

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 60
Case No: 2023/01498/A1



Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 19th January 2024

B e f o r e:

LORD JUSTICE COULSON

MRS JUSTICE FOSTER DBE

MR JUSTICE HILLIARD

R E X

- v -

ABDUL ROSTAMI

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground Floor, 46 Chancery Lane, London WC2A 1JE
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

Non-Counsel Application

J U D G M E N T

LORD JUSTICE COULSON:

1. The applicant is now aged 33. On 21st February 2022, in the Crown Court at Newcastle Upon Tyne, he changed his plea to guilty to one offence of kidnapping (count 1) and one offence of robbery (count 2). On 18th July 2022, he was sentenced by Her Honour Judge Clemitson (“the judge”) to 10 years' imprisonment.

2. The applicant now renews his applications for an extension of time (257 days) in which to apply for leave to appeal against that sentence, following refusal by the single judge.

3. The applicant had been involved in some sort of business deal with a man named Abdul Jabar, which went wrong. Jabar had a shop and a flat in Gateshead and employed two men, including Hardi Ahmadi, who lived in his flat and worked in his shop. The takings from the shop were kept in a drawer in the flat, although only the two men and Mr Jabar knew of its precise whereabouts.

4. The applicant and a man called Saeed drove in a van through the night from Ipswich to Newcastle. A co-accused, Salih, was a passenger in the van. Another car was driven in convoy with the van. That car was owned by the applicant and occupied by three men, including two co-accused, Staskauskis and Straksys. At some point a decision was made by the applicant to kidnap one of the young men who worked in Jabar's shop. The applicant and Saeed went to Tesco in Kingston Park, from where they bought duct tape and latex gloves. The two vehicles were driven to Gateshead and Hardi Ahmadi was intercepted on his way to work.

5. He was bundled into the back of the van. His head was covered with a blanket and his

hands and legs tied at the back with duct tape. Duct tape was also used to cover his eyes. The men demanded that he tell them where the money was. He was badly beaten and the men threatened to stab him in the heart. Ahmadi thought he was going to die and recited a Muslim prayer apposite for the moment before dying.

6. Ahmadi subsequently told the men where the takings were. They had taken the key to the flat and some of them, including the applicant, went to the flat and removed between £6,000 and £7,000 from the drawer.

7. During this time Ahmadi remained bound in the back of the van. He was told that if he made a noise, he would be killed. He was struggling to breathe. He said that he saw his life flash before his eyes and he thought that he was going to die. Whilst away from the van, the applicant received a call from his co-accused Staskauskis telling him that Ahmadi was praying for his life and "did not look good". Once the money had been taken, Ahmadi was dumped behind a pile of sand in a car park in County Durham. He was bleeding and was still bound, with tape still over his eyes. Ahmadi was found by members of a walking group who happened to be passing nearby. The police were called, and they identified the van from CCTV footage.

8. The van was stopped by police officers in Yorkshire on its way back to Ipswich. The applicant, Straksys and Staskauskis were in the van and immediately arrested. The best part of £9,000 was recovered from a backpack inside the van, along with the blanket, the duct tape and the gloves. The car in which Saeed, Salih and another man were travelling was not intercepted. Of those three, only Salih was later found by the police and arrested.

9. When the judge came to sentence the applicant and the co-accused, she said that she was quite sure that Saeed and the applicant were the prime movers in the venture. She said that

she was sure that the applicant had travelled to the northeast “in order to relieve Abdul Jabar of a significant amount of money or other property such as cigarettes”.

10. As to the particular factors relevant to the applicant, the judge said this:

"Abdul Rostami, you are 31. You have five convictions for eleven offences. They include several offences of assault for which you have previously been sent to prison and more recently you were made the subject of a suspended sentence of imprisonment for a drugs offence and evasion of duty. You sustained a significant head injury and possibly, as a consequence of that, you suffer some symptoms which are being addressed by cognitive behavioural therapy. Otherwise, you have no diagnosed mental illness or disorder. You do have some very real and significant physical health difficulties which resulted in surgery in October 2020. It is of note that that surgery took place before you committed these offences."

11. There are no sentencing guidelines in respect of kidnapping. The judge said that the appropriate way to arrive at a proper sentence in this case was to consider these offences together as a robbery, aggravated by the offence of kidnapping. The judge said that for the purposes of the robbery guidelines, this was akin to a professionally planned, commercial robbery, albeit that the lack of sophistication had to be marked by an appropriate downwards adjustment within that guideline. She found that the harm fell within category 2; and in the case of the applicant, his leading role meant that his culpability was in category A. A category 2A offence has a starting point of nine years' custody and a recommended range of 7 to 14 years imprisonment. The judge identified the various factors to which we have already referred, and also other aggravating features, namely: the steps taken to prevent the victim from reporting the offence or obtaining assistance; the prolonged nature of the attack; the restraint and detention of the victim for a lengthy period of time; and the ongoing impact on the victim.

12. Taking all those matters into account, the judge identified a starting point of 11 years' imprisonment. In so doing, she had regard to the aggravating factors and the applicant's leading role, but also to his significant personal mitigation. She reduced the starting point of 11 years by ten per cent, being the credit for his late guilty plea, thus arriving at the term of ten years' imprisonment.

13. The single judge refused leave to appeal on the basis that there was nothing in any of the criticisms belatedly raised by the applicant. He also refused the extension of time. He said:

"The reality is that you were correctly advised that your appeal has no merit. This did not justify what was then a very substantial delay in bringing your appeal."

14. In our view, the single judge was plainly right to refuse an extension of time. There was no explanation at all for the delay in making this application.

15. Furthermore, we consider that the single judge was also right to conclude that there was nothing in any of the grounds of appeal in any event. Working our way through the undated, handwritten grounds of appeal received by the Criminal Appeal Office on 16th August 2023, our brief conclusions are as follows.

16. First, it is said that the applicant was given the maximum sentence of ten years' imprisonment because the CPS changed their minds and said that, rather than playing a lesser role, the applicant had played a leading role.

17. This complaint is misconceived. Although the applicant had put in a basis of plea that sought to minimise his role, that was not accepted by the Crown. On the basis of the material before her, the judge concluded that the applicant had played a leading role. On the material

that we have seen, that was the correct categorisation.

18. Secondly, it is said that the applicant was not given credit for his guilty plea. But he plainly was. He pleaded guilty only on the day of trial, so was not entitled to more than ten per cent credit. The judge was careful to give him that credit, otherwise, as she said, "You would have been sentenced to 11 years' imprisonment".

19. Thirdly, the applicant complains that the other defendants received lesser sentences, and the applicant suggests that this was "blatantly wrong". Again, we consider that the complaint is misconceived. The co-defendants received lesser sentences because their roles were less significant and therefore their culpability was lower. Of the defendants before the court, it was only the applicant who played a leading role. It was therefore inevitable that he would receive a longer term of imprisonment.

20. Furthermore, the applicant had a worse record than any of his co-defendants, including convictions for offences of violence. The judge was correct to say that this demonstrated "a vicious side to your nature and a propensity to use gratuitous violence". In addition, the author of the pre-sentence report identified the applicant as posing a significant risk of causing serious harm, despite the fact that the author was unaware of the previous offending. There were, therefore, a number of aggravating factors in the applicant's case which simply did not apply to the other defendants.

21. Furthermore, we consider that the judge would have been entitled to consider the applicant to be a dangerous offender and to impose an extended sentence. She said that expressly at page 6E of her sentencing remarks. However, she decided, because of his age and his state of health, together with the time that he would spend in custody, that she would not impose such an order.

In our view, that was a merciful conclusion and one that other judges may not have reached. The applicant can therefore count himself fortunate that he was not given a longer sentence.

22. For those reasons, therefore, we consider that there is nothing whatever in this renewed application for leave to appeal against sentence. Both the renewed application for leave to appeal and the renewed application for an extension of time are therefore refused.

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: rcj@epiqglobal.co.uk
