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IN THE COURT OF APPEAL  
CRIMINAL DIVISION



Case No: 202000172/A4

Neutral Citation Number: [2020] EWCA Crim 1139

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 18<sup>th</sup> August 2020

**LORD JUSTICE POPPLEWELL**

**MRS JUSTICE O'FARRELL DBE**

**MR JUSTICE NICKLIN**

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**REGINA**

**- v -**

**REECE DYLAN JONES**

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**Mr R T Thomas** appeared on behalf of the Appellant

**Mr P Clemo** appeared on behalf of the Crown

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

## **MR JUSTICE NICKLIN:**

1. On 25 October 2019 in the Crown Court at Chester, the appellant pleaded guilty to one offence of conspiracy to rob. On 17 December 2019 he was sentenced to 5 years' detention in a young offender institution, less 41 days spent on a qualifying curfew. The appellant appeals against sentence with the leave of the full court.
2. The offence was committed on 10 September 2019. The appellant, with two co-defendants, Wade Golby and Yaseen Sati, robbed Lewis Purcell at knife-point. The appellant's role in the robbery was to act as a facilitator and decoy to aid his co-defendants, Mr Golby and Mr Sati. The appellant knew Lewis Purcell, who was studying for his A levels. He had telephoned the appellant earlier that day to purchase some cannabis from him. That day, Mr Sati informed the appellant that he had bought some balaclavas in readiness to commit a robbery. The defendants claimed that they themselves had been robbed and decided to commit a robbery to make up for the money that they said they had lost. It was the appellant who suggested to Mr Sati that the complainant was a suitable target.
3. On 10 September 2019 the complainant met the appellant on Garden Lane. It appeared that the appellant wanted to chat to the complainant about family issues. He had had a row that day with his parents, although the arrangement was to buy some cannabis. The complainant had his bicycle with him. The appellant encouraged him to go to an area of scrubland close by so that they could smoke cannabis and so that the complainant could buy some cannabis from him. They reached a particular point on the scrubland and started to smoke. Not long after, the complainant heard noises coming from the entrance to the wooded area.
4. Mr Sati and Mr Golby came running towards him. Both had their faces covered and were wearing hoods, so that only their eyes were visible. Both of them confronted the complainant and the appellant and demanded that they hand over their possessions. Both produced knives and threatened both the complainant and the appellant with them.
5. The complainant was made to lie down on the ground. He handed over his rucksack and wallet containing cards, cash and a driving licence, a Bluetooth speaker, an iPhone and a fleece. The appellant also, for appearances' sake, handed over a number of items to the two men who then left. However, they returned to obtain the pass code for the complainant's phone and he was again threatened at knife-point before he gave them the pass code. As the two left, they told the complainant and the appellant not to report them to the police as they knew where they lived.
6. The appellant and the complainant stayed there for a number of minutes before the appellant said that he would go and check to see if the complainant's bicycle was still there and to make sure that the two robbers had gone. The bicycle was still where it had been left. The complainant started to cycle home whilst the appellant ran alongside him. At some stage the complainant realised that he had left some headphones back at the scene. The appellant offered to go and fetch them. The complainant continued on his bicycle and stopped at a local convenience store. The appellant joined him a short while later, and handed over the headphones in continuance of the semblance that he too had been a victim of the robbery.
7. The complainant went home and told his mother what had happened, and she reported the matter to the police. Officers attended and took a police statement. They used the

"Find my iPhone" feature, which was still active on the complainant's iPhone, to help locate where the offenders might be. As a result, the police stopped a vehicle being driven by the appellant. Mr Golby was his passenger. At that stage the police believed that the appellant was a possible victim of what had happened and so they asked him to accompany them to Chester Police Station so that his details could be taken.

8. At the police station the appellant began to give an account to officers but ended up by saying: "I've been stupid. I'll tell you the truth." He said that with Mr Golby and Mr Sati he had come up with a plan to rob the complainant. He was then arrested and cautioned. He went on to say that he had arranged a meeting with the complainant so that he could lure him to the area so that Mr Golby and Mr Sati could rob him. He said that the three of them had been robbed in London recently and that that was a way, as he saw it, of them getting their money back.
9. When he was arrested and cautioned, Mr Golby made no reply. Sati was located and found to be carrying the rucksack stolen from the complainant. He told officers that he had knives on him which had been given to him by Mr Golby. He was searched and, save for £15, all of the items from the robbery were recovered. There was also a large knife in the bag and a large knife in Mr Sati's waistband. All three defendants were interviewed and all admitted their involvement.
10. The victim, Mr Purcell, gave a personal statement shortly after the incident. The statement was dated 27 September 2019, just over a fortnight after the incident. In it Mr Purcell said this:

"I have been reluctant to sit down and write how the events of Tuesday 10<sup>th</sup> September have affected me as I don't want to be reminded of it or even acknowledge how it has affected me. But the truth is, it has been the most traumatic event of my whole life and left me with mental scars that I just hope one day will fade in time. I'm struggling to sleep every night but when I do, I have vivid nightmares about that evening which leave me feeling anxious and shaken up. I'm going to college every day to try and reinstate a 'normal' routine back into my life but I am tired and struggling to focus in class. I'm panicked by this as this is my final, crucial year to complete my A levels. I'm meant to be applying for universities in other cities which a month ago was exciting but now, I don't even feel safe in my home town anymore. I'm suspicious of everyone I see in case they are the masked offenders who threatened me with knives and robbed me, or somebody associated with them.

I don't like to go out of an evening, as the dark nights remind me of what happened that night. I feel vulnerable and scared. Through the day, I get flashbacks of the threatening language the masked offenders used and how they used the knives towards me.

... I've withdrawn from friendship groups who are associated with Reece in a way to try to protect myself from being hurt further.

...

Before the robbery, I was enjoying life to the full, socialising with friends, loving college, going to the gym, cycling, learning to drive and looking forward to the future. Now I feel nervous and [wary] but I'm

taking each day at a time and trying to be positive in order to get my life back on track."

11. When it came to the day of sentence, no additional statement had been taken from Mr Purcell. Instead, on that day, uploaded to the DCS system (used by the Crown Court) was an undated, unsigned note. We are told this morning that it comes from the Witness Care Officer and was prepared on the day of the sentencing hearing in relation to the Restraining Order that the Crown intended to seek. It also contained the following:

"Lewis would also like to add to his victim impact statement that he continues to suffer stress and anxiety as a result of the incident. He does not go out socialising, except for visiting friends at their homes. He only knows one of the offenders, so is very worried that whilst out he may come across them and he doesn't know them. Lewis' mum, Michelle, recently attended a parents evening at the college Lewis attends. He is studying A-levels and is an expected A grade pupil. His tutor advised his mum that he had received very poor U grades. This is as a result of the incident. Lewis continues to live in fear of meeting the defendants and reprisals."

12. Mr Clemo, who appeared for the prosecution in the Court below and has appeared today, as part of outlining the prosecution facts to the sentencing judge read out the full victim personal statement and the unsigned, updated statement.
13. Mr Clemo has acknowledged today, and in a Respondent's Notice following the grant of leave, that the update provided to the sentencing judge "*was not in line with the Practice Direction*" and that this was "*very far from ideal*". We agree. The provision of information relevant to victim impact in this way is not acceptable, as was made clear in ***R v Perkins* [2013] EWCA Crim 323**, referring to the Criminal Practice Direction VII Sentencing (§F.2-F.3), the victim personal statement should be in the form of a witness statement which must be served on the defence in good time before the sentencing hearing. In ***R v Chall* [2019] EWCA Crim 865**, the Court of Appeal emphasised the need for the evidence be to up to date. In giving the judgment of the Court, Holroyde LJ said:

[31] ... [I]t not infrequently happens, particularly in the case of victims of physical violence in non-sexual cases, that a VPS is made at an early stage of proceedings and is thereafter not revisited before the sentencing hearing, which may be many months later. The consequence is that judges are sometimes provided with a VPS made when the injuries were fresh but have no information about the present state of the victim or about the extent to which the offence has given rise to continuing problems. For obvious reasons this is unsatisfactory, particularly if there is any issue between prosecution and defence as to the victim's present state of health. It is therefore important to emphasise that paragraph F.2 of the Practice Direction permits the serving of a further VPS, in proper witness statement form, at any time prior to the disposal of the case.

[32] Secondly, the judge must keep in mind that the intensely personal nature of a VPS may sometimes call for caution as to whether the

harm suffered by the victim may, unintentionally, have been overstated. It is important that the VPS should express the victim's own experience, and it is entirely understandable that the expression will sometime be in very emotional terms. The judge must, nonetheless, make a dispassionate assessment. Whilst the defence are entitled to cross-examine the author of a VPS, we agree with counsel's submissions that it is a right which will only very rarely be exercised, for a number of obvious reasons, including the risk that the process of cross-examination may actually increase the psychological harm suffered."

14. As was made clear by Holroyde LJ in that case, expert evidence is not a necessary precondition before a finding can be made that an offence has caused serious or severe psychological harm ([19]). A judge should not make assumptions about the effect of the offence on the victim. A sufficient and reliable evidence base is required. That may come from evidence given by the victim at trial or from a victim personal statement ([22]). But the evidence must demonstrate severe psychological harm that goes beyond what is typically likely to be caused by the offence. Holroyde LJ said at [23]:

"Whether in a given case the VPS does provide a sufficient basis for the judge to make a finding of severe psychological harm will depend on the circumstances of the case and the contents of the VPS. To take an obvious example, a VPS written by a mature adult setting out the effects of historic sexual abuse in his or her childhood may provide very clear evidence of the long-term and severe psychological harm which has been suffered; whereas a VPS written only a few weeks after the offence may provide clear evidence only as to the immediate consequences of it and be insufficient to enable the judge to make any safe finding as to the severity and likely duration of any psychological harm."

15. The sentencing guidelines in fixing starting points and providing an indicative range of sentences already take into account the psychological harm which is inherent in the nature of the offence ([25]). What is required is evidence that demonstrates psychological harm which is "*significantly greater than would generally be seen in the [type of] case*" ([26]).
16. In consequence, evidence from victims' statements is important and can have an integral part to play in and a significant impact on the sentencing exercise. They should not be left as an afterthought, hastily uploaded to the DCS just before, or in some cases during, the sentencing hearing. They must be in the proper form, contain up-to-date information, and be served in good time on the defence. The importance of the Victim Personal Statement provided by Mr Purcell in this case was that, accepting the submission of the prosecution, the sentencing judge relied upon it to conclude that the victim had suffered serious psychological harm as a result of the offence and to categorise the offence accordingly on the sentencing guidelines. In his sentencing remarks the judge said:

"And the effect on him – because that is the first thing I want to think about – is just utterly devastating. I heard about how the three of you with your different backgrounds still have something to live for and hopefully to change in the future. You ruined his life at a crucial part of his life. Straight A student now getting Us, not wanting to go out, not

wanting to see friends, not knowing who his friends are, not wanting to look forward to going to university when he would have done before. Previously outgoing, utterly devastated. His mother utterly devastated. You have ruined those two lives, the three of you, by your selfishness and your greed and that is the effect you have had on him."

A little later, when dealing with the offence classification on the guidelines, the Judge added:

"In my judgment the harm in this case is Category 1, the most serious. You caused serious psychological harm to your victim and indeed to his mum."

17. In consequence, the Judge assessed the offence as falling into category A1 of the sentencing guidelines, giving a starting point of 8 years' custody and a range of 7-12 years. It is common ground that, without that finding of serious psychological harm, the appropriate sentencing category would have been A2, with a starting point of 5 years' custody and a range of 4-8 years.
18. Applying the categorisation, he identified and reflecting the aggravating features, the Judge determined that the appropriate sentence after trial would have been one of 9 years' custody. He reduced that to 6 years for the appellant's guilty plea, and then reduced the sentence by a further one-sixth to take account of the appellant's youth. He was, at the date of the offence, 18 years old. In the result, the sentence was one of 5 years' detention in a young offender institution.
19. It is not a point raised in the grounds of appeal, but we would observe that the correct practice is to reduce the notional sentence on account of the youth of the defendant before applying the discount for a guilty plea: *R v RB and Others* [2020] EWCA Crim 643 [21].
20. Following the imposition of the sentence, the appellant's mother provided a witness statement dated 28 January 2020. She said this:

"Following the [sentencing] hearing, I was contacted by an individual named Samuel Webb. He is a friend of my son's and his girlfriend was a friend of the complainant, Lewis Purcell. I understand that he had therefore spent some time with Lewis.

He had heard the contents of the victim personal statements made by Lewis and had heard the subsequent comments made by the judge as to how the incident had ruined Lewis' life. He did not think that this was a fair reflection as to the lifestyle of Lewis following the incident. He stated that he was aware Lewis had still been socialising on a regular basis, being a DJ and had posted a lot of this on his social media.

On this basis he forwarded to me the screenshots that I now exhibit as KJ/1. These are from the Instagram account of Lewis Purcell.

In addition, I was also contacted by Jess Griffiths. She was also a mutual friend of both my son and Lewis Purcell. She sent a screenshot to me of an exchange of messages with Lewis from 14<sup>th</sup> September 2019

indicating he had attended Chester Races. She sent me this for the same reason as Samuel ...

I am not suggesting for one minute that this incident had no effect on Lewis Purcell. I have no doubt that it had a significant effect upon him. However, I do not feel that the information placed before the court at the sentence hearing provided a balanced or accurate reflection of the situation."

21. The evidence provided does appear to demonstrate that on 14 September 2019 (that is 4 days after the offence), Mr Purcell had indicated that he was at Chester Races. From the Instagram posts, the following appear to us to be the most significant: a photograph of Mr Purcell with a group of others at a restaurant called Munchies in Chester on 21 October 2019; a post showing Mr Purcell at an 18<sup>th</sup> birthday party on 3 December 2019; a photograph with a comment that he "did some DJ'ing" on 4 December 2019; and a post showing him on a trip to Manchester on 8 December 2019.
22. It was on the basis of this evidence, and what appeared to be a failure to follow the guidance in *Perkins* and *Chall* that on 16 July 2020 the Court of Appeal (Macur LJ, Nicklin J and the Recorder of Nottingham (His Honour Judge Dickinson QC)) granted leave to appeal. Giving the judgment of the court, the Recorder of Nottingham said this:

“This case is an illustration of an increasing practice of information as to the effect of a crime on a victim being provided, informally, at a late stage, to the defence and the court. It gives rise to the risk that the judge may sentence on an out-of-date or inaccurate basis.

On behalf of the appellant evidence has been provided which suggests that Lewis Purcell may have 'got his life back on track' – to use his phrase – he bounced back from the experienced crime and indeed did so in the weeks and months before sentence.

If this information is reliable and truly representative, then there is a need to look again at this sentence. As Macur LJ indicated at the outset of this hearing, we have decided to grant leave to appeal, to grant a representation order and to adjourn the final hearing of this appeal, so that the prosecution could consider and respond to the material that has been provided on behalf of the appellant. We emphasise that the focus of this direction is the evidence now available relating to the complainant in the weeks and months before the date of sentence in December 2019."
23. The court directed that the Prosecution should respond by 13 August 2020 and be represented at the hearing of the appeal. Following that direction, the prosecution filed a witness statement of DC Boneham and a Respondent's Notice, both dated 13 August 2020.
24. In his witness statement, DC Boneham said that he had spoken to Mr Purcell who, he said, was "*shocked to hear that one of the defendants in this case was appealing his sentence*". Although Mr Purcell initially agreed to come into the police station for the purposes of providing further information about the Instagram posts, in the end he did not do so, saying that it was "*too traumatic for him and would be like reliving the*

*whole experience all over again". DC Boneham said that he had spoken to Mr Purcell's mother who said that the telephone call from the police "had sent him backwards in relation to recovery from the offence". She said that Mr Purcell was working at the Chester Races. He did not attend, and has never attended there, socially. She said that she was "upset to hear that the level of Lewis' trauma was under scrutiny by his actions on social media ... He had committed no crime and is the victim in all of this and his posts are not reflective of how he felt inside, as mental health is not something you can see". She added this:*

"Prior to the incident, Lewis had a wide circle of friends that he socialised with. Since the incident, which involved one of the defendants who he thought was a friend and stayed over at his home, Lewis has withdrawn from a number of friends due to issues with trust. His ability to trust anyone has been potentially irreparably damaged as a result of what happened to him. He now has a circle of approximately six friends who he has known for most of his life and that he feels he is able to trust ..."

As to Mr Purcell's college work, his mother said this:

"Lewis' college work has suffered as a result of what happened to him. During the latter part of 2019, between September and November, his grades plummeted as he struggled with assignments and failed mock exams, when he was intended for much higher grades. The current ongoing Coronavirus situation makes it even more an issue, as Lewis has not been able to improve his marks with further assignments and exams at the end of the year."

In light of the requirements of a Victim Personal Statement, it is perhaps unfortunate that this further evidence has come by way of hearsay, rather than a statement in proper form from either Mr Purcell or his mother.

25. In his original grounds of appeal, which were prepared before he had had sight of the witness statement from the appellant's mother, Mr Thomas, who appears on behalf of the appellant, contended that there was insufficient evidence within the original Victim Personal Statement safely to conclude that serious psychological harm had been caused to Mr Purcell. In those circumstances, it was argued that the correct sentencing bracket should have been 2A, with a starting point of 5 years' custody, after trial. In an addendum to the grounds of appeal, Mr Thomas argued that the new evidence merely served to strengthen the argument that it was unsafe for the Judge to rely on the Victim Personal Statement that was taken only a matter of weeks after the incident, as the evidential foundation for his conclusion that the victim had been caused serious psychological harm.
26. Mr Clemo, has sought to argue that, notwithstanding the accepted departure from the required practice, DC Boneham's witness statement nevertheless demonstrates that the effects of the offence are both severe and ongoing.
27. The failure to follow the correct procedure at the sentencing hearing meant that the Judge made his assessment of psychological harm on evidence that was not up to date and did not give a full or reliable picture of psychological harm. There is an obvious danger that the Victim Personal Statements, taken in the immediate aftermath of an offence, may well describe intense emotions and fears, but in many cases those raw



feelings subside with time. Obviously, each person will react differently to being a victim of an offence, but the Court's task is to attempt to identify, if possible, those cases in which serious psychological harm has been caused. That is not to say that evidence of harm falling below that level will not be considered. It will, but the impact falling short of serious psychological harm will then take its correct place as an aggravating factor when selecting the correct sentence in the range indicated in the relevant sentencing guidelines.

28. It is concerning to read from DC Boneham's statement that Mr Purcell and his mother appear to consider that a challenge is being made to Mr Purcell's suffering, even that he is being accused of lying. That is not the case. We do not know how the issues that have arisen in this appeal have been presented to them, but we make clear that neither the Court nor the appellant is downplaying the consequences of the offence upon Mr Purcell. No one has suggested that he has not been anything other than truthful in explaining how he has felt. Nevertheless, the law requires up-to-date evidence demonstrating serious psychological harm before a sentencing Court can be justified in applying the highest sentencing category for the offence.
29. We are satisfied that, as a result of the failure to follow the established procedure, the sentencing judge did not have that evidence. What he had was the genuine expression of the understandable emotional response and immediate fears of someone who had in the last few weeks been the victim of a nasty robbery. Happily, the social media posts demonstrate that Mr Purcell has been able to make a start at rebuilding a social life where he can go out with friends. It may be that, as his mother explained to DC Boneham, this is with a trusted group at first. We are quite satisfied that Mr Purcell's original victim statement faithfully articulated how he felt. Unfortunately, that was not a reliable indicator as to whether the harm he felt was likely to be long-standing. Happily, we consider that the updated information of the social media posts and the information provided by his mother gives cause for optimism that he will continue to return to a normal life and emerge fully from the shadow of this offence. We concur with the sentencing judge in the acknowledgement of the serious nature of this offence and the understandable fear and terror that it brought both at the time and in its immediate aftermath. A substantial period of detention was clearly the only sentence available for the offence. But we are satisfied that this was not a case where, on the evidence, a conclusion that it caused serious psychological harm, in the sense that that term is used in the sentencing guidelines, can be sustained.
30. In consequence, we agree that the sentencing judge was wrong to categorise the offence as A1. He should have placed it in category A2. The Judge's assessment of the aggravating and mitigating factors cannot be faulted. We consider that, applying a reduction for the appellant's youth, the correct sentence, after trial, would have been one of 5 years' detention. The appellant's sentence must, therefore, further be reduced by one-third for his guilty plea. Accordingly, we allow the appeal, quash the sentence of 5 years' detention and substitute one of 3 years and 4 months' detention in a young offender institution. As before, he will receive credit for 41 days against that sentence for the time spent on qualifying curfew.

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