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IN THE COURT OF APPEAL
CRIMINAL DIVISION
Case No: 2021/00312/A3
[2021] EWCA Crim 596



Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 20th April 2021

LORD JUSTICE COULSON

MR JUSTICE PICKEN

MRS JUSTICE FARBEY DBE

REGINA

- v -

SL

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Mr J Scouller appeared on behalf of the Appellant

JUDGMENT

Tuesday 20th April 2021

LORD JUSTICE COULSON: I shall ask Mrs Justice Farbey to give the judgment of the court.

MRS JUSTICE FARBEY:

1. This appeal is subject to a reporting restriction under section 45 of the Youth Justice and Criminal Evidence Act 1999. No matter relating to the appellant shall, while he is under the age of 18, be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings, and in particular: (i) his name; (ii) his address; (iii) the identity of any school or other educational establishment attended by him; (iv) the identity of any place of work; and (v) any still or moving image of him.
2. On 3rd December 2020, following a trial in the Crown Court at Woolwich before HHJ Gumpert QC and a jury, the appellant (then aged 16) was convicted of robbery. On 22nd January 2021, the judge sentenced him to a six month Youth Rehabilitation Order (“YRO”) with the following requirements: a six month electronically monitored curfew requirement (the curfew hours being 9pm-6am), a residence requirement, a programme requirement and a supervision requirement. The appellant appeals against sentence by leave of the single judge.

The Facts

3. In the days preceding 29th December 2018 the victim, who was aged 14 at the time, advertised an Xbox One for sale on Instagram. The appellant contacted the victim and arranged to purchase the Xbox. The victim knew who the appellant was, having previously met him through friends. At around 2pm on 29th December 2018 they met near the Co-op store in Charlton, South London. The appellant was with two other boys and a girl, but went into the store alone. While he was in the store, one of the other boys took the Xbox.
4. When the appellant came out of the store, they all walked away from the store together. The victim kept asking who had the money to pay for the Xbox. The group walked up a hill and the victim continued to ask who had the money, but eventually walked away. The appellant was sentenced on the basis that he had used the threat of violence to avoid paying for the Xbox.
5. The appellant was arrested and interviewed on 14th January 2019, but not charged until 21st August 2019. The trial was initially set down for 14th April 2020, but was adjourned owing to the current Covid-19 pandemic. The other two boys were tried with the appellant. They were both found not guilty of robbery, but one was convicted of theft.

Judge’s sentencing remarks

6. In his sentencing remarks, the judge set out the facts of the offence and observed that there had been very significant delay in bringing the case to court. The appellant had been aged 14 at the date of the offence. He had committed a number of other offences, albeit that a “considerable portion” of his offending had taken place after the commission of the robbery.

7. The judge had the benefit of a pre-sentence report from Greenwich Youth Offending Service. He agreed with the report writer that the appropriate sentence was a Youth Rehabilitation Order, with the residence, programme and supervision requirements. Referring to the guideline on sentencing children and young people for robbery, he concluded that the YRO should be an “intensive” order and that it should include a curfew requirement so that the appellant's movements could be monitored and restricted.
8. The judge took account of the fact that the appellant had been subject to a curfew while on bail, but said that the various elements of the YRO were intended to assist the appellant. The various elements were focused on supervision and on assisting the appellant to overcome peer pressure. The curfew was not a measure designed to punish him, but to be part of a “package” which would help him to avoid offending.
9. In his written and oral submission on the appellant's behalf, Mr Joshua Scouller submits that the judge erred by: (1) taking into account convictions for offences which post-dated the offence with which we are concerned; (2) not taking due consideration of the appellant's age at the time of the offence; (3) imposing a curfew; (4) imposing a curfew for the same length of time as the YRO; (5) not reducing the length of the curfew to take account of time already spent on curfew or the delay in the case; and (6) not reducing the hours of the curfew to the least possible to achieve its aim. He submits that in these circumstances the sentence was manifestly excessive.
10. Mr Scouller is correct to say that nearly all of the appellant's other offending postdates the offence with which we are concerned. As such, we agree that it was unfair to treat the later offences as an aggravating factor, which is what the judge seems to us to have done. Nevertheless, the victim was aged only 14 on the date of the offence and was, therefore, vulnerable. The theft of the Xbox was carefully planned and it ought to have been obvious to the appellant - even at his age - that the victim might resist, which is what prompted the threat of violence.
11. We note that the programme requirement amounted to six days of work on victim awareness and other matters. We do not regard it or the requirements of residence and supervision to be excessive or disproportionate. Nor do we regard the curfew requirement as inappropriate. The seriousness of the appellant's offence warranted an element of punishment, which the curfew represents.
12. However, we understand that the appellant was subject to a curfew for around eleven months while on bail for this offence. Given his age and the fact that no violence was actually inflicted, we regard the imposition of a further six month curfew period as manifestly excessive. A lesser period must be imposed.
13. Accordingly, we quash the six month curfew requirement and substitute a three month curfew requirement. Electronic monitoring will continue as before. The curfew hours remain 9pm to 6am.
14. To this extent this appeal is allowed.

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

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