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2019/00237/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Wednesday 10th July 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE CHOUDHURY

and

HIS HONOUR JUDGE FIELD QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

JASON RAYMOND HEWISON

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Mr A J Davis appeared on behalf of the Appellant

J U D G M E N T
(Approved)

Wednesday 10th July 2019

LORD JUSTICE HOLROYDE: I shall ask His Honour Judge Field QC to give the judgment of the court.

HIS HONOUR JUDGE FIELD QC:

1. This is an appeal against sentence brought with the leave of the leave of the single judge.

2. On 26th October 2018, at a plea and trial preparation hearing in the Crown Court at Newcastle upon Tyne before His Honour Judge Sloan QC, the appellant pleaded guilty to one offence of domestic burglary, contrary to section 9(1)(b) of the Theft Act 1968, and to two offences of robbery, contrary to section 8 of the same Act. On 18th December 2018, he was sentenced by Her Honour Judge Moreland as follows: on count 1 (burglary), to three years' imprisonment; on count 2 (the first of the offences of robbery), to an extended sentence, pursuant to section 226A of the Criminal Justice Act 2003, comprising a custodial term of six years and an extended licence period of three years; and on count 3 (the second offence of robbery), to an identical nine year extended sentence.

3. The facts, in summary, are these. Ramesh and Sheila Lall are brother and sister. They lived together in a ground floor flat in Newcastle. Sheila Lall suffers from severe learning difficulties and is a vulnerable adult. Ramesh Lall is her registered carer. In the past, and most recently during the week prior to 25th September 2018, the appellant had been engaged by Ramesh Lall and his sister to carry out casual gardening work for them. Whilst carrying out that work, the appellant came into contact with Sheila Lall and so it was that he would have become aware of her particular difficulties and her vulnerability.

4. On 25th September 2018, at about 11.15pm, Ramesh Lall was asleep in his bedroom. He woke up to find the appellant standing at his bedside. The appellant demanded money. Mr Lall refused to give him any, but the appellant then thrust his hand into Mr Lall's trouser pocket, took out his wallet and removed £80 in cash. He then demanded jewellery or anything else of value. Mr Lall said that he did not have anything and asked the appellant not to hurt him. The appellant then left. These are the facts relating to count 1 on the indictment.

5. Miss Lall had been in the kitchen throughout these events. She was unaware that there had been a burglary at her home until her brother told her about it.

6. The appellant returned to the Lalls' flat the following night, 26th September 2018. This time he was armed with a screwdriver. At about 10pm he walked into the flat through an unlocked door. He made towards Ramesh Lall's bedroom. Sheila Lall saw and followed him. Ramesh Lall, alerted by his sister's scream became aware of the appellant's presence and, seeing that his sister was visibly upset, he tried to put himself between the appellant and Sheila. The appellant drew the screwdriver and threatened Mr Lall with it, saying "Give me money now or I will cut you". It was apparent to Mr Lall that the appellant had been drinking and so he proffered his wallet to the appellant who took it and removed £25. He then threw the wallet to the floor, shouting "Is that all you have?" Miss Lall said that she had some money in her purse in the kitchen. The appellant, still armed with a screwdriver, took her to the kitchen, removed money from her purse and then returned to Mr Lall's bedroom and demanded anything else of value. Mr Lall handed the appellant a tablet computer, and the appellant also took three mobile telephones before leaving the premises by the back door. His parting shot was to issue a further veiled threat to Ramesh and Sheila Lall: "Don't call the police, because I know where you live".

7. In fact, the police were quickly informed and the appellant was soon arrested. He was still in

possession of the tablet computer and two of the mobile telephones belonging to Sheila Lall. He declined to answer questions when interviewed about these offences.

8. The effect of these offences upon the victims was profound. They were terrified by what had happened in their home. We are told that they are now contemplating leaving their home and moving to sheltered accommodation.

9. The appellant was 42 years old at the time of sentence. He had 25 previous convictions, spanning the period between February 1992 and March 2018. His relevant convictions included burglary of a dwelling within intent to cause unlawful damage in 1997; burglary of a dwelling again in 1997 and in 2005; kidnapping, possession of an offensive weapon in a public place and causing grievous bodily harm with intent in 1998; theft from a dwelling in 2016; and assault occasioning actual bodily harm, for which he was sent to prison in March 2018. Also of relevance is an offence of possessing an imitation firearm with intent and affray in 1996.

10. Following the appellant's guilty plea at the plea and trial preparation hearing, His Honour Judge Sloan QC ordered a pre-sentence report and a mental health assessment for the purposes of assessing whether the appellant was a dangerous offender. The appellant declined the opportunity to engage with the Mental Health Liaison Team at the Crown Court and there was no pre-sentence report available for the judge at the sentencing hearing on 18th December. There was a note from the probation officer on the Digital Case System that explained that she had been unable to interview the appellant because of a problem with the prison video-link and had been unable to arrange a further appointment before the hearing. She went on to say that she had been told by the appellant's solicitors that the appellant wanted the sentencing hearing to go ahead; that they were not concerned about having a pre-sentence report; and that if the judge wanted one, a four week adjournment would be required.

11. Her Honour Judge Moreland raised the question with Mr Davis, who represented the appellant at that hearing and who represents him again today. The judge stated in the plainest of terms that she intended to determine the issue of whether the appellant was a dangerous offender and gave Mr Davis two options: to proceed without a pre-sentence report or to adjourn so that the appellant could be seen by a probation officer and a report prepared. The judge was told that the appellant was anxious to proceed and that he did not want to adjourn for a report. The judge proceeded to pass sentence.

12. As for count 1, the burglary on 25th September 2018, by reference to the relevant definitive guideline the judge concluded that this was a category 1 offence because there was greater harm, because Mr Lall was at home and encountered the appellant who was beside his bed as he awoke; and there was higher culpability, because the appellant had targeted the premises, being aware of the vulnerability of the Lalls. The appropriate starting point for count 1 was thus three years' custody, and the category range was two to six years. Taking into account the aggravating features, including the appellant's previous convictions, the fact that he was under the influence of alcohol, the fact that it was a night time burglary, and the profound impact upon the victims, the judge concluded that after trial the sentence would be four years' imprisonment. With 25 per cent credit for the guilty plea, this was reduced to three years' imprisonment.

13. When dealing with counts 2 and 3, the judge applied the guideline for robbery in a dwelling. She found that culpability fell into category B, because the appellant had produced a weapon, but not a bladed article; and harm fell into category 2, because other characteristics for categories 1 and 3 were absent. The starting point, therefore, was five years' custody, and the range was four to eight years. The judge found a number of aggravating features: the appellant targeted vulnerable victims; he threatened them so that they would not go to the police; this was

a prolonged incident which took place at night and when the appellant was under the influence of alcohol; and the appellant had previous convictions for offences committed in people's homes. The judge concluded that, before credit for the guilty plea, the appropriate sentence would be eight years' imprisonment on each count; the credit for the guilty pleas was 25 per cent; accordingly, the sentence in respect of both robbery offences would be six years' imprisonment. She declined to allow full credit for the guilty pleas because the appellant had not pleaded guilty at the lower court. The judge found that an indication of plea at the lower court was not sufficient.

14. The judge then moved on to consider dangerousness. She concluded that there was a significant risk to members of the public of serious harm occasioned by the commission by the appellant of further specified offences and further found that conditions (a) and (b) under section 226A were met, because of the appellant's previous conviction for an offence contrary to section 18 of the Offences against the Person Act 1861 and the judge's conclusion that a six year custodial term was appropriate. The judge gave her reasons briefly. It was clear that she took into account the circumstances of the current offences which she found "have indicators of dangerousness". She also took account of the appellant's previous convictions, particularly those for specified offences, namely, the offences involving the possession of an imitation firearm, affray, kidnapping, possession of an offensive weapon and causing grievous bodily harm with intent. She was aware of the circumstances of those offences. As for the fact that a number of them took place some years ago, she said this:

> "I accept, as I say, your offences are old but that makes it all the more concerning that here is another example of you entering the home of another person and committing serious offences therein. These are, as I say, ruthless and despicable offences.
>
> No order that I can make will, in my view, protect the public from the risk that you pose and so I form the view that you are a dangerous offender. You qualify for an extended sentence, both

> by the length of the custodial sentence appropriate in this case and by the fact that you have a previous section 18 offence in your previous convictions."

The judge then passed the extended sentences to which we have previously referred.

15. This appeal focuses upon those extended sentences. There are two grounds of appeal for which the appellant was granted leave: first, that the imposition of an extended sentence was manifestly excessive because the appellant did not meet the dangerousness criteria; and second, that an extended sentence should not have been imposed in the absence of a pre-sentence report. There was a further, third ground of appeal, namely, that the appellant had indicated guilty pleas at the magistrates' court and was thus entitled to full credit for his pleas, rather than the 25 per cent that was allowed. Although leave on the third ground was not granted by the single judge, Mr Davis has renewed the application before us and has sought the necessary extension of time.

16. It is submitted on the appellant's behalf that the judge was wrong to conclude that the appellant is a dangerous offender because: first, the more serious specified violent offences that resulted in serious harm were committed 20 years or more ago; and second, the appellant caused no serious physical harm in the course of the robberies committed in September 2018. It follows, so Mr Davis submitted, that the risk of serious harm was not significant.

17. It is clear to us that the judge accurately identified the issue that she had to determine in section 226A of the 2003 Act, namely, whether the court considered that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences. The judge was, therefore, concerned with an assessment of future risk posed by the appellant. In making that assessment, she took account of his past offending, and she clearly had well in mind the circumstances of both the robberies and the earlier burglary.

On the basis of the factors that she considered, the judge reached a reasoned decision that the appellant did indeed satisfy the statutory criteria. We see no reason to interfere with the decision which we find she reached carefully and on a proper and reasonable basis. The appellant's previous convictions were plainly relevant, notwithstanding the age of some of them. We note, in any event, that the judge might also have relied upon the conviction for the offence of assault occasioning actual bodily harm, contrary to section 47 of the Offences against the Person Act 1861, committed in March 2018 – a more recent "specified" offence. We also find that the absence of serious physical harm on 26th September 2018 does not detract from the conclusion that there remains a significant risk of serious harm in the future, as the judge found, particularly given the clear evidence of serious harm caused by the appellant in the past. Indeed, we find that the absence of serious harm in the course of the robberies was perhaps fortuitous.

18. It follows that, in our judgment, the judge correctly applied the statutory test to the facts of this case. We find that her decision was neither wrong in principle, nor wrong in law.

19. The second ground of appeal concerns the absence of a pre-sentence report. It is submitted on the appellant's behalf that the judge should have erred on the side of caution and adjourned the case to obtain such a report. We note that it is clear that nothing arose during the course of the hearing that caused her to change the view that she had formed at the beginning of the hearing that no pre-sentence report was necessary.

20. In our judgment, in the particular circumstances that we have already outlined, the judge was entitled to reach the conclusion that a pre-sentence report was not necessary. The purpose of the report was well-known to the parties, and the appellant was given the opportunity to seek a further adjournment. He declined to do so. Thus, the judge was fully entitled to proceed as she did.

21. In the event, we have had the benefit of a pre-appeal report, prepared by a probation officer pursuant to the order of the single judge. Nothing that we have read in that report casts any doubt upon the assessment made by Her Honour Judge Moreland of dangerousness in this case. The absence of a pre-sentence report on 18th December 2018, therefore, did not invalidate her decisions.

22. Having found that conditions (a) and (b) in section 226A were met, the judge went on to exercise her discretion to pass an extended sentence. Her reason for so doing was that an extended sentence was necessary to protect the public. Again, we find that her decision is unimpeachable and that the extended sentence was wholly justified. Nor do we find that the extended sentences in this case were manifestly excessive.

23. Finally, we turn to the third ground of appeal. At his first appearance before the magistrates on 28th September 2018, the appellant indicated in open court that he was likely to plead guilty to the charges of robbery and burglary. That much is clear from the Case Management Questionnaire from that hearing that was uploaded to the Digital Case System. The appellant then entered his guilty pleas at the first opportunity in the Crown Court. Robbery, of course, is an indictable only offence. Thus, the appellant was unable to do any more than indicate his guilty plea to the magistrates. It follows, in our view, that the judge was incorrect to say that he should have pleaded guilty at that stage and to reduce his credit accordingly.

24. Having regard to the guideline on the reduction in sentence for a guilty plea, the proper discount in this case should be, and should have been, one-third.

25. We, therefore, grant the necessary extension of time and give leave to appeal on ground 3.

We quash the sentences in this case and substitute for them the following sentences which take account of the correct one-third credit for guilty pleas: on count 1 (burglary), the sentence will be 32 months imprisonment; on count 2 (the first of the robberies), there will be an extended sentence, pursuant to 226A of the Criminal Justice Act 2003, of eight years and four months, comprising a custodial term of five years and four months and an extended licence of three years; and on count 3 (the second robbery), there will be an identical extended sentence of eight years and four months, comprising a custodial term of five years and four months and an extended licence period of three years. The sentences on counts 2 and 3 remain concurrent with each other, but consecutive to the sentence on count 1.

26. To this limited extent, the appeal is allowed.
