being told that it might take a while for the police to arrive, he decided to go home. He felt pain in his face and his mouth was bleeding. The punch had caused one of his front teeth to fall out and another one to become loose. This injury required frequent visits to the dentist and the complainant's missing front tooth has still not been replaced.

3. Complainant 2 was 14 years old at the time of the offence. He was travelling on the Metro on 8 April 2021 with a group of his friends. The appellant boarded the same train and sat next to complainant 2 and his friends. The appellant was friendly to begin with, but he then lit a cannabis joint, and his demeanour changed. The appellant's tone of voice became aggressive. Complainant 2 and his friends got off the train at the same station as the appellant, namely Brockley Whins. Complainant 2 walked with his friends across the footbridge when he heard that someone had been hit, this being a reference to the incident between the appellant and complainant 1. Complainant 2 turned round to see what had happened. The appellant walked up to complainant 2 and said: "Who the fuck are you talking to?" Complainant 2 replied that he had not been talking to the appellant, and that he had just been checking if the man who had been hit was all right. The appellant then punched complainant 2 on his left cheek and said: "Give me all your green". Complainant 2 covered his face with his hands to protect himself and he told the appellant he had no "green". An unknown man approached complainant 2 and asked if he was okay. The appellant then punched the unknown man, turned back to complainant 2 and punched him once more to the right side of his face. Complainant 2's glasses were knocked off by the punch and he could not see properly. He suffered from a headache and felt sick after the assault. He also sustained a bruise and graze to his right eye.
4. In sentencing the appellant, the judge categorised the assault on complainant 1 as a category B1 offence, that is to say medium culpability and high level of harm; the latter involving serious physical injury and/or substantial impact on the victim. A category B1 offence has a starting point of 18 months and a range of 36 weeks to 2½ years. The judge then categorised the assault on complainant 2 as a category 2A assault, that is to say high

culpability because the victim was obviously vulnerable due to age and harm falling between category 1 and 3. A category 2A assault also has a starting point of 18 months and a range of 36 weeks to 2½ years in custody. The theft was categorised as medium culpability category 3 offence, for which the starting point is a high-level community order and a range of a low-level community order to 36 weeks.

5. The judge noted aggravating features including a number of offences of minor violence and public disorder, and the fact that the appellant was under the influence of cannabis at the time of the offence. He also noted the location of the offence and the fact that it was in a public place. The judge concluded that the sentence after trial would have been in the region of 3 years for all of the offending. Taking account of the discount of 15 per cent for the guilty pleas, the judge imposed the sentences described above.
  
6. Mr Routledge, in concise and helpful submissions on the appellant's behalf, submits that the categorisation of the offending was too high. He suggests that the assault on complainant 1 should be a category 2B offence rather than 1B, with a starting point of 36 weeks' and for complainant 2, it should be 2B also with a starting point of 36 weeks. He further submits that if the sentence is reduced so as to be eligible for suspension, suspension should be ordered in this case. In those circumstances, he submits that the sentence of 28 months' imprisonment is manifestly excessive.
  
7. Dealing first with categorisation, we are unable to agree with Mr Routledge that the judge erred in this respect. The judge is entitled to conclude, based on the victim personal statement, that there had been a substantial impact upon complainant 1. That, in

conjunction with the physical injury to his teeth, amply justified, in our view, a categorisation of 1B.

8. As for the assault on complainant 2, the judge was similarly entitled to conclude that this 14-year-old schoolboy was vulnerable due to age. However, we bear in mind that this is a factor that covers a wide range of ages. Thus, although we do consider that although there is a degree of vulnerability, given the age of the victim in the present case, this would be such as to fall at the lower end of the bracket. As to harm, the victim's personal statement indicates that the victim has had to change his behaviour, sleeping with a spanner to hand and changing his behaviour at school. Such evidence entitled the judge to conclude that there was more than just a limited impact on the victim so as to place the offending in category 2A.
  
9. Although we do not disagree with the categorisation, we consider that in respect of complainant 2 any vulnerability by reason of age would, as we have said, fall at the lower end of the category. For that reason, and taking into account totality, we consider that the sentence of 28 months for this offending overall was manifestly excessive and, in our judgment, a sentence of 22 months overall, comprising 12 months for the first assault and 10 months for the second assault would be just and proportionate having regard to the overall level of criminality involved.
  
10. Accordingly, the appeal is allowed to that extent. The sentence of 28 months is quashed and replaced with one of 22 months. Although that would render the sentence eligible for suspension, we do not consider this to be an appropriate case for a suspended sentence to

be imposed. The offending in this case involved wholly unprovoked attacks on children. The appropriate punishment can only be achieved, in our view, by a sentence of immediate custody.

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

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