

No: 201901800 A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

5 July 2019

Before:

Lord Justice Bean

Mr Justice Choudhury

HIS HONOUR JUDGE Potter

**Regina
and
Ryan Joshua Ball**

Ms S Smith appeared on behalf of the **Appellant**

Mr Justice Choudhury

This appeal raises a short point in relation to the discount to be applied to sentence where there is an early guilty plea.

The background facts, very briefly, are as follows. On 16 March 2019 police were called to the rear of a pub in southeast London following reports of a man being seen with two knives in his waistband. When the police arrived, the Appellant was detained and searched. The Appellant immediately put up a violent resistance to his detention. During the ensuing struggle, the Appellant managed to assault and injure no fewer than four officers who were merely trying to do their job. PC Mady suffered an injury to her wrist caused by the applicant kicking out at her. PC Stockdale was grabbed by the wrist, causing the officer to suffer reddening and localised pain to his wrist. He also suffered bruising and marking to his face. PC Cupid was bitten by the Appellant, although fortunately the bite did not break the skin. Finally, PC Webster was kicked by the Appellant approximately five times, as a result of which the officer sustained cuts and bruises to his knees. Two kitchen knives were later found in a letterbox close to where the Appellant had been standing prior to being detained for the search.

The Appellant appeared before Bromley Magistrates' Court on 18 March 2019 and was charged with the offences of assault occasioning actual bodily harm, possession of an offensive weapon, and two offences of assault of an emergency worker contrary to the Assaults on Emergency Workers (Offences) Act 2018. The Appellant did not enter any plea at that stage. The magistrates declined jurisdiction and the case was committed to Woolwich Crown Court, with a plea and trial preparation hearing fixed for 15 April 2019.

At the hearing on 15 April 2019, there were discussions between the Crown and the Defence regarding the Appellant's pleas and the proposed basis of those pleas. For technical reasons, the Appellant was unable to sign the basis of plea and the matter was adjourned until 23 April 2019. On that day, the Appellant appeared at court in person and was able to sign the proposed basis of plea. However, the Crown stated that the matter had not been reviewed and proposed a further short adjournment in order to finalise the indictment and consider the basis of plea. The matter was then adjourned to 29 April 2019. It was at the hearing on 29 April that the Appellant was finally able to enter his guilty pleas. There was, however, insufficient court time to proceed to sentence on that day, and the matter was adjourned until 3 May 2019 for sentence.

On 3 May 2019, the Appellant appeared before Recorder Boothby. The judge passed the following sentences: in respect of the four counts of assault, ten months' imprisonment to run concurrently on each count. In respect of the two counts relating to possession of a knife, ten months' imprisonment concurrent on each count, but consecutive to the sentences for assault. The total sentence passed was therefore 20 months' imprisonment. In passing that sentence, the judge made the following remark:

i. "You have spared us a trial and I have readily reduced the total sentence that I proposed to pass on you by 20 per cent."

The short ground of appeal is that the reduction of 20 per cent was incorrect and that in accordance with the guidelines, the sentence should have been reduced by 25 per cent. Ms Smith, who appears for the Appellant, acknowledged in written submissions that the Appellant was not entitled to a one third discount on the basis that he did not enter his plea at the very earliest opportunity. However, Ms Smith relies on the fact that a guilty plea was indicated to the court by the very next hearing on 15 April 2019. Although a plea could not actually be entered on that occasion, the guidelines indicate that it is sufficient for there to be an indication of plea for the reduction to apply.

The application for leave to appeal against sentence was referred to the full court by the Registrar.

In our judgment, it does appear from the chronology described above that the plea was indicated immediately after the first stage of the proceedings, namely at the plea and trial preparation hearing fixed for 15 April 2019. In accordance with the guidelines, the reduction to be applied at that stage is 25 per cent. It may be that the judge considered that a 25 per cent reduction was not appropriate because of the delay in actually entering the plea, but there is nothing in the remarks to indicate that that was the reason behind the 20 per cent reduction. It seems to us that the guidelines are clear, and that all that is required from the Appellant in order to be eligible for the reduction is the giving of an indication of plea. If that indication is clear, then unless there are other reasons for not giving the reduction, the full discount of 25 per cent available at that stage should be applied.

Given that the maximum sentences under the guidelines being considered by the judge were 12 months for each of the offences, it would appear that by passing a sentence of ten months' imprisonment for each, the judge in fact applied a discount of only one sixth, or 16.7 per cent, and not 20 per cent as stated. The correct discount of 25 per cent would result in a sentence of nine months for each of the offences with a total sentence of 18 months. Accordingly, we quash the sentence of 20 months and substitute it with a sentence of 18 months.

To that extent, this appeal is allowed.