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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202001739/B1

[2021] EWCA Crim 664

Royal Courts of Justice

Strand

London

WC2A 2LL

Wednesday 28 April 2021

LORD JUSTICE BEAN

MRS JUSTICE FARBEY DBE

RECORDER OF NEWCASTLE

(HIS HONOUR JUDGE SLOAN QC)

(Sitting as a Judge of the CACD)

REGINA

V

PETER HARWOOD

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NON-COUNSEL APPLICATION

J U D G M E N T

MRS JUSTICE FARBEY:

1. On 24 November 2016 in the Crown Court at Luton before HHJ Bartle QC and a jury, the applicant was convicted of attempted murder. On 16 December 2016 he was sentenced to an extended sentence of 20 years, under section 226A of the Criminal Justice Act 2003, comprising a custodial term of 16 years and a 4-year extended licence period. He renews his applications for an extension of time in which to apply for leave to appeal against sentence after refusal by the single judge.

The Facts

2. Previous applications for an extension of time in which to apply for leave to appeal against conviction were refused by this Court on 10 July 2020 (see R v Peter Harwood [2020] EWCA Crim 969). Giving the judgment of the Court, Fraser J set out the factual background. We gratefully adopt his summary which was as follows:
3. On 28th May 2016, at just before 7am, the police arrived at a multi-occupancy property in Hemel Hempstead. About 20 minutes earlier, they had been called by a concerned neighbour who had heard shouting and noises consistent with someone being struck repeatedly. When the police arrived, they found the complainant, Mr Williams, lying on the floor next to the bed with very serious injuries to his head, face and upper body. He had suffered broken ribs, slash wounds to his face and head, a punctured lung, bleeding on the brain, and part of his left ear had been severed. The applicant was present, sitting on the bed, covered in blood, holding his head in his hands.
4. Upon his arrest, the applicant became abusive and confrontational. He accused Mr Williams of being a paedophile and of sexually assaulting him. He declined to comment in interview, but raised self-defence in a prepared statement. He said that he had spent the night at the address and had slept there, fully clothed, after an evening out drinking with friends, and that he had woken that morning to find Mr Williams with his hands down the applicant's trousers, attempting to perform oral sex upon him. He denied using a knife, but he admitted punching Mr Williams. He said that it was Mr Williams who had picked up the knife and that he (the applicant) had had to disarm him.
5. The head injuries suffered by Mr Williams were of such severity that he had no recollection whatsoever either of the attack or of much of the events of the previous evening.
6. The Crown's case was that the applicant had attempted to murder Mr Williams who had sustained very serious, life-threatening injuries. The medical evidence was that the most likely cause of the rib injuries was Mr Williams being stamped

on. This was also said to be consistent with the blood pattern distribution evidence. There was blood on the knife, which was consistent with the knife being used on Mr Williams' ear. The Crown also maintained at trial that the applicant had sustained only minor injuries, at least one of which could have been caused in the police van after he was arrested following the incident.

7. Mr Williams could not give evidence, due to the extent of his head injuries and his resulting amnesia.
8. The applicant admitted causing the injuries suffered by Mr Williams, but the defence case was that the applicant had not acted unlawfully, that he had had no intention to kill Mr Williams or even to cause him serious bodily harm. The applicant maintained that he had acted in self-defence at all times."

The Judge's Sentencing Remarks

9. In his sentencing remarks the judge accepted that the applicant had believed that the victim had put his hand down his trousers. The injuries which the applicant had inflicted on the victim (over a period of about 20 minutes) comprised a stab wound to the ear; stamping causing three broken ribs and a punctured lung; and stamping to the head which caused a bleed to the brain. The applicant had stamped so hard that wet blood sprayed over the furniture and several feet up the wall. The applicant had intended to kill the victim and had deliberately caused as much injury as he could. He had not called the police or summoned help albeit that he had placed the victim in the recovery position. The victim had sustained life threatening injuries and would have died had he not received medical attention promptly. Such were his injuries that he remained in hospital for 3 months.
10. The judge had read a victim personal statement in which the victim said that he had restricted movement in his shoulder, was in constant pain, suffered breathlessness and fatigue, and had been unable to work. His short-term memory was poor, he was unlikely to work again, was homeless and in rent arrears. He would no longer go out after dark and only went out at all if he felt he had to.
11. The judge took into consideration that the applicant was 27 and grew up in the care system. He had been expelled from school at the age of 14 for assaulting a fellow pupil. Whilst he had previous convictions none were comparable to the present offence. The judge took account of other aspects of the applicant's personal mitigation and considered the references from his mother and from his uncle.
12. There was no dispute as to the correct categorisation under the sentencing guideline. The case was at level 3 as being a spontaneous attempt to kill. It was agreed that the case was within the top category within level 3 because of the serious and long-term harm

suffered by the victim. The starting point was 15 years with a range of 12 to 20 years' custody. A seriously aggravating feature was that the applicant did not attempt to obtain medical treatment for the victim and was content to allow him to die. He must have known that he was dying. There was no mitigation in relation to the offence itself.

13. The applicant had been found guilty of a serious specified offence as defined by section 224 of the Criminal Justice Act 2003. The judge was satisfied that there was a significant risk that he would commit further offences and in doing so would cause serious harm to adult males. His behaviour had been exceptionally violent. He injured the victim when he was no threat to the applicant. After stamping on him and breaking three ribs, he had gone on to stamp on his head. The offence represented an escalation of his offending. The pre-sentence report concluded that the issue of dangerousness was finely balanced but that the applicant posed a high risk of harm to adult males he perceived had assaulted him or wronged him in some way.

The Applicant's Submissions

14. The applicant has sent numerous documents to the Court setting out his views of the case. We start with the documents before the single judge in which the applicant's points are essentially as follows. He states that he was "given an extra year for not calling the emergency services" - this amounted to him being punished twice for the same offence. We disagree. The judge was entitled to treat the applicant's failure to seek help as an aggravating factor. He did not raise the sentence by 1 year for that reason but weighed this factor in the balance in a wholly appropriate manner. We reject the unmeritorious suggestion that the applicant saved the victim's life by putting him in the recovery position.
15. The applicant submits that the offence ought to have been placed in the middle of level 3 on the grounds that the victim suffered only some physical or psychological harm. It appears that the applicant still does not accept the victim has been left with lifelong disabilities. We are firmly of the view that the judge applied the Sentencing Guidelines correctly and that he was entitled to regard the victim's injuries in the way that he did in his sentencing remarks. The applicant continues to challenge various aspects of the evidence before the jury even after having been refused leave to appeal against conviction. We will not deal with those matters: they fall outside the scope of the present appeal.
16. In relation to the finding of dangerousness, the applicant contends that he does not have a history of violence, did not have a pattern of violent behaviour, did not have "pro-criminal ideals" and did not fit the criteria for an extended sentence.

17. It is correct that the applicant's previous convictions show a limited history of violence. The author of the pre-sentence report had concluded:

"it is finely balanced as to whether or not Mr Harwood meets the criteria for an assessment of dangerousness. Due to the lack of previous serious violent convictions the Court may feel a determinate sentence is sufficient at this time."

Nevertheless the judge was not bound by the conclusions or recommendations of the pre-sentence report. He applied the appropriate statutory criteria for *dangerousness* and was, in our judgment, entitled to find that they were satisfied. There is no arguable reason for this Court to interfere with the judge's assessment.

18. We turn to the applicant's further written submissions made after the single judge had considered the application. The applicant repeats many of his submissions and in addition contends that (i) insufficient attention was paid to the fact that the victim had touched him inappropriately; (ii) insufficient regard was had to the applicant's personal mitigation (previously being the victim himself of a sexual assault); (iii) the elements of the offence were not proved; (iv) no credit was given for the fact that the applicant accepted punching the victim; (v) the applicant ought not to have been found dangerous given that the victim "instigated" the offence; (vi) the direction of the prosecution changed during the applicant's evidence; (vii) a suspended sentence should have been imposed; and (viii) the correct starting point was one of 9 years.

19. We do not accept any of these points. The judge's sentencing remarks were detailed and careful and took into consideration all relevant evidence. He was plainly entitled to treat the offence as falling within the top of level 3 under the guideline. He balanced the aggravating and mitigating factors. He was, as we have said, entitled to find that the applicant was a dangerous offender liable to an extended sentence.

20. The sentence imposed by the judge was not arguably excessive or wrong in principle. There are in addition no good reasons for the long delay in bringing this appeal. We refuse an extension of time and refuse leave to appeal.

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

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