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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202103767/A1
[2022] EWCA Crim 768

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 5 May 2022

Before:

VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE FULFORD)

MR JUSTICE JAY

RECORDER OF WESTMINSTER
(HER HONOUR JUDGE DEBORAH TAYLOR)
(Sitting as a Judge of the CACD)

REGINA
V
RYAN BRENNAN

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MR S EVANS appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE JAY: On 22 November 2021 at Liverpool Crown Court before Mr Recorder Close and following his guilty pleas, Mr Ryan Brennan (the appellant) was sentenced to a total term of imprisonment of 5 years composed as follows. Count 1, dangerous driving, contrary to section 2 of the Road Traffic Act 1988, 12 months' imprisonment concurrent to count 4 and consecutive to counts 2 and 3; count 2, affray, contrary to section 3 of the Public Order Act 1986, 12 months' imprisonment consecutive; count 3, making a threat to kill, contrary to section 16 of the Offences Against the Person Act 1861, 3 years' imprisonment; count 4, aggravating vehicle taking, contrary to section 12A of the Theft Act 1968, 12 months' imprisonment concurrent to count 1 and consecutive to counts 2 and 3.

The appellant's licence was endorsed in respect of two summary-only matters and he was disqualified from driving for 5 years 6 months and required to take an extended retest.

The appellant appeals against sentence with the leave of the single judge.

The facts were that on 20 August 2021, at around 6.00 am, Roy Goulden (a man in his 70s) had been driving his car along a road in Warrington when he heard a large bang and realised that he had been hit from behind with force. Mr Goulden subsequently left his vehicle to exchange details with the driver that had hit him, namely the appellant. Words were exchanged between both drivers and Mr Goulden flagged down another couple who had been driving past to see if they could assist. The appellant was initially calm and suggested calling the police but later began shouting and being abusive. He produced a knife and threatened Mr Goulden with it. The latter thereafter used a tree trunk which had been in the rear of his vehicle to defend himself.

At this time Ms Marcia Harris, who worked for the NHS, had noticed the collision and had decided to stop and offer assistance. She tried to get the appellant to calm down and to

stop being aggressive but the appellant then turned on her. The appellant made his way towards her vehicle and said: "Give me the keys you fucking cow" along with: "You fucking bitch, I'll fucking kill you" before taking hold of her with the knife in his hand. Marcia Harris eventually managed to free herself from the appellant's grasp after throwing her car keys to a nearby shop worker.

Another couple had also been driving down the road and they tried to manoeuvre their vehicle around the collision scene. The appellant approached that vehicle and demanded that the occupants give him their vehicle and at one stage the appellant attempted to snatch the ignition keys but that couple managed to drive off. The appellant clung onto the vehicle after it had driven off but once it gathered speed the appellant let go of the vehicle. The appellant thereafter took a bicycle from a delivery driver but witnesses described the appellant as being unable successfully to ride off on the bicycle. The appellant then made his way to a car park of a Co-op store where he pulled the female driver from a BMW motor vehicle whilst holding the knife that had been used previously and made off from the scene of the offences. The police had been summoned and were making their way to the scene. Once they had arrived the witness told the police the direction in which the appellant had made off. The police thereafter followed the BMW which was being driven by the appellant at speed, whereupon the BMW missed a turn, went through a small wooden fence, raised into the air and came to a halt on a grass area. A pedestrian with a dog was nearby. The appellant exited the vehicle and walked away. He was warned by police officers to stop but threatened to stab the officers as he was walking away. He was ultimately Tasered by the police officers who were then able to bring him to the ground and arrest him.

We have examined the various footage on the Egress system which shows parts at least of this

composite incident. The appellant was subsequently taken to hospital by the police where he was found to have a subarachnoid haemorrhage. He gave a "no comment" interview.

The appellant was aged 39 at sentence. He had 14 convictions for 24 offences, covering the period 1998 to 2017. His relevant convictions included four offences against the person, five public order offences and eight relating to motor vehicles. There were victim personal statements from Marcia Harris and Roy Goulden, which spoke to the terrifying nature of the incident and the significant impact that it had. In particular Marcia Harris suffers from disturbed sleep and was struggling at work. The Recorder did not have a pre-sentence report but we agree that one neither was nor is necessary.

There was a psychiatric report, the terms of which we have considered with care. In short, these offences were committed when the appellant was under the influence of drink and drugs. There was a history of substance abuse and of depressive and anxiety symptoms, the latter dating back to the tragic death of the appellant's son in 2007. According to Dr Van Der Bijl's report the appellant's mental health had been deteriorating under stress in the week or so leading up to this incident and a diagnosis of an adjustment disorder was appropriate. Moreover, the appellant told the psychiatrist that during the early hours of 20 August he had consumed a considerable quantity of cocaine and alcohol and then took an overdose of drugs that had been prescribed to him and his partner and believed that he was going to die. He had very little recollection of the events which followed.

Finally, the Recorder had the benefit of a detailed, at times, moving statement from the appellant's partner, speaking to her own health difficulties, the health problems of the child and the appellant's own desperate need for help. The appellant's partner's statement largely corroborated his account in relation to what happened in the hours leading up to the incident.

In his detailed and careful sentencing remarks the Recorder made specific reference to the Sentencing Council Guidelines for Sentencing Offenders with Mental Disorders etc. In his view the appellant's adjustment disorder had some impact but was not significant because the principal determining factor here was the drink and drugs. In the Recorder's view paragraphs 11 and 12 of the relevant Guideline dealing with culpability were pertinent.

The Recorder accepted that the appellant was remorseful for what he did and that he had given timely guilty pleas.

In terms of the Sentencing Guidelines for the individual offences, the Recorder considered that this was a category 1A offence for the affray with a starting point of 2 years' custody and a sentencing range of up to 2 years 9 months. For the threats to kill, this was also a category 1A offence because of the possession of a visible weapon and the various serious distress sustained by the victim. The starting point was 4 years with a range of up to 7 years' imprisonment. For both driving offences the maximum sentence was 2 years' imprisonment and the overall circumstances brought the appellant's case towards the upper end of the range.

The Recorder's approach was to treat the threats to kill as the main offence and adjust his other sentences to reflect totality. There would be a modest discount to reflect the appellant's mental health and full credit for the guilty pleas.

The ground of appeal is that the total sentence of 5 years' imprisonment was manifestly excessive as (a) the sentence of 3 years' imprisonment for the threats to kill equating to what is said to be a starting point before credit for 4½ years' imprisonment did not properly reflect the aggravating and mitigating features of the case; (b) the sentences on counts 1, 2 and 3 ought not to have been consecutive to each other as all the offending arose from the same set of circumstances; (c) the total sentence of 5 years' imprisonment was disproportionate

to the harm caused in the course of the incident, that gave rise to the four offences on the indictment; and (d) the total sentence of 5 years' imprisonment did not properly reflect the mitigating features, in particular the appellant's mental state at the time of the incident and the effect of the sentence upon innocent parties.

In oral argument Mr Evans, in a concise and extremely helpful submission, emphasised the following points. He submitted that looking at this in the round a total sentence of 7½ years' imprisonment before credit for the pleas, being full credit, is simply too long when considering the appellant's culpability and overall criminality. Furthermore, it is submitted that inadequate regard was paid to the Sentencing Council's Guideline on the Sentencing of Offenders with those with Mental Disorders and the Sentencing Council's Totality Guideline.

There were important mitigating features here which although the Recorder did have regard to, he did not give sufficient weight. Plainly there was the appellant's mental state at the time. Secondly, there is the effect of the sentence on others including the appellant's partner and his children and thirdly, there is the appellant's genuine remorse.

We have carefully reflected on these submissions in what is undoubtedly a sad and troubling case. In our judgment the Recorder did apply the relevant Guidelines in a flexible manner. He did take into account the psychiatric evidence and the available mitigation and he did pay proper regard to the principle of totality. As has already been remarked, his sentencing remarks were extremely comprehensive and, if we may say so, very well structured.

The real issue here is whether the Recorder applied the Sentencing Council's Guideline on the Sentencing of Offenders with Mental Disorder in a correct manner. It is clear from the psychiatric evidence that the appellant was suffering from an adjustment disorder at the material time and that his mental state had been deteriorating for a number of reasons, in

particular stress.

It is also clear that although the appellant took large quantities of drugs and alcohol in the morning in question, that the reason for his doing so was in part occasioned by his adjustment disorder and the stress in which he was under.

The Recorder's analysis, which was to say that he was principally culpable for what he did, in our view did not quite reflect the overall gravamen of the Sentencing Council's Guideline or indeed that part of the Guideline which deals with the issue of self-medication. There is therefore force in the submission - notwithstanding the frankly awful circumstances of this case, namely what happened on the day – that the regard that was paid to the psychiatric features was simply not sufficient.

In our judgment, the correct way to approach this case is to allow the appeal to this extent. For the main offence here (threats to kill (count 3)) the sentence of 3 years' imprisonment shall stand. Having regard to the relevant Guideline and the seriousness of that offence, in our view there is no basis for adjusting it. Moreover, it was correct in principle to impose concurrent sentences in relation to the two driving matters. However, the consecutive sentence in relation to the 12 months (affray) can be challenged for two related reasons. First of all, there is a strong argument that that sentence should not have been consecutive but should have been concurrent, as it is part and parcel in the effect of the same incident of violence; and secondly and perhaps more importantly, given our conclusions about the saliency of the psychiatric evidence in this case, it was right, in our judgment, that the sentence in relation to the affray should be made concurrent.

The upshot therefore is that the appeal is allowed to the extent that in relation to count 2 (the affray) the sentence of 12 months' imprisonment is concurrent not consecutive and therefore the overall term of imprisonment is reduced to one of 4 years. The consequential

effect of that is that the period of disqualification falls to be reduced in line with the principles laid down by this Court in R v Needham [2016] EWCA Crim 455. We deduce from the period of disqualification of 5 years 6 months that what the Recorder had in mind was 2½ years to reflect the period of actual incarceration and then 3 years beyond that. Applying the same approach the period of disqualification must be reduced to one of 5 years and the appellant must be required to take an extended re-test at the end of that period. To the extent to which we have indicated this appeal is allowed.

proceedings or part thereof.

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