IN THE COURT OF APPEAL

CRIMINAL DIVISION

Neutral Citation Number: [2023] EWCA Crim 348

CASE NO 202202010/A2

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 20 January 2023

Before:

LORD JUSTICE LEWIS
MR JUSTICE GARNHAM
HER HONOUR JUDGE NORTON
(Sitting as a Judge of the CACD)

REX
V
MATTHEW FARMER

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 P CLARK appeared on behalf of the Appellant

J U D G M E N T

1. LORD JUSTICE LEWIS: On 26 May 2022 in the Crown Court at Basildon, the appellant Matthew Farmer was sentenced following a trial for one offence of wounding with intent to cause grievous bodily harm. He was sentenced to seven years' imprisonment for that offence. He had also pleaded guilty to another offence of possessing a bladed article and he was sentenced to one year's imprisonment to be served consecutively. That resulted in a total sentence of eight years' imprisonment. He appeals with leave of the single judge.
2. The facts of the offences are these. On 7 August 2020 the appellant went to a restaurant in Westcliff-on-Sea. Robert Plester was the DJ working at the restaurant that evening. The appellant pestered Robert Plester for drinks, cigarettes and money. His behaviour towards other people in the restaurant was boorish and unpleasant. He was intoxicated. Eventually he was asked to leave. He left briefly but came back with musical instruments which he attempted to play. The DJ told him that he should do himself a favour and leave because he had been a pest all night. Others took over and the appellant was ejected from the restaurant.
3. For some reason the appellant nursed a grudge against the DJ. The appellant did not leave the area. Instead he waited. He waited for about three- quarters of an hour During that time he fashioned a weapon, sharpening the edges of a can. At one stage he changed his location to avoid being seen and he hid behind a hedge.
4. Mr Plester and his partner came out of the restaurant and they were seated in the car with the car windows open. Mr Plester was in the passenger seat. The appellant then ran across the street to the open car window, shouted out "Oi, mate" and when Mr Plester looked up the appellant used the sharpened object to slash Mr Plester to the throat a number of times. The attack was recorded and can be seen on CCTV. Fortunately the

weapon failed to cause serious physical injury. It is apparent however from the victim impact statement of the victim that he suffered severe psychological harm as a result of the attack. He had sought psychiatric treatment for his symptoms and he felt fearful and hyper-aware of danger. The attack had also caused severe emotional and psychological harm to his partner who was in the car with him that night.

5. At the time that the appellant committed this offence he was on bail in connection with the other offence. That had occurred sometime previously. The appellant was on the street in daylight outside an address in Southend holding the blade of a Stanley knife which he was waving about. There was another person there and a second person emerged from a house. That formed the subject matter of the possession of a bladed article offence.

6. The appellant was 34 at the time of sentence. He had two previous convictions for unrelated offences of taking a vehicle without consent. The judge said those were not to be treated as aggravating factors for the purpose of sentencing. The judge did not have a pre-sentence report.

7. In terms of culpability, the judge considered that the wounding offence fell within Category A high culpability for the purposes of the Definitive Guideline on Assault issued by the Sentencing Council as there had been a significant degree of planning and premeditation. The appellant had waited outside the venue and during that time had fashioned a make-shift weapon out of a can. In addition, the judge found that the appellant acted out of revenge. In terms of harm, the case fell within Category 3. The a starting point for a category 3A offence is five years' custody with a range of four to seven years' custody. The judge considered that the offending fell at the top end of that range because of the serious psychiatric harm caused to the victim. The judge might also

have pointed out that the offence was committed whilst the appellant was on bail for the other offence and that was an aggravating factor. He also committed the offence whilst intoxicated which was a second aggravating factor.

8. The judge did not consider that the appellant had shown remorse. She was aware that the appellant had suffered a road traffic accident some six weeks earlier and had damaged his hand. She by implication did not regard that as in any way mitigating his culpability for the attack that he had carried out. The judge imposed a sentence of seven years' custody for the unlawful wounding offence.

9. In relation to the offence of possessing a bladed article, culpability was high at Category A because it involved the possession of a knife. The judge considered that it was Category 1 because the offence was committed in circumstances where there was a risk of serious disorder. The offence was committed on a street with two others present. The starting point was 18 months' custody and the range was one to two-and-a-half years' custody. The judge gave the appellant 25 per cent credit for the guilty plea at the plea and trial preparation hearing in the Crown Court. The judge imposed a sentence of 12 months to be served consecutively, making a total of eight years' custody.

10. In his written grounds of appeal, Mr Clark had originally contended that the judge was wrong to categorise the wounding as involving high culpability or that the judge erred in placing the sentence at the top of the range because of the psychological harm. The single judge refused leave on these grounds. She was correct to do so. There was significant premeditation or planning here involving the waiting outside and the fashioning of a weapon. Those factors would place the offence clearly within Category A in terms of culpability. The judge was also entitled to place the sentence at the top end of the range for a Category 3A offence.

11. Similarly, the judge was correct to refuse leave to appeal on the grounds that the judge had mis-categorised the bladed article offence. Having seen the CCTV it is clear that the judge was entitled to find that the offence of possessing a bladed article occurred in circumstances where there was a risk of serious disorder.

12. In his other written grounds of appeal and in his helpful and focused oral submissions this morning, Mr Clark submitted that the judge had failed to have regard to the appellant's personal mitigation, that the appellant should have had a one-third reduction for his early guilty plea in relation to the bladed article offence and that as a matter respecting the principle of totality the total sentence of eight years should have been lower.

13. In terms of ground 1 and the wounding offence, there was the aggravating factor that it was committed whilst on bail. In addition it was committed under the influence of alcohol. The only possible mitigation was the fact that the appellant had no relevant previous convictions. Those matters would balance each other out. In those circumstances there is no error in fixing a sentence of seven years at the top of the relevant category.

14. Turning to ground 2 and the bladed article offence. First, it is clear that the appellant did not indicate that he was prepared to plead guilty to an alternative offence of possession of a bladed article when he was in the Magistrates' Court. Indeed, that form indicates that he was denying guilt for the offence. It was only at the plea and trial preparation hearing in the Crown Court that he pleaded guilty. That did not entitle him to a one-third reduction. It entitled him to the 25 per cent reduction that the judge gave. The only real mitigation was the absence of relevant previous convictions. The unfortunate accident that had caused injury to Mr Farmer was unconnected with these matters and does not in any way mitigate his culpability.

15. A starting point of 18 months reduced by about two months to reflect the mitigation would be indicative of a sentence in the range of 16 months. A reduction by 25 per cent to reflect the guilty plea would result in a sentence of 12 months. We do not see therefore that the sentence of 12 months that the judge imposed was, viewed in isolation, manifestly excessive.
16. Finally, in relation to totality, the judge was entitled to impose consecutive sentences as these were two separate offences committed at separate times in separate locations involving separate victims. Overall, the sentence of eight years for all that offending was just and proportionate. One of the offences involved possession of a bladed article in circumstances which could have led to serious disorder. The second was a vicious unprovoked and premeditated attack which had severe psychological consequences for the victim. The sentence of eight years overall, whilst severe, is not manifestly excessive. This appeal is therefore dismissed.

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