CASE NO 2024 01075/A3

Neutral Citation No: [2025] EWCA Crim 116

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM THE CROWN COURT AT NOTTINGHAM
HER HONOUR JUDGE SHANT KC
31CF0815921

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 28 January 2025

Before:
LADY JUSTICE ANDREWS

MR JUSTICE LAVENDER

MR JUSTICE SWIFT

REX
V
STUART PITMAN

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Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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MS L THANDI appeared on behalf of the Appellant.

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

**LADY JUSTICE ANDREWS**:

1. The appellant (who is now aged 36) has an unattractive and extensive criminal record, much of it comprising offences of violence, including assault and robbery. In March 2017 he was found to be a *dangerous* offender and was sentenced to an extended sentence of 10 years, comprising 6 years' imprisonment with a 4-year extended licence for an offence of section 18 wounding with intent to cause grievous bodily harm. The weapon he used on that occasion was a knuckleduster and the victim was a member of the public. Consecutive sentences were imposed for less serious offences, resulting in a total custodial term of 10 years and 4 weeks.

2. On 26 October 2023, in the Crown Court at Nottingham, following a trial before the Recorder of Nottingham (Her Honour Judge Shant KC) and a jury, the appellant was convicted of a single count of causing grievous bodily harm with intent. That offence comprised an unprovoked attack upon a fellow inmate at the prison at which the appellant was serving the aforementioned extended sentence, on the morning of 31 May 2021. The victim, Aiden Semper, was sitting on a pool table on the landing of the prison wing, as the judge said, minding his own business, when the appellant approached him from behind and struck him to the head with his closed fist, causing Mr Semper to fall to the floor.

3. The appellant then continued the assault, initially with his fists but then with a makeshift weapon which he had concealed in his waistband. The weapon was never recovered and so its precise nature is unknown, but the injuries to the victim are consistent with it having a blade of some sort. The appellant himself described it to the psychiatrist who examined him as a "shank". The attack only ended when one of the other inmates came to the assistance of Mr Semper. The entire incident was captured on CCTV.

4. There has really been no explanation for the assault, although we are told that at the trial the appellant suggested that Mr Semper had bullied him on earlier occasions and that this constituted some degree of provocation. It would appear that the jury did not accept this, because they rejected his account and found him guilty of causing grievous bodily harm with intent (he had offered to plead to the lesser offence of inflicting grievous bodily harm.)

5. The appellant has a history of alcohol and substance abuse. He told the police that because of this he had a poor memory. He expressed no remorse and displayed no empathy towards his victim.

6. Mr Semper suffered the following injuries:

    1. A right cheek bone fracture and upper jaw fracture.
    2. Single rib fractures.
    3. A fractured right eye socket.
    4. Flattening to the right side of the face.
    5. Numbness under the right eye socket and the right side of the upper lip, suggesting localised nerve damage.
    6. Multiple lacerations to the head, two 5-centimetre gashes on each side of

the skull and one 3-centimetre M-shaped laceration over the left temple, all of which were glued, and

7. A laceration to the left wrist which required four stitches.

Mr Semper described the ongoing effect of the injuries in a victim personal statement. He said that he suffered consistent pain which was affecting his sleep, and that he had difficulty in eating. He was also left with scarring.

7. On 26 February 2024, having made what is conceded to be the inevitable finding that the appellant was a *dangerous* offender, the judge imposed a discretionary life sentence based on a notional determinate custodial sentence of 8 years. She stated that the minimum term would be 5 years and 3 months. As the appellant was 35 years old at the time of sentence, that sentence could only have been imposed pursuant to section 285 of the Sentencing Act 2000. However it was erroneously recorded in the court extract as having been imposed pursuant to section 274 of that Act, which relates to offenders aged between 18 and 20. The minimum term was also incorrectly calculated - it should have been 5 years and 4 months, but we are unable to correct it, as to do so would be to unlawfully increase the sentence. If the appeal were to be allowed, there would be no minimum term. We do however direct that the court extract be corrected to reflect that the sentence was passed under section 285.

8. The appellant appeals against the life sentence by leave of the single judge. Complaint is made in the grounds of appeal that the judge gave insufficient consideration to the appellant's personal background (he grew up in care and had been incarcerated in one type of institution or another for most of his adult life) and to the likely impact of this upon his offending. However, the real issue is whether a life sentence was necessary and proportionate and whether sufficient consideration was given by the judge to the alternative disposal of an extended sentence which, as Ms Thandi pointed out to the Court, could have been ordered to run consecutively to the extended sentence he was already serving.

9. The judge categorised the offence in accordance with the applicable Definitive Sentencing Guidelines as a category A3 offence, because of the use of the makeshift weapon, which she found indicated a significant degree of planning and because, as she said, the assault was persistent. Ms Thandi this morning pursued an argument, although lightly, that this was a mis-categorisation. She submitted that the judge should have categorised this offence as category B3 offending. She pointed out that the assault only lasted some 45 seconds and that it was not as prolonged and persistent as perhaps the guideline had in mind.

10. However, in our judgment, the categorisation was entirely apposite. The judge was entitled to take the view that, seen in its context, the assault was persistent because the assault continued after Mr Semper was on the floor, having been felled by the first blow, and progressed from a physical assault using fists into slashing with the improvised weapon. It may only have lasted for 45 seconds, but that was long enough to do considerable physical damage to the victim. As for the significant degree of planning, it takes some time and a degree of cunning to be able to fashion an improvised weapon of this kind in a custodial setting, although it is known that prisoners do manage to do so.

11. The judge increased from the starting point of 5 years by 6 months to take some account of the ongoing effect of the injuries described by the victim. She did so after sounding a note of caution about this because there was no supporting medical evidence in relation to the effect as described by Mr Semper. She then identified the serious aggravating factors, namely that the attack took place in prison but, more importantly, that the appellant had a very significant record for serious violence and was serving an extended sentence at the time of the attack. She explained that this justified taking the sentence outside the category range to one of 8 years.
12. The judge then addressed the risks that the appellant posed to the public and found him to satisfy the statutory criteria of *dangerousness*. In so doing, she had regard in particular to the pre-sentence report, and to a psychiatric report which diagnosed a dissocial personality disorder, but she made it clear in her sentencing remarks that she had read with care all the documents in the case. Both of the reports referred to the appellant's long-standing addiction which added to his offending.

13. The judge quoted from a passage in the pre-sentence report in which the author assessed the risk of re-offending as high and said it would only be reduced once abstinence from illicit substances had been completed and interventions completed within a custodial setting. The author said that:

> "It appears as though the risk is indiscriminate and anyone could be at risk of harm from Mr Pitman if he feels threatened, offended or even without any provocation."

The judge accepted that assessment. She went on to consider the prospects of the risk being reduced by abstinence or interventions. The proposed interventions would take place within a custodial sentence setting rather than during any licence period. The judge pointed out that, in the course of his existing significant sentence, the appellant had not availed himself of any intervention thus far, although, as she said, he now professed that he wished to do so. The use of the word "professed" is telling. It indicates that the judge was not prepared to take what he said at face value. Of course she had had the advantage, which this Court does not have, of having observed him giving evidence during the trial, and was able to gauge for herself the genuineness or otherwise of such profession.

14. Moreover, on his own account, as the judge said, he continued to use drugs and was probably under the influence of them when he committed this offence. She was sure that the risk he posed to members of the public was likely to carry on for a considerable time in the future, and it was impossible to predict how long it would last or if it would ever be abated. She was therefore satisfied that the offence was so serious that a sentence of life imprisonment was required.

15. Ms Thandi relies on the observations of the constitution of this Court presided over by the former Lord Chief Justice (Lord Thomas) in *Attorney-General's Reference No 27 of 2013 (R v Burinskas & Ors)* [2014] EWCA Crim 334; [2014] 1 WLR 4209, to the effect that a life sentence should only be imposed as a last resort. She contends that the judge erred in finding this case exceptional and that she failed to give sufficient consideration to the appellant's

personal background, or to the assessment by probation of the prospects of his risk being reduced through intervention work with which he had expressed himself willing to engage. She also pointed out that the offence, taken in isolation, was not the most serious of its type.

16. Attractively though those submissions were presented, we cannot accept them. These were exemplary sentencing remarks by an experienced judge who, as we have said, had the advantage of observing the appellant throughout the trial and could gauge for herself how likely it was that he would take the necessary steps to mitigate the serious risks that he plainly poses. She approached the task before her with conspicuous care and she took all the relevant information properly into account.

17. Whilst it is true that the appellant had now expressed himself willing to engage with probation, the author of the pre-sentence report frankly stated that this would not be an easy task, because violence was a coping mechanism which the appellant had deployed since his childhood. The course which probation deemed suitable for him was specifically designed to address his poor consequential thinking skills rather than his dependency on drugs. However, it was plain that abstinence from illicit substances was the key factor in making any progress. The judge was clearly entitled to take account of the fact that, during his already lengthy period of incarceration for similar offending, the appellant had done nothing to indicate any motivation to become abstinent.

18. In those circumstances, she was right, in our judgment, to conclude that it was totally unpredictable whether and, if so, when, the risk posed by the appellant would ever be addressed. In those circumstances, although we acknowledge that a life sentence is one of last resort, in our judgment the judge was fully entitled to pass one in the present case. This appeal is therefore dismissed.