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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 19 February 2019

B e f o r e:

LORD JUSTICE GREEN

MR JUSTICE HOLGATE

HIS HONOUR JUDGE PAUL THOMAS QC

(Sitting as a Judge of the CACD)

R E G I N A

v

JEREMIAH NTIM

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Mr R Carey-Hughes QC appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. MR JUSTICE HOLGATE: On 3 September 2018, in the Crown Court at Blackfriars before His Honour Judge Clarke QC, the appellant pleaded guilty to wounding with intent. On 28 September 2018, before the same court, he was sentenced to an extended sentence of 15 years, comprising a custodial term of 10 years and an extended licence period of 5 years. Count 1, which had alleged attempted murder, was ordered to lie on the file in the usual terms. The appellant appeals against the sentence with leave granted by the single judge restricted to one ground, namely whether the judge failed to make a sufficient reduction for the appellant's youth and his guilty plea. As we shall explain, Mr Carey-Hughes renews the application for leave in respect of one further ground rejected by the single judge as unarguable.
2. On 23 March 2018, at around 11.30 am in Kennington, London an altercation occurred between the appellant and the complainant, Dwayne Buchanan. They were not previously known to one another. This occurred in public near a major traffic junction and a supermarket which Mr Buchanan was intending to visit. The location was not far away from his home. The appellant was seen on CCTV walking in the area prior to the argument. The appellant is about 6 feet tall and Mr Buchanan about 5 feet 4 inches.
3. The argument was witnessed by a number of workmen who had been working nearby. It appeared to them that the appellant was the aggressor. He was shouting loudly and swearing, saying things like, "Fucking come round the corner. Come on let's go. You get me and make your move bro. Do something". The appellant feigned a punch and a headbutt to Mr Buchanan. He spat at Mr Buchanan. He was trying to provoke him into a fight but the latter did not react.

He simply asked to be left alone and said that he was going to the Tesco nearby. Suddenly, the appellant stabbed Mr Buchanan in his shoulder area using a 6-inch knife held in his right hand. He then ran off down Kennington Lane carrying the knife.

4. Very shortly after the stabbing the victim fell to the pavement and was immediately helped by witnesses and other passers-by. Blood was pouring out of his chest because the knife had passed into his right ventricle. Emergency services were summonsed. They attended within minutes. Mr Buchanan's life was saved by the prompt medical assistance he received. He was in cardiac arrest when the ambulance arrived and he was taken to Kings College Hospital. He needed open heart surgery. He received catastrophic life-changing injuries. His clothes were taken for analysis and some saliva was found on his jacket which matched the appellant's DNA profile.
5. Just before the police entered the appellant's home to arrest him a large folding knife was thrown out of a window and another folding knife was found in the pocket of a pair of jeans inside his bedroom. However, no forensic evidence was found to link the knives to Mr Buchan. The appellant was interviewed and answered no comment to the questions asked.
6. Mr Buchanan was aged 31 at the time of the offence. Due to the amount of blood loss that occurred Mr Buchanan suffered an extreme hypoxic brain injury, which has caused a long-lasting cognitive impairment, both global and severe. He lacks the capacity to make decisions about his own care. He has difficulty understanding instructions and speaking intelligibly. Because of cognitive problems he is unable to use alternative means of communication. He also has severe mobility problems and spends most of his time in bed or in a wheelchair. He has difficulty with feeding, washing and dressing himself and requires assistance for all aspects of daily life. He is doubly incontinent and is currently in a specialist rehabilitative unit where he receives one-to-one daily care. He has no real insight into his condition, which is unlikely to improve in the short to medium term. He may never be able to live independently again. The court has read moving victim personal statements from Mr Buchanan's friend and former partner and from his sister.
7. The appellant was born on 29 March 2001 and so was just shy of his 17th birthday when he committed this offence. He had one conviction for using threatening or offensive words or behaviour with intent to cause fear or provocation of violence, for which a referral order for 4 months had been imposed only 2 months before, on 16 January 2018. On 22 October 2017, the appellant and one other had pursued a male victim on a bicycle. The victim fell off but escaped. Later that day the appellant saw the victim, went up to him shouting and produced a 30-centimetre long knife with a serrated edge. Fortunately, on that occasion the victim's father intervened.
8. In the pre-sentence report, the appellant said that the victim had been trying to

intimidate and provoke him and that once the appellant had produced the knife he felt that the victim would not back down. As the author of the report pointed out, none of the eyewitness evidence supported this account. Although the appellant expressed regret for his actions and said that his anger became "out of control", he was unable to address fully the impacts on the victim. Reports from the Young Offender Institution stated that the appellant sought verbal and physical conflict. Most of the aggressive incidents against inmates had been initiated by the appellant because they were from rival areas. But it appears that the appellant may himself have experienced extreme fear at the age of 14 when he was chased by a group of males with knives.

9. He was assessed as posing a high risk of reoffending. The risk relates to a number of factors, namely his use of cannabis, heightened anxiety of becoming a victim, peer groups and violence-related behaviour whilst remanded in custody. The appellant was also assessed as a high risk in relation to his own safety and wellbeing partly through his involvement with negative peer groups. The report stated that the court might conclude that the appellant met the threshold for dangerousness.
10. In his sentencing remarks, the judge noted the guilty plea to wounding with intent, which had been entered on the day of the trial. He took into account the fact that this offence had been committed whilst the appellant was still subject to the referral order for the public order offence, the character references and the letter the appellant had written to the court.
11. In his defence statement the appellant had relied upon self-defence and accident. A central issue in analysing his intention for the purposes of sentencing was the degree of spontaneity. Four factors caused the judge to sentence on the basis that even if the appellant had not planned specifically to attack Mr Buchanan, it was nevertheless the appellant's ambition to commit this type of offence. First, there was the appellant's previous conviction. Second, the contents of his mobile phone showed a preoccupation and association with membership of a gang called the Harlem Spartans. Third, the drill music lyrics on his mobile phone contained a chilling description of the events of this offence. Fourth, the appellant had clearly been spoiling for a fight with Mr Buchanan by goading him in the hope that a fight would begin in which the appellant would then use his knife.
12. The judge continued by saying that knife violence was of much a concern to the courts as it was to the police and the public. The prevalence of this type of offence had to play a part in assessing the appropriate level of sentence. The judge had read the pre-sentence report and agreed with the author's finding of dangerousness. Having carefully considered the matter, particularly the appellant's youth, he was satisfied that the appellant posed a significant risk of causing serious harm by committing further similar offences in the future.
13. It was agreed that this was a category 1 offence. The judge said that if the

appellant been an adult, the sentence would have been 16 years' imprisonment. He said that the guilty plea attracted a credit of 15 per cent and the sentence would be tempered to reflect the appellant's youth. He said that the appropriate sentence involved a reduction of over one third. However, it was necessary to pass an extended sentence of 15 years pursuant to section 226B of the Criminal Justice Act 2003 comprising a custodial term of 10 years' detention and an extended licence period of 5 years.

14. Mr Carey-Hughes does not seek to renew the application for leave to appeal in relation to the finding of dangerousness or the decisions to impose an extended sentence or an additional licence period of 5 years. But he does seek to persuade us that it is arguable that 16 years' imprisonment after the trial of an adult for this offence would have been manifestly excessive. He does so on the basis that the judge significantly uplifted the sentence for prevalence contrary to the principles laid down by this court in *R v Bondzie* [2016] 1 WLR 3004 at paragraphs 10 to 11 and 19. He also submits that a sentence of 16 years after trial lying at the top of the range for category 1 should be reserved for those cases which involve the most serious examples of both greater harm and higher culpability. He submits that there was no evidence before the judge to show that the level of harm caused by this type of offending in the locality was significantly higher than elsewhere or the harm that might be taken to be inherent in the definitive guideline, that the circumstances could not be described as exceptional and that it was not just and proportionate to increase the sentence in the instant case on this ground.
15. We shall begin by considering whether an adult sentence of 16 years for this offence was manifestly excessive, assuming that an uplift for "local prevalence" could not have been justified. As Mr Carey-Hughes accepted, the harm caused in this case could not in reality have been more serious for this type of offence. As regards culpability, the appellant used a dangerous weapon and his ambition was to commit this type of offence. In our judgment, this would take the sentence into the upper part of the sentencing range for category 1. Then there were the aggravating features: the wholly unprovoked attack on a member of the public in a busy public location; the carrying of a knife in such a place; the attempts to goad the victim; fleeing the scene to avoid detection; the attempt to throw away a knife; the use of a knife in the recent public order offence; the commission of this offence while under supervision; and the appellant's association with a gang. Even putting to one side any argument about "local prevalence", an adult sentence for this offence of 16 years could not be described as excessive let alone manifestly excessive. On this analysis the situation is therefore similar to the case of *R v Byrne* [2018] EWCA Crim 2729 .
16. Furthermore, after carefully reviewing the judge's sentencing remarks, we are not persuaded that it is arguable that he made any significant and improper uplift for "prevalence" in the sense used by this court in *Bondzie*. As in many other cases involving knife crime, the judge in effect did no more than reflect the

general concern about knife crime throughout the country. In that respect his remarks were similar in nature to those of the trial judge in the case of *R v Ezeh* [2017] EWCA Crim 1766 .

17. For these reasons, we dismiss the renewed application for leave to appeal in respect of this additional ground. Before leaving this point, we would simply observe that it is probably better for a sentencing judge to avoid the use of the term "prevalence" save in those cases where he or she considers a Bondzie uplift for exceptional local conditions is justified and the judge explains clearly why that is so on the evidence placed before the court.
18. We turn to consider the ground for which leave to appeal was granted. We do not accept that the question is whether a reduction of 37.5 per cent from 16 years' to 10 years' custody was adequate to deal with both a reduction for youth and the guilty plea. These are separate matters in the sentencing exercise. Youth may qualify as one aspect of mitigating circumstances: here, the only real point advanced. A reduction for a guilty plea follows as the final and separate adjustment.
19. We also consider that the judge's willingness to allow a credit of 15 per cent to the appellant was generous on one view of the matter. We do not see why any credit greater than the 10 per cent normally allowed for a guilty plea on the first day of the trial was justified. Leading counsel accepts that the judge suggested at the PTPH that the indictment be amended so as to add a second and alternative count of wounding under section 18 of the 1861 Act. In our judgment, there is no merit in the suggestion that the first opportunity to indicate a plea under section 18 did not occur until the prosecution made a formal application to amend the indictment on the first day of the trial. The alternative offence under section 18 was an obvious one. But the appellant maintained his reliance upon self-defence and/or accident until late in the day. Especially once the court had raised the matter, the appellant's solicitors could have written to the prosecution to indicate that he would admit the lesser charge - see, for example, *R v Caley* [2013] 2 Cr App R 305 at paragraph 20 and now paragraph F3 of the definitive guideline on guilty pleas. On this basis, we can infer that the reduction for age amounted to about 30 per cent.
20. But whatever view is taken about the size of the credit for guilty plea, the appellant's argument rests on paragraph 6.46 of the definitive guideline for sentencing children and young people:
 - 1.
 1. "When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In

most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."**

2. It was not suggested in this case on behalf of the appellant that the emotional and developmental age or maturity of the appellant was less than his chronological age. In any event, para. 6.46 provides only a rough guide which must not be applied mechanistically. Notably, the extent to which the age of a young person reduces his culpability should be seen in the context of the offence of which he stands convicted. In this case, the appellant carried a knife in public despite his recent conviction, but not for the purpose of defending himself against others carrying knives. Instead, on the judge's finding, he deliberately sought to provoke an innocent member of the public in broad daylight in a busy thoroughfare to act in such a way that he would feel able to strike a vicious blow in the victim's chest.
3. In our judgment, even if the appropriate credit for the guilty plea was 15 per cent, no criticism can be made of the judge's reduction for the appellant's age for this particular offending.
4. We therefore can find no basis upon which this court would be entitled to interfere with the judge's assessment of the allowance to be made for age or to come to the conclusion that the sentence imposed was manifestly excessive.
5. For all these reasons, we dismiss the appeal.
6. MR CAREY-HUGHES: Can I just clarify, the renewed ground was dismissed, I had to seek leave for that, therefore it is going to be whether leave was granted to argue it, it makes a difference to my remuneration.
7. LORD JUSTICE GREEN: We grant you leave but the appeal is rejected on that point.
8. THE REGISTRAR: My Lord, there is one other matter: the case was listed as "N", whether or not any reporting restrictions apply by reason of his age.
9. LORD JUSTICE GREEN: My understanding was that there were reporting restriction but at one stage the judge in the Crown Court lifted them.
10. MR CAREY-HUGHES: That was my recollection. They seem to have come back.
11. THE REGISTRAR: Are we saying, my Lord, that the reporting restrictions do not apply now?
12. LORD JUSTICE GREEN: Insofar as the restrictions are in place, they are lifted.

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