No: 200700487/A2

Neutral Citation Number: [2007] EWCA Crim 792
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2

Tuesday, 20th March 2007

B E F O R E:

LORD JUSTICE MAURICE KAY

MR JUSTICE PENRY-DAVEY

MR JUSTICE MCCOMBE

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R E G I N A

-v-

BASHIR MAKEID

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MR A FRYMANN appeared on behalf of the APPELLANT

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J U D G M E N T
(As Approved by the Court)

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1. Mr Justice Penry-Davey: On 1st June 2006, in the Crown Court at Snaresbrook, the appellant pleaded guilty to possession of an offensive weapon and possession of a bladed article in a public place. On 13th July 2006 he further pleaded guilty to applying a corrosive fluid with intent to cause grievous bodily harm. On 21st December he was sentenced to a total of eight years' imprisonment, that being eight years for applying the corrosive fluid and three months' concurrent for the other two offences with time spent on remand to count towards his sentence.

2. He appeals against sentence with the leave of the single judge.

3. In the early hours of the morning the appellant was stopped in his car on suspicion of driving with excess alcohol. A black friction lock baton was found in the car and a silver lock knife found in his pocket following his arrest. When interviewed, he denied any knowledge of the baton and said the knife was his fishing knife and that he had forgotten to put it away with his fishing equipment.

4. On the evening of 6th May 2006 he had been drinking with the complainant, Mr Lopes. At about 1 o'clock the following morning they went to a shop to purchase more alcohol. They were seen to drive away in the appellant's car and return a few hours later. Lopes got out of the car and purchased some more alcohol from the shop before he and the appellant became involved in an argument. Lopes said words to the effect of "Fucking Muslim" and "Muslim motherfucker" to the appellant, but the words, as the judge found, were said in a joking manner between two friends who had been drinking excessively. The appellant then went to the boot of the car and produced a 2.5 litre bottle containing sulphuric acid. He stepped back and threw the contents of the bottle at Lopes, causing him immediate pain. Lopes started to scream and removed his upper clothing. He rushed into the shop for assistance and the police and an ambulance were summoned. He was taken to hospital where he was treated for significant burn injuries. He was in hospital for seven days in extreme pain.

5. The appellant had left the scene after the attack and was arrested at his home address on 11th May. On arrival at the police station he said, "Defending myself you mean. It is lucky I didn't kill him, motherfucker, racist fucker." When interviewed he maintained that Lopes had racially abused him, punched him in the face, thrown a can of cider at him which hit him on the head. He claimed that he feared Lopes would attack him further, so he took out the bottle, warned Lopes he had the bottle in his hand and then threw the contents in his direction. He said he saw the fluid hit Lopes, but he left the scene when the police arrived. He said the bottle contained drain cleaner.

6. There was in the wake of the plea of guilty a Newton hearing. In sentencing the judge indicated that the appellant would receive limited credit for his guilty pleas, because that hearing had been substantially resolved against him, more particularly as to the suggestion that he had attack the complainant in response to some threat. The judge found that any racist words were said in a joking manner between two friends who had been drinking excessively and the suggestion that the appellant had attacked the complainant in response to any threat was entirely rejected. There had been a delay in a potential cooling off period between any comment and the appellant's reaction to it.

7. The appellant had one previous conviction for assault occasioning actual bodily harm.

8. The pre-sentence report indicated that he was remorseful and acknowledged that he had committed a serious offence that had caused extensive injuries. However, an addendum to the report indicated that, despite his expressed remorse and regret, he did not appear to have acknowledged the full impact of his actions.

9. There was a psychiatric report indicating alcohol dependence and the existence of an emotionally unstable personality trait, including a degree of impulsivity and past self-harming behaviour.

10. Mr Frymann on the appellant's behalf has referred us as central to his submissions to the case of Attorney General's Reference No 119 of 2004 (Jackson) [2005] 2 Cr App R(S) 52. That involved an attack with corrosive fluid of a similar type. In that case the offender pleaded guilty to one offence of causing grievous bodily harm with intent, two of maliciously inflicting grievous bodily harm and two of assault occasioning actual bodily harm. She asked for a total of 23 offences of assault occasioning actual bodily harm to be taken into consideration.

11. The offences involved the offender returning to a public house from which she had been barred when a party was in progress. She had with her a small pot containing a fluid intended for unblocking drains, which consisted of 96 per cent sulphuric fluid. She was asked to leave. As she did so, she pulled out the pot, unscrewed the lid and threw the contents at the man who escorted her out of the premises. The acid hit that man and some considerable number of others in the vicinity who experienced painful burns. The man at whom the pot was thrown sustained large areas of burns to the face and left hand, together with injuries to the right eye. He was left with permanent facial scaring. Others also received permanent scaring and the offender herself suffered serious burn injuries to her face.

12. The sentence imposed was four years which this court was asked to review on the basis that it was unduly lenient. The Vice President indicated that the sentence that the court would have expected to have been passed in the court below on a plea of guilty would have been in the order of five years' imprisonment. He did not accept that the sentence in the court below ought properly to have reached a level of six years because of the absence of premeditation and the serious injuries the offender herself sustained from her own conduct. Those factors pointed to a sentence less than five years, whereas the large number of victims pointed in the opposite direction. Even on the basis that the sentence could be properly characterised as unduly lenient, the court did not interfere with the sentence, having regard to the element of double jeopardy and the serious injuries sustained by the offender herself as a result of her conduct.

13. Mr Frymann submits that having regard to the circumstances of that case and what this court said about the appropriate level of sentence in that case, that the overall sentence of eight years imposed in this instance was manifestly excessive. He concedes that an alternative approach which the judge could have adopted was to have imposed consecutive sentences in respect of the other two offences to which the appellant pleaded guilty, but he submits that on any basis eight years was excessive. He points

out that there are elements of the Attorney General's Reference case that appear to have been, he submits, considerably more serious than the circumstances of this case, not least, he submits, the element of premeditation in the offender taking the sulphuric acid to the public house from which she had been barred when there were a large number of people there. Equally, he submits that there was mitigation in this case, even if it is right that the judge was entitled only to give limited credit for the plea of guilty having heard and resolved the issues in the Newton hearing. It is to be pointed out that there was in the Attorney General's Reference case a total of some seven heads of mitigation which were prayed in aid in order to reduce the sentence in that case.

14. There are, in our judgment, factors pointing both ways. We find that there is a basis for Mr Frymann's submission, looking at the circumstances of the Attorney General's Reference case, that point to the sentence imposed in this instance on the appellant as having been too long. Accordingly, we consider it appropriate to interfere with the sentence imposed. What we propose to do is to reduce the sentence in respect of the main offence from one of eight years to one of six and a half years. The sentences on the other two offences will remain as before and will remain concurrent, making a total of six and a half years' imprisonment. The appeal is allowed to that extent.