IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2021] EWCA Crim 833

CASE NO 202002204/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 19 May 2021

LADY JUSTICE NICOLA DAVIES DBE
MR JUSTICE SPENCER
THE RECORDER OF SHEFFIELD
HIS HONOUR JUDGE JEREMY RICHARDSON QC
(Sitting as a Judge of the CACD)

REGINA
V
GURGANA GUEORGUIEVA

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

NON-COUNSEL APPLICATION

J U D G M E N T

1. MR JUSTICE SPENCER: This is a renewed application for an extension of time in which to apply for leave to appeal against sentence, following refusal by the single judge. The applicant also requires an extension of 14 days in which to renew this application. We grant that short extension; it is plain that there were difficulties in communication between the applicant in prison and the Criminal Appeal Office.
2. The applicant is now 50 years of age. On 5 July 2019 in the Crown Court at Southwark she pleaded guilty to a very serious offence of robbery. Her basis of plea was not accepted by the Crown. There was a Newton hearing before His Honour Judge Testar on 27 September 2019. At the conclusion of that hearing the applicant was sentenced to a term of nine-and-a-half years' imprisonment. In addition, the judge made a restraining order to protect the victim of the offence and a restitution order in the sum of £6,500 was made in favour of the victim.
3. The applicant did not lodge this appeal until 25 August 2020, some 10 months out of time. She requires an extension of 304 days. We shall return to the reasons the applicant gives for the long delay.
4. The victim of the robbery was Mrs Geraldine Winner, the widow of Michael Winner, the well-known film director, producer and film critic. He died in January 2013. The applicant had worked for Michael Winner and been close to him for a period of three years or so around 1999 to 2002. She had expected to be remembered in his will. She says he had mentioned a bequest of £100,000. In the event, the will made no provision for her.
5. It is apparent that the applicant developed a loathing of Mrs Winner, whom we shall refer to as the complainant. The applicant's resentment became an obsession. Over a period of several months the applicant brooded on a plan to visit the complainant at her home and to rob her. The robbery took place on Friday 9 October 2015. The complainant was at home making preparations for a trip to Paris the following morning to visit her sons. The complainant was then 77 years of age. She had withdrawn €20,000 in cash for the trip.
6. At around 10 pm, the complainant went outside the rear door of her flat to put out some rubbish. The applicant was lying in wait for her. She had taken steps to disguise her appearance, wearing a wig and a large hat. The prosecution case was that the applicant hit the complainant over the head with a metal pole or bar. The applicant disputed this in her basis of plea. Following the Newton hearing the judge concluded that he could not be sure that the applicant had used a metal pole or bar to inflict violence.
7. The complainant retreated into her flat. The applicant followed her and grabbed her. There was a violent struggle during which the applicant used a kettle as a weapon, causing serious injury to the complainant's head. Following the Newton hearing the judge was sure that the applicant had used the kettle to hit her. There were three open wounds to the head which cut through the flesh and down to the bone: one on each side of the forehead and one on the back of the head.
8. Having subdued the complainant, the applicant tied her hands and feet with plastic cable ties which she brought with her for the purpose. During the course of the struggle the complainant's left ring finger was fractured. The finger required surgical intervention. In the course of the incident the applicant stood on the complainant's chest when she was lying on the floor. This was the apparent cause of a fracture to the ribs. In her basis of plea the applicant denied standing on the complainant. The judge accepted the

complainant's evidence and was sure that the applicant had done so.

9. The applicant left the complainant bound hand and foot on the kitchen floor. She put a mask over the complainant's face to prevent her seeing what was going on. The applicant denied in her basis of plea that she had done this, but the judge was sure that she had.
10. The applicant then undertook a systematic search of the flat. Various items were stolen. The applicant cleaned up behind her. In her final police interview the applicant admitted she had wanted to cause the complainant maximum distress for the way she believed the complainant had treated her. She had chosen to steal items which she knew would be of personal and sentimental value to the complainant, as well as items with an obvious financial value. One of the issues in the Newton hearing was whether the applicant had stolen the €20,000. The judge was sure that she had.
11. The applicant was in the flat for about three hours altogether. She left the complainant lying on the floor, still restrained. She offered to lift her onto the bed but the complainant declined, fearful that she might drop her. The applicant took the keys for the flat. She locked the door from the outside but left the keys in the lock. She had told the complainant not to call the police. With great difficulty the complainant managed eventually to get to a kitchen drawer and cut off the cable ties. She locked herself in the bedroom and called the police.
12. In terms of injuries, the complainant was left with indentation marks on her wrists and ankles with associated bruising and swelling; the wound to the back of her head was approximately two centimetres in length; one of the open wounds to the side of her forehead was one-and-a-half centimetres in length and the other about three centimetres. There was bruising and swelling behind her right ear. There were also the fractures of the rib and the finger.
13. The prosecution accepted that the applicant did not appreciate the true financial value of the items she had stolen, because she was still in possession of a large number of the items when she was arrested some three years later at the beginning of 2019. Some items had been converted into cash as and when the applicant needed to do so. There were six missing items never recovered with a value of around £20,000. In early 2019 the applicant had attempted to sell an expensive watch stolen from the flat to an undercover police officer. It was that which led to her arrest.
14. Only in her fifth police interview did the applicant admit that she was responsible for the robbery. She admitted that she had planned it for approximately two years. Lock-up premises which the applicant had rented were searched and a number of the items were recovered.
15. Because of the issues which arose from her basis of plea, the complainant was required to give evidence at the Newton hearing.
16. The judge followed the Sentencing Council's Definitive Guideline for Robbery in a Dwelling. The judge was satisfied that it was a Category 1 offence. He found that culpability was high for two reasons: first, a weapon had been used to inflict violence (the kettle); second, the degree of planning of the offence and all the other features, including tying up the complainant, meant that the robbery was properly classified as being of a sophisticated nature within the guideline. There was greater harm because the complainant had suffered serious physical and psychological harm. The starting point under the guideline for a Category 1 offence was 13 years after trial, with a range of 10 to

16 years.

17. The judge began below the starting point of 13 years because he had found in the Newton hearing that no weapon had been taken to the scene. However, there were several additional aggravating features under the guideline: the event was prolonged; the victim was restrained; the offence took place late at night into the early morning; the applicant had attempted to conceal her identity by means of a wig; she had attempted to conceal evidence by keeping the stolen property in a lock-up which she rented.
18. As to mitigating factors, the applicant was of good character; testimonials indicated that she had led an otherwise good life but had become corrupted by this obsession. The judge was satisfied that the force used in the robbery was not gratuitously inflicted in order to cause pain; rather the applicant's "mission" (the word she used in evidence) was to teach the complainant a lesson and to cause her pain through the loss of objects precious to her for their sentimental value.
19. The judge was satisfied that despite her personal mitigation the aggravating factors brought the appropriate sentence after trial back up to 13 years' custody. He allowed credit of 25 per cent for her guilty plea. That reduction was quite generous but was justified because there had been a Newton hearing in which the applicant had succeeded on some issues and lost on others. Accordingly, the sentence was nine-and-a-half years' imprisonment.
20. The applicant explains the delay in lodging her appeal as resulting from the severe anxiety and depression she suffered following sentence. She says that when she regained a degree of mental stability, she undertook some research and realised that her mitigating factors and the complainant's own bad character had not been taken into account at the Newton hearing. She says it was several months before she was able to obtain documents to support the appeal.
21. As part of the appeal, the applicant seeks to adduce fresh evidence pursuant to section 23 of the Criminal Appeal Act 1968. This is evidence in the form of lengthy witness statements from two associates of hers who also worked for and knew Michael Winner well. These witnesses speak in disparaging terms about the general character and conduct of the complainant and her attitude towards the applicant and others formerly close to Michael Winner. The thrust of the appeal is that this material should have been presented at the Newton hearing and might well have undermined the credibility of the complainant in relation to the disputed issues of fact. The applicant says the material would also have helped the judge understand her motivation for committing the offence.
22. There is a great deal of written material, all of which we have considered carefully. The applicant complains that she had wanted her counsel to cross-examine the complainant about such matters at the Newton hearing but had been advised that the evidence would not be admissible or helpful. The applicant submits that this evidence relating to the complainant's character would have been admissible under section 100 of the Criminal Justice Act 2003 as important explanatory evidence.
23. We have considered carefully all the applicant's written submissions and the documentation she has provided. We are quite unable to accept that the purported fresh evidence which the applicant seeks to adduce could afford any basis for allowing the appeal. For that reason alone it is not arguable that this court should receive the evidence, but in any event it was material which could have been presented at the time. Its relevance and admissibility would have been doubtful in the extreme. It is plain that

the judge did not accept as accurate and reliable everything which the complainant said in her evidence about the incident. On several significant disputed issues of fact the judge found in the applicant's favour.

24. The judge said in terms that the right and wrongs "whatever they may be" in relation to the background to the offence were not the concern of the court. He observed that it was common ground between the prosecution and the defence that the robbery was motivated principally by feelings of revenge rather than by a wish for financial gain. To her credit, the applicant accepts in the documents she has lodged, for example her exhibit 6, that there was no excuse for the way in which she addressed her issues with the complainant. She writes: "At that time the built-up anger, frustration and desperation of how there is nothing that can be done legally to fix or challenge [the complainant's conduct]" caused her to opt for "that act of madness as I could not see any other option".
25. We agree with the judge that the background of the applicant's motivation can afford no mitigation. However strongly the applicant felt, nothing could justify the action she took. This was a very serious offence of deliberately planned robbery.
26. In more recent written submissions the applicant also refers to the difficult circumstances in which she has had to serve her sentence owing to the restrictions in prison imposed by the pandemic. Whilst the court sympathises with the additional hardship the applicant has had to endure, it must be remembered that she was sentenced some five months before the pandemic began. In such circumstances the observations of this court in R v Whittington [2020] EWCA Crim 1516 are pertinent. The court said that it will rarely, if ever, be appropriate on account of the pandemic to reduce a long sentence which was passed many months before the pandemic started; particularly cogent evidence of the increased hardship and impact of imprisonment because of the pandemic would be needed before such a course could be contemplated in the case of a long term prisoner. The more serious the offence, and the longer the sentence, the less the pandemic can weigh in the balance in favour of a reduction unless there is clear, cogent and persuasive evidence of a disproportionately harsh impact on the prisoner.
27. We are far from persuaded that this is such an exceptional case of that kind justifying a reduction in sentence on that account.
28. We are quite satisfied that the sentence of nine-and-a-half years' imprisonment was fully justified for this very serious offence. It is not arguable that the sentence was manifestly excessive. That being so, we refuse the extension of time and we refuse leave to appeal.