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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202103707/B1
[2022] EWCA CRIM 1343



Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 14 September 2022

Before:

LADY JUSTICE SIMLER DBE

MRS JUSTICE CHEEMA-GRUBB DBE

MR JUSTICE BENNATHAN

REX
V
LENNON GOMES

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)

MR JAMES appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE SIMLER:

Introduction

1. One of the victims in this case, Mr Hopgood-Darcy, was a young person under 18 at the time of the proceedings and remains so. We therefore make an order under section 45 of the Youth Justice and Criminal Evidence Act 1999, that no matter relating to him 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 these proceedings.
2. On 2 June 2021, in the Crown Court at Reading, the appellant Lennon Gomes, pleaded guilty to possessing a controlled drug of class B (cannabis) contrary to section 5(2) of the Misuse of Drugs Act 1971 (count 10). Thereafter he was tried in the Crown Court at Reading and convicted on 9 September 2021 of three counts of false imprisonment (counts 1, 5 and 6), two counts of blackmail, contrary to section 21 of the Theft Act 1968 (counts 2 and 7) and two counts of conspiracy to supply a controlled drug of class A (both cocaine and heroin), contrary to section 1(1) of the Criminal Law Act 1977 (counts 8 and 9).
3. On 29 October 2021, again at Reading Crown Court before the trial judge, HHJ Real, the appellant was sentenced to a total of 18 years' imprisonment, made up as follows: four years on count 1, false imprisonment; four years on count 2, blackmail, to run concurrently; six years on count 5, false imprisonment, to run consecutively; with six years to run concurrently on count 6, false imprisonment, and two years on count 7, blackmail, to run concurrently. In respect of counts 8 and 9, there were terms of eight years' imprisonment to run consecutively. No separate penalty was recorded in respect of count 10.
4. There were co-accused who were sentenced at the same time: Naveed Mahmood, convicted on counts 1 and 2, was sentenced to six years' imprisonment; Syed Shah,

convicted on counts 5, 6, 8 and 9, was sentenced to a total of eight years; Mustafa Mohamud, convicted on count 3, was sentenced to a 12 month community order and Anne-Marie Garland, convicted on count 4, was sentenced to 33 months' detention in a young offender institution.

5. The appellant appeals against sentence by limited leave of the single judge, who also granted a representation order for counsel and we are grateful to Mr James, who has appeared and made submissions on his behalf.
6. Two points have been raised by the Registrar which we deal with now.
7. First, so far as count 7 is concerned, there is a discrepancy between the transcript of the judge's sentencing remarks (which has been checked for accuracy) which reflect no sentence having been passed on count 7, and the record sheet where this offence, albeit referred to as "count 5", records a concurrent sentence of two years' imprisonment. It appears that the judge intended to impose a concurrent sentence on this count that would not have affected the total length of the sentence but inadvertently omitted to do so. In R v Venison (1994) 15 Cr App R(S) 624 at 626, the court said:

"It is established authority that it is what the judge pronounces in his sentencing remarks that amounts to the sentence, rather than what may be recorded on the court record in the event of a discrepancy between the two."

That approach was also adopted in R v Southward [2022] EWCA Crim 547, and accordingly we direct that the Crown Court should amend its record to record the imposition of no separate penalty on count 7.

8. Secondly, a surcharge order was made at the sentencing hearing on 29 October 2021 although confiscation proceedings were then adjourned. That order was unlawful until the conclusion of the confiscation proceedings. However, this court has held that it would not

interfere with a premature order of this kind unless exceptionally it disadvantages the offender to do so. There is no suggested disadvantage here and accordingly we do not interfere with that order.

The facts

9. The offending occurred against the background of an organised crime gang. Counts 1 to 3 relate to incidents that occurred in April 2020. Counts 5 to 7 relate to the period December 2020 and counts 8 to 9 reflect the ongoing drugs conspiracy that was the background to all of the offending.
10. The victims of the blackmail and false imprisonment were young men: Charles Sampson in April and December, and Jordan Hopgood-Darcy in December. Both were runners for the gang known as "the Pirates". Two men, known as Crackz and Megs, played senior roles within the gang. The appellant was just below them in the hierarchy. He was in day-to-day control of the Pirates' drug lines. He held the drugs, distributed them to runners and received the money generated from the onward sale of the drugs back from the runners.
11. So far as the incidents in April 2020 are concerned, on 22 April 2020 the appellant told Sampson to go to Slough train station. He drove to the station with another member of the Pirates gang and they collected Sampson and drove him to a house. It appeared that the appellant had instigated this meeting as another runner, known as Diggory, had stolen drugs and the Pirates gang wanted to find him. There was no suggestion that Sampson had himself stolen any drugs. Sampson tried to contact Diggory but without success. The appellant put Sampson on the phone with someone Sampson did not recognise. That person told him: "I want you to know that my boys are coming round right now so you best think of some fucking answers". Shortly afterwards three men arrived at the house,

including Crackz. Everyone at the house, including the appellant, surrounded Sampson. He was told to provide answers, which he could not. He was prevented from leaving. While he was surrounded Crackz put his arm around his throat and he was frogmarched from the house. He was told to get into the boot of the car but ultimately put into the back seat. The car was locked. The appellant, Crackz and others surrounded the car with Sampson locked inside. There followed a discussion and the appellant left. Crackz and others got into the car with Sampson who was driven around for between 30 and 40 minutes. During that time he was beaten by Crackz. Although the appellant was not in the car with Sampson, cell site evidence placed him in close proximity to the car at all times. Throughout that journey, Sampson's mother (Ms Shehi) was in contact with Sampson. At times his phone was taken from him and put on mute. At times he was permitted to speak to her. He was told what to say. He was sobbing. He said goodbye to her. She believed that he was going to be killed. Sampson told his mother that if she wanted to see him again she would have to pay £1,000. She agreed. She was given the appellant's bank details and put £1,000 into his account. The appellant then moved the money into the bank account of Mahmood.

12. Telephone evidence demonstrated that the appellant and Mahmood communicated through a third party. Sampson was driven to a petrol station, and on arrival the appellant was already there. Once the appellant confirmed that he had received the money, Sampson was allowed out of the car.
13. Following that incident Sampson cut his ties with the Pirates gang for a time but ultimately started to work for them again. On 4 December 2020 he was at home. There was a knock at the door. When he opened the door it was the appellant together with another newly recruited runner. The appellant asked Sampson for the money he had earned that day.

Sampson handed over the money to the appellant expecting the appellant to leave. The appellant told Sampson to come with him. He took him in the car with the drug runner who had accompanied him and two other men. They picked up Hopgood-Darcy. They were told that they were being taken to help prepare drugs for onward sale. Neither Sampson nor Hopgood-Darcy were usually involved in preparation. They were taken to the appellant's home address. Crackz and another man arrived. They threatened Sampson with a machete while others surrounded him. The appellant told him that his ex-girlfriend (also a co-accused) had said that he was going to rob them. Hopgood-Darcy was hit on the back and to the kneecaps with a baseball bat. He was pushed to the floor where he was kicked and punched. Hopgood-Darcy was then taken outside into a car driven by another of the co-accused. He was assaulted. Subsequent analysis found his blood in the car.

14. The appellant stayed in the house with Sampson preventing him from leaving. Sampson was told to bag up drugs. He did as he was told. The appellant then told him that Hopgood-Darcy was "going to get dealt with". Hopgood-Darcy meanwhile was driven back to the appellant's house. Eventually Sampson and Hopgood-Darcy were given drugs to sell and were allowed to leave. The drugs they were given should have come to a value in money terms of £600 but was short. That meant that they would owe the appellant money. At that point Sampson was determined to leave the Pirates gang. He told the appellant of his intention and the appellant told him that if he wanted to leave he would have to pay £2,500 in cash. Sampson withdrew that money in two tranches from his bank account. This was money he had been able to save since starting to work again for the Pirates and he made arrangements to hand the money over to the appellant. There was cell site evidence showing the appellant together with Sampson near the Metro Bank where the second tranche of cash was withdrawn.

15. Sampson and Hopgood-Darcy spoke to the Police subsequently on 13 December 2020. Their interviews were video recorded and photographs were taken. By that time, albeit that his injuries had subsided, injuries to Hopgood-Darcy were still visible.
16. The offences we have just described were committed alongside the various conspiracies to supply class A drugs that ran from 1 April 2020 to 10 December 2020 and the cannabis possession that was found at the appellant's home.
17. So far as the drug conspiracies were concerned, no actual drugs were found. However, the evidence indicated that the drug dealing involved kilogram quantities of class A drugs. The appellant's role involved accounts of bulk supply of class A drugs for onward supply to users. He was running drug lines through the conspiracy and throughout the period, directing others below him in the chain. When interviewed by Police about these matters on 12 February 2021, he made "no comment" to questions asked of him.

Sentence

18. The appellant was 22 at the date of sentence, born on 10 June 1999. He had three convictions for four offences in the period June 2019 to 20 November 2020. The convictions included four drug offences.
19. The Crown Court sentenced him without a pre-sentence report. No such report was then or is now necessary. We have been provided with a prison report, which we have read. This indicates that the appellant has behaved well and is making good progress. We are told by Mr James that he has completed several courses.
20. We have also read victim personal statements that were before the Crown Court, from Charles Sampson (dated 10 June 2021) and Maria Shehi, his mother (dated 20 October 2021).
21. The judge had the advantage of presiding over the appellant's trial and saw and heard the

evidence. She treated the drug conspiracy counts as the main offences. In terms of the appellant's role, she recognised that there were others higher in the chain but found that he had direct responsibility for recruiting and running others. He stored drugs at his home address, distributed drugs to the runners and collected cash. He was in contact with those higher than him and plainly had their trust. She concluded that this was a significant role within the Sentencing Council Guideline.

22. So far as harm is concerned, quantity is determined by the weight of the drugs involved according to the Sentencing Council Guideline but these recognise that there will often be no precise calculation possible. This was such a case. There was no direct evidence of the precise quantity of drugs involved in the class A conspiracies. Sampson's evidence as to the value of the drugs of which he was aware, demonstrated some part of the scale of the appellant's involvement and the judge concluded that there was nothing to support the appellant's assertion that Sampson had exaggerated the Pirates' success. The appellant controlled several runners below him, and was able to and did continue running drugs without Sampson or Hopgood-Darcy for that matter. His efforts must have been profitable. He was determined to continue profiting from the supply of drugs even when avoiding arrest and she concluded that there was evidence that this was a multiple kilo operation that enabled her to categorise this offending as category 2, with a starting point in the Guideline of eight years and a range of six and half to 10 years.

23. So far as the false imprisonment and blackmail offences are concerned, these were relatively short-lived, hours not days in each case. Detention was in vehicles and at an address. There were a number of people involved; weapons were used; and physical injuries were caused. The demands for money were made during the course of the false imprisonment of runners in a drugs gang and it was all done by way of enforcement of a

drugs conspiracy. All offenders were subordinate to Crackz and other men who took a more leading role and the appellant's role had been in instigating and arranging those incidents on behalf of those higher up in the gang. While he was not present in April when demands were made of Sampson, he was on hand to ensure that money was paid into his own account before Sampson was released. In December, the threats and violence were not carried out by the appellant, and the December blackmail took place over the telephone.

24. The judge identified the sentences that she would have passed on each count looked at in isolation and then made adjustments to reflect the appellant's age, the extent of his previous offending and, importantly, to reflect totality. She observed that had these offences fallen to be sentenced separately, the notional sentences would have been eight years on count 1 for false imprisonment; somewhere between nine and ten years on counts 5 and 6, the separate incident of false imprisonment in December; and nine years in respect of the class A drugs conspiracies. That would have resulted in a sentence of between 26 and 27 years' imprisonment. Having made the reductions she said she would make, the sentences were adjusted in the way we have earlier described and a total sentence of 18 years was passed.

The appeal

25. The single judge gave leave on one ground and that is the only ground pursued. The appellant submits that the judge failed to have sufficient regard to the principle of totality when considering the sentence passed on this appellant, then only 22 and lightly convicted.
26. A second ground was refused, to the effect that the judge was in error when categorising the offending on the drugs conspiracy as falling into category 2. That ground has rightly not been renewed. We are entirely satisfied that the trial judge, who was best placed to assess the appellant's harm and culpability in the count 8 and 9 offences, made a proper

assessment. In our judgment, there was ample material to support the conclusion that these were category 2 offences and the appellant played a significant role.

27. In developing the totality ground, Mr James made submissions about the appellant's immigrant background, and origin. He is supported by a loving family. Nonetheless, in the period following his arrival in this country, Mr James described how he struggled to fit in and was, as is the way in cases of this kind, then welcomed by members of the Pirates gang. He found himself in a situation where he was trapped into the behaviour that followed. Mr James did not seek in any way to minimise the seriousness of the offending, but his broad submission was that the overall sentence on this relatively young man was simply too long.

Analysis and conclusions

28. There are no sentencing guidelines for blackmail and we, like the judge, were referred to R v Hardjou (1989) 11 Cr App R(S) 29, as a leading authority on the seriousness of blackmail and R v Ford [2015] 2 Cr App R(S) 17. Such cases are always highly fact sensitive, but common factors have been identified as relevant to sentencing: first, the relationship between the amount of money demanded and the means available to the victim, and secondly, the psychological harm done and intended to be done. There are also no guidelines for false imprisonment and again, like the judge, we were referred to Attorney General's References Nos 92 and 93 of 2014 (R v Gibney) [2014] EWCA Crim 2713.
29. Applying the Gibney factors, the notional sentences identified by the judge on counts 1, 5 and 6 cannot be criticised. In each case the length of detention was, as she recognised, several hours. On each occasion victims were taken to a house and not permitted to leave. They were driven around whilst violence was inflicted on them. Although the appellant

was not involved in the violence, he was close by on both occasions and aware of what was happening in the car.

30. There was no evidence that the victims had exaggerated the extent of the violence used. There was evidence from Sampson's mother about the injuries that he had suffered and Hopgood-Darcy's injuries were visible. Weapons were used: a machete, shod feet and a baseball bat. Demands were made and these were met. Although there were no direct threats made to others, Sampson's mother at least, was allowed to believe that her son would die if she failed to pay what was being demanded. There was a considerable and profound effect on the victims, we have no doubt. Sampson described sobbing in fear for his life and his mother believed that he would die. In December, Hopgood-Darcy felt helpless against the unrelenting attack and his unchallenged evidence was that the beating only stopped because "he had taken it like a soldier".
31. Both incidents were clearly planned; they were orchestrated by the appellant in consort with others, including Crackz who was higher up in the chain. There were several people involved on each occasion (enforcers who were recruited for that purpose). While the violence was sustained and serious, there was no torture and no humiliation such as is found in other cases.
32. Both incidents arose in the context of wider drug dealing. Both were targeted at the gang's perception that a runner was attempting to leave or steal from the gang. Both can be seen as both punishment and also sending out a wider message to other runners.
33. Sampson and Hopgood-Darcy have now been identified as victims of modern slavery and have had positive grounds decisions made under the National Referral mechanism process and so were vulnerable.
34. The judge made the sentences for the April and December incidents internally concurrent,

acknowledging that the blackmail was part and parcel of the false imprisonment, but consecutive to one another. This structure ensured that there was no double counting and properly reflected that each incident was discrete, and that the December incident was inevitably aggravated by the fact that it involved repeat criminality against the same victim. The December incident did not inevitably flow from the April incident and neither incident was an integral part of the day-to-day drug conspiracy operation.

35. We also consider it right that the judge treated the sentences for the class A drug conspiracies as the most serious and made those sentences consecutive to the other counts. They reflected the appellant's involvement in what was a commercial supply of class A drugs. The counts were not limited to his supply using Sampson or Hopgood-Darcy. His involvement expanded far beyond his recruitment and employment of those two runners and indeed continued after one or both left the gang. The evidence showed that the so-called "Pinky Line" was still active after it was removed from Sampson and Hopgood-Darcy and that it was then operated directly by the appellant or by other co-accused whose cell site evidence placed them with the appellant on days after the December incident.
36. Drawing those threads together and recognising that the judge was best placed to assess the overall culpability and harm involved in this offending and notwithstanding the force of the submissions made by Mr James, we have concluded that this is not a sentence with which we can interfere.
37. In our judgment, the judge had the totality principle well in mind. She had well in mind the appellant's age and his lack of serious relevant convictions. She made substantial reductions to the notional standalone sentences she had identified, to reflect these considerations. She made no error of principle and indeed Mr James did not suggest

otherwise. Standing back, we have concluded that there is simply no basis for concluding that she failed to have regard to any relevant consideration or wrongly considered irrelevant matters. Having made her overall assessment, while this was a lengthy sentence for a young man, the sentence imposed was nonetheless just and proportionate having regard to the seriousness of the multiple offending and all the circumstances of this case.

38. In those circumstances this appeal must be dismissed.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk