IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2023] EWCA Crim 712

No. 202202705 A2

Royal Courts of Justice

Wednesday, 10 May 2023

Before:

LORD JUSTICE POPPLEWELL
MRS JUSTICE FARBEY
MR JUSTICE HILLIARD

REX
V
AARON SCOTT

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MR D TREMAIN appeared on behalf of the Appellant.

J U D G M E N T

MRS JUSTICE FARBEY:

1 The appellant appeals against sentence by leave of the single judge. On 9 April 2022, having pleaded guilty before magistrates, he was committed to the Crown Court for sentence in relation to four offences. On 14 April 2022, having been convicted after summary trial before magistrates, he was committed for sentence in relation to two further offences.

2 On 10 August 2022 in the Crown Court at Basildon before HHJ Leigh, the appellant then aged 32 was sentenced to all six offences as follows: Offence 1 (dangerous driving) – 16 months' imprisonment; Offence 2 (possession of an offensive weapon, namely a baseball bat) – nine months' to be served concurrently with the sentence on Offence 1; Offence 3 (assault occasioning actual bodily harm) – 23 months to be served consecutively to the sentence on Offence 1; Offence 4 (possession of an offensive weapon, namely a pole) – nine months' imprisonment to be served concurrently with the sentence on Offence 3, but consecutively to Offence 1; Offence 5 (dangerous driving) – 12 months, which we are told was intended to run concurrently with the sentence on Offence 1; Offence 6 (driving with no insurance) – for which no separate penalty was imposed. The judge failed to state the overall sentence. She also failed to explain the effect of the sentence to the appellant, which she was required to do by s.52 of the Sentencing Act 2020.

3 The Crown Court record sheet states that the overall sentence was four years' imprisonment. That reflects the judge's endorsement of a court official's record of the sentence on the sidebar of the Crown Court Digital Case System.

4 In addition, the appellant was disqualified from driving for 12 years, comprising a discretionary period of 10 years' disqualification and an uplift of two years (eight months under s.35A and 16 months under s.35B of the Road Traffic Offenders Act 1988) and until an extended retest was passed.

Facts

5 At about 2.30 p.m. on 24 September 2020, the appellant and an unknown man were outside the Ship Inn in Rochester, Kent. The appellant was seen on CCTV walking around a carpark with a metal pole in his hand which he tried to conceal. A third man, Mr Young, entered the car park shortly afterwards and walked towards his vehicle. He was approached immediately by the unknown man who punched him. Mr Young was able to avoid that punch. The unknown man continued to punch Mr Young while holding on to his jumper. CCTV footage showed the appellant running up behind Mr Young (who was the ex-partner of his sister) and hitting him repeatedly with the metal pole to the head and back. Mr Young was eventually able to free himself from his jumper and make his escape. As a result of the assault, he sustained bruises to his left arm and leg, lumps on his forehead and the back of his head, and scratches across his back. That incident was the subject of Offences 3 and 4.

6 At around 2.30 a.m. on 19 November 2021 the appellant failed to stop for police. He made off and drove at speeds of approximately 60 to 70 mph in a 30 mph zone through Erith. During the course of a pursuit lasting about 15 minutes, he turned onto the dual carriageway and drove the wrong way into oncoming traffic. As a result, pursuit by car was halted and the police helicopter unit took over. The appellant and other occupants of the vehicle were eventually apprehended and detained. Checks showed that the appellant was not a named driver on the vehicle's insurance policy. This incident was the subject of Offences 5 and 6. The appellant was on bail to the Magistrates' Court in respect of Offences 3 and 4 when these offences were committed.

7 In the early hours of the morning on 8 April 2022, police pursued a vehicle being driven by the appellant, activating their emergency equipment in an unsuccessful attempt to stop the appellant's car on the A127 in Southend, Essex. A pursuit then ensued which went onto the M25 over the Dartford Crossing at speeds in excess of 120 mph. The pursuit lasted 15 to 20 minutes, during which time the appellant drove at speeds in excess of 80 mph in a 50 mph zone, continually failed to stop, continued the wrong way around a roundabout, and went the wrong way down a 40 mph carriageway. There were also recorded speeds of 60 mph in a 20 mph zone and driving into oncoming traffic at 70 mph in a 50 mph zone before the car returned to the correct side of the carriageway. The car had gone several times onto the incorrect side of the carriageway and, again, the police helicopter was authorised to continue the pursued. The car eventually came to a stop in a car park, the occupants decamped and the appellant was apprehended. The vehicle was searched and a baseball bat was found between the driver's seat and driver's door. The appellant was on bail at the time. This incident was the subject of Offences 1 and 2.

8 The appellant had 18 convictions for offences between 2007 and 2016, largely for offences of dishonesty, failing to surrender and drug offences. His convictions included battery, for which he was fined in 2012, and driving a motor vehicle with the proportion of specified controlled drug above the specified limit for which he was fined in 2016.

Sentencing Remarks

9 In her brief sentencing remarks, the judge set out the basic facts of the various offences. She referred to and applied the sentencing guidelines for assault and possession of an offensive weapon and stated that there are no sentencing guidelines for dangerous driving. She indicated that she would take into consideration the principle of totality. She said that some of the sentences would be consecutive and some concurrent. She took into consideration that a number of the offences were committed while on bail which was an aggravating factor. She said that if there had been trials on all charges, the sentence would have been in the region of six years. She stated: "I am going to give, obviously, full credit in relation to that to also mitigate down for totality." She proceeded to impose the various sentences in the various terms we have set out above.

Grounds of Appeal

10 On the appellant's behalf, Mr David Tremain submitted in his grounds of appeal that the disqualification period was manifestly excessive. He did not challenge an overall sentence of four years in his grounds of appeal and has not been granted leave to argue that the four years endorsed on the court records is not the sentence pronounced. After the Court of Appeal Office pointed out in correspondence that the judge might be regarded as having imposed 39 months (in essence, 16 months on Offence 1 and 23 months on Offence 3 being consecutive to each other with all other sentences running concurrently), he filed a Note with the court indicating that, upon reflection, the true sentence was 39 months. He has not however filed an application for leave to amend his grounds of appeal or provided us with any amended grounds.

Discussion

11 We are in no doubt that, reading the sentencing remarks as a whole, the judge intended to impose a total sentence of four years and that she said just enough in her sentencing remarks for this court to consider that four years was the sentence pronounced. Not least her reference to a notional sentence of six years before discount for pleas and her decision to impose an uplift of two years to the discretionary element of the disqualification only makes sense on the basis of an overall four-year sentence. We have concluded that the lack of clarity is merely a slip of the tongue in relation to the sentence for Offence 2 which we are in no doubt she intended to be consecutive, in the sense of adding an additional nine months, bringing the total to 48 months after discount for pleas and mitigation. We are therefore not

persuaded that this is one of those cases where the court must resolve in the appellant's favour any discrepancy between the sentence pronounced and the sentence recorded by the court administratively: see *Venison* (1994) 15 Crim App R (S) 674, 626. Accordingly, there is no reason for this court to interfere with the overall sentence length.

12 We turn to the pleaded grounds of appeal. The judge was entitled to impose a lengthy period of disqualification. The appellant was being sentenced for two offences of dangerous driving. Both offences took place in the context of police pursuits and involved highly dangerous driving for a sustained period. In the first incident (Offence 5), the appellant drove the wrong way on a dual carriageway into oncoming traffic. In the second incident (Offence 1), he drove into oncoming traffic at 70 mph in a 50 mph zone. It was only a matter of luck that no one was seriously injured.

13 That said, the judge in our view failed to take into consideration that disqualification should not be so long that it would have a disproportionate adverse effect on the prospects of rehabilitation: *Campbell* [2021] EWCA Crim 1962 para 8. We regard the 10-year discretionary period as manifestly excessive.

14 We shall therefore quash the disqualification order and substitute an order that the appellant be disqualified from driving for a period of six years (comprising a discretionary period of four years and an uplift of two years) and until an extended test is passed.

15 Accordingly and to this extent, this appeal is allowed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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