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IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202303838 A1

[2024] EWCA Crim 197

Royal Courts of Justice

Wednesday, 14 February 2024

Before:

LADY JUSTICE WHIPPLE
MRS JUSTICE STACEY
HIS HONOUR JUDGE PICTON

REGINA
V
SHUHANG MEYAN LIMBU

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MR R. SALIS appeared on behalf of the Appellant.

J U D G M E N T

MRS JUSTICE STACEY:

1 This is the renewed application for leave to appeal against sentence following refusal by the single judge. We grant leave.

2 On 7 July 2023 in the Crown Court at Inner London before HHJ Cottage KC, the appellant (then aged 21) pleaded guilty to assault occasioning actual bodily harm, contrary to s.47 of the Offences Against the Person Act 1861.

3 On 10 October 2023 before HHJ Ainley, the applicant (then aged 21) was sentenced to 13 months' immediate imprisonment.

The Facts

4 The appellant was 19 years old at the time of the offence. He and his two co-defendants, Riwanj Magar (aged 26) and Sameer Dewan (aged 25), were leaving Barking railway station at 1.30am, having been told there were no more trains and the station was closing for the night. They had all been out drinking, celebrating the appellant's 19th birthday two weeks earlier.

5 They encountered the victim, Clinton Samuel, a homeless man who was stumbling around the station concourse eating chicken and chips. As can be seen from the CCTV, Mr Samuel is a slight, bedraggled looking man who was obviously vulnerable. Mr Samuel thought the three of them might be after his food and made a feeble, aimless swing at the appellant as he told them not to take his food. In response, all three set upon him and carried out a prolonged and vicious assault that was mostly captured on CCTV.

6 All three repeatedly stamped and kicked Mr Samuel as he lay on the ground. Mr Magar was seen to punch him multiple times. Mr Dewan dragged him along the floor by his clothing. The appellant and Mr Dewan kicked Mr Samuel in the face and head before the appellant ran up and kicked him in the face again. Mr Dewan removed his shoe and repeatedly struck

Mr Samuel about the head with it. He then took a plastic wet floor sign which he used to hit Mr Samuel multiple times in the head. Mr Samuel repeatedly apologised to them during the assault, but to no avail. Mr Magar was seen to laugh throughout. The assault continued for two and a half minutes.

7 Mr Samuel had visible and significant injuries on his face, with blood around his mouth and his face was swollen and bruised. He became unresponsive towards the end of the assault and was still unresponsive when paramedics arrived 20 minutes later.

8 Mr Samuel was taken to hospital. He was reluctant to report the offence or stay in hospital and discharged himself before the X-rays that medics had ordered were taken.

9 The appellant and his two co-defendants were arrested a short time later at a nearby bus stop.

10 All defendants claimed self-defence in their police interviews, but after the appellant was shown the CCTV in his interview, he said he was sorry for the homeless man and then answered "no comment" to the remainder of the questions.

Sentence

11 In brief sentencing remarks, the judge noted that this was drink-fuelled violence in a public place on a man who was no threat to anyone who was mercilessly beaten for two minutes. It could only be met by a sentence of immediate imprisonment, even though he acknowledged that all three were to be treated as of good character, they had all acted out of character and would be unlikely to offend similarly again. All had provided impressive character references.

12 It was a category A2 offence under the guidelines as it was a prolonged and persistent attack on an obviously vulnerable victim. The harm caused was significant, but it was not proven

that it was serious physical harm, since Mr Samuel had left the hospital before an assessment of his injuries could be made.

- 13 The starting point under the Sentencing Council assault guideline is 18 months with a category range of 36 weeks to 2 years and 6 months. The judge considered that the aggravating features were balanced out by the mitigating features and arrived at a notional sentence after trial of 18 months. All three defendants had pleaded guilty at the Plea and Trial Preparation Hearing and were entitled to a 25 per cent discount for plea, which the judge rounded up to arrive at a final sentence of 13 months for each.
- 14 There is no mention of the appellant's age difference or any reference to the specific mitigation and personal circumstances that he or either of his co-defendants had put forward.
- 15 The three grounds of appeal are, firstly, that the judge failed properly to differentiate between the respective roles of each defendant. Secondly, he failed to have regard to the appellant's mitigation, which distinguished him from his other co-defendants and, thirdly, he failed to have significant regard to the Sentencing Council imposition of community and custodial sentences guideline. This was a sentence that could and should have been suspended it was submitted.

Analysis and conclusions

- 16 The CCTV made for very distressing watching. The attack was brutal, sustained and extremely violent, with deliberate running kicks and stamps on Mr Samuel's head. It was a feral and brazen case of group violence on a weaker individual openly conducted in a public place. The defendants appeared to consider that they could act with impunity in full sight. The custody threshold had been passed as the offence was so serious that neither a fine alone or a community sentence could be justified for the offence.

- 17 As explained in the Sentencing Council definitive guidelines on the imposition of community and custodial sentences, passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. In this case two of the factors identified by the Sentencing Council in support of suspending a term of imprisonment applied: firstly, there was both a realistic prospect of rehabilitation and, secondly, strong personal mitigation. However, given the facts of the offence, the judge was entitled to conclude that the appropriate punishment could only be achieved by immediate custody, even though the risk of re-offending was low and the pre-sentence report for the defendants had proposed a community-based sentence.
- 18 As to the disparity of treatment argument, Mr Dewan took a marginally more active role than either the appellant or Mr Magar, as only Mr Dewan removed his shoe and beat Mr Samuel around the face and then used the wet floor cleaning sign as a weapon. But there was in truth precious little difference in their respective involvement and they worked as a team.
- 19 All three had equally compelling mitigation. The appellant and Mr Dewan had hoped to join the Royal Air Force, which this offence and sentence has likely put paid to. All three were in work. They all expressed insight and remorse about their behaviour. They had all had the matter hanging over them for two years and three months. None had been in any further trouble in that period. The appellant also had some caring responsibilities for his father who has health issues, with whom he lives. His parents are divorced and his mother lives in Nepal.
- 20 The significant difference between the co-defendants however, is the appellant's age. He was six years younger than Mr Dewan and seven years younger than Mr Magar and will no doubt have been influenced by his older friends who he had been out with.

- 21 It is a trite observation that young adults, such as the appellant, are still developing neurologically and are likely to be susceptible to peer pressure and more likely to take risks or behave impulsively when in company with peers and older adults. Young adults are less able to evaluate the consequences of their actions and are likely to be less able to limit impulsivity.
- 22 As was stated in the Attorney General reference case of *Clarke* [2018], EWCA Crim 185, reaching the age of 18 has many legal consequences, but it does not represent a cliff edge for the purposes of sentencing. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays.
- 23 We are satisfied that the age difference between the appellant and his co-defendants was a material difference that entitled the appellant to a lesser sentence than his co-defendants that the judge could and should have taken into account. Even though there was no specific finding of immaturity in the pre-sentence report, it operates by dint of the age gap itself. Furthermore, a two year and three-month delay in this matter being dealt with would have weighed more heavily on the appellant than his co-defendants because of his age. It represents over 10 per cent of his life to date.
- 24 We consider that it was manifestly excessive to impose the same sentence of 13 months on this young man of previous good character. We are also mindful of the context of the current conditions in custody: see *R v Arie Ali* [2023] EWCA Crim 232.
- 25 We therefore allow the appeal to the extent that we quash the sentence of 13 months and in its place impose a determinate sentence of 10 months. We grant the application for legal assistance and make a representation order for junior counsel for Mr Salis.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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