

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

Case No: 2023/00934/A2



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 3rd November 2023

[2023] EWCA Crim 1530

B e f o r e:

LORD JUSTICE SINGH

MRS JUSTICE McGOWAN DBE

MRS JUSTICE HILL DBE

R E X

- v -

DOMINIC GILLET

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Miss C Gardner appeared on behalf of the Applicant

J U D G M E N T

(Approved)

Friday 3rd November 2023

LORD JUSTICE SINGH: I shall ask Mrs Justice Hill to give the judgment of the court.

MRS JUSTICE HILL:

Introduction

1. This is a renewed application for leave to appeal against sentence, leave having been refused by the single judge.

2. On 9th January 2023, in the Crown Court at Bristol before His Honour Judge Patrick, the applicant (then aged 25) pleaded guilty on re-arraignment to an offence of riot, contrary to section 1(1) of the Public Order Act 1986 (count 1).

3. No evidence was offered against him on a charge of arson (count 3), and a not guilty verdict was entered, pursuant to section 17 of the Criminal Justice Act 1967. The applicant had earlier, on 13th July 2022, pleaded guilty to count 2 (violent disorder), but that plea was vacated on 9th January 2023, and the count was marked as an alternative to count 1.

4. On 21st February 2023, His Honour Judge Patrick sentenced the applicant (then aged 26) to four years and eight months' imprisonment.

5. The applicant's proposed grounds of appeal have been developed in oral submissions this morning by Miss Gardner of counsel, and we thank her for her assistance.

The facts

6. On 21st March 2021 a protest was organised to take place in Bristol city centre. It was one of a number held across the country in response to the Police, Crime, Sentencing and Courts Bill which was, at that time, making its way through Parliament. About 2,000 people congregated on College Green at around 2 pm for what was, at that stage, a peaceful protest.

7. It was not until much later in the afternoon, when a fraction of those people turned their attention from the proclaimed aim of the protest and instead focussed on police, that the peaceful atmosphere changed. Not everyone was there to protest about the Sentencing Bill; some were there to support the Black Lives Matter movement, and others were remembering Sarah Everard, whose body had been found just days earlier. In addition to those on College Green, a second group gathered on Park Street and at about 2.45 pm both groups started to move towards the city centre. The sheer number of people involved meant that the roads and pavements were blocked and effectively brought the city to a halt

8. At around 3.15 pm some protesters peeled off from the main demonstration and moved to the Bridewell Police Station before heading back towards the city centre and on to Castle Park. In that area a small number of people staged a sit in on the road, causing officers to speak to them to try and get them to move on so that buses and traffic could pass through. Soon after that engagement the peaceful seated protesters were joined by others who had anything but peaceful protest on their mind. As a result the police officers were forced back into their vehicles and from that moment on it was clear that a certain number of those present were no longer intent simply to voice their concerns but wanted to focus on and attack the police.

9. Initially, a group of a few hundred congregated at Castle Park. That was the first time the police noticed a change in the mood of the crowd. That change was highlighted by the fact

that the chanting, which had been aimed at the proposed legislation, now became focussed on the police. In addition to the chanting, some of the group pushed their banners and flags into the faces of police officers while others actively tried to provoke a reaction from the police. Some were trying to prevent the police from filming, which police routinely did at such events so that everyone attending could be easily identified.

10. At about 5 pm a crowd gathered at Union Street where one male spoke about the encroachment of police into people's lives. He then shouted: "There is only one place they are going to hear us and only one place we should be", to which the crowd responded: "The police station". The male replied: "Let's get the fucking pigs".

11. By 5.15 pm the crowds outside Bridewell Police Station had grown and the tone of those at the front closest to the police station was clearly aggressive. The procession going from Castle Park chanted: "ACAB" and "All cops are bastards". A few members of the crowd then started to daub graffiti on the side of a police van, as others climbed onto the roof of that van. There was still a divide in the crowd between those protesting legitimately and those whose anger was against the police. Those who protested were verbally abused by other people there, and one who asked for a peaceful protest was told to "piss off".

12. By 5.30 pm police officers were being pelted with missiles from the crowd. At that stage they were dressed in low key protest uniform without helmets, with shields held at their side rather in front, and without batons being drawn.

13. The footage showed that the men who had claimed on top of the police van were able to see that additional police vans had arrived and parked further up the street, outside Primark. As the men became aware of that they scrambled down from the van and the crowd moved back towards the Bay Horse Public House. A number of protesters started to rock a second

police van which was outside that public house violently. Officers from the vans outside Primark formed a cordon around the van to prevent it from being toppled over. At that stage they were wearing their cloth caps, with their helmets and batons attached to their belts. They were abused by the crowd chanting at them and also pelting missiles at them, including bottles and a firework. For the first time officers then commanded the crowd to "Get back". The crowd responded: "Fuck the Police" and "Fuck the pigs". As a result officers changed their caps to helmets and eventually, having secured the van, began to form a line across the road, running right to left from the police station to the old fire station, with the aim of keeping the police station safe. Officers in the line shouted for the crowd to get back, but rather than doing so the crowd pushed against the police line still chanting and throwing missiles.

14. From there the protest developed into a long and drawn out melee, with the police trying to hold shield lines as they were repeatedly attacked; fireworks were thrown; shields, helmets and batons were taken from officers; and the police were pushed back past the Bridewell Police Station, which then came under direct attack for the first time. The windows of the police station were attacked, police vehicles were set alight, and one vehicle on Bridewell Street was destroyed completely. One of the vehicles was set alight while an officer remained inside. The cost of the damage that day ran into tens of thousands of pounds. Many police officers were injured, and it was by mere good fortune that no serious injuries resulted, but the mental toll on the police officers was quite severe.

15. During the investigation the applicant was identified as person "Golf Charlie". Initially he was wearing brown trousers and a grey jacket, with a grey scarf covering the lower part of his face. In the early footage he was seen to be carrying a bottle of sparkling wine. As the day unfolded his appearance changed. He appeared to lose the scarf and then took off his grey jacket and used it as a face veil, revealing a dark shirt underneath.

16. As we have noted, the events of the day were covered by extensive CCTV footage, which the sentencing judge watched, as have we. In opening the facts to the sentencing judge, prosecuting counsel highlighted the following aspects of the applicant's conduct.

- (i) At an early stage in the demonstration, as it left Castle Park and headed towards Bridewell Police Station, the applicant was the first person to climb on top of the police van and the first to stamp on it. He helped others onto the police van and began aggressively to stamp down on the front light. He was immediately copied by the person standing at the back of the van, who carried on.
- (ii) The applicant was seen in early scuffles in the front line of protestors and in one shot could be seen kicking down and under the shields of the police officers to kick at their legs.
- (iii) As the crowd enveloped the Bridewell Police Station and the police line had to pull back, leaving officers isolated within the police station which they had been using as a refuge, the applicant removed a bicycle from the rack outside and carried it over to the already damaged windows of the building. As he walked the bicycle from that point to the corner he waved up at the crowd, beckoning others, which he did more than once.
- (iv) He then attacked the window of the police station with the bicycle. When he stopped, others joined in, but without any real enthusiasm. The applicant then renewed his attack, waving his hand forward. The crowd followed him and attacked the police station windows. At that point the window was finally breached. This happened at about 7.20 pm.

- (v) At around 7.45 pm the applicant, alone, left the crowd that was focussing on the police station and made a beeline for a mobile police station vehicle which was parked on its own opposite on Bridewell Street. He climbed onto the bonnet, onto the windscreen and started to stamp on the windscreen until it smashed. Prosecuting counsel described his actions as acting as a “catalyst” for the focus of the crowd, which then turned onto that police vehicle.
- (vi) While another person set the vehicle alight, the applicant attacked it with a shovel. He was part of the crowd that rocked the vehicles on its axels and he added things to the fire once it had fully started.
- (vii) Later footage showed more police vehicles creating a cordon in front of the mobile police station. The applicant could be seen silhouetted by the burning police van, alone at that point, on the roof of one of the police vehicles as it tried to move away.
- (viii) In the next set of footage three more police vehicles could be seen to retreat down Bridewell Street with the burning vehicle in front of them. A lone police officer was acting as a rear guard for those three vehicles. The applicant, initially acting alone but later acting with the assistance of another, picked up a wheelie bin. Prosecuting counsel described him as “half ramming and half throwing” the bin at the officer.
- (ix) Later the applicant was seen to be conversing with officers, explaining that they were only there to damage property and did not really want to do it. Footage also showed the applicant throwing liquid at officers' shields as they re-formed the line

at 8.41 pm.

17. Pausing there, in submissions this morning, Miss Gardner has contended that the prosecution case relied heavily on the police station incident. However, as we have indicated, there were around nine examples of the applicant's behaviour on which reliance was placed, of which the police station incident was only one.

18. On 24th August 2021, the applicant handed himself in to the police. When he was interviewed he declined to comment.

The Applicant's Written Basis of Plea

19. The applicant advanced a written basis of plea. This noted the following features of his behaviour: (i) earlier in the afternoon the applicant had engaged with the police in a peaceful manner and had been standing peacefully in the crowds; (ii) he was seen at many times on his own and was not part of any group, organised or otherwise; (iii) his intentions had been to protest peacefully; (iv) at various times in the afternoon and evening the applicant had assisted a number of people with basic first aid (including those who had been sprayed with pepper spray); and (v) even later on during the incident, at around 8.30 pm, he was seen and heard talking to a police officer, asking in a calm way the police to respond less violently to the crowd.

20. As to the point in the incident when the crowd was first pushed back by the police with their shields, the basis of plea contended that the applicant was not present at or near the front.

21. Reference was made to a separate and later occasion when the police had shields and

batons. It was suggested that the footage was out of sequence and therefore out of context. It was said that initially the applicant was a little back from the front of the crowd, doing nothing, when a male with long hair rushed at the police. It was said that once that happened, the police responded by advancing into the crowds and using their batons and shields, at which the applicant kicked out. It was not clear if he made contact, but he then retreated into the crowd.

22. In respect of the damage to the police station with the bicycle, the basis of plea advanced was that for at least five minutes persons other than the applicant had attacked the police station windows, including breaking the window against which the applicant later used the bike. The others had used stones among other items. The applicant was standing to one side at times, not even looking at what was happening to the police station. It was submitted that he had nothing to encourage the actions of those attacking the police station. It was contended that it was clear that a number of males and a certain number of females had thrown missiles and had kicked out at the windows and that they were the instigators, and that the applicant had joined in at a later stage.

23. With regard to the police van, the basis of plea contended that someone else other than the applicant had set the van on fire and that at no time did the applicant have on him any incendiary device.

24. Finally, reliance was placed on the fact that at no time had the applicant thrown any bottles or stones, and that he had voluntarily handed himself in to the police station.

The Sentencing Process

25. That applicant had two convictions for four offences. On 16th November 2016 he

received a community order for offences of possessing cocaine, being drunk and disorderly, and restricting or obstructing a constable. On 16th March 2021, he was fined for an offence of hiding tools, clothes or any other property, or depriving or hindering the use thereof. This related to an HS2 protest. He also had a youth caution for common assault in 2014.

26. The judge had the benefit of a series of victim personal statements and business impact statements, a pre-sentence report about the applicant, character references about him, and a spreadsheet detailing the outcome of a series of other cases from the police operation relating to the protest, “Operation Harley”.

27. The judge made clear that he had watched the key parts of the CCTV footage in relation to the applicant and his co-defendants.

The Relevant Sentencing Council Guideline

28. The relevant Sentencing Council Guideline was that for riot. This provides the following relevant categories of culpability:

“A

- Offender used or intended to use petrol bomb or incendiary device
- Offender used or intended to use firearm or other highly dangerous weapon
- Offender was an instigator or carried out a leading role
- Offender’s actions escalated level of violence and/or disorder

B

- Any incident of riot not including category A factors”

29. The guideline also provides certain categories of harm:

“Category 1

- Multiple or extreme examples of the following
- Incident results in serious physical injury or very serious fear and/or distress
- Incident causes serious disruption or severe detrimental impact to community
- Incident causes loss of livelihood or substantial costs to businesses
- Incident causes substantial costs to be incurred to public purse
- Incident involves attacks on police or public servants
- Incident results in extensive damage to property

Category 2

- All other cases”

The Applicant’s Grounds of Appeal

30. The applicant contends that the sentence was manifestly excessive and advances four grounds of appeal.

Ground 1

31. First, it is argued that the judge erred in placing the applicant in the role of instigator and did not take the basis of plea into proper consideration when sentencing. As we have noted, the role of instigator suggests that culpability category A is appropriate within the guideline.

32. The judge was well aware of the basis of plea. He said that he took issue with the basis of

plea in relation to the “beckoning” aspect, but otherwise sentenced the applicant on the basis that he had offended “effectively as was shown on the CCTV”: see 4E of the sentencing remarks. By the “beckoning” aspect, we understand that the judge did not accept the proposition that the applicant had done nothing to encourage the actions of those attacking the police station.

33. The judge accepted that the applicant had been acting on his own, but observed that this did not mean that he had not encouraging others or that his offending did not have the effect of doing so. As the judge explained at pages 3C to 4A of the sentencing remarks, the CCTV footage showed the following key elements of the applicant’s behaviour:

1. He had been one of the first to climb onto the police van and stamp on it – behaviour which was then copied by others. He pushed and kicked at the police line and threw items, not only at the police station but also at the police.
2. He had used a bicycle to break the window of the police station and waved to others to encourage them to join in what he intended to be an attack that would lead to the police station being, if not breached, damaged.
3. He encouraged others to attack the police station, not once but twice.
4. At around 7.45 pm he attacked a second police van, running into it and smashing the window, which had the effect of encouraging others.
5. At around 8 pm he used a spade on the van that caused an escalation of behaviour by others who turned their attention to the van and set fire to it. The judge specifically noted that the applicant was not involved in the setting of

the fire, but concluded that “it is perfectly plain that your behaviour had the effect of encouraging others in relation to the damage”.

6. He climbed onto a police van which was occupied at a time when the other police vans were ablaze and waved his fist in encouragement to others.

7. Finally, as a lone police officer sought to maintain a position, the applicant was actively concerned with throwing a wheelie bin at him and later threw liquid at the officers.

34. In light of these features, the prosecution had contended that the applicant’s actions had escalated the level of violence and/or disorder which followed, particularly in relation to the van. On that basis it was submitted that he had indeed been an instigator and had carried out a leading role, such that culpability category A was appropriate. During the prosecution’s opening of the facts, the judge accepted the point in relation to the escalation of violence, but observed that the applicant had not used any petrol bomb, incendiary device, highly dangerous weapon or firearm: see pages 9F to 10C of the prosecution opening.

35. The offending was considered to fall into category 1 for harm. For a 1A offence within the guideline, the starting point is a sentence of six years’ custody, with a range of three to seven years. It is also pertinent that, as the judge observed, there is a “very narrow range between 1A and 1B”. For a 1A offence the starting point is a sentence of seven years’ custody, with a range of six to nine years: see page 9G of the opening.

36. When he came to sentence the applicant, the judge said as follows in relation to the culpability category:

“With some diffidence, the prosecution suggest that this is category 1A offending. In my judgment, it is category 1B offending. I have regard to the narrow sentencing range between the two offences of seven years and six years but, in my judgment, you were playing a significant role over a long period of time, encouraging others. You were plainly acting on your own. From the footage that I have seen it is not apparent that you knew others or others were relating to you, but I observe as you are nodding at what I am saying you are aware that your actions encouraged others.

In my judgment it is appropriate to rise from the starting point in relation to your sentence. When considering the papers overnight, I had in mind a higher starting point than I have resolved on but because of the features that aggravate the offending, in my judgment, the appropriate sentence following a trial before mitigation would be in the region of six years and four months.” (See page 4B-D of the sentencing remarks)

37. It can therefore be seen that the judge reflected carefully on the culpability category. He did not accede to the prosecution’s contention that this was a category 1A case, even though there was evidence that would have justified that approach. We do not, therefore, accept that he did, in fact, sentence the applicant having categorised him as an instigator within category A, if that is the intention of the submission.

38. The judge plainly adopted category 1B, and then adjusted the starting point upwards slightly to reflect the nature of the applicant’s role as he was seen on the CCTV and the other aggravating features. There was substantial evidence from the CCTV of the applicant engaging in repeated acts of violence and encouragement of others. In our assessment, the judge’s approach was a measured one that was relatively generous to the applicant. We do not consider it arguable that the judge erred in his assessment of the applicant’s culpability.

39. Nor do we consider it reasonably arguable that the judge disregarded the basis of plea.

40. The judge made it clear that he had accepted the basis of plea, except for the “beckoning”

aspect relating to the extent to which the applicant had encouraged the actions of those who attacked the police station. He specifically referred in his sentencing remarks to certain elements of the basis of plea, such as that the applicant was generally acting alone and had gone to the demonstration with the intention of protesting peacefully. As to the “beckoning” aspect, having watched the CCTV as the judge did, we consider he was entitled to conclude that the applicant did through his actions encourage people to attack the police station. The applicant can clearly be seen waving his arm with the apparent intent and with the effect of encouraging others to follow him towards the police station window that he broke with the bicycle. The fact that the applicant did not start the attack on the police station does not mean that he did not in the course of it encourage others to join in.

41. We therefore conclude that the judge was entitled to depart from that aspect of the basis of plea, contrary to the assertion contained in the second paragraph 18 of the grounds and thereafter. A *Newton* hearing would not have assisted, given that this issue turned entirely on what can be seen on the CCTV.

42. Reliance is placed at paragraph 16 of the grounds on the fact that the CCTV was selective and only showed negative aspects of the applicant’s behaviour. That is perhaps inevitable in a case of this nature. Having read the basis of plea, the judge was aware that there were also some positive aspects to his behaviour, such as him giving first aid or chatting amiably with police officers. However, the judge had to focus primarily on the nature of the criminal acts committed by the applicant.

43. It is contended at paragraph 19 of the grounds that the judge was incorrect to describe the applicant as at the “head of the procession”. These words may have been slightly inaccurate, but it is clear from the CCTV that the applicant was involved from an early stage. Moreover, there were a series of other, more serious, aspects of the applicant’s offending which led the

judge to sentence him as he did.

44. The wheelie bin incident may well have occurred when there were two police vans behind what the judge described as the “lone” police officer, as is said in the second paragraph 22 of the grounds. However that does not diminish the severity of the applicant’s actions in half ramming and half throwing the bin at the officer.

45. Finally, the fact that the liquid that the applicant had thrown at the officers happened to be milk and not something more sinister, as is averred at paragraph 23 of the grounds, does not render inappropriate the judge’s reliance on this action by the applicant.

46. For these reasons we do not consider ground 1 to be reasonably arguable.

Ground 2

47. Under this ground it is submitted that the judge failed to have sufficient regard to those already sentenced when fixing the nominal post-trial sentence.

48. The grounds cite the details of six other defendants who had pleaded guilty to, or had been convicted of, offences arising from the demonstration, whose sentences range from three years and nine months’ imprisonment to five years and ten months’ imprisonment.

49. However, as the single judge noted, there were a number of aggravating factors that applied to the applicant, but not necessarily to others prosecuted as a result of Operation Harley. The applicant was an active and persistent participant over a long period of time. He incited others and he threw missiles and objects. These factors clearly provided a basis for the judge to adjust the starting point in his case up to six years and four months’ custody,

before mitigation.

50. More generally, we observe that each sentencing exercise is fact specific. We do not know the details of the charges in each of the cases relied on in the grounds, when any pleas were entered, and what other aggravating or mitigating factors were present. We are told that this judge sentenced many, if not all, of those convicted out of the events of this day. The judge was therefore well placed to assess the relevant roles of different individuals.

51. Our overall impression is that there is nothing in the information we have been given about other offenders' sentences that is of concern. We bear in mind that the relevant test for showing unfair disparity in sentences as between similar offenders is whether right thinking members of the public knowing the relevant facts and circumstances would think something had gone wrong with the administration of justice: see *R v Fawcett* (1983) 5 Cr App R(S) 158.

Ground 3

52. This argues that the judge failed to have sufficient regard to the applicant's personal mitigation. The judge indicated that he would have given the applicant a sentence after trial of six years and four months' imprisonment, which he reduced to five years and ten months in light of the applicant's mitigation. The main thrust of ground 3 is that the discount of six months was insufficient.

53. It is argued at paragraph 34 of the grounds that it is unclear which elements of the pre-sentence report the judge took into account. We respectfully disagree. The judge specifically referred to the report at page 3B of the sentencing remarks. He made clear that he accepted the proposition that the applicant now had a good insight into his offending. This issue was

dealt with in some detail on page 2 of the report, under the heading “Offence Analysis”.

54. The judge appeared to accept that the applicant is a passionate man who went to the protest legitimately. He noted, however, that the applicant had accepted that his perception that he was under threat by the police was misguided. The judge specifically accepted that the remorse referred to in the pre-sentence report was genuine; and that the applicant had genuinely tried to rehabilitate himself. This morning Miss Gardner has relied on the fact that the applicant had stayed out of trouble for almost two years, and the judge would have been aware of that. The judge noted that the applicant was still comparatively young. He accepted that the applicant was a man who had reflected upon his offending and he was capable of hard work. He acknowledged that the applicant had had the offence hanging over him for a reasonable period of time, albeit he noted that part of the delay had been brought about by his own actions: see page 4E-F of the sentencing remarks.

55. For all these reasons the judge reduced the term by six months, before giving credit for the guilty plea. The judge took time to make clear which mitigating factors he had taken into account. In our judgment, this was again a careful and sensitive approach. We do not consider it reasonably arguable that the weight he attached to those factors rendered the sentence manifestly excessive.

Ground 4

56. This ground contends that the judge placed too much emphasis on the applicant’s relevant previous conviction. This refers to the applicant’s conviction on 16th March 2021. As we have said, he was fined for an offence of hiding tools, clothes or any other property, or depriving or hindering the use thereof, which related to an HS2 protest. The pre-sentence report notes that he had tried to stop others from cutting down trees as part of the HS2

development.

57. Reliance is placed on the observation of the probation officer who prepared the pre-sentence report that the index offence had not been assessed as falling into a pattern of offending behaviour. Irrespective of the views of the probation officer as to whether this was a developing pattern, the judge was required to take into account the applicant's previous convictions as an aggravating feature in the sentencing process, if considered relevant. Given that the fine had been imposed on the applicant for the HS2 related offence a matter of days before the events that led to this conviction, and was for a similar sort of activity, the judge was entitled to regard it as highly relevant.

58. During the prosecution's opening of the facts of this offence for the purpose of sentence, counsel advanced several other aggravating factors, namely: that the applicant had been active and persistent throughout the demonstration; that the events took place in a busy public area; that there had been some use of improvised weapons; and that the applicant had consumed alcohol. We do not understand that any of these features were contested by the applicant. At page 4D of his sentencing remarks, the judge referred to the "features" which aggravated the offending. It therefore appears that some or all of the matters referred to by prosecuting counsel had led to the judge increasing the starting point, rather than the HS21 conviction alone.

59. In any event, the judge increased the starting point by only a relatively modest amount, in light of all the aggravating features, from six years to six years and four months' imprisonment.

60. For these reasons, we do not consider it reasonably arguable that there was an error in the judge's approach to the HS2 conviction.

Conclusion

61. Accordingly, for all these reasons, while Miss Gardner has presented the renewed application for leave with care, we refuse it.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rej@epiqglobal.co.uk
