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Neutral Citation Number: [2024] EWCA Crim 1243

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WOOLWICH
(HIS HONOUR JUDGE MANN) [S20240008]

Case No 2024/01580/A1

Thursday 3 October 2024

B e f o r e :

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
(Lord Justice Holroyde)

MR JUSTICE GARNHAM

MR JUSTICE SWEETING

R E X

- v -

CAYDON HUTCHINSON

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Mr T Smith appeared on behalf of the Appellant

J U D G M E N T

Thursday 3 October 2024

LORD JUSTICE HOLROYDE: I shall ask Mr Justice Garnham to give the judgment of the court.

MR JUSTICE GARNHAM:

1. On 24 February 2023, the appellant, Caydon Hutchinson, pleaded guilty before the Bexley Youth Court to possessing a bladed instrument. On 28 September 2023, before the same court, he changed his plea to guilty to a charge of wounding with intent. On 25 March 2024, in the Crown Court at Woolwich, the appellant (who by then was aged 18) was sentenced by His Honour Judge Jonathan Mann to three years and seven months' detention in a young offender institution for the wounding offence. No separate penalty was imposed for the possession of a bladed instrument.

2. The appellant now appeals against sentence by leave of the single judge.

3. The appellant had two co-accused, both of whom also pleaded guilty to the two offences. Tyler Stanbury was sentenced to 38 months' detention in a young offender institution. Simeon Olagundoye was sentenced to 48 months' detention. Simeon Olagundoye's application for leave to appeal against sentence was granted by the single judge on 6 August 2024. The appeal against sentence, which was listed before the full court on 10 September 2024, was dismissed.

4. The relevant facts may be summarised shortly. On 22 February 2023, at about 2.45 pm, the three young men entered Cineworld at the 02 Arena in Greenwich. The appellant and Simeon Olagundoye were 17 years of age at the time. Tyler Stanbury was 16. All three approached the victim, Saeed Ali Saeed. Simeon Olagundoye threw a punch at Saeed Ali

Saeed. Tyler Stanbury then removed from his waistband a katana type knife, with a blade of around 15 inches in length and stabbed the victim once to the left lower torso and again towards the arm. Simeon Olagundoye attempted to trip the victim as he tried to fight back.

5. The appellant subsequently joined in and threw a punch at Saeed Ali Saeed. The blade had fallen to the ground; Simeon Olagundoye picked it up and handed it to the appellant. Tyler Stanbury then threw the handle of the broken blade at Saeed Ali Saeed, causing him to stumble and fall. Tyler Stanbury and Saeed Ali Saeed then exchanged blows. The appellant went to stab Saeed Ali Saeed with the blade, before Simeon Olagundoye threw the handle of the blade, which he had picked up from the floor, at the victim. The appellant and the co-defendants then left the area. The appellant had the blade in his hand. Saeed Ali Saeed's friends attempted to administer first aid to him whilst seeking help. The whole incident was captured on CCTV.

6. Saeed Ali Saeed was taken to hospital with multiple stab wounds. The injuries were not life threatening. Saeed Ali Saeed was spoken to at the hospital and gave an account to officers but did not wish to provide a statement.

7. The appellant and the co-defendants were interviewed on 22 February 2023. Each had a solicitor and an appropriate adult. In in interview each answered "No comment" to questions asked by the police.

The Sentencing Exercise

8. The appellant was born on 10 February 2006 and so was aged 17 at the time of the offence and 18 at the time of sentence. He was of previous good character.

9. The judge said that this was a premeditated attack in which the three accused had acted

together. He found no difference between their respective culpabilities. He concluded that this was a case of high culpability that fell into harm category 3. He said that, in the case of an adult offender, the starting point after trial would be five years' custody. He found it was an aggravating feature that the attack occurred at a public venue (a cinema), where there were young people and children present. That would justify a sentence in the case of an adult of six years' custody.

10. The judge said that he had read this court's judgment in *R v ZA* [2023] EWCA Crim 596, the sentencing guidelines for the relevant offence, the guidelines for dealing with young people, and the guidelines for non-custodial sentences. He noted that the appellant had made "every effort to rehabilitate" himself, that he had had a difficult family life, but that he had been 'doing everything' he could to turn around his life. He said that detention had to be considered a sentence of last resort. However, the judge concluded that only immediate custody would be justified for so serious an attack. He allowed a one-third reduction from the six year starting point to take account of the appellant's age, and he deducted a further five months for his guilty plea on the day of the trial, which produced a final sentence of 43 months' custody. He deducted 198 days to take account of the time spent on an electronically monitored curfew. He imposed no separate penalty for the bladed article offence.

The Grounds of Appeal

11. On behalf of the appellant, Mr Tobias Smith advanced two grounds of appeal. First he argued that the judge erred in determining that a sentence of immediate custody ought to be imposed. Second, he said that the judge failed to reduce the sentence imposed in any way to reflect the appellant's substantial mitigation, apart from the one-third reduction for his age.

Discussion

12. We see no possible grounds for criticising the judge's conclusion that only a custodial

was appropriate. The appellant was part of a group of three young men who mounted a vicious and unprovoked attack, using fists and a machete, on a young man who had been sitting with friends outside a cinema. As it happens, the injuries were not life threatening but they could very easily have been fatal. That this behaviour was wholly out of character for the appellant is a relevant element of mitigation but it does not detract from the seriousness of the offending.

13. The appellant had just reached his 17th birthday at the time of the offence. The judge correctly treated him as a young person and had proper regard to all the relevant guidelines and to the principles identified in *ZA*.

14. *ZA* is required reading for any judge sentencing a young person. In that case, in giving the judgment of the court, May J restated the principal aim of the youth justice system as being to prevent offending by children and young people and the welfare of the child or young person concerned. She emphasised the necessity for an individualistic approach in every case and that "a custodial sentence should always be used as a last resort". She referred to paragraphs 6.46 to 6.49 of the guidance as follows:

"61. ...

'When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15-17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically... the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.' (para 6.46)

'The individual factors relating to the offence and the child or young person are of the greatest importance and may present good reason to impose a sentence outside of this range...' (para 6.47)

'The welfare of the child or young person must be considered when imposing any sentence but is especially important when a custodial sentence is being considered. A custodial sentence

could have a significant effect on the prospects and opportunities of the child or young person and a child or young person is likely to be more susceptible than an adult to the contaminating influences that can be expected within a custodial setting...' (para 6.49)"

15. All this was properly considered and applied by the judge here. Applying the relevant guidelines for an adult after a trial, the judge said that a starting point of five years' custody would be appropriate. That was correct. He allowed a reduction of one-third for the appellant's age but did so, not mechanistically, but having considered the evidence as it related to this individual. That was not just a view the judge was entitled to reach; it was plainly the correct view on the facts of this case. He allowed a ten per cent reduction for the guilty plea. Given the time at which the plea was entered, that too was correct.

16. The judge had also to take into account the aggravating and mitigating features of the case. He was entitled to regard the fact that the offending took place in a public place (the entrance to a cinema) and in front of a group of other young people as a significantly aggravating factor. There were also mitigating factors. However, there is nothing in his sentencing remarks to suggest that the judge made any reduction to the sentence to reflect that mitigation.

17. Of particular significance it seems to us are the following matters. First, at the time of the offending the appellant was a young man of good character with no previous convictions. Since the offences there have been no further incidents of suspected criminality; the appalling behaviour of which he was guilty on 22 February 2023 appears to have been out of character.

18. Second, despite a somewhat unstable upbringing, during which he had been exposed to family breakdown and domestic violence, he had done well at school and had a promising future. A letter from his current employers, who were aware of the allegation, indicated that he was performing well. Third, he had himself been the victim of a serious assault which it

was thought by his family had had a lasting impact; after his arrest and with the assistance of the Youth Offending Team, the appellant sought and received treatment for his mental health. Fourth, over the course of his time on bail, the appellant had responded positively to the Youth Offending Team intervention and had done all that was required of him; he appeared determined to address his offending behaviour.

19. In our judgment, this personal mitigation ought to have been addressed expressly by the judge and ought to have led to some adjustment in the sentence. The judge's failure to do so amounted to an error of principle. In our view, the mitigation noted above balanced out the aggravating features noted by the judge.

20. As the judge found, the appropriate starting point was five years' custody. In view of our conclusion that the aggravating and mitigating factors balance each other out, and making the appropriate reduction of ten per cent to reflect the late guilty plea, the appropriate sentence for a mature adult offender would be four years and six months' imprisonment. Having regard to the appellant's age at the time of the offence, we conclude that the appropriate sentence is three years' detention in a young offender institution, from which the period of 198 days in respect of the curfew falls to be deducted.

21. To that extent, the appeal against sentence is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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