

Regina v Sean Harding

[2018] EWCA Crim 2526

Before: Lady Justice Rafferty Mr Justice Holgate The Recorder of Preston His Honour
Judge Mark Brown (Sitting as a Judge of the CACD)

Tuesday 30 October 2018

Representation

Mr A Oliver appeared on behalf of the Appellant.

Judgment

Mr Justice Holgate:

1 On 30 May 2018 the appellant admitted before the magistrates to having an article with a blade or point, contrary to section 139(1) of the Criminal Justice Act 1988 and he was committed to the Crown Court for sentence. On 4 July 2018 in the Crown Court at Norwich he was sentenced by Her Honour Judge Bacon QC to 16 months' imprisonment. He appeals against sentence with the leave of the single judge.

2 On 29 May 2018 at about 8.30 pm, the appellant went into a small supermarket in Norwich with a large knife. He told the staff that he was carrying a knife and asked them to call the police. He then went outside to sit on a nearby bench to await the arrival of the police. A police officer approached him and drew his taser because he had been told the appellant had a weapon. Colleagues arrived to assist him. When they arrested the appellant they had put their tasers back in their holsters because the appellant made no attempt at all to resist arrest. A black kitchen meat knife with a blade of approximately 20-centimetres was seized. There was no suggestion that he produced the knife at any point.

3 The appellant was born on 16 October 1958. He had six previous court appearances for nine offences between 2016 and 2018, five of which were for possessing a bladed article in a public place. He committed the index offence whilst on licence four days after being released from prison.

4 In a pre-sentence report the appellant said that his life fell apart when his father died, his employment ended and as a result he lost his flat and became homeless. He had not committed any crimes before then. The appellant said that he had come out of prison and wanted to go back. He had no money and nowhere to live and so prison was a better place for him. The probation officer

was satisfied that the appellant had committed this offence in order to get himself arrested and be returned to prison. She raised the possibility that the appellant's mental health was deteriorating and noted that there had not been an assessment by a psychiatrist. No such assessment was ordered by the Crown Court. She assessed the appellant as posing a high risk of re-offending, referring to his motivation to commit a further offence if not sentenced to prison. The appellant posed a medium risk of causing serious harm to the public. She recommended a custodial sentence so that interventions could be accessed. The prison report we have seen is positive, although no sentence plan has been put in place.

5 In passing sentence, the judge said that the appellant had committed the offence with the intention of being detained in prison. It was obvious that the staff in the supermarket were aware that he had that imposing knife with him because they summoned the police. That in itself showed that they were alarmed at the prospect of his being in the shop with the knife.

6 The judge had regard to the Definitive Guideline on Bladed Articles and Offensive Weapons. She concluded that in terms of harm the case fell within Category 1 because serious alarm or distress was caused or risked. She said that that had been the appellant's "entire objective". His culpability fell into Category A, because he had been in possession of a bladed article. The appellant had pleaded guilty at the very first opportunity, and unusually for an offender he was in his fifties before he got into any sort of trouble. He had been convicted on many occasions of possessing a knife in a public place and on 25 May he had been released from prison from his last sentence for the very same offence. Four days later he committed the index offence. He was manifestly in breach of his licence.

7 The starting point for a Category 1A offence was 18 months' custody. There were several aggravating features: the number of previous convictions, all being committed so soon one after another, the fact that he was on licence and that he has failed to respond to conditional discharges. The appellant was given full credit for his guilty plea.

8 Mr Oliver submits that the judge misapplied the guidelines by placing the offence in Category 1A rather than 2A. There was no basis for saying that the appellant's objective or entire objective had been to risk causing "serious alarm or distress". His objective was to be arrested and returned to prison and to that end he had asked the staff to call the police because he had a knife on him and then immediately went outside to sit on a bench to wait for their arrival. By implication the judge had considered that the sentence before credit for plea would have been two years, which in the circumstances was manifestly excessive.

9 We consider that these submissions are well-founded. For the reasons given by counsel, the level of harm could not have fallen into Category 1. The starting

point for Category 2A was six months within the range of three months to one year. After taking the aggravating factors into account, namely antecedents which included repeat offending of the same type and the commission of the present offence so soon after having been released on licence, and the statutory minimum sentence provisions, we consider that a sentence at the upper end of the category range was called for, namely 12 months. After allowing full credit for the guilty plea, a sentence of eight months was appropriate.

10 We therefore quash the sentence of 16 months' imprisonment and substitute a sentence of eight months' imprisonment. To that extent the appeal is allowed. We are concerned that a sentence plan does not appear to have been put in place. This was a matter for the prison authorities but we express the strong hope that an appropriate release plan is put in place as a matter of urgency.

Lady Justice Rafferty:

11 The court will invite the Registrar, as a matter of urgency, to contact the Governor of the prison at which Mr Harding is detained. His release is certain to be imminent. As Chelsey Holmes, the author of the pre-sentence report made plain some time ago and as the judgment of this court has repeated, it is a matter of significant concern that there is no release plan in place for this man and one really ought to be considered urgently. Mr Harding has already set out clearly, and my Lord included it in his judgment, his motivation for committing the offence he did. He needs structured help so that he and the general public and the scant resources available are all facing in the same direction. As my Lord said, this is a matter for the prison authorities, not for us, but we will ask the Registrar to urge the Governor's immediate attention to the difficulty.

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