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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
NCN: [2024] EWCA Crim 618  
CASE NO 202400781/A2



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Thursday 16 May 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE YIP

MRS JUSTICE HILL

REX

V

JOSHUA GILLIGAN

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MR L STEWART appeared on behalf of the Appellant.

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**J U D G M E N T**

LADY JUSTICE MACUR:

1. On 2 February 2024, Joshua Gilligan (“the appellant”), then aged 20, pleaded guilty to robbery, contrary to section 8(1) of the Theft Act 1968 and having an offensive weapon, contrary to section 1(1) of the Prevention of Crime Act 1953, and was sentenced to a total of 18 months’ detention, with 4 months having been imposed concurrently for possession of the offensive weapon. He appeals against sentence with the leave of the single judge.
2. The victim of the robbery was aged 16 at the time of the offence, on 5 June 2023. He had left his school in the early afternoon, after completing one of his GCSE examinations, and set off to walk to McDonald’s in the town centre. As he was walking, he could see ahead of him a group of approximately 12 males and was immediately, and understandably, fearful and wary of them, since a number were wearing balaclavas and dark clothing. He crossed the road to avoid them but they followed and subsequently blocked his path. One member of the group told him to walk down a side road which would take him from the main road. He refused. He started to back away from the group to put some distance between them. However, the appellant, who was wearing a balaclava, said: “What do you have?” The victim replied that he did not have anything and when asked where his phone was, he replied that he did not have one. The appellant demanded that the victim hand over a mobile telephone and showed his left fist upon which he was wearing a knuckleduster. The victim attempted to run away but the appellant grabbed him and the victim’s mobile phone fell out of his pocket. The appellant picked it up. The victim ran away but was followed by another member of the group, who demanded he provided the PIN to his telephone. Understandably, in the circumstances we have described, he did so. The victim ran from the scene towards a public house where members of the public assisted him to call the police and his mother.

The victim was able to describe the appellant.

3. Police officers went to the scene soon after, found the appellant and arrested him. He was interviewed with an appropriate adult. He did not deny the offence, nor attempt to minimise the circumstances detailed by the victim. He said that he had visited Chesterfield to see a friend and fell in company with a large group of males whom he wished to impress, for which reason he had been wearing a balaclava. He had taken possession of the knuckleduster approximately 1 hour before the incident. He made frank admissions of his participation and described his apparently leading role in the confrontation, intimidation and implicit threats of violence towards the victim which had resulted in the robbery. He pleaded guilty at the first opportunity and was of previous good character.

### ***Sentence***

4. The victim prepared a personal statement in which he said he was not used to going to places by himself and, as a result of the incident, he did not feel he could do so again. He had never been so scared, especially when he became aware that members of the group were carrying weapons. His phone had been stolen so he could not summon help; he felt helpless and scared. The incident had a lasting impact on him. He was no longer able to use public transport or to go out unaccompanied. He had panic attacks at the thought. He was unable to concentrate on his remaining GCSE examinations, which undoubtedly affected his results negatively. The incident had also had a distressing effect upon his whole family.
5. A short form pre-sentence report was available to the judge. The appellant had acknowledged the author, his offending as “wrong”: “I know that now and I feel terrible”.

He had felt “coaxed and pressured” into taking the knuckleduster from one of the group and he wanted to fit in and impress his friends and “gain their respect”. He volunteered that it probably had an impact on the victim’s mental health and he (the victim) must be paranoid about going out. He then went on to express remorse for the offences and stated that he felt terrible for what had happened and that he was really sorry for how his actions had impacted on the victim and his daily life. He apologised for his offences and stated he would like also to apologise to the victim.

6. The appellant reported to the author of the report details of a difficult childhood. He had been known to Birmingham Children’s social care. He had been diagnosed with autism, ADHD and depression and anxiety from the age of 10, for which he received medication. He had been bullied at school and attempted suicide when aged 11, following which he was admitted to a children’s psychiatric ward. In the time before sentence, he had started to self-harm by cutting and had suicidal ideation which led to an increase in medication and a referral to the Crisis Team. He was identified by the author as “a young adult yet to reach his full stage of maturity” who would be vulnerable in a custodial environment. The author of the report proposed a 24-month community penalty with rehabilitation activity and unpaid work requirements. We note that the appellant’s mental health issues as indicated were and are independently verified and well documented in his medical records.
7. The judge also received a letter, dated 4 February 2024, from the appellant’s father, with whom he had started to live immediately before sentence, confirming the various diagnoses and indicating that the appellant had been known to CAMHS (Child Adolescent Mental Health Service) from the age of 5. Further, he detailed an incident which had occurred in February 2023, in which the appellant had been lured to a

property in Birmingham, forced to remove his clothing and was badly beaten and held against his will for several hours. During this time, he had been threatened with a machete and was told that he would be killed if he told anyone. He was finally released without his jeans and mobile phone and threats were made to harm him and his family if he went to the police. He had suffered a broken nose, a broken thumb and bruised ribs along with multiple bruises all over his body during the period of his false imprisonment. The police were involved and this was investigated, although to date it is not known whether anyone has been prosecuted for the offence. The incident had caused the appellant to suffer from PTSD and to continue to have regular flashbacks of the assault. There had been targeting of his previous home address by those who it was thought had been responsible for the assault and false imprisonment.

8. In November 2023, he had significantly self-harmed and tried to commit suicide again. He was admitted to hospital overnight. Leading up to his sentencing, the appellant had frequently experienced panic attacks and struggled greatly with his anxiety. His father noted his appetite and sleep had been severely affected and he had lost a lot of weight and had struggled to sleep at night. There were other references in support of the appellant and he too had written to the judge of his own remorse.
9. Sentencing the offender, the judge determined the appellant's offending to fall into medium culpability and category 2 harm of the relevant sentencing guideline, which indicated a starting point of 4 years with a range of 3 to 6. So far as the judge was concerned, the "only real aggravating feature is that this was a group activity ... and you took a leading role". That meant upward movement from the starting point, prior to him taking into account a number of mitigating factors, namely lack of previous convictions, remorse, documented evidence of autism and ADHD which "could" impact upon his

behaviour, particularly in a group setting, comparative youth and demonstrated immaturity. Taking all those matters into account after trial, he said he would have sentenced the appellant to 3 years' detention, with credit for plea to bring it down to 2 years. However, the judge then said that, upon further reflection, he thought that the factors he had identified in terms of mitigation would bring the sentence down to 18 months' detention and subsequently, upon invitation from Mr Stewart, who appears before us today, attempted to indicate the necessary mathematical calculation which would lead to such a figure. Pertinently, as we will describe below, the judge then identified the most difficult question to be that of whether or not to suspend the custodial sentence.

10. The judge referred to the Sentencing Guideline on the Imposition of Community Sentence and addressed the points of "realistic prospect of rehabilitation" in favour of the appellant, who had "good personal mitigation" which however he did not regard to be strong. He did not regard the appellant to pose a risk to members of the public, however, he considered that the appropriate punishment for the offending could only be achieved by an immediate custodial sentence.

### ***Discussion***

11. There are six drafted grounds of appeal but we consider that they may be appropriately and adequately summarised as a submission that the sentencing judge failed to give sufficient weight to the extent of the appellant's mental health issues, attendant emotional immaturity and consequent vulnerability to adverse peer pressure, leading him to commit the offences and which would impact upon the appellant's mental wellbeing and undermine the prospect of successful rehabilitation if sent to a custodial setting. We

consider that other matters raised in the written advice on appeal arising from the appellant's 'openness' in interview do not assist us in determining the issue of whether the judge was wrong in principle not to suspend sentence, although we agree they do speak to the appellant's lack of sophistication and artifice and therefore indicate his expressed remorse and regret to be sincere.

12. We do agree with the sentencing judge's categorisation of the offence and with the single judge's comment that the circumstances of the offence would "ordinarily indicate an immediate custodial sentence for a defendant aged 19 at the time" regardless the principle to be derived from R v Green (Jaiden) [2020] EWCA Crim 1709, that an offender's chronological age of maturity does not present a cliff edge for sentencing purposes.
13. Specifically, we make clear that but for the mental health issues that are at play here, we would regard the sentence of 18 months as lenient. The adverse impact upon the victim was entirely in keeping with the offence he described and for which the appellant accepts responsibility. The course we propose to follow does not indicate that we minimise the nature of the offence or the degree of psychological harm that it has caused to the victim and his family.
14. Whilst it would be inappropriate for a sentencing judge to speculate that the incident in which the appellant was himself involved as a victim in 2023 could explain his suggestibility to malign prompt, or otherwise cause him to seek unsuitable peer approval, there is nevertheless convincing independent evidence of the same. Consequently, the appellant's previous good character and congruently expressed and apt insight post his offending is an important feature of the overall assessment to be made. The prospect of his reoffending is reported to be low and that of his successful rehabilitation is high,

subject to appropriate, benign intervention as the recent prison report appears to confirm as also the interaction with his father immediately before sentence.

15. In the exceptional circumstances of this case, we are persuaded that the judge failed to make adequate allowance for the significant mental health issues with which this appellant has long suffered. The constellation of the appellant's youth and the extent and effect of his mental disability corroborates the appellant's expressed rationale for his prominent involvement in an incident that was frankly out of character and for which, we are satisfied, he has expressed genuine remorse, both for his own involvement in the offence itself and the impact it has had upon his victim.
16. With respect, we disagree with the sentencing judge that the combination of these factors did not qualify as 'strong personal mitigation' to be weighed in the balance when considering whether an immediate custodial sentence was inevitable. As already indicated, we acknowledge that it will only be in an exceptional case that an offence taking place, in the circumstances we have described above, will warrant anything other than an immediate custodial sentence, regardless that the defendant is comparatively young and of good character. However, the exceptional circumstances we identify call for a bespoke approach to facilitate this appellant's rehabilitation and reform, as the Overarching Guidelines on Sentencing Offenders with Mental Developmental Disorders make clear.
17. Consequently, we are satisfied that this appellant should, as Mr Stewart urges upon us, have been regarded as on the cusp of detention by reason of his personal mitigation, and that it was possible to punish and to deter his further offending, by imposing a suspended custodial sentence with an additional rehabilitation activity requirement, the better to secure his rehabilitation.



18. We conclude that an immediate custodial sentence was wrong in principle and we allow the appeal. The unusual and prominent circumstances of the offender's mental disability requires particular attention to address his reform and rehabilitation. Therefore, despite the fact that he has served the equivalent of 6 months' imprisonment, we nevertheless substitute the previous custodial sentence of 18 months' imprisonment albeit suspended for 2 years, with a 15-day rehabilitation activity requirement.
19. LADY JUSTICE MACUR: It is necessary, Mr Stewart, to explain the consequences of the breach of the suspended sentence to Mr Gilligan. Given his difficulties, it will be necessary for you to reinforce that which I now say in Court. The nature of a suspended sentence means that, if during the currency of the 2-year suspension, this appellant commits any further offence which is punishable by imprisonment, this 18-month sentence can be imposed in part or in full consecutively or concurrently to any further sentence of imprisonment that is ordered to be served. To that effect, it hangs over him for 2 years and will, we hope, in addition to the support that he is to receive, in the nature of the rehabilitation activity requirement and also from family members, be sufficient to mean he will not reappear before the courts.

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

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