



Neutral Citation Number: [2020] EWCA Crim 66

Case No 201902625/A4

IN THE COURT OF APPEAL
(CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16 January 2020

Before :

LORD JUSTICE SINGH

MR JUSTICE SPENCER

and

HIS HON OUR JUDGE LEONARD QC

(sitting as a Judge of the CACD)

REGINA

v

JOSHUA PETERS

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Mr K Allen appeared on behalf of the **Appellant**

Judgment

1. JUDGE LEONARD: The appellant pleaded guilty to dangerous driving and associated summary driving offences at the Crown Court at Teesside on 15 January 2019, and guilty to aggravated burglary on 28 May 2019, being the morning on which he was due to be tried. He was sentenced on 24 June to five years' detention for the aggravated burglary and six months concurrent in respect of the dangerous driving. He appeals that sentence with leave of the single judge.
2. At about 10.30 pm on 16 December 2018, Hamza Hussain, who lived in Middlesbrough, went to bed but awoke at 11 pm to the noise of six or seven youths who were outside his property and who then proceeded to kick down his front door. This was a planned attack on his home to gain entry and there to steal a recently purchased motorbike which had cost Mr Hussain around £10,000. He kept the motorbike in his front room.
3. When Mr Hussain saw the youths, who were wearing hoods or hats, he panicked and climbed out of his bedroom window and hid in the rear alley. When he got back into his home he found that the motorbike had been stolen and the front window had been smashed.
4. The police arrived and the stolen motorbike was spotted nearby, being driven by the appellant with his co-accused, Owen Kidner, as his pillion passenger. They were pursued by the police through the centre of Middlesbrough until the appellant eventually lost control at a roundabout. The police arrested him as they were trying to right the motorbike in an attempt to continue their escape.
5. The appellant was found to be in possession of a large hunting knife, the sheath of which was found close to Mr Hussain's address and Kidner had a cosh. A pair of tights which had been used as a mask during the course of the aggravated burglary were also recovered.
6. The police recovered a small hatchet from inside Mr Hussain's address which must have been carried by another member of the group who had forced their way into his home.
7. The appellant was 17 at the time of the offence and Kidner was 18. The psychological report prepared ahead of what was to have been a trial identified that the appellant had mild learning difficulties and was experiencing stress ahead of his trial. There was no evidence of any psychotic symptoms or thought disorder. His skills tests showed that he was less developed than would be expected of someone of his biological age.
8. He has three previous convictions, two in 2017 when he was 16 years old for using threatening, abusive and insulting words and behaviour and shoplifting for which he was made the subject of a referral order, a supervision requirement and a youth rehabilitation order. In March 2018 he was conditionally discharged for possession of cannabis and for careless driving.
9. The sentencing judge acknowledged that the guidelines in sentencing young offenders applied to the appellant, but not to Kidner. He rightly identified that the aggravated burglary was a serious offence. It had been planned because they knew that there was a valuable motorbike in the house and it was carried out at night when the victim was at home by a group who were armed with weapons. He found that the appellant made his escape on the motorbike which he drove dangerously.

10. As to the Sentencing Council's Definitive Guideline on Aggravated Burglary, the judge found that the appellant's offending fell into the upper end of the range for Category 2, being lesser harm and higher culpability. He identified the sentences which would have been considered if they had both been adult offenders of eight years with the appellant receiving a consecutive sentence of one year for the dangerous driving. Whilst the appellant could receive some credit for his pleas, none was available to Kidner.
11. In the appellant's case, he took into account his "wretched" start to his life, which is fully set out in the pre-sentence report, the psychological report and what reduction he should make for his age. He took a starting point of nine years and reduced that to five-and-a-half years to take account of the aggravated burglary and the dangerous driving. That was a reduction of 40 per cent in his sentence.
12. For Kidner he gave six months' credit for his plea to the aggravated burglary on the day of trial and by not imposing a consecutive sentence for the dangerous driving he was reflecting that he had pleaded guilty to that offence at an early stage.
13. It is not entirely clear to us how it is that a concurrent sentence for the dangerous driving reflected his early plea when the judge had taken it into account when increasing the sentence for aggravated burglary from eight years to nine years on account of the plea to dangerous driving. He was entitled to a discount of between one-quarter and one-third for his early plea to the dangerous driving, but has only benefited by approximately 10 per cent on the total sentence. He compared his position to that of Kidner who he described as having a good start in life, a supportive mother and a good job. He took the view that he was immature and that he was probably led into this, although willingly so. He sentenced him, despite being found guilty after a trial, to five years' imprisonment.
14. Mr Keith Allen, in helpful written and oral submissions invites us to conclude that the sentence was manifestly excessive and that the sentencing judge failed to have sufficient regard to the appellant's immaturity and age, his learning disability and his personal mitigation. Further, he submits that an insufficient reduction was made pursuant to the Sentencing Guideline for Sentencing Children and Young People and to reflect his plea of guilty when compared to the sentence imposed on his co-defendant Kidner.
15. We see some force in those submissions. We judge that the effect of adding a year to the sentence for aggravated burglary to reflect his plea to the dangerous driving has resulted in too high a starting point. The offences arose out of the same offending and ought in our judgment to have been ordered to run concurrently, or if it was to be taken account of in the sentence for the aggravated burglary, substantially reduced to make allowance for the additional reduction for the early plea.
16. In PS, Abdi Dahir, CM v R. [2019] EWCA Crim 2286, a case decided since this sentence was imposed, the court considered the proper approach to sentencing offenders who suffered from autism or other mental health conditions or disorders which may be relevant to, amongst other things, the assessment of the appellant's culpability in committing the crime in question and to the decision about the type of sentence imposed and the length of that sentence. The court pointed out that in relation to young offenders the Over-arching Principles Guideline Sentencing Children and Young People states at paragraph 1.12 as part of its duty to have regard to the welfare of a young offender the court should ensure it is alert to any mental

health problems or learning difficulties or disabilities. The Lord Chief Justice said:

- i. "It follows that in some cases, the fact that the offender suffers from a mental health condition or disorder may have little or no effect on the sentencing outcome. In other cases, it may have a substantial impact. Where a custodial sentence is unavoidable, it may cause the sentencer to move substantially down within the appropriate guideline category range, or even into a lower category range, in order to reach a just and proportionate sentence."

17. Whilst the appellant was described as having mild learning difficulties, in our judgment they were sufficient to have required the court to make a minor downward adjustment in sentence on account of his condition.
18. We judge that the appropriate starting point for an adult was eight years and three months, which is to include a small increase in his sentence to reflect the plea to dangerous driving. To that we make an adjustment for his age under the over-arching principles of 60 per cent which we calculate as the figure adopted by the sentencing judge. We reach a figure of just under four years and 10 months. We make a further reduction on account of his learning difficulties of four months and apply a reduction of 10 per cent for his guilty plea, making a final total, rounded down, to four years. We have compared this to the sentence imposed on the co-defendant Kidner of five years and judge that the difference between the two sentences is fully justified due to the differences in their backgrounds, their ages and the fact that Kidner was convicted after a trial, even allowing for the judge's finding of comparative responsibility for the offending. We quash the sentence on count 1 and substitute a sentence of four years' detention.
19. As a result, we must amend the period of disqualification from driving as follows. He will be disqualified from driving for 36 months, being a mandatory disqualification of 12 months and an extension period under section 35B of the Road Traffic Offenders Act 1998 of 24 months. The disqualification will remain in force until he has passed an extended driving test. We leave everything else unaltered. To that extent, this appeal is allowed.

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