Regina

v

William Hill

Court of Appeal Criminal Division

[2019] EWCA Crim 975

Before: Mr Justice Picken The Recorder of Nottingham His Honour Judge Dickinson QC (Sitting as a Judge of the CACD)

Friday 24 May 2019

Representation

Miss N Dardashti appeared on behalf of the Appellant.

Judgment

The Recorder:

1. This is an appeal against sentence, brought with leave of the single judge limited to one ground, namely totality. On 9 January 2019, in the Crown Court at Lewes, on a committal for sentence, the appellant was sentenced as follows: Charge 3, threats to kill, contrary to section 16 of the Offences Against the Person Act 1861 , an extended sentence of six years, comprising a custodial term of five years and an extended licence of one year. Charge 1, arson, eight months' imprisonment concurrent. Charges 2, 4, 5 and 6, common assault, four months concurrent with each other and with the other sentences.

2. The offence of threats to kill was committed for sentence under section 3 of the Powers of Criminal Courts (Sentencing) Act 2000 . The victim of this offence was the appellant's former partner, who we shall refer to as KB. All other charges were committed under section 6 , meaning that the Crown Court had the same powers as the Magistrates' Court and no greater. This includes the charge of arson, even though the offence has a maximum sentence on indictment of life imprisonment. Further, as the offences of common assault are summary only, the maximum sentence for all four individually and cumulatively was six months.

3. The appellant is aged 26. He has previous convictions including for arson in 2008 and 2010, criminal damage and harassment. The appellant has a substantial record of previous convictions for offences of violence including in 2013 wounding with intent, a stabbing, for which he was sentenced on a plea of guilty to 45 months' imprisonment. In 2014, assault occasioning actual bodily harm. In 2016, assault occasioning actual bodily harm again. KB was the victim of this offence. The applicant was sentenced to 26 weeks' imprisonment. On release he and KB resumed cohabitation. In September 2016 the appellant punched at random a stranger. The victim sustained a fractured eye socket. In July of 2017, on a plea to inflicting grievous bodily harm, the appellant was sentenced to 32 months' imprisonment. That same month, July 2017, KB terminated her relationship with the appellant. However, he continued to contact her from prison in a manner described by her as "abusive and controlling".

4. On 26 April 2018, for an offence of assault occasioning actual bodily harm, the appellant was sentenced to 18 weeks' imprisonment. This offence was committed in November 2017, presumably while the appellant was in prison.

5. Dealing briefly with the individual offences. In chronological order, the first is charge 3. On 17 January 2018, the appellant telephoned KB from prison. He threatened to kill her. He said that it was his life's mission to do so. On release from prison, he said, he would track her down, slit the throat of her new partner and kill her. These chilling threats terrified the victim, as was the appellant's intention.

6. Next charges 2, 6, 5 and 1. On 8 May 2018 at HMP Lewes the appellant assaulted three members of staff. He punched and headbutted Mr Somanah who worked in the healthcare unit (charge 2). Police officers intervened. The appellant gouged the eye of Matthew Ward (charge 6); he spat into the face and mouth of Ross Buchanan-Stevens (charge 5). The appellant was taken to the segregation unit. There he set fire to bedding in his cell. That is charge 1, arson. Then charge 4. On 2 August 2018, the appellant was in a cell in the healthcare unit. He spat through that hatch into the eyes of Sam Slater. He threatened: "I am going to snap your neck, find your children and kill them."

7. An interim hospital order pursuant to section 38 of the Mental Health Act was made on 7 September 2018. The appellant was admitted to Llanarth Court Hospital. The responsible clinician was Dr Sanikop.

8. The sentencing judge was provided with reports from two consultant forensic psychiatrists: Dr Sanikop, dated 28 November, with an addendum dated 7 January 2019, two days before sentencing; and from Dr Jayawickrama dated 27 November 2018. The reports indicate sadly that the appellant grew up in a violent household. At the age of 14 he began to abuse alcohol and cannabis. Long term drug use led to psychotic symptoms, including auditory hallucinations. There is a long history of involvement with mental health services, including admissions to hospital both compulsory and voluntary. Both psychiatrists diagnosed an emotionally unstable personality disorder of the borderline type and dis-social personality disorder, but not paranoid schizophrenia or schizo-effective disorder.

9. There was no recommendation for a hospital order. The suggestion was treatment principally by way of psychological counselling, but the appellant was not engaging. On the contrary, while at the hospital the appellant assaulted both another patient and members of medical staff. There were several incidents of threats to and intimidation of others. The end result was that the interim hospital order was revoked and the appellant returned to prison.

10. As to future risk, Dr Sanikop concluded that there was a significant risk of violence to others. As to level of harm, Dr Sanikop advised: "If he were to offend again there is no doubt the victims are likely to sustain serious harm, physical as well as psychological."

11. Turning now to the individual sentences. For threats to kill, applying the definitive guideline, the judge concluded that this was a case of higher culpability/A because of the history of violence towards KB and Category 1 due to the very serious distress caused to KB. Category 1A has a starting point of four years with a range of two to seven years. No criticism is made of the judge's conclusions so far.

12. The judge moved up from the starting point of four years to six years after trial. The judge came to this conclusion having considered the particular nature of the threats, which were made from prison; and the statutory aggravating factor of previous convictions. Although this adjustment from four years to six years is criticised in the advice on appeal, leave was refused on this ground and the application has not been renewed

by Miss Dardashti; rightly so. Six years after trial is within the range properly open to the sentencing judge. The judge then allowed full credit for plea, reducing the sentence for threats to kill to four years.

13. As to the arson, the maximum sentence available to the Crown Court was six months, less one-third credit for plea. It follows that the sentence of eight months was unlawful.

14. As for the four assaults, there can be no complaint about the sentence of four months' imprisonment, the judge having allowed full credit.

15. In principle these offences called for consecutive sentences. Having settled on a sentence of four years for the threats to kill, the judge was entitled to impose consecutive sentences for the arson and for the assaults. Standing back, we ask whether the overall sentence was too great. Having regard to the criminality involved, we are not persuaded that the sentence was inappropriately long nor that a reduction was called for on the ground of totality.

16. Turning now to the extended determinate sentence, the offence of threats to kill is a specified violent offence. The judge concluded that there is a significant risk of serious harm occasioned by the commission of further specified offences within the meaning of section 226A of the Criminal Justice Act 2003 . No challenge is made to that decision. The judge could not have come to any other conclusion.

17. The judge had power to pass an extended determinate sentence because of the previous conviction for wounding with intent, that is condition A, section 226A(2) . Additionally the judge had power to impose an extended determinate sentence because the custodial term was at least four years, that is condition B, section 226A(3) .

18. The judge was entitled, had she thought it right to do so, first to pass normal determinate sentences for the arson and the assaults, then consecutively the extended determinate sentence for the threats to kill. This is well established sentencing principle. If authority is needed, see for example *Ulhaqdad [2017] EWCA Crim 1216* . The judge appeared not to appreciate that she had the discretion to pass sentence in this way. The judge considered herself bound by unspecified decisions of this Court to impose, under the heading of the threats to kill, a single custodial term reflecting all criminality, with concurrent sentences for the other offences.

19. However, any submission on behalf of the appellant that the judge was obliged to sentence in accordance with the approach in *Ulhaqdad* is itself wrong. The judge was not required to sentence in that way. The judge was entitled, if she thought it right to do so, to construct the sentence as she did, fixing the custodial element of the extended sentence to reflect all offences.

20. Section 153(2) of the Criminal Justice Act 2003 provides that "the custodial sentence must be for the shortest term …that in the opinion of the court is commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it". Section 226A(6) specifically applies this provision to extended determinate sentences.

21. This approach, reflecting all associated offending in the single custodial term, is encountered frequently in

practice. It is sometimes used in cases, unlike this one, where no single offence would justify a term of four years, but the offences as a whole do so. See for example *Pinnell; Joyce [2010] EWCA Crim 2848* .

22. The judge arrived at the custodial term of five years as follows. For the threats to kill four years, for the assaults four months consecutive, for arson eight months consecutive. In principle there was nothing wrong with this approach. The effect is that the appellant will serve at least two-thirds of the custodial term, including the periods attributable to the arson and the assaults.

23. As Miss Dardashti properly conceded in the course of her very helpful submissions, the sentencing judge should not normally adapt the sentence to take account of the release provisions. The length of the sentence should not be increased to counter early release on licence. When extended sentences were first introduced some prisoners were entitled to be released at the one-half stage. The legislation was amended so that all prisoners serving an extended determinate sentence must serve at least two-thirds and may serve the full custodial term before release. Custodial terms were not reduced to accommodate this.

24. In any event, on the facts of this case, no injustice arises from the amalgamation of the term of four years for threats to kill, with the much shorter terms for the other offences, including arson which itself is a specified violent offence.

25. For the offence of arson the sentence of eight months is quashed and we substitute a sentence of four months' imprisonment concurrent. This reinforces our view that the total sentence was appropriate.

26. As to the extended determinate sentence for threats to kill, the sentence is varied from six years to five years eight months, comprising a custodial term of four years eight months and an extended licence of one year. All other sentences remain as before.