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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202101217/A1

NCN:[2021] EWCA Crim 1189



Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 22 July 2021

LORD JUSTICE DINGEMANS
MR JUSTICE JULIAN KNOWLES
THE RECORDER OF WOLVERHAMPTON
HIS HONOUR JUDGE MICHAEL CHAMBERS QC
(Sitting as a Judge of the CACD)

REGINA
V
JACK HALLIWELL

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MISS K LUMSDON QC appeared on behalf of the Appellant

J U D G M E N T

LORD JUSTICE DINGEMANS:

1. This is the hearing of an appeal against sentence brought by the appellant, Jack Halliwell, who was born on 7 June 2003 and is now 18 years old. He was convicted of attempted murder on 18 March 2021 after a trial in the Crown Court at Chester. He was sentenced by the trial judge, Butcher J on 13 April 2021 to 14 years' detention in a young offender institution with an extension period of three years. The appeal is brought with the leave of the single judge.
2. At the time of the offences the appellant was 17 years old and he had been in care since a young age. He had become involved in criminal activities shortly after that. At the time of the offence he was, according to the prosecution case, part of a county lines drug network and was on licence under a detention and training order. He had recently stolen his father's car in breach of that order and there was a warrant for his arrest as he had failed to appear at Warrington Magistrates' Court on 16 July 2020.
3. This offence took place on 26 July 2020. The appellant was present at the address of his co-accused, Stephen Symes in order to oversee the sale of drugs. Criminal proceedings against a wider drug network are ongoing and Miss Lumsdon QC, who appears on behalf of Mr Halliwell and to whom we are very grateful for her written and oral submissions, tells us that those investigations still include the appellant.
4. The victim, Mr Jamie Lloyd had attended the flat to buy drugs at about 4.30pm. He entered the flat and within three minutes, the times being taken from various CCTV coverage, was subjected to what was described as an horrific attack. The appellant used a hammer which was kept on hand in case of trouble and he struck the victim at least 12 times in the face, targeting, as the judge put it, his eyes, nose, mouth and temples. Mr Lloyd suffered extensive fractures to his facial and skull bones, brain contusions, ruptured eye globes and he has ultimately been rendered blind by the attack. He remained in a medically-induced coma for the duration of the trial.
5. Miss Lumsdon has emphasised the short period of time in which these circumstances took place and the fact that Mr Halliwell was placed in the flat by other older persons 'cuckooing' (as it is termed) Mr Halliwell on Mr Symes and that this attack was spontaneous and in many respects unexpected. Nevertheless, within a short period of time the appellant had taken a photograph of the victim immediately after the attack. Later he sent that to others via his social media, saying that the victim had tried in the past to rob him - no doubt to discourage any future such attempts. He left the flat and called a taxi and in the subsequent days he continued communicating with his boss in the drugs network about the police investigation into the offence.
6. The scene was discovered by others who found the victim lying on the ground and the co-accused with blood on his hands. An anonymous 999 call was made. Mr Symes was arrested. The appellant was arrested on 31 July 2020 and he gave a no comment interview. He was charged on 3 August 2020.
7. The charges were brought against both the appellant and Mr Symes. It was said that Mr Symes would deliver drugs for the gang and was paid in drugs to feed his habits. He claimed to have been bullied by the group. The appellant's case at trial was that Mr Symes had argued with the victim, lost his temper and attacked the victim with the hammer. The appellant said he only photographed the victim at Mr Symes' instruction. That account was rejected by the jury.
8. So far as the sentence is concerned, the judge began by describing the circumstances of

the grave offence, calling it "frenzied and brutal". He said that the appellant had intended to kill the victim. He explained how the appellant had taken the photograph and said that the victim was lucky to have survived, but had life-changing injuries. The judge categorised this as a Level 3 offence for the purposes of the then applicable sentencing guidelines on attempted murder. Level 3 was for a spontaneous attempt to kill and was sub-divided into three further levels based on the extent of harm. The judge considered this case to have involved serious and long-term physical or psychological harm for obvious reasons given that the victim is blinded and there was therefore a notional starting point of 15 years' custody for an adult offender and a range of 12 to 20 years' custody under those guidelines. The judge said that he moved up from the starting point on the basis of the range of aggravating factors. These were, first, that the appellant had a very bad record of past convictions, with 21 convictions for 52 offences including offences of robbery. Secondly, he had committed the offence while on licence and in breach of bail conditions. Thirdly, the offence was committed while dealing drugs. Fourthly, the appellant had used a weapon which he had had available to him. Fifthly, evidence had been destroyed by burning clothes worn at the time of the offence. Sixthly, the appellant had left Mr Symes to deal with the consequences of the attack and later falsely claimed that Mr Symes had been the perpetrator. Seventhly, the appellant had taken a photograph of the victim, adding to the degradation of the victim. The judge considered that there was little, apart from youth, that could be said to provide relevant mitigation. The judge said the effect of the aggravating and mitigating factors was that the offending merited a sentence for an adult just outside the Category 3 range at 21 years. However, he then turned to consider the guidelines on sentencing children and young people and made a reduction of one-third to account for the appellant's age. That left a term of 14 years' detention.

9. The judge turned to consider the issue of dangerousness, concluding on the basis of the pre-sentence report and the appellant's previous offending that it was necessary to impose an extended sentence of detention in order to protect the public from future harm. No issue is taken on this appeal with the assessment of dangerousness or the three-year extension period that the judge added.
10. The single ground of appeal is that the sentence was manifestly excessive because aggravating factors were given excessive weight and no mitigating factors were put into the balance.
11. It is common ground that this was a Level 3 offence under the attempted murder guidelines and that it was a case involving serious and long-term harm. So far as mitigating factors under the guidelines are concerned, there are four specific mitigating factors, those are (a) mental disorder reducing the offender's culpability, (b) provocation of the offender, (c) the offender acting to some degree in self-defence, and (d) the offender's age. The appellant submits that the pre-sentence report explained that the appellant had ADHD, contact disorder, insecure attachment style and PTSD and that his complex mental health issues were not reflected in mitigation by the judge. We do note that the specific mitigating factor is a mental disorder reducing the offender's culpability. It was submitted, see paragraph 25 of the advice, that the appellant was confronted and the victim provoked him and this is said to be likely because the appellant had sent a text message to that effect and that was relied on by the Crown during the trial. Miss Lumsdon has expanded on this point in submissions before us. The victim, it was

said, had tried to steal the appellant's property and therefore the appellant was acting to some extent in self-defence.

12. In our judgment, the submission that too much weight was given by the judge to the aggravating factors is not sustainable. The aggravating features we have already identified in this judgment, but they included a very bad past criminal record and the offence was committed in furtherance of criminal activity and the appellant's conduct immediately after committing the offence in burning his clothes and boasting about the attack was rightly taken as serious aggravating conduct by the judge.
13. The question then is whether the judge should have given more discount for the mitigation and effectively the complaint is that the appellant was provoked and acted to some extent in self-defence. This submission was not put in those terms to the judge, but the short answer to those submissions is that the judge was the trial judge and he was best placed to make the findings in relation to these matters. The finding that there was an absence of provocation and an absence of self-defence was, in the particular circumstances of this drug-dealing attack, not particularly surprising.
14. That brings us to really the main point on the appeal which is where the judge had said: "There is little apart from your youth that can be said to provide relevant mitigation for your offending". The appellant submits that the judge should have paid more attention to the effect of his mental disorder when assessing mitigation and we have referred already to the pre-sentence report.
15. It is also right that today we have received further materials in the form of an email dated 21 July 2021 from a senior medical health practitioner, which identifies that the appellant is labile, unstable and has bipolar affective disorder. More importantly, there is a psychiatric report, which we have been provided with, which was produced by Dr Charles Stanley, a Consultant in Child and Adult Adolescent Psychiatry. That psychiatric report sets out in great detail, in many respects mirroring the pre-sentence report, the difficult upbringing that the appellant had, having been in care since the age of eight, his problems in the young offender institution and indeed the effects of medication on his current condition which is said to have dampened his problems. There is a diagnosis of PTSD, disassociation and other psychiatric conditions all set out in detail in the report. It is said that this is further fresh evidence in support of the appeal which would, it is said, and should, reduce the sentence.
16. In our judgment, the increase from the starting point of 15 to 21 years for an adult offender was not in this case excessive when weighing the aggravating and mitigating factors, the former of which were both numerous and of great severity. The reduction that the judge made of one-third for youth also took into account those aspects of immaturity, impulsivity and the other aspects which were plainly affected by the mental disorder but were reflected, in our judgment, by that reduction.
17. We have looked carefully at the circumstances of this offence. We have for ourselves reviewed the sentence category to see whether there was any error in principle and we can identify none. We have looked carefully at this sentence to see whether it was manifestly excessive and in our judgment it was not.
18. For all these reasons, we dismiss the appeal.

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