

[2019] EWCA Crim 1572
2019/00853/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 18th September 2019

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE LAVENDER

and

MR JUSTICE NICKLIN

REGINA

- v -

MR

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Non-Counsel Application

JUDGMENT
(Approved)

LADY JUSTICE NICOLA DAVIES:

1. On 2 November 2018, in the Crown Court at Manchester, the applicant pleaded guilty to a number of offences on two indictments. On 4 January 2019, he changed his plea to guilty of the offences on a further indictment. On 8 February 2019, he was sentenced as follows:

Indictment T20187460:

- Count 1, robbery: three years' detention;
- Count 2, attempted robbery: two years' detention, to run concurrently;
- Count 3, having an offensive weapon: twelve months' detention, to run concurrently.

Indictment T20187439:

- Count 1, wounding with intent: 27 months' detention, to run consecutively;
- Count 3, having an offensive weapon: twelve months' detention, to run concurrently.

Indictment T20187459:

- Count 1, possessing an imitation firearm with intent to cause fear of violence: thirteen months' detention, to run consecutively;
- Count 2, damaging property: six months' detention, to run concurrently;
- Count 3, possession of an imitation firearm with intent to cause fear of violence: thirteen months' detention, to run consecutively;
- Count 4, assault occasioning actual bodily harm: twelve months' detention, to run concurrently;
- Count 5, having an article with a blade or point: twelve months' detention, to run concurrently.

The total sentence was one of 89 months' (seven years and five months) detention, pursuant to section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. Count 2 on indictment T20187439 (unlawful wounding) was an alternative count.

2. The co-accused, Cade Johnson, was acquitted of all counts.
3. The applicant renews his application for leave to appeal against sentence following refusal by the single judge.

The facts

Indictment T20187460

4. On 14 June 2018, at about 8.30pm, the complainants, Mark Walsh, Curtis Wordley and Dominic Wilson (who had a pillion passenger) were riding around Radcliffe on their mopeds or motor bikes. While waiting at some traffic lights, they were noticed by the co-accused Johnson (who was driving a Peugeot motor car towards the junction). The applicant was a passenger in the car. On seeing the group, Johnson made a U-turn and followed them. The moped riders carried on for a while and then stopped, side by side, to have a cigarette. The car was driven directly at them. It crashed into Walsh, causing him to fall off his moped, which was damaged. Wordley tried to move his moped out of

the way, but he was hit by the front passenger door of the car. The applicant got out of the car and Wordley fell to the ground. The applicant shouted abuse at Walsh and told him to give him the bike.

5. Walsh's bike was the initial target for the robbery. However, it was leaking coolant and, although the applicant tried to start the engine, it would not go (count 2). Thereafter, the applicant turned his attention to Wordley. He produced a flick-knife (count 3) and pointed it towards Walsh and Wordley. Walsh fell back, injuring his knee. Wordley remained on the ground, where the applicant kicked him. Wordley was wearing a helmet which deflected the blows, but the applicant then stabbed him twice in the buttocks as he lay on the ground, causing two deep wounds. The applicant then stole Wordley's motor bike (count 1) and made off across Radcliffe town centre. He then set fire to the bike so as to destroy it. It has never been recovered.
6. Following the attack, Wordley went to hospital where his wounds were cleaned. He remained there for a number of days. His Samsung phone, value £900, was stolen, as was his moped, value £1,500. He identified the applicant, who was subsequently arrested on 18 June 2018. The applicant was identified by all of the moped drivers. When interviewed, he made no comment.

Indictment 20187439

7. On 19 July 2018, the complainant, John Tatton, went into Radcliffe with his partner for a drink. Later that afternoon, they were walking along Strand Lane when a Honda Civic pulled up. The driver was Tatton's drug dealer to whom he was in debt. The applicant was a passenger in the car. Tatton knew the applicant. As Tatton bent down to speak to the driver of the car, the driver said "Where's my money?" and punched Tatton in the face. That caused Tatton to back away. The driver and the applicant got out of the car. The driver grabbed Tatton and they ended up in a headlock. Tatton thought that the applicant punched him in the buttocks. In fact, the applicant had stabbed him with a knife. The men ran back to the car which moved off, but then reversed at Tatton. He dodged in order to avoid being knocked over, whereupon the car was driven off. Witnesses called the police. Tatton eventually gave his account at the hospital. A review of the CCTV evidence led to recognition of the applicant by a police officer.

Indictment 20187459

8. On 10 September 2018, Joanne Foster was a taxi driver in a car park when she went to pick up a fare in the afternoon. She came across a group of males who were fighting. The applicant caused her to slam on her brakes as he went in front of her car. He was chasing another male. Ms Foster noticed that he was holding a handgun (count 1). He was pointing it at the man he was chasing. He fired the gun three times. The chase continued around the car park and then back towards the taxi.
9. Ms Foster saw that the applicant was pointing the gun in her direction. He fired three more shots, the third of which hit and damaged the roof of her car (count 2). Thereafter, the applicant walked away with the gun held by his side.
10. The following day, 11 September 2018, the complainant Mr Mohammed went to visit his cousin at a takeaway restaurant in Prestwich at around 6pm. Two youths walked up to him. One of them (the applicant) glared at him. Mr Mohammed asked if everything was all right, to which the applicant replied, "I'll show you". He was bouncing around and he reached into his shoulder bag. Mr Mohammed saw a knife strapped under his left arm and saw in the bag a black pistol (count 3) which looked real to him. Mr Mohammed's friend began to quarrel with the applicant. Mr Mohammed heard three or

four puffing noises as his friend was shot at by a gas gun. Then, at very close range, the applicant aimed at and shot Mr Mohammed in his leg, wounding him (count 4). Two further shots were fired at Mr Mohammed, but they missed.

11. Two days later the police were searching for the applicant, concerned at what he might do next. An officer came across him in Bury New Road and called for assistance. Police colleagues arrived. They managed to detain the applicant after a struggle. Following the struggle, he yielded up a black handled kitchen knife that he was carrying at the time (count 5). When interviewed he made no comment.
12. The applicant was aged 16 at the time of the offences. He was now aged 17. Although he had no previous convictions, it was clear that he had been involved in a criminal gang culture since the age of 15. In June 2018, following an attack on his family home by youths who were still awaiting trial, he was issued with a threat to his life.
13. Having considered the relevant facts, the judge imposed the sentences identified above.
14. The grounds of appeal are twofold, namely:
 - (i) the sentence is manifestly excessive because the judge failed to attach any weight to the applicant's personal mitigation; and
 - (ii) the judge failed to apply the totality principle generally and specifically by ordering the sentences for the two imitation firearm offences to run consecutively.

It should be stated that the personal mitigation before the court was referenced in a pre-sentence report and spoke of the applicant's troubled childhood.

15. In refusing leave to appeal, the single judge stated:
 - “1. Stabbing to the buttocks and thighs is a frequent means of punishment inflicted in a premeditated way intended to cause pain and injury without killing the victim. Because of the location of important blood vessels, it does sometimes kill. It is frequently seen in gang-related cases. You did this twice and your victims survived. These offences are to be seen as serious, premeditated knife crimes in the public street.
 2. You also used a ‘BB’ gas-fired weapon twice to cause fear and injury [in] the context of criminal activity. You succeeded in causing both fear and injury using a realistic weapon.
 3. When arrested, you were armed with a large kitchen knife.
 4. You have involved in gangs from the age of 15, and by the time of these offences were 16 years old.
 5. As the author of the pre-sentence report indicates, some of your explanations for your conduct are not true.
 6. All of this justified the judge in finding you dangerous, and her decision not to impose an extended determinate sentence of detention was a proper one, but one which gave you substantial credit for your age and lack of previous convictions.
 7. This series of serious offences by a dangerous young man plainly required a long sentence which would protect the public, given the decision to deal with the case by a determinate sentence.

8. The discounts for plea and age are not criticised in the grounds of appeal, correctly.

9. That being so, it is, in my judgment, not arguable that this overall sentence was manifestly excessive or wrong in principle.”

16. We agree with the remarks and conclusion of the single judge. Accordingly, this renewed application is refused.

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

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