

**WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.**

**This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.**

IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2024] EWCA Crim 686



No. 202303100 A5

Royal Courts of Justice

Thursday, 9 May 2024

Before:

LORD JUSTICE POPPLEWELL

MRS JUSTICE THORNTON

MR JUSTICE CAVANAGH

REX

v

LEIGHTON WILLIAMS

Computer-aided Transcript prepared from the Stenographic Notes of  
Opus 2 International Ltd.

Official Court Reporters and Audio Transcribers

5 New Street Square, London, EC4A 3BF

Tel: 020 7831 5627 Fax: 020 7831 7737

[CACD.ACO@opus2.digital](mailto:CACD.ACO@opus2.digital)

Ms H. Douglas appeared on behalf of the Applicant.

The Crown were not represented.

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

LORD JUSTICE POPPLEWELL:

- 1 The applicant was convicted on 4 June 2008 of an offence committed on 24 August 2007 of causing grievous bodily harm with intent, contrary to section 18 of the Offences against the Person Act 1861, following a trial before Mr Recorder Rouch QC and a jury sitting in the Crown Court at Cardiff. He was sentenced by the recorder on 26 June 2008 to an indeterminate sentence of imprisonment for public protection ("IPP") with a minimum term of detention of 30 months. He was aged 19 at the time of the offence, and 20 at the date of sentence. He remains in prison serving that sentence 16 years later, although he has twice been released on licence and recalled, having been out on licence for about six years of that period.
- 2 On 2 September 2023, the applicant lodged an application for leave to appeal against sentence of his own fashioning, having received negative advice from trial counsel at the time he was sentenced. His application, together with the necessary application for a very lengthy extension of time, was referred to the full court by the single judge who made a representation order for counsel to advise and represent him. Grounds of appeal were perfected by Ms Douglas who has appeared before us. The sole ground of appeal is that the sentence imposed was wrong in principle because the recorder did not correctly apply the test of dangerousness and could not properly have concluded that the applicant posed a significant risk of causing serious harm to the public from future offending.

The Offence

- 3 The offence occurred late in the evening in a park in Caerphilly. The applicant was with a group of friends or acquaintances who had been drinking all day; so, too, had the victim and the friends and acquaintances he was with. The victim and the applicant knew each other. While in the park there was a disagreement between the victim and others. The applicant, seemingly unprovoked, lost his temper and hit the victim several times to the face. Others then punched and kicked the victim. The victim sustained a fractured eye socket, fractured cheekbone, fractured jaw, fractured nose and bruising to his head, body and face. The recorder described the applicant's part as "a gratuitous" use of violence and "not for any reason but because you wanted to".
- 4 In interview, the applicant denied that he had been in the park at the time of the assault on the victim (who had identified him by name as his attacker in his statement). The applicant's defence at trial is not clear from the papers, but after trial the pre-sentence report recorded him as admitting to having committed the offence and explaining that he had not pleaded guilty because he had wanted to avoid a further term of imprisonment.
- 5 At the time of sentence, the applicant had four previous convictions for eight offences. The only relevant one, so far as the appeal is concerned, was an offence of causing grievous bodily harm with intent, contrary to section 18, which had been committed on 8 December 2004 when the applicant was aged 17. For that offence he was sentenced to three years' detention in a young offender institution, having been released a little over a year before he committed the index offence. An information sheet annexed to the list of antecedents records that in the earlier section 18 assault the applicant "violently assaulted and robbed a male person by kicking and punching him to the head in order to steal personal property".
- 6 The pre-sentence report recorded the separation of the applicant's parents following his father's abuse of his mother, for which his father subsequently served a term of imprisonment. The applicant described how seeing his mother's injuries made him feel "mad" and how they had been upsetting for him to witness.

- 7 Ms Nash, who prepared the report, assessed the applicant as presenting a high risk of harm to the public and concluded that the risk was "exacerbated by the misuse of alcohol and poor thinking skills". In her assessment, unless the applicant's alcohol misuse and anger management skills were addressed, the risk he posed to the public would remain high as his violent behaviour had occurred when he was under the influence of alcohol. The report also concluded that the applicant fully acknowledged that alcohol abuse was the underpinning feature of his behaviour, and it recorded her saying that he wanted to complete any programmes addressing such alcohol abuse which would help with dealing with it.

### Sentencing

- 8 When it came to sentencing the applicant, the recorder said that a section 18 offence was an offence specified in Schedule 15 of the Criminal Justice Act 2003. He stated that although the sentence was punishable by a life sentence, it was not sufficiently serious to justify that. He referred to the previous section 18 offence and said that the index offence had occurred within about a year of release from the sentence for that earlier offence. He then went on to say:

"That is why I accept the presumption that you are a danger and you pose a significant risk to the public."

He went on:

"Because you have already been convicted of a section 18 offence when you committed this offence I am required by law to assume that there is a significant risk to the public of serious personal injury by you committing further offences. I do not consider it would be unreasonable to conclude that there is such a risk.

In coming to that conclusion I have taken into account the nature and circumstances of your current offence and of your previous offence. I have taken into account the pattern of behaviour in which those offences occurred, the drinking and the like, and taken into account all I know about you."

- 9 The recorder then identified that the notional determinate sentence he would have imposed was one of five years' detention, half of which was 30 months, and imposed 30 months as the minimum period to be served before the Parole Board could consider the applicant's release.

### The Law

- 10 The relevant law at the time was contained in sections 225 and 229 of the Criminal Justice Act 2003 (as then in force). Although in his sentencing remarks the recorder did not expressly refer to those provisions, it is clear from his language that he was familiar with them and was seeking to apply them. In their relevant part, and as in force at the time, they provided as follows:

"225 Life sentence or imprisonment for public protection for serious offences

(1) This section applies where -

(a) a person aged 18 or over is convicted of a serious offence committed after the commencement of this section, and

(b) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by him of further specified offences.

(2) If -

(a) the offence is one in respect of which the offender would apart from this section be liable to imprisonment for life, and

(b) the court considers that the seriousness of the offence, or of the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life, or in the case of a person aged at least 18 but under 21, a sentence of custody for life,

the court must impose a sentence of imprisonment for life.

(3) In a case not falling within subsection (2), the court must impose a sentence of imprisonment for public protection or in the case of a person aged at least 18 but under 21, a sentence of detention in a young offender institution for public protection.

... "

#### 11 Section 229:

"229 The assessment of dangerousness

(1) This section applies where -

(a) a person has been convicted of a specified offence, and

(b) it falls to a court to assess under any of sections 225 to 228 whether there is a significant risk to members of the public of serious harm occasioned by the commission by him of further such offences:

...

(3) If at the time when that offence was committed the offender was aged 18 or over and had been convicted in any part of the United Kingdom of one or more relevant offences, the court must assume that there is such a risk as is mentioned in subsection (1)(b) unless, after taking into account -

(a) all such information as is available to it about the nature and circumstances of each of the offences,

(b) where appropriate, any information which is before it about any pattern of behaviour of which any of the offences forms part, and

(c) any information about the offender which is before it,

the court considers that it would be unreasonable to conclude that there is such a risk.

(4) In this Chapter 'relevant offence' means -

(a) a specified offence,

... "

12 A "specified offence" is one of the 153 categories of violent or sexual offences listed in Parts 1 or 2 of Schedule 15 of the 2003 Act, and includes an offence of causing grievous bodily harm with intent, contrary to section 18 of the 1861 Act.

13 The recorder did not refer to the authoritative guidance by this court in *R v Lang* [2005] EWCA Crim 2864, [2006] 1 WLR 2509, [2006] 2 Cr App R (S) 3 as to the approach to findings of dangerousness under sections 225 and 229 of the 2003 Act. In that case, Rose LJ (Vice-President of the Court of Appeal (Criminal Division)) said (paragraph 15):

"15 The provisions for assessment of dangerousness in section 229 distinguish between offenders aged 18 or over with a previous conviction for a specified offence and those under 18 or with no such previous conviction. In both cases, information is identified which the court must or may take into account in assessing dangerousness but there is a rebuttable assumption of dangerousness in relation to adults with a previous specified offence conviction. In our judgment, when sections 229 and 224 are read together, unless the information about offences, pattern of behaviour and the offender (to which regard must be paid under section 229(3)) show a significant risk of serious harm (defined by section 224 as death or serious injury) from further offences, it will usually be unreasonable to conclude that the assumption applies."

14 At paragraph 17 Rose LJ identified a number of applicable principles, of which the following are material to the present appeal:

"17 In our judgment, the following factors should be borne in mind when a sentencer is assessing significant risk:

(i) The risk identified must be significant. This is a higher threshold than mere possibility of occurrence and in our view can be taken to mean (as in the Oxford Dictionary) 'noteworthy, of considerable amount or importance.'

(ii) In assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence; the offender's history of offending including not just the kind of offence but its circumstances and the sentence passed, details of which the prosecution must have available; and, whether the offending demonstrates any pattern; social and economic factors in relation to the offender including ... drug or alcohol abuse; and the offender's thinking, attitude towards offending and supervision and emotional state ...

...

(v) In relation to the rebuttable assumption to which section 229(3) gives rise, the court is accorded a discretion if, in the light of information about the current offence, the offender and his previous offences, it would be unreasonable to conclude that there is a significant risk. The exercise of such

a discretion is, historically, at the very heart of judicial sentencing and the language of the statute indicates that judges are expected, albeit starting from the assumption, to exercise their ability to reach a reasonable conclusion in the light of the information before them. It is to be noted that the assumption will be rebutted, if at all, as an exercise of judgment: the statute includes no reference to the burden or standard of proof. As we have indicated above, it will usually be unreasonable to conclude that the assumption applies unless information about the offences, pattern of behaviour and offender show a significant risk of serious harm from further offences.

(vi) In relation to offenders under 18 and adults with no relevant previous convictions at the time the specified offence was committed, the court's discretion under section 229(2) is not constrained by any initial assumption such as, under section 229(3), applies to adults with previous convictions. It is still necessary, when sentencing young offenders, to bear in mind that, within a shorter time than adults, they may change and develop. This and their level of maturity may be highly pertinent when assessing what their future conduct may be and whether it may give rise to significant risk of serious harm.

(vii) In relation to a particularly young offender, an indeterminate sentence may be inappropriate even where a serious offence has been committed and there is a significant risk of serious harm from further offences (see for example, *R v D* [2005] EWCA Crim 2282)."

- 15 It is important for appellate courts to keep in mind what was said at paragraph 17(v), that the decision of the sentencing judge involves an evaluative judgment akin to the exercise of a discretion. This court should not overturn the decision merely on the ground that this court would have reached a different one. It must be persuaded that the sentencing decision involved an error of principle or was outside the range of conclusions which were properly open to the sentencing judge.
- 16 In this case it is not apparent from the sentencing remarks or the papers in the case that the recorder had cited to him or had in mind the principles set out in *Lang*. His conclusion on dangerousness rested on his view that the risk was established by the pattern of behaviour in the two section 18 offences.
- 17 In our view there are three important aspects of the case which undermine his reasoning and conclusion. First, the violence involved in the earlier section 18 offence was not committed in the same context as that for the later offence but was for the purposes of committing a robbery of property. The motivation and context for the violence in the two section 18 offences, which is what is relevant to future risk, did not constitute a "pattern". The first offence might lend support to a risk of future violence for the purposes of acquisitive crime; the second, to a risk of future violence in the context of a drunken confrontation. Neither makes the commission of the other kind of offending more likely so as to form a pattern.
- 18 Secondly, the recorder does not appear to have attached the necessary importance to the applicant's young age at the time of the two offences committed when he was aged 17 and 19 respectively. As is now recognised in paragraph 1.5 of the Sentencing Council Guideline on Sentencing Children and Young People,

"1.5 It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity. As such, this can

impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes ... "

19 This consideration must be judged by reference to the offender's developmental and emotional age, that is to say, maturity rather than simply looking at biological age: see paragraph 4.10.

20 The Guideline says about findings of dangerousness in children and young people (at paragraph 2.6):

"2.6 Children and young people may change and develop within a shorter time than adults and this factor, along with their level of maturity, may be highly relevant when assessing probable future conduct and whether it may cause a significant risk of serious harm."

This guidance echoes that which was given in paragraph 17 (vi) of *Lang*.

21 The offence committed by the applicant at the age of 17 needed to be approached with this in mind, and great caution needed to be exercised about treating it as something capable of contributing to a pattern of behaviour by way of a reliable guide to the risk of future conduct as an adult.

22 This is reinforced by the fact that the second offence was committed when the applicant was 19 and, according to the pre-sentence report, was influenced by poor thinking skills. Turning 18 does not represent a bright line divide between the immaturity of childhood and the maturity of adulthood. Young offenders who have turned 18 may still exhibit immaturity in the form of poor thinking skills which will often be subject to their continual emotional development. What was said in *Lang* at 17 (vi), reflected now in paragraph 2.6 of the Guideline, may be equally appropriate for young offenders who have turned 18 but still suffer from immaturity in the form of poor thinking skills or in other aspects.

23 Thirdly, the drunken context of the offence being considered by the recorder and of the previous section 18 offence is important; that is because the pre-sentence report noted both the applicant appreciated that that was what had given rise to the violence in both cases, and also that he was keen to address it by undertaking programmes. That was an important factor reducing any risk of future violence as a result of alcohol abuse.

24 Had the recorder had the guidance in *Lang* in mind and taken into account these considerations which we have identified, he would have been bound, in our view, to have concluded that the section 229 presumption was an unreasonable one, and that the dangerousness criterion was not fulfilled. A contrary conclusion was not properly open to him in all the circumstances of the case.

25 Accordingly, it is in the interests of justice to grant the necessary extension of time. We do so, we grant leave to appeal, and we allow the appeal. The indeterminate sentence for public protection will be quashed. We will substitute a determinate sentence of five years' detention in a young offender institution which will result in immediate release.

26 We had some concerns as to whether such immediate release would leave the applicant in a position of having no support from the probation service, and we, therefore, made some

inquiries. The probation service has, very helpfully, explained the current position in relation to supervision upon release. It is that he will have that assistance because he was sentenced to 12 weeks' custody on 18 October 2023 for an offence of common assault before being recalled to prison, and although his licence period on that sentence has ended, he remains subject to post-sentence supervision until around 4 December 2024. The senior probation officer responsible for managing his case has confirmed that he will be offered appointments, and accommodation has been sought with approval for him to reside for the time being at his mother's address if and when released.

- 27 Accordingly, on release the applicant should report immediately in order for the probation service to provide that assistance. There is an address given which Ms Douglas has (which we do not need to read into the judgment), which she will be able to give to the applicant at the post-hearing CVP conference which will be available.
- 28 Mr Williams, the effect of that is that your sentence of imprisonment for public protection has been quashed and disappeared. The sentence we impose is a determinate sentence of five years' imprisonment, and you have served all that. That means you are entitled to immediate release without being on licence for that offence. However, you will have the assistance of the probation service which you must take up. For those purposes, when you are released, you should immediately report to the probation service in Caerphilly. You may know the address but if you do not, do not worry because Ms Douglas will make sure that you have it. Please ensure that you do that; it is for your benefit.

---



**CERTIFICATE**

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

*Transcribed by **Opus 2 International Limited**  
Official Court Reporters and Audio Transcribers  
5 New Street Square, London, EC4A 3BF  
Tel: 020 7831 5627 Fax: 020 7831 7737  
CACD.ACO@opus2.digital*

This transcript has been approved by the Judge.