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[2022] EWCA Crim 1909

No. 202201158 A3

IN THE COURT OF APPEAL

CRIMINAL DIVISION



Royal Courts of Justice

Wednesday, 9 November 2022

Before:

LADY JUSTICE WHIPPLE

MR JUSTICE JAY

HER HONOUR JUDGE KARU, RECORDER OF SOUTHWARK

REX

V

TALLIQ MWALIM

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MR S FIDLER appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE WHIPPLE:

Introduction

- 1 On 7 December 2020, the appellant pleaded guilty to Count 2, which was causing grievous bodily harm with intent, and Count 3, which was having an offensive weapon. He maintained his plea of not guilty to the first count on the indictment, which was one of attempted murder, of which he was convicted on 20 December 2021 following a trial at Basildon Crown Court before HHJ Graham.
- 2 He was sentenced on 28 March 2022 by the same judge. That judge of course had had the advantage of having presided over the appellant's trial and knew well the facts and circumstances that he was dealing with. The sentence imposed was one of 23 years' imprisonment for the attempted murder with six months' imprisonment concurrent for having an offensive weapon. The grievous bodily harm with intent, which was charged as Count 2, was an alternative to the attempted murder count. The offence had been committed during the currency of an 18-month Community Order for an offence of affray and two offences of failing to surrender and that Community Order was revoked. The appellant now appeals to this court against his sentence with the leave of the single judge.
- 3 The co-accused was Jay Hursham and he was convicted of Counts 1, attempted murder, and 3, having an offensive weapon. He was sentenced to 24 years' imprisonment. The other co-accused was Bradley Dulieu, who was convicted of Count 2 of grievous bodily harm with intent and pleaded guilty to Counts 4 of dangerous driving and 5 driving whilst disqualified. He was sentenced to 10 years' imprisonment.

Facts

- 4 The facts in brief are these. At around 20 past midnight on 1 July 2020, Darnell Walker dropped his girlfriend back at her home in South Ockendon before driving home. Walker noticed a BMW was following his car. The appellant, Jay Hursham and Bradley Dulieu were inside that BMW. They were wearing balaclavas or face coverings. Mr Walker drove around Ockendon in an unsuccessful attempt to lose them.
- 5 At 40 minutes past midnight, Mr Walker drove to the front of his house with the intention of running inside. He was followed by the appellant and Hursham who exited the BMW and attacked him with machetes. Mr Walker ran to the gardens behind his house. He was struck multiple times. Neighbours came to Mr Walker's aid. He was severely injured. There was a gaping wound at the back of his neck and he was bleeding heavily. Police and an ambulance crew attended shortly after. He was taken to the Royal London Hospital.
- 6 The BMW was captured on Automatic Number Plate Recognition cameras at ten minutes past one in the morning, driving towards Shenfield on the A1023. A police chase followed involving armed officers and a police helicopter. Two police vehicles eventually enacted a forced stop of the BMW by ramming it. Dulieu was in the driver's seat. He was wearing a mask. The appellant fled from the rear passenger door, but was detained nearby. Hursham also ran away, but was found hiding in a hot tub.
- 7 Mr Walker needed blood transfusions that amounted to 40 per cent of the blood in his body. He underwent surgery on his neck, left arm and face. He sustained 13 injuries, caused by slash and incision wounds, some were categorised as chop wounds. The two most serious injuries were to the back of his neck and to his left arm.
- 8 The appellant gave no comment in his police interview. The appellant had one previous conviction from 2019 for which he had been given a Community Order. He had no prior experience in custody. Hursham had 50 convictions for 32 offences between 2012 and 2020. His relevant convictions included offences of robbery committed in 2012, violent

disorder committed in 2014, threatening a witness or a juror with intent to interfere with justice in 2014 and battery twice in 2014.

Sentence

- 9 The judge rehearsed the facts of this offending. He noted that the appellant was 22 now and 20 at the time of these offences. His only previous offence was committed at the age of 19. The judge said that the attempted murder fell into Category B of the Guideline, which is for cases of high culpability. There was dispute before him as to whether there was Category 1 or 2 harm. The judge noted that there was no up-to-date evidence from the victim. The judge then imposed the sentences we have described on these defendants.

Grounds of Appeal

- 10 By his grounds of appeal, Mr Fidler, who represented the appellant at trial, contends that the sentence imposed was manifestly excessive for the following reasons. First, the judge failed to give sufficient weight and allowance for the appellant's age. Secondly, there was a disparity in the sentence of the appellant and that imposed on Hursham. The sentence for Hursham was only one year longer than the appellant's sentence, despite Hursham's greater criminal record, the fact that he was older and, unlike the appellant, that he had not expressed any remorse.
- 11 Mr Fidler filed a skeleton argument dated 27 October 2022 in support of his appeal today. He has also relied on a number of authorities, which we have read, which are addressed to the issue of dealing with young adult offenders.
- 12 In his submissions today, for which we thank him, Mr Fidler has emphasised the points raised in his grounds of appeal and skeleton argument and he has also questioned the lack of pre-sentence report before the Crown Court.

Decision

- 13 It appears that the judge put this offending in Category B2. That gave the appellant the benefit of the doubt when it came to the extent of harm, bearing in mind the lack of up-to-date evidence from the victim. Putting aside the categorisation question for the moment, these were on any view appalling injuries. The photographs are extremely graphic. The injuries were deep and brutal. The victim could well have died. We have read the Victim Impact Statements which bear witness to the trauma of this attack.
- 14 We turn first to deal with Mr Fidler's suggestion that this was an appropriate case for the judge to obtain a pre-sentence report. It does not seem that such a report was requested before sentence at trial. Although in many cases it may be advisable to obtain a pre-sentence report, particularly so where the defendant is under 21, this was a case where the judge had presided over the trial which had lasted some time and the judge would have formed a very good view of the defendant during the course of the trial. The defendant at the time of these offences was 20 and a half. He was a little older at the time of trial. We do not consider that in the circumstances of this case it was necessary for the judge to obtain a pre-sentence report and it was permissible for the judge to progress to sentence without one.
- 15 We turn then to the sentence that was imposed. Category B2 gives a start point of 25 years and a range of 20 to 30 years. The sentence for the attempted murder was intended to reflect the totality of the offending. There was, in addition to the attempted murder conviction, the plea to possession of an offensive weapon. That was of course the weapon used in the attack on Mr Walker and its possession may be seen as part and parcel of the attempted murder. The breach of the Community Order was different and would have added an additional element to the overall offending.
- 16 The appellant's only real mitigation was his age. He was born on 31 January 2000 and he was, as we have said, 20 and a half when he committed these offences. By the time of sentence on 28 March 2022, he was 22 years old. He was young, but this is not a case

where the appellant had just turned 18 after the index offending. Further, there is no suggestion that he was not of normal developmental maturity for his age. For that reason, we are not persuaded that the case law that we were shown has particular relevance. He was not of good character given his recent conviction for violence leading to the Community Order, a sentence which he breached by these index offences.

17 The judge accepted that the appellant had himself accepted some responsibility for his part in this attack by his plea to Count 2 and, to that extent, he had shown awareness and remorse. The appellant had also written a letter to the judge saying that this had been a lesson to him and that he had reformed his ways, but he did not admit the charge of attempted murder and so the remorse shown was not absolute.

18 We have concluded that the sentence of 23 years amply reflects the available mitigation for the appellant, including his young age at the time of the commission of these offences.

19 Mr Fidler also complains of disparity by comparing the appellant's sentence with the sentence of 24 years' imposed on Hursham. Hursham was born on 16 April 1997. He was 23 years and four months when the offence was committed and he was about to turn 25 at sentence. He was older than the applicant and he had many more convictions and he had failed to show the same degree of remorse as had the appellant. Hursham was given a higher sentence than the appellant by a margin of one year. The judge was plainly alive to the differences between them. It may be arguable that Hursham could have received a longer sentence than he did, but that is not the issue before us.

20 We are satisfied that the sentence that was imposed on the appellant was just and proportionate and we dismiss this appeal.

CERTIFICATE

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