*Neutral Citation Number: [2019] EWCA Crim 1288*

No: 201900259/A4

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday 12 July 2019

**B e f o r e**:

**LADY JUSTICE NICOLA DAVIES DBE**

**MR JUSTICE PHILLIPS**

**MR JUSTICE CHOUDHURY**

**R E G I N A**

v

**CRAIG BANNER**

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**Mr A Davis** appeared on behalf of the **Appellant**

**J U D G M E N T**

(Approved)

1. MR JUSTICE CHOUDHURY: On 23 November 2018, the Appellant was convicted of offences of aggravated burglary, contrary to Section 10(1) of the Theft Act 1968 and causing grievous bodily harm, contrary to Section 18 of the Offences Against the Person Act 1861. On 20 December 2018, he was sentenced for each offence to an extended sentence of 18 years, comprising a custodial term of 14 years and an extension period of four years, those sentences both to run concurrently. The Appellant has been given leave to appeal by the single judge against that sentence on the grounds that the sentencing judge erred in considering that the dangerousness provisions were applicable.

2. The facts of this matter can be briefly stated. Mr Colin Jones, the victim in this crime, lived in the same block as the Appellant. They had known each other for a few months when they had a falling out and stopped speaking to each other. On 25 July 2018, Mr Jones was at home when he received a call from Miss Stevens, who was the Appellant's partner at the time. After a brief conversation with Miss Stevens, he had a further telephone call which he did not pick up thinking it was Miss Stevens again. About 15 minutes later, Mr Jones heard a knock on the door. As soon as Mr Jones opened the door, the Appellant burst in and struck him on the head with a hammer. Mr Jones put his hands up to protect himself but the Appellant continued to hit him with the hammer whilst saying: "I'm going to fucking kill you."

3. The Appellant appears to have dropped the hammer at some stage but continued the assault with his fists. When the attack ceased, the Appellant left saying that he would "send a friend" if the complainant reported him to the police. The Appellant thereafter made attempts to conceal his actions by washing his clothes which were

covered in blood.

4. A neighbour, who had become aware of the incident, flagged down a nearby police car saying that the Appellant had injured another neighbour. The police attended Mr Jones' flat. When they got there, they found Mr Jones had serious injuries.

5. The police then went to the Appellant's home address but he was not in. They tracked him down to a nearby pub and he was arrested. The Appellant was heard to make some incriminating remarks whilst being restrained. He also sought to deny involvement in the attack by suggesting that he had found Mr Jones covered in blood when he had gone to the flat to obtain some Rizlas.

6. The injuries suffered by Mr Jones were serious. His skull was fractured and might potentially require a metal plate to be inserted. His hands were fractured in several places and both hands were in casts. There remains the possibility that two fingers would be lost. Mr Jones' personal statement makes clear that the effect of the injuries has been traumatic and that the physical impact would be lifelong.

7. In his sentencing remarks, the Judge, His Honour Judge Williams, described the attack as "pitiless" and the Appellant's attempts at concealing his actions afterwards as "cynical". The Judge treated the grievous bodily harm offence as the lead count and applied the relevant guidelines to that offence. He concluded that this was a Category 1 offence for which the starting point is 12 years' imprisonment, with a range of 9 to 16 years. The Judge then considered the various aggravating features. These included, in particular, the Appellant's previous convictions for a total of 84 offences spanning four decades. Several of those offences were against the person, including three offences involving assault occasioning actual bodily harm and one Section 20 offence. It was noted that the last offence of violence was over 20 years ago. It was noted that the pattern of offending since 2000 was less serious and less frequent. It was also noted that there had only been one previous period of imprisonment. Other aggravating features were the location of the offence, being the victim's home, the ongoing effect on the victim of his injuries and the attempts to dispose of and conceal evidence. Taking account of all those features, the Judge considered that an increase in the starting point to 14 years was warranted. The Judge found there were no mitigating features.

8. The Judge proceeded to consider whether the Appellant was to be regarded as a dangerous offender. In doing so, he took account of the content of the pre-sentence report. In the Section entitled "Assessment of the Risk of Serious Harm" the report noted, amongst other things, that: the Appellant has "a significant level of criminogenic need, i.e. those lifestyle factors that were either directly or indirectly causally linked to his behaviour leading up to and during the commission of the index offence"; he presented a "high risk of recidivism"; whilst the nature of his previous offending did not suggest that he had, prior to the index offence, caused victims of his crimes to suffer serious harm, they are nevertheless serious convictions; past behaviour is the most reliable indicator when considering an offender's risk of serious harm to others, but is not the only predictive factor and in the absence of the Appellant demonstrating that he can maintain a drug free lifestyle, cognitive reasoning skills and self-management skills, there are significant issues associated with his risk of harm; and whilst he has achieved stability in other areas of his life, nevertheless he is to be assessed as presenting "a high risk of harm".

9. Taking the circumstances of the offence into account and the matters set out in the pre-sentence report, the Judge concluded that there was a significant risk that the Appellant would commit specified offences and that by doing so would cause serious physical or psychological harm to one or more persons. As such, it was concluded that the Appellant is to be regarded as a dangerous offender.

10. The Judge considered that a determinate sentence of imprisonment was insufficient and stated as follows:

”I note that if a determinate sentence of imprisonment is a sufficient sentence then I should not impose an extended sentence, reference here to R v Bourke *[2017] EWCA Crim 2150*. The identified criminogenic factors contributing to the risk of re-offending by the defendant are longstanding and have not been addressed by the imposition of a single custody sentence and many non-custodial sentences in the past. They are to be regarded as ingrained.

The defendant has never before experienced a substantial term of imprisonment, supported on his release by a lengthy period of licence and I can see that he has only served one period in custody, three months' detention in a young offender institution imposed in 1994.

It is argued, in terms, that the length of an appropriate immediate custodial sentence means the defendant will spend a long time in custody before his release on licence. That he would have effectively the opportunity for addressing the issues identified within the pre-sentence report, such as deficits in his consequential thinking during that sentence. Against this background I am urged not to pass an extended sentence of imprisonment.

I have reflected on that position and considered cases such as R v Phillips [2019] (sic) 1 Cr.App.R (S) and R v White *[2018] EWCA Crim 2142* and, of course, the case I have already referred to, Bourke. The nature and circumstances of this incident cause me considerable concern. I am sure that it is necessary to impose extended sentences of imprisonment for the protection of the public.”

11. The Appellant appeals on the ground, as we have said, that the dangerous offenders provisions did not apply, but even if it was right to say that the Appellant was dangerous, an extended sentence was not appropriate, and, finally, that the period of the extension fixed by the Judge was too long.

12. Mr Davis, who appears for the Appellant but who did not appear for him during the trial, highlights the fact that the Appellant's most recent conviction prior to this for an offence of violence against a person was recorded over 20 years ago in 1997. It is noted also that there were no convictions for weapons-related offences and that there was only a medium risk of serious recidivism. In the circumstances, it is said that the sentence of an immediate determinate sentence alone would adequately reflect the seriousness of the offending and would not offend the public interest or the interests of justice.

13. As to the assessment of dangerousness, we note that the Judge appeared to rely specifically on the circumstances of the offences and the assessment in the pre-sentence report. It was established in *R v Lang [2005] EWCA Crim 2864* that in assessing the risk of further offences being committed, the sentencer should take into account the nature and circumstances of the current offence, the defendant's history of offending (including not just the kind of offence but its circumstances) and the sentence passed, whether the defendant demonstrates any pattern, social and economic factors in relation to the offender (including accommodation, employability and education), associated relationships and drug alcohol abuse, and the offender's thinking, attitude towards offending, supervision and emotional state. Information in relation to these matters will most readily, but not exclusively, come from antecedents, pre-sentence, probation and medical reports.

14. The pre-sentence report in this case was clear that notwithstanding the pattern of recent offending, which might not of itself give rise to the conclusion that there was a significant risk of serious harm, there were several other factors - factors pertaining to the Appellant's criminogenic needs, thinking skills and offending associated with continued substance abuse - that gave rise to a high risk of harm. The Judge was, in our view, entitled to rely upon that conclusion. The offences themselves involved a pitiless and unprovoked attack with a hammer. The attack resulted in very serious and life-changing injuries and, as the judge stated, it was a matter of sheer good fortune that the victim did not die as a result of the attack.

15. In our judgment, the Judge was entitled, based on these matters, to reach the conclusion that the Appellant was dangerous and that he did not err in so doing.

16. The next issue is whether the Judge erred in considering that an extended sentence was appropriate. The Judge did expressly consider that question. The Judge's reasons for regarding a determinate sentence as insufficient appear to be that there remained a high risk of re-offending because of ingrained criminogenic factors contributing to the risk of re-offending which had not been addressed by the many non-custodial sentences and single custodial sentence in the past. The other factor that the Judge took into account was the nature and circumstances of the offence itself.

17. Although that reasoning could be said to be somewhat sparse, it is our view that it does sufficiently indicate that the Judge was not satisfied that a determinate sentence would address the risk of re-offending and the high risk of harm in this case. We note that the pre-sentence report specifically refers to poor engagement with probation services thus far. That conclusion reached by the Judge was one that he was entitled to reach based on the information available to him. The Appellant is an individual with a long and despicable record of offending. Whilst much of that history did not involve serious acts of violence, it does appear clear that the many non-custodial sentences imposed on him have not had the effect of achieving significant improvement in behaviour. That, taken in conjunction with the savagery involved in the offences in question, is clearly capable of giving rise to a real concern that a determinate sentence would not suffice to diminish the risk of serious harm and that an extended sentence is appropriate.

18. Finally, in relation to the period of extension, we note that this was not the highest level of extension and, in the circumstances, it cannot be said that a four-year period was manifestly excessive.

19. For these reasons, we consider that the appeal must be dismissed.