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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2022] EWCA Crim 826



No. 202103796 A2

Royal Courts of Justice

Friday, 13 May 2022

Before:

LADY JUSTICE NICOLA DAVIES

MR JUSTICE TURNER

HIS HONOUR JUDGE SLOAN QC  
(THE RECORDER OF NEWCASTLE)

REGINA

V

KHALID YUSUF

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**J U D G M E N T**

MR JUSTICE TURNER:

- 1 The applicant in this case was charged on counts contained upon the indictments: T202117094, T20217151 and T20217055. For ease of reference, we will refer to these as the first, second and third indictments, respectively.
- 2 On 1 September 2021 in the Crown Court at Wood Green the applicant (then aged 25) pleaded guilty to an offence of blackmail on the first indictment. On 10 September 2021 in the Crown Court at Harrow he pleaded guilty to an offence of robbery on the second indictment and guilty on re-arraignment to a further offence of robbery under the third indictment.
- 3 On 3 November 2021 the applicant was sentenced to an extended sentence of 12 years, comprising a seven-year custodial term and an extended licence period of five years in respect of the robbery count on the third indictment. For the offence of robbery under the second indictment, he was sentenced to six years and nine months' imprisonment to run concurrently. For the offence of blackmail on the first indictment he was sentenced to three years' imprisonment, also to run concurrently. Accordingly, the total sentence was an extended sentence of 12 years comprising a seven-year custodial term and an extended licence period of five years.
- 4 He renews his application for leave to appeal against his sentence following refusal by the single judge.

#### The Facts

##### The First Indictment

- 5 At around midnight on 23 November 2020 the complainant, one David Jareno, was walking along Kilburn High Road. The applicant approached him and offered to sell him drugs. Jareno refused and walked away. Undeterred and shortly after, the applicant approached the complainant again offering drugs, but this time asking also where he was going. The complainant said he was checking the Grindr App, which is a social networking application for members of the gay community. The applicant asked him if he was gay and the complainant confirmed that he was. The applicant then asked if the complainant wanted to have some fun, to which the complainant then agreed. The complainant offered to perform oral sex on the applicant, who accepted the invitation. They started to walk towards a quiet area and the applicant asked the complainant for money and the complainant refused. When they arrived, the applicant began to undo his trousers, but the complainant changed his mind and told him that he was going to leave. The applicant again asked for money, suggesting that the complainant should go to an ATM to get him some. The complainant again refused and went home.
- 6 The following day the complainant was out walking in the same area. He saw the applicant again. The applicant asked for some money for food and again asked if the complainant wanted to have sex. The complainant said that he did not want to have sex, but he would buy him some food. He later changed his mind and said that he would perform oral sex on the applicant and they agreed to go somewhere to do that. The complainant asked the applicant how old he was and the applicant said he was 24, which was true. They went to the ATM together to get cash and then went to the complainant's flat at around half eight in the evening. Whilst there, the complainant overheard the applicant talking on his telephone to somebody saying something along the lines of, "I will get the money. I will buy it for you." The complainant then went on to perform oral sex upon the applicant. Afterwards, the applicant told the complainant, untruthfully, that he was only 16 years old

and that therefore what had happened was rape and he was going to call the police and the complainant could get sent to prison for a long time. The complainant asked the applicant what he wanted him to do. The applicant said he wanted money, so they went to a cash machine. The complainant withdrew one hundred pounds, gave it to the applicant and told the applicant not to approach him again.

- 7 However, the applicant did approach him the next day. The complainant was at home in his flat in the early evening when the downstairs doorbell rang. He answered and heard a male voice accusing him of raping his friend and telling him to open the door. The person ringing the bell was able to get to the complainant's front door and the complainant saw that it was actually the applicant. The applicant told the complainant that he had his father on the telephone who wanted to speak him. The complainant left the flat and spoke to the man on the telephone who told him that the applicant was not even 16 yet and that he was going to call the police, but then said there is another way to sort things out. It was agreed that he would come and meet them both. Whilst they were waiting, the applicant told the complainant he did not want his father to come as he would hurt the complainant because he had knife and would kill him. He told the complainant that if he would give him some money he would leave and not return. They went to the cash machine again together and the complainant withdrew this time £250 which he gave to the applicant. The applicant got a taxi and left. The complainant, however, then reported the matter to the police.
- 8 On 26 November the complainant was at home again in the afternoon. The doorbell rang and he heard banging on his own front door. He could hear the applicant demanding the door be opened. The complainant was scared and called the police. Fortunately, the police happened to be on their way to the address to take a further statement relating to the matters that had occurred on the previous day. When they arrived they found the applicant on the floor above and arrested him.
- 9 The applicant made no comment in interview.
- 10 Having been released under police investigation between 1 and 2 March, the applicant committed two further robberies. He was on bail for the first robbery at the time of the second.

#### The Second Indictment

- 11 At about 7 o'clock in the morning on 1 March 2021 the complainant Naima Bouchetta (aged 55) was walking along Camden High Street. She walked past the applicant who was sitting at a bus stop looking at her. Moments later he came up behind her and grabbed her bag which was over her shoulder. He pulled it hard three or four times. The complainant screamed at him. Being the stronger of the two, the applicant managed to take the bag and the complainant nearly fell over. The applicant ran off with the bag. Moments later he returned and the complainant asked where the bag was. He said "Come with me and I will show". She refused to go and noticed that he was looking at her necklace and other jewellery. She walked away and called the police.
- 12 When the police arrived, the complainant pointed out the applicant who was still nearby. He went to look for the bag and found it on the street. Nothing was missing. The applicant was arrested and denied the robbery in interview, saying it was probably carried out by somebody that looked like him.

#### The Third Indictment

13 At approximately 8.45 on the morning of 2 March 2021 the applicant robbed the complainant Hamdi Mohammed (aged 36) who was leaving her flat in Kilburn to go to work. As she entered the lift, the applicant followed her and began to talk to her, telling her that he was a lawyer and could help her. As they reached the ground floor, the applicant said, "Help me. Give me some money". The complainant said that she could not help him. As the lift doors opened, the applicant grabbed hold of one of the straps of a bag that the complainant was carrying on her shoulder. He pulled the strap, causing her to fall out of the lift and catch herself with her hand. The applicant put the bag over his own shoulder. He kicked the complainant in the head while she was still on the ground and kicked her in the stomach. She screamed for help. The bag then fell from the applicant's shoulder. The complainant grabbed hold of it. There followed a struggle between them, because the applicant still had hold of the bag, and he dragged the complainant along the floor for about three metres before she let go of it. The applicant ran out into the street and the complainant followed him shouting for help.

14 A parent outside the nearby school called the police. The applicant ran away, dropping the bag and throwing the contents on the floor. When the bag was returned to his victim £70 was missing and one of the straps was broken. Parents outside the school confronted the applicant and followed him. He told one them:

"This is what I do. I'm done with her now. I'll go rob somebody else.  
I'm not crazy. I know what I'm doing."

15 When a parent started recording him on their mobile phone, he told them that he was in gang. The parents followed him until the police arrived. When the police stopped the applicant, he told him he was on bail for the offence from the previous day. He said that the woman had accused him of robbery because he had resisted her attempts to have sex with him. He also said that he was a king, a lawyer and a police officer. He made no comment in interview. The complainant suffered a small graze to the knee from when he dragged her on the floor, a very tender stomach, a sore head and a headache.

#### Antecedents

16 The applicant had 11 convictions for 19 offences between 14 April 2014 and 11 January 2021. These included attempted robbery, for which he received a referral order in 2014 and robbery, for which he had received a suspended sentence order in 2015. He was later resentenced to immediate custody following breach of that order. He had also served custodial terms for other offences, including possession of Class A controlled drugs with intent to supply and assault occasioning actual bodily harm. Most recently, on 22 February 2021, he had received a community order with mental health and rehabilitation activity requirements for an offence of criminal damage.

17 The judge approached the task of sentencing by taking the robbery offence in the third indictment as the lead offence under which he would pass an aggregate sentence reflecting everything, including the blackmail, whilst bearing in mind the principle of totality.

18 There were two grounds of appeal. Firstly, the increase to seven years from the starting point was excessive for the additional criminality relating to the robbery on 1 March and the blackmail. Secondly, the judge did not seem to give any discount for the personal mitigation of the applicant, in particular his mental health issues, or discount for the mitigation pertaining to the initial offences.

19 In refusing leave the single judge observed:

"The sentencing judge decided to take one of the robberies as the lead offence and to pass a sentence that reflected all the offences, making the other sentences concurrent. There is, and could be, no complaint about that approach.

He concluded that each of the robberies fell into Category 2B in the sentencing guidelines. Again, this gives rise to no complaint. That gave a starting point of 4 years and a range of 3-6 years for each offence. Taking account of both offences and the fact that these were your third and fourth convictions for robbery offences, the judge considered that a sentence at the top of the range (before credit for plea) would have been appropriate. He found that you were dangerous and decided that it was necessary to pass an extended sentence. No complaint is made about that.

The judge indicated that he would usually have imposed a consecutive sentence for the blackmail offence. However, as he was passing an extended sentence, he aggregated the sentence to arrive at a custodial term of 7 years. It is acknowledged on your behalf that the sentence for the blackmail offence was of an appropriate length. It appears that he made the concurrent sentence on the other robbery slightly shorter to reflect slightly different credit for your guilty pleas that each offence attracted.

The judge did take account of your mitigation. While you do have a long history of mental health problems, these were compounded by antisocial personality traits and substance abuse. Your compliance with treatment was poor even when in prison. The question is whether it is arguable that your sentence was manifestly excessive having regard to the totality of your offending, the available mitigation and the credit you were entitled to for pleading guilty. In all the circumstances, I do not consider that this is arguable. It is notable that the medical report indicated that your drug-seeking behaviour increased as your mental state had improved. At the time of the offences, you were taking large amounts of crack cocaine.

In the end, the question is whether it is arguable that your sentence was manifestly excessive having regard to the totality of your offending, the available mitigation and the credit you were entitled to for pleading guilty. In all the circumstances, I do not consider that this is arguable."

20 We agree. The sentence passed by the judge was neither wrong in principle nor manifestly excessive for the reasons given by the single judge and this application is refused.

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**CERTIFICATE**

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This transcript has been approved by the Judge.