Regina v Justin Shaw

[2019] EWCA Crim 579

Before: The Vice-President of the Court of Appeal Criminal Division (Lady Justice Hallett DBE) Mrs Justice May DBE and Mrs Justice Cutts DBE

Tuesday 5th March 2019

Representation

Mr P Hallowes appeared on behalf of the Appellant.

Judgment

Tuesday 5th March 2019 Lady Justice Hallett:

I shall ask Mrs Justice May to give the judgment of the court.

Mrs Justice May:

1 On 12th September 2018 in the Crown Court at Winchester the appellant pleaded guilty to one count of arson being reckless as to whether life is endangered, contrary to section 1(2) and (3) of the Criminal Damage Act 1971 . On 15th November 2018 he was sentenced by Her Honour Judge Evans to three years' imprisonment.

2 The appellant appeals against that sentence with the leave of the single judge.

3 The circumstances were these. On 17th July 2018, at around 1.30pm, firefighters received a report that a block of flats in Alexandra Road in Farnborough was on fire. The block consisted of two adjoining semi-detached multi-occupancy properties with seven flats in each. The owner of both properties was a Mr Simpson. The Fire Service responded promptly when a call was made from local residents.

4 When they arrived, they noticed the appellant standing on the roof. They reached him with a ladder so that they did not have to enter the property. When they brought him down and asked if anybody was inside, he told them "There are bodies everywhere. There's one alive in the attic and two below". The firefighters were concerned and had to go into the property. Visibility inside was by now nil. They made their way through the property and found that the source of fire was from the appellant's flat.

5 It seems that the appellant had barricaded the door to his flat before setting fire inside the property and making his way on to the roof via a skylight. The firefighters had to use considerable force to effect entry. Their search revealed that there was nobody else inside either that flat or any other within the property.

6 The appellant demonstrated psychiatric problems at the time. He told a paramedic that he had been chased by Triads. He admitted that he had set light to the bedding in his flat using a lighter and an aerosol. He was taken into police custody.

7 The damage caused by the fire was extensive. The precise value was not known, but believed to be between £50,000 and £100,000. The fire systems were made inoperative, resulting in all the residents of every flat having to move out because it was not safe to stay in the flats without an operative fire alarm.

8 In interview the appellant reported hearing voices. He said that he believed his neighbours were calling him a "paedophile" and telling him that his family would be killed. He had wanted to die, he said, from the smoke of the fire.

9 At the sentencing hearing the judge had both a pre-sentence report and a psychiatric report. The psychiatric report related the appellant's condition to heavy cannabis use, but in the opinion of the psychiatrist it was then too early to say for definite that the appellant's psychosis was a reaction to substance misuse, rather than an episode of schizophrenia. He had drunk a can of beer and smoked cannabis on the day of the offence.

10 In sentencing, the judge referred to the fact that all other occupants were fortunately out, but the fire and the barricading had put firefighters at risk of injury or death. Significant damage had been caused. All the occupants had had to move out because the building was unsafe. She referred to the appellant's poor mental state on the day and to his suffering from paranoia and delusions. She observed that the offence was aggravated by the use of an accelerant and a lighter. The judge was satisfied that the appellant posed a medium risk to the public and that the dangerousness provisions were not engaged. There was a letter before her in which the appellant expressed his remorse. His mental state, she was told, was now stabilised on medication and he was co-operating with Mental Health Services.

11 The judge was referred to the recent decision in *R v Batchelor [2018] EWCA Crim 2506* . She said that the facts of that case were very different, but that the cases reviewed in that authority were of some assistance.

12 The judge concluded that, after trial and before mitigation, the sentence would have been one of seven years' custody. With mitigation and full discount for the guilty plea, that would be reduced to one of three years. Since a full discount was allowed, it was to be inferred that the notional sentence after trial, taking into account mitigation, would have been four and a half years' imprison-

ment.

13 Mr Hallowes, who appears for the appellant on this appeal as he did at sentencing, contends: first, that the level of sentence, before mitigation and discount, was too high; and second, that the appellant's mitigation was insufficiently taken into account. As to the first point, Mr Hallowes says that seven years was excessive in circumstances where no one was in the building in the middle of the day; the appellant was not motivated by revenge; he was delusional; and he had said that he wanted to kill himself. Mr Hallowes also says that the sentence of four and a half years reflects insufficient attention to the very strong mitigation which the appellant had: he was suffering from paranoia and delusions; his condition had responded to treatment; he had not intended to hurt anyone; he was remorseful; he had made admissions at the scene; he had no relevant antecedents; and his last offence, committed in 2006, was of a very different kind.

14 The appellant is now aged 34. There are no current sentencing guidelines for arson offences. There are some in draft, but none yet in force. *Batchelor* , to which the judge was referred, was an Attorney General's Reference. In that case, a man had set a fire outside the door of a flat above after weeks of noise nuisance. A suspended sentence of two years was increased to one of 38 months. The court in *Batchelor* observed that the seriousness of the offending, with its aggravating features, merited a sentence of six years' custody, which it reduced to five for mitigation and then to 40 months for the guilty plea, with a further reduction of two months for compliance thus far with the conditions of the suspended sentence. The court discussed the guideline case of *Attorney General's Reference No 68 of 2008 (R v Myrie) [2009] 2 Cr App R(S) 48* , where the court emphasised three features increasing the seriousness of an offence: first, setting a fire as a premeditated act of revenge or retribution; second, setting a fire adjacent to or at premises known to be occupied; and third, setting a fire in a block of flats or multi-occupancy houses, particularly at night.

15 With the exception of multi-occupancy, none of the features highlighted in *Myrie* apply here. However, the guidance provided by that case is, in our view, limited, given the changes in sentencing over the past years. The Sentencing Council will shortly produce a guideline in relation to offences of arson.

16 The damage which the appellant caused was extremely high and his actions resulted in very severe inconvenience to all the other occupants of the flats who had to move out. Before guidelines, every case must be determined on its own facts. In these circumstances, seven years does not seem to us to be wrong in principle. In any event, the judge took a notional sentence of four and a half years, before discount for the guilty plea, which is a very considerable reduction from the point where she started. She had in mind, as she said, that the appellant's paranoia and delusions were related to heavy cannabis use. In our view, it cannot be said that a reduction of this magnitude failed to take sufficient account

of the appellant's mitigation or that the resulting sentence, prior to discount, was excessive, still less manifestly so. As the judge observed, this was a highly dangerous act which created substantial damage and harm to other occupants who all had to be rehoused.

17 Mr Hallowes has said everything on the appellant's behalf that he possibly could. But we cannot conclude that the sentence was excessive.

18 Accordingly, the appeal is dismissed.