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NCN: [2024] EWCA Crim 754
IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO: 2024 00583 A5

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 18 June 2024

Before:

LORD JUSTICE WILLIAM DAVIS

MRS JUSTICE COCKERILL

HIS HONOUR JUDGE JOHN LODGE

REX
v
ARNOLE MANE

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MS J HITCHCOCK appeared on behalf of the Applicant
MR J O'CONNELL appeared on behalf of the Crown

J U D G M E N T

MRS JUSTICE COCKERILL:

1. This is an application for leave to appeal referred to the Full Court by the Registrar of Criminal Appeals.
2. On 9 November 2023, in the Crown Court at Isleworth before His Honour Judge Robin Johnson, the applicant pleaded guilty to the offences to which we will come.
3. On 18 January 2024, in the Crown Court at Isleworth before Mr Recorder Krepski, the applicant was sentenced as follows.
 - a. Count 1, wounding with intent, contrary to s.18 Offences Against the Person Act 1861, 2-years-and-4-months' imprisonment.
 - b. Count 3, having an offensive weapon, contrary to s.1(1) Prevention of Crime Act 1953, 6 months' imprisonment concurrent.
 - c. In relation to count 4, dangerous driving, contrary to s.2 Road Traffic Act 1988, no separate penalty was imposed.

THE FACTS

4. On 7 October 2023 the complainant, Kamaldeep Singh, had been driving his Sainsbury's lorry at around 1.30pm on Greenford Road in Ealing. There had been heavy traffic. The applicant had also been driving his Audi motor vehicle in an aggressive manner in the vicinity, trying to overtake the complainant's lorry. The applicant's vehicle moved from left to right in order to try to overtake, including veering onto the wrong side of the carriageway. Parked cars meant that he was unable to get by. Subsequently, his vehicle undertook the complainant's lorry on the left-hand side, mounting the kerb as he did so. The Applicant subsequently got out of his vehicle and approached the complainant's cab. Some of what happened next was captured on two sets of vehicle camera, and we have been able to view it

in considering the application. The Applicant opened the cab door and Mr Singh exited his cab. There was subsequently what appeared to be some pushing and shoving. That appeared to have come to an end, when Mr Singh called the Applicant a name as the Applicant walked off. At this point, the two came together again.

5. Unbeknown to Mr Singh, however, the applicant had been carrying a screwdriver in one of his hands when he approached the cab. He delivered a single blow to Mr Singh's neck, which caused a wound. Mr Singh thought initially that he had been punched but began to bleed from the wound to his neck. Paramedics attended and he was conveyed to hospital and treated for the wound, which turned out to be a laceration 1-2cm long. The Applicant surrendered to custody shortly after this.
6. Mr Singh had been in hospital for four days and had been put on blood thinning medication which he would have to take for a period of three months. At the sentencing hearing, the court was informed that he was still taking that medication.

GROUND OF APPEAL

7. It has been submitted that in the context of what was agreed at the time to be a difficult sentencing exercise, the overall term of 2 years and 4 months' imprisonment is manifestly excessive. It is said that, distilled to its centre, this was an exceptional case, which even given the offence type could and should have been suspended.
8. Specifically it has been submitted that in the particular circumstances of this case the judge was wrong to find, contrary to the agreed position of the parties, that the offence fell between culpability A and B of the Sentencing Guidelines as opposed to squarely within culpability B. It is said that having taken too high a starting point as a result (at 4 years and 6 months) the judge's hands were effectively tied. Had he taken the B3 4-year starting point which the parties had suggested and approached the sentencing exercise in the same way that he otherwise did (that is, affording a 12-month reduction for mitigating factors and

giving one-third credit for the applicant's guilty plea) he would have arrived at a sentence of 2 years' imprisonment, which he could then have considered whether to suspend.

9. In this context the sentencing judge's attention and our own have been drawn to the very, very difficult family context, in particular the vital caring role the applicant was playing to two severely disabled children with complex needs. They obviously require much intensive care and support. It was therefore submitted that this was a truly exceptional case in terms of the applicant's personal mitigation, and had the starting point been lower so as to bring the final sentence down, this case would have been a paradigm one for suspension.
10. It was clear from the documents uploaded, which we have seen, that the Applicant did indeed play a key role in the care of both children and that there had been significant impact on them. We note that school attendance has suffered very significantly in the case of one child. Both children were missing out on medical appointments as the result of it being effectively impossible for a sole carer to leave the house with both children. There was a letter to the court from the applicant's wife setting out the stark difficulties she had been facing and accepting that she was struggling to cope.
11. It has been contended before us today by Ms Hitchcock, who appeared below, that regardless of categorisation the sentence should in any event have been suspended in the light of the exceptional mitigation. This was effectively a new ground. In the grounds of appeal lodged originally it was expressly said that no issue was taken with the sentencing exercise apart from as to the original categorisation .
12. The court was in either event referred to the case of *R v Petherick* [2013] 1 Cr App R 116 on the basis that, because of its extremity, the applicant's family situation was akin to those who are sole carers for young children. It was said that this is a case where on the facts the children cannot be supported by a single carer.
13. The judge referred in his sentencing remarks to the focused and determined mitigation put

forward for the applicant by Ms Hitchcock, noticing that “*she has said everything that could possibly be said on your behalf and you should be grateful to her that she represented you as well as she did*”. We entirely endorse that statement. We are most grateful for her clear Advice and Grounds, and the way that she has resolutely sought to develop her key points to us this morning in the face of not inconsiderable challenge. We are also grateful to Mr O'Connell for attending on behalf of the prosecution.

DISCUSSION

14. The key question ultimately is a narrow one. Ms Hitchcock says that *R v K Alvis of Lee* [2022] EWCA Crim 1227 -- the authority on which the Learned Judge relied to move away from the agreed B3 categorisation -- was factually different, in that the point of argument there was whether a 4- to 6-inch knife was capable of being a highly dangerous weapon. It is, of course, quite right that this case did not concern the use of a knife. But the question is whether the judge erred in regarding this screwdriver as being sufficiently analogous that the offence could fairly be categorised as being on the borderline between A and B culpability. We consider that the judge was perfectly entitled to reach the conclusion which he did. The events demonstrated that the screwdriver was an instrument which was sharp enough to be used as one would a knife. It was also taken on to the scene in circumstances where it appears to have had no other purpose than to be, at least contingently, a weapon. It was something which the applicant accepted was an offensive weapon in pleading guilty to that offence.
15. We do not agree that regarding the screwdriver as or approximate to a highly dangerous weapon on the facts and circumstances of this case is, as Ms Hitchcock submitted, to effectively double count what had already been taken into account when charging the case as wounding with intent. The offence is one which can be achieved with or without a wide array of weapons, as the Guideline makes clear.
16. A submission was also made that a distinction ought to be drawn between items that are

highly dangerous per se and knowingly used as such to inflict an injury and everyday items used in the heat of a moment. That submission fails for two reasons. The first is that it is not what the carefully drafted guideline says, nor what the authorities say. Secondly, it ignores the fact that the conviction for this offence means that there was at the time of use a finding of intent to cause really serious harm.

17. We consider that it was well within the range of answers open to the Recorder to conclude that the correct categorisation was on the borderline of A and B, for the reason he gave. A reasonable assessment of the applicant's overall culpability could perfectly well place the offence on the borders of the highest category, given the particular weapon and its use within the facts of this case. We note that the judge might equally have placed the culpability squarely into B but then uplifted the starting point somewhat to reflect the fact that the applicant deliberately armed himself with the weapon with the intention, at least contingently, of using it, thereby importing an element of the category A premeditation criterion. Further, the starting point the judge used was, as the prosecution has reminded us, one which fell in any event within the range of category B3.
18. Once that starting point is accepted as robust, it follows that, however difficult the family circumstances -- and we make clear we entirely accept the extremely sad evidence on this -- there is no basis on which we can interfere with this sentence.
19. We should perhaps add in the light of the late attempt to shift the ground of the challenge towards the mitigation, that there was no scope properly for any other challenge. The approach to reduction for mitigation is one of judgment, with which this court will not lightly interfere. There was no error of principle here. The judge carefully considered the mitigation. He reduced the sentence considerably by a whole year for that mitigation, and he gave particular consideration to the effect on the children. While *Petherick* was cited, this was not a sole carer case in the full sense, despite the partial analogy which can be drawn. Thus, in our judgment the allowance for mitigation cannot be seen as falling outside the

range of answers which the sentencing judge could reach so as to permit us to interfere with that exercise of his sentencing powers.

20. The sentence, accordingly, is not arguably contrary to principle, nor is it arguably manifestly excessive. Accordingly, the application for leave is refused.

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