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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 16 November 2018

B e f o r e:

LORD JUSTICE McCOMBE

SIR DAVID CALVERT-SMITH

HER HONOUR JUDGE WALDEN-SMITH

(Sitting as a Judge of the CACD)

R E G I N A

v

LEE ROLAND OSEI

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Mr P Mostyn appeared on behalf of the **Applicant**

HER HONOUR JUDGE WALDEN-SMITH:

1. On 6 April 2018 in the Crown Court at Wood Green before Her Honour Judge Kaul QC and a jury, the applicant, Lee Roland Osei, was convicted of the offence of kidnapping, contrary to common law (count 2 on the indictment). On 18 June 2018 he was sentenced, along with his co-defendant, Christopher Cook, to an immediate determinate term of 11 years. Both the applicant and Mr Cook had been acquitted by the jury, on the direction of the judge, of an offence of causing grievous bodily harm with intent, contrary to section 18 of the Offences Against the Person Act 1861 (count 1 of the indictment).

2. The applicant renews his application for leave to appeal against sentence after refusal by the single judge.

3. The facts of this matter can be summarised as follows.

4. On 4 October 2017 the complainant had contacted a dealer named as "Goldie" and arranged to buy some drugs from him in Marquis Road, near Wood Green. When the complainant arrived at about 00.45 the applicant and Mr Cook both approached the car and took the key. The complainant was fearing trouble, because the car he was in belonged to a drug dealer and he had failed to return it in time. The complainant tried to run away but was dragged back by the applicant and Mr Cook and was bundled into the back of the car. This assault and the removal of the complainant in the car lasted approximately 2 to 3 minutes. The applicant was the driver. Mr Cook was in the passenger seat.

5. In his victim impact statement the complainant referred to the applicant and Mr Cook as being his "friends".

6. At 00.49 the police were called by witnesses who stated they had seen a man being attacked by two males in Marquis Road, London N22. The eyewitnesses described the man being punched and kicked by two men and that in the course of that assault he had his shirt and trousers removed. The police arrived and set up a cordoned crime scene at 1.07 am. At some time shortly after the cordon was set up the applicant came to the cordon saying he wanted to get through as his partner was in an address within that cordon. He was persistent but told to leave and come back later.

7. At around 3.15 am the applicant's partner had come out of an address in Marquis Road and identified herself to the police. She said she was concerned about the applicant as he had left her address with Mr Cook and she had heard an argument outside which involved both Mr Cook and the applicant and then she said she heard the complainant, who she also knew, crying out in pain before hearing a car screech off.

8. The applicant is known to have returned again to the cordon at approximately 3.15 and 4.15. When asked where he had been that night he said he had been to an all-night shop. He was asked to wait and at 5.00 am he was arrested on suspicion of kidnapping.

9. The complainant did not remember anything of what had happened to him after his time in the car. His first knowledge was when he woke up on 5 October, at approximately 11.00 am, in a house near the North Circular. Some 34 hours had passed. An ambulance was called to take the complainant to hospital and he was found to be covered in cuts and bruises and to have suffered a fractured cheekbone.

10. In his evidence, the complainant described how he was in pain when in the car but he had been conscious for most of the journey but had become dizzy and had fallen in and out of consciousness. He was unable to give any evidence about what had happened to him after that although he had plainly been further assaulted including the fracture to his eye socket.

11. The applicant when interviewed gave a "no comment" interview but provided a prepared statement.

12. At trial the bad character of both the applicant and Mr Cook was adduced. The complainant, the applicant and Mr Cook were all drug addicts, with a history of acquisitive crimes. The applicant himself, now aged 38 years, his date of birth being 12 November 1979, has 34 convictions for 84 offences including a high number of shoplifting offences funding his drug addiction. Whilst he has that large number of convictions, he has not previously been convicted for any substantial period of imprisonment.

13. The sentencing remarks of the sentencing judge indicate that she had in mind that the applicant was responsible with Mr Cook for the violence against the complainant in Marquis Road. He was the driver of the car, and she was mindful

of the fact that he took away the complainant to "hand over to wherever he was handed over".

14. The sentencing judge was satisfied that the applicant did what he did by reason of what he was told to do by another but he was responsible for his own actions in the violence that was inflicted on the complainant and that he:

> "...chose to behave in a way that was unconscionably violent bearing in mind he was one man, unarmed, as we heard, in quite a drugged up state, not terribly well himself and so not really in a position to fight back against two well-built and strong men. There was no need, in other words, to deal with him in the way that you did."

15. The sentencing judge accepted that the applicant could not have been responsible for the main injury to the complainant given his prompt return to the police cordon. She also accepted that the complainant went to Marquis Road of his own free will and that there could not have been a great planning for the kidnap to take place, at least so far as the applicant was concerned, and that the requirement for the applicant and Mr Cook to involve themselves was taken relatively shortly before the kidnap happened.

16. A pre-sentence report was compiled on the complainant which set out details about his history of drug addiction and that he was taking steps to address his addiction whilst in prison. The report writer concluded that the applicant was at high risk of re-offending, he was assessed as posing a high risk of serious harm and that he met some of the dangerousness criteria. The judge determined that it was more appropriate to sentence with a lengthy determinate sentence rather than on the basis that the applicant was dangerous.

17. There are no Sentencing Council Definitive Guidelines for kidnap. The judge was referred to Attorney-General's Reference Nos 102 and 103 of 2014 (*R v Perkins [2014] EWCA Crim 2922*) . In his helpful written submissions Mr Mostyn, on behalf of the applicant, has also referred to a number of other cases including *Attorney-General's Reference Nos 39, 40, 41 and 42 of 2014 [2014] EWCA Crim 1557* ; *Attorney-General's Reference No 92 of 2014 [2014] EWCA Crim 2713* and *R v Greene [2018] EWCA Crim 480* .

18. The sentencing judge accepted submissions made on behalf of the applicant of the facts of the case of Perkins were considerably more serious than the facts of this instant case. In Perkins the complainant was assaulted in the property of a friend, where he was punched and kicked, kicked to the head and stamped upon continuously. He was bound hand and foot, blindfolded and a plastic bag placed over his head and he was being partially suffocated and choked. On one occasion, when he had the plastic bag over his head, an iron was used to burn his arm. While being bound and bagged he was taken to the bathroom and there plunged repeatedly into water and submerged for some period of time. Subsequently he

was dragged out onto the balcony of a second floor flat where he was lifted and held over the balcony rail head first. He was told he was going to be killed by being dropped on the concrete below. He was completely terrified and terrorised. His ordeal came to an end when the offenders ordered a taxi to take them away. In that case the court found that the conduct of the offenders was cruel and deliberate and amounted to torture. The sentence imposed was one of 10 years together with a 3-year extension.

19. Attorney-General's Reference Nos 39, 40, 41 and 42 of 2014 was another case of false imprisonment where the complainant was struck to the head with a hammer, causing him to fall onto a sofa where he was punched and tied up with electric cabling and then laid on top of a body bag. He was hit further with a hammer including blows to the face, including the eye socket and mouth with some of his teeth being deliberately broken. That case, where there was prolonged and sustained violence, sentences of 14 years comprising 10 years' custody and a 4-year extension and an 8 year determinate sentence were given to the main protagonists.

20. Those two cases assist this court in assessing what is an appropriate starting point for the matter before us.

21. In Attorney-General's Reference No 92 of 2014, this court set out at paragraph 19 the following with respect to kidnap cases:

> "It seems to us that relevant factors in accessing the gravity of cases of this type will include the length of detention; the circumstances of detention, including location and any method of restraint; the extent of any violence used; the involvement of weapons; whether demands were made of others; whether threats were made to others; the effect on the victim and others; the extent of planning; the number of offenders involved; the use of torture or humiliation; whether what was done arose from or was in furtherance of previous criminal behaviour, and any particular vulnerability of the victim whether by reason of age or otherwise."

22. We take into account all those matters in this case.

In *R v Greene*there was a degree of planning, the involvement of others, the humiliation and beating of the victim and the length of ordeal. All matters that were relevant in determining appropriate sentence.

23. This renewed application for leave to appeal is made on the basis that the sentencing judge has placed his starting point too high at 12 years. The applicant has a substantial number of convictions but these are, in the main, for crimes

relating to his drug habit. There was an affray in 2011, for which the applicant received a sentence of 18 weeks' immediate custody. There was also a conviction for battery and criminal damage in 2014, for which a community order with supervision was imposed. There was an assault on a police officer in 2015 which occurred during an arrest of the applicant for theft. There are no other antecedent incidents of violence recorded and this kidnap was a very steep escalation in seriousness and harm.

24. The offence was extremely distressing to the complainant who has suffered anxiety and flashbacks and, as he has set out in the victim impact statement, has been compelled to leave the area as it was his friends who assaulted him and he feels paranoid and unable to trust others.

25. The offence was in some way related to the involvement of the applicant, Mr Cook and the complainant in the use of drugs. It was therefore an offence which took place in the furtherance of criminal activity. It does not appear that the applicant was involved in any planning of the kidnap. Violence was used in the course of the kidnap, but the most serious assault or assaults did not involve this applicant. The applicant was acting with Mr Cook and the complainant was vulnerable because he had been using drugs.

26. Every kidnap is fact sensitive and kidnaps create difficult sentencing decisions for any sentencing judge. The sentencing judge had the benefit of hearing the trial. However, we have concluded, on a close analysis of the facts in this case, that the sentencing judge did set the starting point of 12 years too high and that an appropriate starting point is one of 8 years. Whilst the sentencing judge reduced her starting point to take into account the efforts being made by the applicant to turn his life around, which meant there was hope for him in the future, we do not consider that there should be any further reduction to that sentence of 8 years. The offence of kidnap is an extremely serious one but, in the circumstances of this matter, the sentence imposed of 11 years was manifestly excessive

27. We therefore quash the sentence of 11 years and impose a sentence of 8 years. To that extent this appeal is allowed.

MR MOSTYN: May I just enquire whether that ruling includes the application for legal assistance?

LORD JUSTICE McCOMBE: You asked for representation; you have not had it before? We grant a representation order.

Thank you for your assistance Mr Mostyn, we are grateful.