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Neutral Citation No. [2024] EWCA Crim 1502



IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT NEWCASTLE-
UPON-TYEN

MR RECORDER HEDWORTH

CASE NO 202401625/A1

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 26 November 2024

Before:

LORD JUSTICE DINGEMANS

MRS JUSTICE MAY

RECORDER OF BRISTOL
(HIS HONOUR JUDGE BLAIR KC)
(Sitting as a Judge of the CACD)

REX

V

MARK BRADLEY

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR P SCHOFIELD appeared on behalf of the Appellant.

J U D G M E N T
Approved

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an appeal against sentence which raises issues relating to the sentence of a person who was a child or young person when he committed the offences but who was sentenced after he had become an adult. The appellant, Mark Bradley, was born on 1 July 2004 and he is now aged 20 years. In the Crown Court at Newcastle-upon-Tyne, Mr Bradley was sentenced on 2 April 2024 for offences of theft of a motor vehicle, aggravated vehicle taking and robbery. The offence of robbery was committed when the appellant was then unconvicted and aged 16 years and 1 month. The appellant was given an overall sentence of 4 years' detention in a young offender institution.
2. So far as the robbery is concerned, on 8 August 2020, so when, as we have already indicated, the appellant was aged 16 years and 1 month, Tom O'Henley, who had complex neurodevelopment issues, had been out with his girlfriend. He returned home and had gone to bed at 11.00 pm. At around half midnight, Mr O'Henley and his girlfriend were woken by banging and he went to find out what was going on. When he opened the door, around seven to eight individuals, which included the appellant and a Kieron Lowrey (who was the appellant's co-defendant and who was aged 18 at the time) barged into the flat and they almost knocked Mr O Henley over as they did so. They roamed around the flat for about 15 minutes saying they were looking for someone. They then left the flat. The appellant and Mr Lowrey were last to leave and they confronted Mr O'Henley, stating that until they found the person they were looking for they were going to take his Xbox. Mr O'Henley tried to stop the appellant and Mr Lowrey but he

was threatened with a Hoover pipe and was told that if he told anyone he would be stabbed. Mr Lowery picked up the Xbox from under the television and the appellant swung the Hoover cable around. The appellant and Mr Lowery left the address and a witness saw the appellant and Mr Lowery leaving and called the police. Both were arrested by the police. In interview, the appellant answered “no comment”.

Background

3. In March 2021 (the robbery was August 2020), Mr O’Henley had been out at a shop when he saw Mr Lowery cycle past. Mr Lowery shouted at Mr O’Henley calling him “a grass” and in a later sighting the following week, Mr Lowery told Tom O’Henley that he was lucky he did not stab him and batter him. It is relevant to record, because one of the grounds of appeal is disparity, that in relation to this case Mr Lowery failed to surrender at a ground rules hearing and at a section 28 hearing in December 2022.

4. The appellant was convicted in the North Northumbria Juvenile Court from 7 October 2020, so just under 2 months after the robbery, of a theft from a motor vehicle committed on 24 September 2020, so just over a month-and-a-half after the robbery. He was given a 4-month referral order. Other convictions occurred for possessing an offensive weapon in a public place, assault occasioning actual bodily harm on 20 March 2020 (which was some 5 months before the robbery), theft from a motor vehicle on 5 August 2020 (some 3 days before the robbery) and a series of thefts and interference with motor vehicles at the end of August and beginning of September 2020 (so some 20 days after the robbery). The appellant’s convictions continued, including for a battery, theft from motor vehicles, burglaries, so that by the end the appellant had ten convictions for 38 offences. The

referral order was extended and then revoked and replaced with a youth rehabilitation order, with curfew and tagging requirements added later on and then a detention and training order of 4 months was imposed.

5. On 11 July 2023, when the appellant was aged 19 years and 10 days, Stephanie Lawson had gone to bed leaving her Renault Clio, worth some £15,000, outside her house in Jarrow. At around 2.50 am she was woken by a neighbour banging on her bedroom window. The neighbour said that they has seen three males trying to steal her car. Two of the males had ran off and the third had tried to drive the car but kept stalling. The car had only been bumped down the road a short distance and that male then also ran off. The police were called and Stephanie Lawson moved the car between two other cars in order to jam it in. At 6.30 am Stephanie Lawson heard a bang, looked on her CCTV camera, to see her car being driven off. Police officers recognised the appellant as being the driver.

6. On 13 July 2023, when the appellant was aged 19 years and 12 days, Mr Anderson left his work van outside his home address in Jarrow. The appellant and Mitchell Morse subsequently broke into the vehicle and drove off in it. There was a tracker installed in the van which showed it was taken at about 3.00 am. At about 3.30 the van came to the attention of the police in an unmarked car. PC Baker illuminated his lights; the van failed to stop. The vehicle was driven on the wrong side of the road before mounting a pavement and colliding with metal fencing. The appellant and Mitchell Morse made off but they were located by a Police Dog Unit. The cost of repairs to the van was about £10,000.

7. On 18 September 2023, the appellant (then aged 19 years) pleaded guilty before Sunderland Magistrates' Court to the theft of the motor vehicle belonging to Ms Lawson and he was committed for sentence. On 5 August 2023, in the Crown Court at Newcastle, the appellant changed his plea to guilty for an offence of aggravated vehicle taking, relating to the taking and crashing of Mr Anderson's van, and on 22 January 2024, in the Crown Court, again the appellant changed his plea to guilty for the offence of robbery relating to the events of August 2020. In the robbery case there had already been a pre-trial preliminary hearing, a video recording and cross-examination, pursuant to section 28, of the victim, and an adjournment of the first trial because of a lack of court time.

Sentencing

8. At the sentencing hearing on 2 April 2024, the robbery was categorised as less sophisticated commercial, category B because of the threat of violence from the hoover, and category 2, which gave a starting point for an adult of 4 years with a range of 3 to 6 years. Aggravating factors were identified as the threats to prevent reporting to the police, the location of the offence (in Mr O'Henley's home) and Mr O'Henley's particular vulnerabilities. The theft of the motor vehicles and aggravated vehicle taking were also categorised although it is noted that there was no Crown Court guidelines for aggravated vehicle taking.
9. When sentencing, the judge recorded that he had been asked to give the appellant a chance but that it was apparent from the antecedent history that he had been given many

chances. The only sentence that could be imposed was detention in a young offender institution, which would be kept as short as possible. The robbery was categorised as B2 and aggravated by previous convictions, but reduced for age. The sentence of 40 months was therefore reduced to 36 months to give credit for plea. The theft of the Renault was 18 months reduced to 12 months for a plea consecutive and the aggravated vehicle taking was 12 months reduced to 8 months for plea, to be served concurrently to take account of totality. That gave the total sentence of 4 years, half of which would be served with credit for time in custody, save for the period when he had been recalled on licence. The disqualification period was 4 years but it seems, doing the best we can with the sentencing remarks and with the assistance of Mr Schofield this morning, that the judge's intention was to disqualify the appellant from driving for 2 years and then give an extension or uplift period of 2 years.

10. So far as other orders are concerned, the judge imposed a statutory victim surcharge of £34, the disqualification from driving for 4 years but also an order restraining the appellant from contacting Mr O'Henley and is, so far as is material to the appeal, "(ii) not to go within 100 metres of victim Tom O'Henley, or any place, address where he is reasonably expected to be".

The grounds of appeal

11. The grounds of appeal are that the sentence was manifestly excessive because it failed to reflect that the appellant was 16 at the time and that the co-accused had been 18 years, insufficient consideration was given to the fact that this offence predated the appellant's other convictions and he did not appear before the Magistrates' Court until he was 18.

The sentence did not reflect the fact that the appellant had been sentenced to custody for three other offences but which, if the appellant had been sentenced at the same time, would have been reduced for totality. The sentence passed on the appellant and co-accused was disproportionate and the overall sentence did not sufficiently take into account totality. It was also said the length of the restraining order (5 years) was manifestly excessive and condition (ii) was unworkable.

The Proper Sentence

12. It does not appear that the judge was expressly referred to Sentencing Council Guidelines for Sentencing Children and Young Persons or the Totality Guideline. As appears from *R v Ahmed* [2023] EWCA Crim 281; [2021] 1 WLR 1858, whatever may be the offender's age at the time of conviction and sentence, the Sentencing Council's Overarching Guidelines: Sentencing Children and Young Persons is relevant and must be followed for a youth offender, unless the court is satisfied that it would be contrary to the interests of justice to do so. The court must have regard to, although it is not necessarily restricted by, the maximum sentence which was available in the case of the offender at, or shortly after the time of the offending, and the court must take as its starting point (which might be different from the end point) the sentence which it considers was likely to have been imposed if the child offender had been sentenced shortly after the offence. Where some form of custody was available, the court is not necessarily bound by the maximum applicable to the child offender, the court should only exceed that maximum where there's good reason and the mere fact the offender has now attained adulthood is not in itself a good reason. Subsequent events may enable the court to be sure that the culpability of a child offender was higher or perhaps lower. We also note that in

paragraph 31 of *Ahmed* reference was made to the fact that a borstal sentence of 2 years (which is 2 years' detention and then 2 years supervision) equated to a sentence of 4 years' imprisonment.

13. It is apparent that the judge had some regard to totality because he made the sentence for aggravated vehicle taking concurrent. The judge was not directed to that part of the totality guideline on sentencing for offences committed prior to other offences for which an offender has been sentenced. As that guideline makes clear, the court should first reach the appropriate sentence for the instant offences. Taking into account totality in respect of the instant offences alone, the court then has a discretion whether to make further allowance to take into account the earlier sentences whether or not they had been served in full. The court should consider all the circumstances in deciding what, if any, impact the earlier sentence should have had on the new sentence.

14. So far as the grounds of appeal are concerned, we deal first with the issue of the sentence imposed on Mr Lowrey. In our judgment, there is nothing in that point. The judge had careful regard to the respective records of the respective defendants and also had regard to the offences for which he was sentencing this appellant. It may be that the sentence on the appellant's co-defendant was merciful but that that does not mean that this appellant should not properly be sentenced for what he did.

15. However, in this case, the judge did not refer to the sentence which was likely to have been imposed on the appellant shortly after the offence as a starting point, whatever might have been the end point. Further, the judge did not consider whether it was

necessary to make further allowance for totality in respect of the fact that he was sentencing for the robbery which had been committed before the other offences for which he had been subsequently sentenced.

16. Here the appellant was 16 at the time of the robbery and with no previous conviction or cautions, although he was later convicted of some earlier offences. Given all that we now know about the substantial number of crimes which the appellant was committing, we consider that it is very likely that a Youth Court would have given him a detention and training order when sentencing for the offence of robbery. At the time detention and training orders could (before the 2022 amendment) only be given for certain periods and, in our judgment, an appropriate detention and training order which would have been imposed would have been 18 months' detention and training order. We also have regard to the fact that the appellant served sentences for matters committed after the robbery, at a time when he was contesting the robbery and the robbery offence was working its way through the courts.

17. Having regard to all those features, in our judgment, the appropriate sentence of detention in a young offender institution should have been 18 months and not the 3 years imposed by the judge. That 18 months remains consecutive to the theft which was 1 year and therefore, that gives an overall sentence of 2½ years' detention in a young offender institution.

18. We then turn to deal with the other matters raised by the appeal, which is the restraining order. In our judgment, there is force in the proposition that the second subclause (ii) of

the restraining order which is “or any place, address, where he is reasonably expected to be” is unworkable and unnecessary. There are obvious difficulties in proving where a person is reasonably expected to be, so that the scope of the subclause becomes uncertain. That means that the appeal against the restraining order is allowed to the extent that (ii) now reads “not to go within 100 metres of the victim Tom O’Henley” and the other part is deleted. The remainder of the restraining order remains in force.

19. As far as the complaint of the period of time of 5 years is concerned, in our judgment, the judge was entitled to take that period into account given the appellant’s criminal and continuing criminal activities.

20. That only leaves then the question of the uplift or extension in relation to the disqualification from driving. For all the reasons which we have given, the disqualification period is 2 years. The aggravated vehicle taking, for which there would be an extension period, was made concurrent, so there is no extension period. That means that there has to be an uplift and, on the materials before us, it seems that the uplift would be half of the custodial period of 30 months and therefore the uplift is a period of 15 months.

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

Lower Ground, 46 Chancery Lane, London WC2A 1JE

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk