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No: 201702139/A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 30 January 2018

B e f o r e:

LADY JUSTICE HALLETT DBE VICE PRESIDENT OF THE CACD

MR JUSTICE SWEENEY

SIR RODERICK EVANS

R E G I N A

v

WILLIAM SCOTT SARTAIN

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Mr N Bonehill appeared on behalf of the **Appellant**

J U D G M E N T (Approved)

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1. **MR JUSTICE SWEENEY:** This is an appeal against sentence by leave of the single judge. On 13 January 2017 in the Crown Court at Basildon the appellant, who is now aged 23, pleaded guilty to two offences, on Count 3 of indictment T20160630 to an offence of inflicting grievous bodily harm committed on 23 January 2016 and on Count 1 of indictment T20177001 to an offence of robbery committed on 19 February 2016.
2. On 15 March 2017 in the same court the appellant pleaded guilty on Count 1 of indictment T20177035 to an offence of robbery committed on 18 June 2016 and on Counts 2 to 10 of the same indictment to nine offences of fraud, also committed on 18 June 2016.
3. On 18 April 2017, following the provision of a pre-sentence report, the appellant was sentenced by Her Honour Judge Leigh on Count 1 of indictment T20177001 to an extended sentence under section 226A of the Criminal Justice Act 2003 of 20 years, comprising a custodial term of 15 years and an extension period of 5 years. On Count 1 of T20177035 to a concurrent extended sentence under section 226A of 20 years, again, comprising a custodial term of 15 years and an extension period of 5 years. On Counts 2 to 10 of that indictment two concurrent terms of 2 months' imprisonment on each and on Count 3 of indictment T20160630 to 3 years' imprisonment concurrent.

4. The total sentence imposed was therefore an extended sentence under section 226A of the 2003 Act of 20 years, comprised of a custodial term of 15 years and an extended period of licence of 5 years.
5. There were three co-accused. On indictment T20160630 Nathan Hasan, who is now also aged 23, and was of previous good character, pleaded guilty with full credit to Count 3 and was sentenced to 34 months' imprisonment and Paige Nutley, who is now aged 24 and is the mother of the appellant's child, pleaded guilty to common assault and was made the subject of a community order with requirements.
6. On the equivalent of indictment T20177035, Count 1, Terence Reason, who is now aged 29, pleaded guilty with full credit to robbery and was sentenced to an extended sentence of 8 years, comprised of a custodial term of 5 years and an extension period of 3 years. All the various pleas which were entered by the appellant attracted full credit.
7. The facts in short are these: the appellant has a poor criminal record, having appeared before the courts on some 18 occasions in the period from 2008 to 2016 in respect of 29 offences including battery, thefts, using threatening abusive or insulting words or behaviour and burglary. Two community orders imposed in 2012 were revoked as being unworkable and a suspended sentence imposed in 2013 was activated halfway through the operational period. He was the subject of a community penalty at one stage during the course of his instant offending.

8. As to Count 3 on indictment T20160630 the facts, in short, were these: on 23 January 2016 at half past midnight the victim, Simon Geden, left home to go to a supermarket in Westcliffe-on-Sea in Essex where he bought some wine and lager. He started to walk home and saw the appellant, Hasan and two females, the co-accused, Nutley, and another who was not charged, walk out of an alleyway. One of the males asked Mr Geden for coke which he interpreted as meaning the drink coca-cola as he held out a bottle of vodka. Mr Geden ignored him and continued to walk on. But the group walked along with him, continually asking him for coke. Eventually Mr Geden stopped and told them to walk on ahead of him. Miss Nutley said, "What, so you can bottle us from behind?" Mr Geden repeated, "Just walk on please", but Nutley continued to accuse him of wanting to bottle her. He then told her to grow up and she responded by punching him in the face. He threw a punch back in self-defence. The group then set upon him and his bag containing a bottle of wine was pulled from his hand. He was hit over the head with the bottle which smashed and fell on the floor. There were four witnesses to these events and the attack was caught on CCTV.

9. When later shown the forensic evidence, Hasan accepted that he was the one who had hit the victim over the head with the bottle. It was clear however from the CCTV that both the appellant and Hasan started to knee the victim to his torso and repeatedly punched him to the back of his head. Once he was on the floor he was repeatedly punched and kicked and stamped on his head, ribs and groin. He adopted the foetal position trying to protect his head. Mobile phone footage that was recorded by two people

watching, who also gave a running commentary, described him rolling up and covering his head to try and protect himself. Someone driving past saw what was going on and drove at the perpetrators to try and break up what was happening.

10. In the results the victim sustained two fractures to his ribs, bruising to his left eyebrow and right jaw, a pain to his chest with reduced air entry and tenderness to his abdomen, neck and back.
11. Two baseball caps were discarded at the scene, the examination of which resulted in various DNA matches from the appellant and Hasan. The broken wine bottles that had been used during the assault had DNA from at least three people including the victim and Hasan. The appellant's clothes were also examined. His own blood was on the inside of the left jacket pocket and the victim's blood was on the right sleeve. The appellant answered no comment in interview in relation to this offence but after he was told that he had been forensically linked to the offence he produced a prepared statement saying that he had acted in defence of Nutley and that he had seen her being punched.
12. In his victim personal statement Mr Geden recorded how he had been taken to hospital but had not needed any follow up appointments. His various injuries had healed save for a chipped front tooth, about which he was very self-conscious. He had to be off work for two weeks which had cost him £800 and he has also had to have six other days off work which had to be treated as holiday time. He said that he had nightmares for about two

months after his ordeal, was unable to face going out at night for about a month and had become very wary when he did eventually go out, all of which had put pressure on his partner. Eventually, given that the offence had occurred close to where he was then living, he had to move to another address.

13. The appellant was released on bail and all his subsequent offending therefore took place whilst he was still on bail.

14. As to Count 1 on indictment T20177001, the facts are these: on 19 February 2016 the appellant and his co-accused, Reason, were involved in the robbery of a 41-year-old man called Defrim Tarja. At about 1.05am in the morning Mr Tarja was out walking in Southend High Street where he had gone to withdraw some cash from an ATM when he was punched by Reason and fell to the ground unconscious. The incident was caught on CCTV which demonstrated the ferocity of the punch, similar to the type of which the court has experience in one punch manslaughter cases.

15. Once Mr Tarja had been rendered unconscious and was on the ground, the appellant and Reason went through his clothes, taking his mobile phone, which cost him £150 to replace, and the cash in his wallet, amounting to approximately £40. They then left him there unconscious on the ground, in fact, with life threatening injuries as there was a bleed on his brain. He spent some three weeks in Romford Hospital and had to have surgery to his head. He was scarred and suffered damage to his teeth.

16. The appellant and Reason were later recognised by police officers from the CCTV footage and their DNA was linked to the victim's clothing. Thus they were eventually arrested. The appellant gave a no comment interview.

17. In his victim personal statement Mr Tarja said that he had no recollection of the events after leaving home and withdrawing money, only of waking up in hospital in a lot of pain and discomfort. After his eventual release from hospital he was off work for a further three weeks and thereafter had been unable to return to full-time work and thus to full-time pay as his health had been up and down. He had, he said, a lot of headaches but had had his damaged tooth repaired. He had been diagnosed with depression as a result for which he was receiving treatment and felt different to how he was before the robbery, now having trouble concentrating, having problems with his memory, being nervous whenever he went out of being attacked again and generally suffering a loss of confidence and stress.

18. The offences on indictment T20177035 were all committed some four months later on 18 June 2016. On that date the victim, Brendon Boshell, who was 24 years old, was on his own walking home having been to a club. He had no clear memory of what happened next and had memory blanks as a result of being hit on the head. He recalls going through an underpass, being approached by a group of males whom he did not know who were initially being friendly and joking with him.

19. The next thing he remembered was being covered in blood to his nose and face. He had knocked on the nearest house asking for help and had realised

at that point that his wallet was missing. An ambulance was called and the next thing he remembered was waking up in hospital in Basildon. His wallet contained three debit cards and his mobile phone was also taken. He had a fractured jaw to the left-hand side, a laceration to the top of his left lip which required eight stitches and there was grazing to the top of his face and forehead. He was swollen and bruised to his left cheek.

20. The debit cards were subsequently used to make unauthorised transactions in Basildon whilst the victim was in hospital. The appellant was identified from CCTV at the various locations, all within hours of the robbery of the victim.

21. The appellant was interviewed in relation to those offences on 7 February 2017 and answered no comment.

22. In his victim personal statement Mr Boshell indicated that the injuries meant that he was on a liquid diet for six weeks after the robbery, meaning that he was often very low in energy. During that time he said it was difficult to sleep because of the pain in his jaw. Even when he had returned to eating non-liquid food it was sometimes painful and laborious to eat and for at least three months he felt that his teeth were not aligning correctly and they would often clash whilst he was chewing. He was the only person in his business and had had to take two weeks off after the robbery and had had to cancel meetings which had cost him prospective customers. Even when he had been able to return to work, it had been difficult for him to talk over long periods as he would get an ache in his jaw after ten minutes

or so.

23. In the interviews for his pre-sentence report the appellant sought to minimise his guilt. As to the offence of grievous bodily harm on 23 January 2016, the appellant told the probation officer that he had been to the club in Southend where he had been drinking excessively and taking drugs. He said that he had seen Miss Nutley, who was extremely drunk, so much so that he decided to take her home. On their way home, he said, with Miss Nutley's cousin and the co-defendant, Hasan, they had encountered the victim. Miss Nutley had slapped the victim who had then punched her so he had punched the victim a number of times in retaliation. Whereupon Hasan had also become involved and, claimed the appellant, done the majority of the damage.

24. As to the robbery, on 19 February 2016, the appellant said that he recalled drinking with his co-defendant, Reason, at a strip bar in Southend and that after they had left and following an argument between them, Reason had struck the victim and then suggested they rob the victim which they had then done together. The appellant claimed to have cringed when he saw the CCTV pictures of his own behaviour.

25. As to the robbery on 18 June 2016, the appellant said that he had been to a nightclub in Basildon and that outside the group that he was with had begun talking with a male who was lost and who they had agreed to walk to the train station. One of the others had then hit the man whose possessions had then been taken. After that he had been told to try to purchase

cigarettes using one of the victim's cards and discovered that it had worked and so he had continued to use the card.

26. Against the background of the appellant's longstanding abuse of alcohol and drugs, the author of the pre-sentence report opined as to the risk of serious harm that there was a medium risk of the appellant committing further specified offences. There was also a letter from the appellant to the judge saying that he was very aware of the seriousness of the offences and ascribing the cause of his offending to a downward spiral after the loss of his job. He was, he said, ashamed and now trying to get his life back together, and was truly sorry for what he had done to the victims.

27. As we touched on already, Terence Reason also fell to be sentenced in relation to the robbery of Mr Tarja committed on 19 February 2016. In the period between 2005 to 2015 he had 14 court appearances for a total of 26 offences, including battery, robbery, assault with intent to rob and an offence contrary to section 20 of The Offences Against the Person Act 1861, two offences of assaulting a constable for which the sentences imposed varied from community penalties to, for the most serious, 4 years' detention in a young offender institution.

28. The author of his pre-sentence report recorded that Reason had been very emotional in interview, was very remorseful for his actions and deeply regretted the injuries that he had caused to the victim and the impact that the offence had had both on the victim and the victim's family.

29. He had described how he and the appellant had been drinking and were then walking along the high street when they had encountered the victim who, said, Reason, he thought was staring at him so he had turned and punched him, recognising immediately that he had used too much force and had caused significant injury. It had not crossed his mind to get help for the victim whom he and the appellant had then robbed, albeit he denied that the offence had been financially motivated.
30. The author of Reason's pre-sentence report concluded that there was little confidence in Reason's ability to engage with interventions in the community, that his risk of re-offending and causing serious harm to the public was high and would remain so unless he learned from interventions whilst in custody. He also posed a risk of serious violent offences against partners, children and criminal justice staff.
31. There was also before the judge a copy of a letter written by Reason to the victim, Mr Tarja, apologising for what he had done to both Mr Tarja and his family.
32. In passing sentence the judge he rehearsed the facts. As to the grievous bodily harm inflicted on Mr Geden, she averred that it was accepted that the offence was in category 1 of the relevant guideline, there was serious injury in the context of the offence and the victim was particularly vulnerable being out alone at night and in further aggravation it was a group attack. Whilst full credit was due for plea there was no worse example of such an offence in her view, having seen the video footage of it, and so she explains

the court went above the normal starting point of 3 years.

33. As to the robbery of Mr Tarja, the judge observed that the appellant had been on bail at the time, that Mr Tarja had been out walking alone in the early hours of the morning, that after the punch by Reason and with Mr Tarja unconscious on the floor the two of them had callously and systematically gone through his pockets and that the offence had had a very serious effect upon him. The force used had been very serious and there was both serious physical and serious psychological injury. In terms of the relevant guideline it therefore fell into category 1A with a starting point of 8 years.

34. As to the robbery of Mr Boshell and associated offences, again, the judge concluded that the robbery also fell into category 1A, given that it must have involved very significant force and group action.

35. As to dangerousness, the judge indicated that she had considered in particular the appellant's record, his history of abuse of drink and drugs, the level of violence involved in the offences as shown in the footage of them, that the appellant was heavily intoxicated at the time of the commission of each and the contents of the PSR, together with the evidence of its author with whose view she disagreed. In consequence, she had absolutely no difficulty, as she described it, in concluding that the appellant was dangerous.

36. The judge said that the notional sentence after trial that she had in mind for

the offence of grievous bodily harm on Mr Geden was one of 4 and a half years' imprisonment which with full credit brought the term to be served down to 3 years. She then imposed the other sentences to which we have already referred but in each case without indicating what the notional sentence after trial would have been.

37. As to Reason, the judge said that the notional sentence after trial for the robbery of Mr Tarja in relation to him would have been in excess of 8 years. Given the very serious force used and the serious harm to Mr Tarja, the starting point was 8 years. It was also a group offence and was further aggravated by Reason's previous convictions, in particular those for robbery and assault with intent to rob. He also fell squarely within the dangerousness provisions but was entitled to full credit for his plea and further credit for the fact that as, in accordance with his letter to the victim, he had started to work towards various courses whilst on remand. Hence, she imposed in his case a custodial term of 5 years and an extension period of 3 years.

38. As to Hasan and the offence of grievous bodily harm on Mr Geden, the judge indicated that she adopted the same starting point of 4 and a half years after trial from which she deducted a full discount for plea and also made a reduction to reflect his previous lack of convictions and positive personal mitigation. In the result the sentence on him, as we have indicated, was one of 34 months' imprisonment.

39. There are before us two prison reports in relation to the appellant, who is

serving his sentence at Chelmsford Prison. Taking them in general terms, they are not particularly to the appellant's credit as there have clearly been some problems.

40. The grounds of appeal are that (1) the judge failed to adequately follow the guidelines; (2) the judge failed to give any reason for the significant increase in sentence for the appellant compared to the sentence imposed on Reason and there was no parity between the sentences; (3) the totality of the offending was not such as to deserve a total sentence of 15 years custody; (4) the judge erred in all the circumstances in finding the appellant to be dangerous.

41. As to dangerous, Mr Bonehill, who appears on behalf of the appellant, submits that the critical issue was whether the appellant posed a significant risk of committing further specified offences. His previous convictions did not provide any basis for such a conclusion. The author of the pre-sentence report concluded that the appellant posed only a medium risk and he was not swayed by the judge's questioning of him, explaining that the appellants had demonstrated an attitude of compliance and that a lengthy period of ordinary custody would allow him to undertake work in relation to drink or drugs that would further lower the risk that he posed.

42. For the reasons given by the probation officer, it is submitted the judge was wrong to conclude that the appellant was dangerous.

43. As to the classification of the offences, Mr Bonehill accepts that everyone

was agreed that the grievous bodily harm inflicted on Mr Geden fell within category 1. As to the robbery of Mr Tarja, he submits that whilst harm fell into category 1, the fact that there was a single punch meant that the offence might have been better viewed as falling into the medium culpability bracket not the top culpability bracket. As to the robbery of Mr Boshell, it was difficult, Mr Bonehill submitted, to categorise the offence because of the lack of evidence as to precisely what had happened and thus there was a question mark as to whether the judge had erred in putting it into category 1A.

44. As to disparity, Mr Bonehill submitted that in relation to the sentence imposed on Reason for the robbery of Mr Tarja that he was clearly the principal offender, albeit that it was a joint enterprise robbery. It was his single punch that had rendered Mr Tarja unconscious and caused his injuries. In addition, Mr Bonehill submitted Reason had significantly more serious previous convictions. Albeit that the starting point in his case was expressed to be in excess of 8 years it made no sense that the starting point for the same offence for the secondary offender, namely the appellant, must be one of over 20 years.

45. As to totality, Mr Bonehill underlines that in her sentencing remarks the judge did not explain how or why she came to a notional sentence after trial of over 22 years for the two robberies and whether or not those sentences were also intended to reflect the infliction of the grievous bodily harm on Mr Geden. If it was, Mr Bonehill submitted, it was still clearly too long.

46. During the course of his submissions this morning Mr Bonehill took no issue with the sentence imposed in relation to the grievous bodily harm but repeated some of the submissions from his advice, to which we have already referred.

47. To state the obvious, ultimately and, as Mr Bonehill accepts, it was for the judge to decide whether the appellant was dangerous. She clearly took care in doing so. In the result and for the reasons that she gave the judge was, in our view, entitled to reach the conclusion that she did, that the appellant was dangerous. Equally, and although it was largely a matter of inference in relation to the robbery of Mr Boshell, the judge was in our view entitled to categorise the offences in the way that she did. It was therefore open to the judge to pass an extended sentence on the principal offence, whether the robbery of Mr Tarja or of Mr Boshell, which reflected all the offending and to impose concurrent sentences in relation to the other offences. That is clearly what she intended to do.

48. Whilst Reason was the principal offender in relation to the robbery of Mr Tarja and had a worse record, it must be remembered that the offence was a joint enterprise and that Reason fell to be sentenced only for that offence and, unlike the appellant, had some positive mitigation. Whereas the appellant fell to be sentenced for all the offences, all but the first of which had been committed whilst he was on bail.

49. All that said, however, we have no doubt that the total sentence imposed on the appellant was too long. In our view the total notional custodial term

after trial should have been in the order of 18 years' imprisonment for all the offences which, less full discount for plea, should have resulted in an extended sentence made up of a custodial term of 12 years and an extension period of 5 years.

50. We propose to give effect to that in this way: we quash the sentences imposed in relation to the two robberies and substitute in each instance an extended sentence of 17 years made up of a custodial term of 12 years and an extension period of 5 years. Those sentences to run concurrently with each other and concurrent with all the other sentences imposed which will remain as imposed concurrent to each other in turn. To that extent this appeal is allowed.

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