

Neutral Citation Number: [2017] EWCA Crim 1662

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 20 October 2017

B e f o r e:

LORD JUSTICE McCOMBE

MR JUSTICE OPENSHAW

MR JUSTICE HADDON- CAVE

R E G I N A

v

STEPHEN DAVID BRYANT

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Mr A Selby appeared on behalf of the Appellant

J U D G M E N T

(Approved)

1. MR JUSTICE OPENSHAW: On 2nd December 2016 in the Crown Court at Lewes, following his conviction after a trial, the appellant was sentenced by His Honour Judge Niblett as follows: on count 1, of wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861, to life imprisonment for the minimum term of 10 years, less time spent in custody, and on count 2, of kidnapping, to 10 years' imprisonment concurrent. He now appeals against sentence with the leave of the single judge.

2. The offence was unusual for its extreme brutality but it should be seen in the context of the appellant's personal history. He is now aged 40. He served for 10 years in the army with considerable distinction. He became a much respected sergeant serving on active service in many theatres of war, winning the admiration and respect of his men and of his senior officers. He has experienced the horrors of war. He left the army after serving in Iraq. He returned later but was again exposed to great danger and had to shoot a man dead at close quarter, in circumstances which have since greatly distressed him. It is probable that as with many servicemen who have been exposed to such action, he had a form of Post Traumatic Stress Disorder. In letters which he wrote to the court after conviction, he described his later descent, as he put it, into drink and cocaine addiction no doubt in an attempt to blot out his painful memories.

3. So we come to the offences. His victim, Tony Richardson was aged 36, a drug abuser and small-time drug dealer. He came to owe the appellant money, obviously for some drugs-related deal. At the trial the prosecution produced a schedule of the texts and voicemail messages recovered from telephones used by the appellant which showed that in the days leading up to the offence the appellant was making increasingly graphic threats. The judge who heard the trial described these threats as "chilling" and "vile", as indeed they were. Some extracts catch the flavour: "Don't fucking ignore me. Call me or its on and I'll start with your fucking family." Then another call: "If you continue to ignore me you're in fucking trouble pal. You're in over your head. Don't fucking ignore me." And then later: "I swear to God, mate, I'm going to fucking ruin you" and a few minutes later: "Tony I'm outside your flat" and so they go on.

4. Richardson had no money. He could not pay and did not pay. And so on 29th May 2015 the appellant and another man who has not been traced went round to Richardson's flat in Hastings. Quite what happened there is uncertain because so terrified was Richardson as a result of what happened to him that he refused to give evidence. Indeed he disappeared throughout the trial and could not be traced. Furthermore, although the appellant did give evidence he denied that he was one of the assailants and so did not give his version of what happened. But from what Richardson said at the time, it was clear that he was abducted from his house and driven some distance to a remote place in the countryside near the village of Hingham near Robertsbridge. The car stopped. He was taken into a field. He was knocked to the ground and as he was pinned down he was forced to extend his left arm. The appellant then produced a small hatchet and chopped at his thumb five or six times, shouting abuse at him, including the sinister slogan "No payment, no thumbs" or words to that effect. He then did the same thing to his right thumb. The two men then left him thus mutilated in the field. Covered in blood he made his way to a nearby house to call for help.

5. The appellant was arrested on 1st June and declined to answer any questions in interview. As we have said, he was convicted only after a trial.

6. The judge had a psychiatric report from Dr Lay which was to the effect that the appellant's mental health problems may have been a contributory factor for his actions. However his use of alcohol and cocaine prob-

ably had been a more important influence over his actions and behaviour. The judge, who had heard the trial, set out his findings and reasons with great clarity. He described the dreadful circumstances of the offence. After referring to the cruelty of the offences, he said this:

"This was a premeditated, carefully planned and executed act of violence of an extreme kind, for which you, as you know, must now be punished by a sentence which will also serve to mark the seriousness of these offences and to protect others from similar harm in the future.

In my judgment a deterrent sentence is also required in this case where, as the evidence shows, a drug dealer is seeking to enforce a drug debt and to punish a vulnerable person who has incurred indebtedness to the dealer."

With those sentiments we entirely agree.

7. He therefore fixed this as being a case of greater harm and higher culpability, putting it in Category 1, he found, and we entirely agree. In our judgment. The offence, being committed after a violent kidnapping and involving as it did the infliction of sadistic violence, justified the imposition of a sentence outside the usual range. An exemplary service career is not irrelevant in that context, but it counts for little when set against the barbarity of the offence. For these reasons we see nothing wrong with the imposition of a 20- year determinate term which is well- deserved and not in our judgment in any way excessive.

8. We turn then to the life sentence. The judge took the view that the appellant was, as he put it, unpredictable and highly dangerous. Mr Selby in the course of his written submissions, to which he has spoken this morning, has criticised this reasoning. Despite occasional doubts, the consistent practice of this court has been to consider the dangers that the offender will present on eventual release which will not be for 10 years. To do otherwise would be to ignore entirely the progress which an offender may make following conviction and during the course of his sentence. Here, as it seems to us, are a number of positive signs that the appellant is determined upon rehabilitation. He is now free from his drug addiction. It used to be said that once a person is in prison that counts for little, since he no longer has access to drug supply but we all know that is no longer the position. Prisoners can and infrequently do obtain drugs, yet the appellant is drug free. Moreover, he has accepted his guilt. He appears from reports from the prison now to be a model prisoner. He assists other prisoners in a variety of ways. He has earned highly complementary reports from the prison authorities of a kind which echo the reports that once he had from his senior officers in the army. Therefore here, as it seems to us, his exemplary service record is relevant. It shows the sort of man which once he was and in our judgment it shows the sort of man he might again become if he sets his mind to it, as he seems to have done. Since he was sentenced a further psychiatric report has been prepared from Professor Fox which report of course was not before the sentencing judge. He summarised his progress in prison in this sentence:

"Since being in prison he has developed incite and some self awareness and self control measures ...

3.9: It appears from Dr Lay's report, and I would concur, that it was the influence of PTSD, alcohol and cocaine that came together that night and it resulted in loss of control. He has developed insight into this and therefore I believe his risk of future violent offending is minimal. I do not believe that he is a threat to the public and he holds no malice against the victim or the other perpetrator of the offence.

3.10. With regard to going forwards, if he remains in prison he should still seek help and he is aware of this. In my view he has made positive steps and significant progress while he has been in prison, and this is supported by objective evidence from the prison authorities. With regards to prognosis, I believe he has an excellent prognosis, particularly if he has the treatment I have suggested as this will allow his recovery from PTSD and it is positive that he has made a significant improvement with his self help whilst in prison."

In short, we are not of the opinion that upon his eventual release there will be a significant risk to the public by the commission by him of further specified offences. Therefore, we do not think that he does fulfil the criteria of dangerousness, and therefore he does not meet the criteria for a life sentence, which we will quash and substitute a determinate sentence of 20 years on count 1. The sentence on count 2 remains. He will therefore be released after 10 years. There will of course be the protection afforded to the public by the fact that he will remain on licence for the further 10 years of his sentence.

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