

Neutral Citation Number: [2019] EWCA Crim 694

2018/03504/A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 9th April 2019

Before:

Lord Justice Coulson

Mr Justice Spencer

and

HER HONOUR JUDGE Tayton QC

(Sitting as a Judge of the Court of Appeal Criminal Division)

Regina

- v -

Lee Daniel Wilding

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Mr A Leech appeared on behalf of the Appellant

JUDGMENT (Approved)

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Lord Justice Coulson:

1. On 4th December 2017, in the Crown Court at Manchester, the appellant, who is now 38 years old, pleaded guilty to one offence of attempted robbery (count 1), one offence of wounding with intent (count 2) and one offence of robbery (count 5).
2. On 14th March 2018, he was sentenced by His Honour Judge Steiger QC to an extended sentence of seventeen years, pursuant to section 226A of the Criminal Justice Act 2003, comprising a custodial term of thirteen years' imprisonment and an extended licence period of four years.
3. The appellant was granted limited leave to appeal against that sentence by the single judge.
4. The appellant has a bad record of violence and dishonesty. On 7th February 2005, he was sentenced to two years' imprisonment for an offence of attempted robbery. Further prison sentences followed for a variety of offences and on 29th September 2016 he was sentenced to 28 months' imprisonment for assault occasioning actual bodily harm. In all of these offences a blade of some sort was involved. The appellant was on licence for that last assault when he committed the present offences. In our view, that is a singularly aggravating feature.
5. On 17th September 2017, the appellant and two others forced their way into the Brackley Conservative Club in Worsley, Salford, Manchester. One of them, Dylan Jones, was armed with a gun. A 79 year old customer, Eric Cavanagh, went to the rescue of the stewardess who opened the door and was being threatened. There was a scuffle. The appellant wielded a very large machete, which cut off one of Mr Cavanagh's fingers. He struck Mr Cavanagh again before the three assailants fled the scene empty-handed.

6. Mr Cavanagh suffered a severed little finger which required an operation, lacerations to his right hand, and a six inch laceration to the right arm which required stitches.
7. The attempt to rob the club was, therefore, the subject of count 1; and the assault on Mr Cavanagh the subject of count 2.
8. Undeterred by this abject failure, the appellant and his two confederates then went to the Premier Inn Hotel in Salford. They demanded money from the receptionist, Mr Curry. The appellant vaulted the reception desk. He had a blade in his hand and his face was covered by a mask. The handgun was again produced by Dylan Jones. Cash was demanded, and eventually a cash tin containing £220 was handed over. One of the assailants was subsequently detained by the police. Evidence from her mobile phone led to the identification of the appellant and Jones.
9. Mr Curry had sustained a three inch cut to the left side of his forehead. He remained in hospital overnight for observation.
10. The appellant answered “no comment” to all questions that were put to him in interview. Nor did he indicate a guilty plea at the first hearing on 8th November 2017. He did not plead guilty until the subsequent plea and trial preparation hearing.
11. When sentencing the appellant, the judge described the attack on Mr Cavanagh as “a shocking, sadistic, cruel action which makes this an offence of such gravity that at one point it seemed to me appropriate that life imprisonment might be justified”. However, having concluded that the appellant was dangerous and qualified for an extended sentence, the judge decided against the imposition of a life sentence.
12. In relation to the attempted robbery of the club (count 1), the judge identified a starting point of twelve years' imprisonment, which he reduced to nine years to take into account the discount for the guilty plea. On the charge of wounding with intent, namely the attack on Mr Cavanagh (count 2), the judge took a starting point of twelve years, but then reduced it for totality and imposed a term of four years, which he ordered to run consecutively to the nine years on count 1. He also imposed an extension period of four years, which appeared to relate to both counts 1 and 2. In relation to the robbery at the Premier Inn (count 5), the judge identified a concurrent sentence of nine

years' imprisonment. He made no express reference to an extension in relation to that offence. In this way, the overall sentence was recorded as an extended sentence of seventeen years, made up of thirteen years' custody and a four year extended licence period.

13. The single judge granted leave to appeal against the sentence on the sole basis that, because the judge had indicated that appellant was entitled to “the full degree” in terms of his discount for plea, the reduction on count 1 should have been from the starting point of twelve years' imprisonment to eight years' imprisonment, thus reducing the custodial term from thirteen years to twelve years' imprisonment overall. We note that this simple mathematical error, as it is alleged to be, was not pointed out at or immediately after the sentencing hearing. That failure gives rise to a difficulty which would not have arisen if the matter had been addressed then and there. This court, therefore, has to grapple with whether or not the judge was referring to a maximum 33 per cent discount (although the guilty plea was not tendered at the first hearing) or was referring to the sentencing guidelines which, for a guilty plea such as this, identify a maximum 25 per cent discount, which is, of course, what the judge actually gave.
14. In addition, the Registrar of Criminal Appeals has pointed out that if consecutive extended sentences are to be passed, then it is necessary to pronounce separate consecutive extended sentences on each count, allotting to each the appropriate custodial term relevant to that count, together with an extension period relevant to that count. The judge did not do that. As we have indicated, he suggested that in some way the four year extended period arose out of counts 1 and 2, without further allocation.
15. In our view, all of this demonstrates a wider difficulty with this entire sentencing exercise. In line with the decision in *R v C* [2007] 3 All ER 753, this court has encouraged the practice whereby in a serious, multiple-count case the sentencing judge should endeavour to impose one term of imprisonment which reflects the defendant's overall criminality. That makes for clarity and simplicity. We are told that the judge was urged to adopt that course here. We consider that it would have been much better if the judge had done so. It would have avoided the problems which we have identified.

16. In those circumstances, although we are mindful that of course we cannot increase the overall sentence imposed by Judge Steiger, we consider that this is a case where, because of the deficiencies which we have noted, this court is entitled to and should remake the sentencing exercise. Accordingly, that is what we propose to do.
17. We have seen the CCTV footage shot from various cameras outside the club. The judge indicated in his sentencing remarks that if this matter was ever reviewed by the Court of Appeal, the court should look at that CCTV footage. We are unsurprised by that observation. We consider the footage to be chilling. The frenzied violence meted out by the appellant to Mr Cavanagh, who had gone to assist the frightened woman who had opened the door, deserves the fullest condemnation by this court. At one point, although they had left the club empty-handed, the appellant returned to the doorway to slash at Mr Cavanagh again with the machete. Indeed, if Mr Cavanagh had been unable to close the door, we are confident that the appellant would have continued the assault inside the club.
18. Accordingly, taking count 1 as the offence in respect of which it would be appropriate to sentence the appellant for his overall criminality, we consider that the sentence would have to reflect a whole host of aggravating factors. These include not only the prolonged and serious nature of the violence, the injuries suffered by Mr Cavanagh, the use of the machete, the presence of the gun and the planning with face masks and the like, but also the fact that this was an offence committed by the appellant who had an extensive and escalating history of violent conduct and who was on licence at the time. In our view, as the judge at one point indicated, a life sentence may well have been merited.
19. Honouring the judge's decision not to impose such a sentence, but taking into account the fact that the appellant then conducted a second robbery shortly thereafter, in which again serious violence was perpetrated on an innocent victim, a starting point to reflect the totality of his criminality would, in our view, have been at least 20 years' imprisonment. However, again honouring the judge's reference to credit to the full degree for the guilty plea, that would still produce a term that was slightly more than the thirteen years' imprisonment which the judge imposed. Accordingly, in our view, the

appellant is fortunate that, because of the approach taken by the judge, the total custodial term of thirteen years remains the maximum which can now be imposed.

20. There is rightly no dispute that the judge was entitled to find that the appellant was dangerous and therefore qualified for an extended licence period. Nor is there any difficulty with imposing an extended period of licence of four years in addition to the term of thirteen years' custody on count 1.
21. Accordingly, we remake the sentence as follows. We quash the sentences on counts 1 and 2 and 7 instead impose on count 1 an extended sentence of seventeen years, comprising a custodial term of thirteen years and an extended period of licence of four years. On count 2, there will be a term of eight years' imprisonment – that is the judge's starting point of twelve years, with a full discount for the guilty plea – which will run concurrently with the custodial term on count 1. The term of nine years' imprisonment on count 5 will remain unchanged and that, too, will run concurrently with the thirteen year custodial term already referred to. There will be no extension period in relation to count 5.
22. Accordingly, this appeal is allowed, but only to the extent that the sentence is remade in the terms that we have indicated. There is no ultimate change to the overall period, either of custody or of the extended licence.