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Neutral Citation No. [2023] EWCA Crim 63

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202202425/A2



Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 19 January 2023

Before:

LORD JUSTICE DINGEMANS

MRS JUSTICE MAY DBE

HIS HONOUR JUDGE CONRAD KC

(Sitting as a Judge of the CACD)

REX

V

DANIEL ROBINSON

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MS G KELLY appeared on behalf of the Appellant.

MS C DUFFY appeared on behalf of the Crown.

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is a hearing of an appeal against sentence with the leave of the single judge. The appellant, a 24-year-old man who was born in March 1998, who was of previous good character, pleaded guilty to an offence of robbery which took place when he was aged 22 years and he was sentenced to a term of 2 years 4 months' imprisonment. The time at which Mr Robinson's plea was entered meant that he was entitled to 20 per cent credit for the plea. There was a co-defendant, Mr Dyson, who pleaded guilty at a later stage to attempting to cause grievous bodily harm and he was sentenced to a term of 3 years 7 months' imprisonment.

The factual circumstances

2. In the early hours of 9 July 2020 Mr Mohammed Mahmud went to the Warehouse Bar in Huddersfield town centre after he had finished work. The appellant and Daniel Dyson, who had been drinking, and were obviously affected by alcohol as appears from the Egress video footage. They entered the bar and one of them told a member of security staff that they had lost a significant amount of money and that someone had the money. Security staff told everyone to leave the bar as it was closing and Mr Mahmud went to leave the bar. He heard someone say: "Listen you" to which he replied: "I've nothing of yours". Mr Mahmud afterwards stood on the pavement outside the bar when he was approached by the appellant and Mr Dyson. This was the part that was captured by the video. The appellant pushed Mr Mahmud once and then pushed him again, causing him to fall backwards into a seated position whereupon Mr Dyson punched Mr Mahmud to the face. The appellant then grabbed Mr Mahmud's iPhone 11 from his hand, and that can be clearly seen again on the video. Mr Dyson continued to punch, kick, head-butt

and use his knee and leg to strike Mr Mahmud repeatedly over a period of time, leaving and then returned to kick at Mr Mahmud. This was the attempted causing grievous bodily harm to which Mr Dyson pleaded guilty. The attack, as we have already indicated, was captured on the town CCTV and that shows the limited force which had been used by Mr Robinson and the completion of the robbery and the separate offending against the same individual by Mr Dyson.

3. During the attack by Mr Dyson, Mr Robinson, who had remained around and was still obviously drunk, had attempted to stop Mr Dyson attacking Mr Mahmud on two occasions. However Mr Robinson did go up to Mr Mahmud and appeared to wave his finger or hand in his face and appeared to speak to him in an unfriendly manner.
4. The police arrived on the scene and Mr Dyson was detained as he attempted to run away. The appellant was also detained a short distance away having made off from the scene. Both the appellant and Mr Dyson were taken to Huddersfield police station.
5. The appellant was interviewed in relation to the offence on 9 July 2020 and he made no comment. In a subsequent interview the appellant admitted pushing Mr Mahmud and taking his phone but said that his intention was not to steal the phone. The appellant stated that the CCTV footage was horrible, which it was, and that he wished to apologise to Mr Mahmud. As a result of the offences Mr Mahmud sustained bruises and cuts to his face and bruising to his eye socket and we have seen the photographs showing that.

The sentence

6. A victim personal statement was obtained for the purposes of sentencing. That showed that Mr Mahmud said he used to deliver day and night for his work, but since the attack he had restricted himself to working days because he was frightened something similar might happen again. That had reduced his income.

7. A pre-sentence report was obtained. That set out Mr Robinson's reaction to the events and outlined some of the difficulties that he had suffered in his life. A psychiatric report from Dr Todd showed that Mr Robinson had ADHD and emotional instability and he had suffered from traumatic events in his early life which it is not necessary to relate. There was evidence from Fusion Housing showing that a Housing Support Worker had been supporting Mr Robinson since October 2021, so just over a year after the offending, and Mr Robinson had mental health issues, ADHD, conduct disorder, attachment disorder, anxiety and depression. Mr Robinson was reported to have been working hard to keep himself out of trouble and had wanted to obtain employment.
8. The mitigation was Mr Robinson's previous good character, his genuine remorse, his absence of any further offending since the event and a traumatic childhood, where he had been abused, and his immaturity for his age. The judge noted the reports and said that the robbery was medium culpability but only just and the harm was category 2, possibly the top of category 3. There was the aggravating factor that Mr Robinson had stayed around while the violence was going on although he had tried to stop Mr Dyson on two occasions.

The grounds of appeal

9. The grounds of appeal are that the sentence was manifestly excessive because the starting point was too high. The judge failed to have regard to the strong mitigation and the sentence should have been below 2 years and therefore should have been suspended.

Incorrect category

10. The prosecution had categorised this offending as being a category 2B offence for the purposes of the Robbery Guideline because there was medium culpability and harm was category 2. That would give a starting point of 4 years and a range of 3 to 6 years.

11. The defence had submitted that this was a category 3B offence because it was accepted that there was medium culpability but the lower category of harm was appropriate because the violence occurred after the robbery had been completed. We are very grateful to both Ms Kelly and Ms Duffy, who in their written and oral submissions outlined their submissions both on the correct categorisation and the appropriate disposal of this appeal.
12. In our judgment, this was a medium B culpability because it was not less culpability nor higher culpability and fell between categories A and C for the purposes of the Guideline. That is common ground.
13. The issue on this appeal is whether the judge was right to put this in category 2 or at the top of category 3. It is common ground that this was not category 1. Category 2 is for cases where category 1 or 3 characteristics are not present. Category 3 is where there is no/minimal physical or psychological harm to the victim.
14. The prosecution's submission is that there was psychological harm, because Mr Mahmud was frightened that something like this might happen again and he had started to work only in the day.
15. In our judgment, this was properly categorised as a category 3B offence. There was no or minimal physical harm from the robbery because, although we accept that Mr Mahmud later suffered real harm, that was because of the separate offending of Mr Dyson. Further, even though Mr Mahmud appears to have suffered more than minimal psychological harm, this seems to have been as a result of Mr Dyson's sustained assault, doing the best we can and having regard to the relative impacts of both incidents. In the same way that his more than minimal physical harm had been caused by Mr Dyson's separate and continuing violence.

16. The judge was, in our judgment, however right to note that it was an aggravating factor that Mr Robinson remained around while Mr Dyson was attacking Mr Mahmud. Although he did stop Mr Dyson twice, he did in some respects continue being involved by waving his finger at Mr Mahmud and shouting crossly at him. He was of course not the subject of any criminal charges for that behaviour.
17. Category 3B has a starting point of 2 years and a range of 1 to 4 years. The starting point of 2 years needed to be increased to take account of the aggravating factors of location and timing of this offence, being on the streets in Huddersfield outside a bar; the offence being committed when under the influence and obvious influence of alcohol; and Mr Robinson remaining present while Mr Dyson attacked Mr Mahmud, the victim of the robbery. There were mitigating factors including the fact that Mr Robinson did on two occasions, attempt to stop Mr Dyson attacking Mr Mahmud; no previous convictions; remorse; lack of maturity and the matters identified in the psychiatric report.
18. We can we consider that the aggravating factors outweighed the mitigating factors leaving a sentence of about 25 months. Mr Robinson was entitled to a 20 per cent reduction for plea leaving a sentence of 20 months. A sentence of 20 months is obviously a sentence that might be suspended. The real question therefore becomes whether this sentence should be suspended. We have noted the factors in support of suspension, namely a realistic prospect of rehabilitation and strong personal mitigation to which we have referred. We consider however that in this particular case the factor indicating that it would not be appropriate to suspend the sentence, namely that appropriate punishment can only be achieved by immediate custody, outweighs the factors supporting suspension. This is because this was serious offending, at night, outside a busy bar in Huddersfield which, as the CCTV footage shows, caused real

concerns to many members of the public. Although Ms Kelly pointed out that the most shocking parts of the incident were Mr Dyson's violence it was the appellant who had first pushed Mr Mahmud and who had then committed the robbery.

19. We therefore allow the appeal to the extent that we reduce the sentence of 28 months to one of 20 months. That sentence will not be suspended. We are very grateful to Ms Kelly and Ms Duffy for their helpful written and oral submissions.

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