Neutral Citation Number: [2019] EWCA Crim 1382

No: 201900034/A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 20 June 2019

B e f o r e:

LORD JUSTICE GREEN

MR JUSTICE JULIAN KNOWLES

RECORDER OF NORTHAMPTON

(HIS HONOUR JUDGE MAYO)

(Sitting as a Judge of the CACD)

R E G I N A

v

NATHAN ALLEN PLEACE

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Mr C Rees appeared on behalf of the **Applicant**

J U D G M E N T

(Approved)

1. RECORDER OF NORTHAMPTON: On 5 October 2018, in the Crown Court at Cardiff before His Honour Judge Bidder QC and a jury, the applicant was convicted of violent disorder, contrary to section 2(1) of the Public Order Act 1986. He was sentenced on 14 December 2018 to a term of 2 years and 9 months' imprisonment. The judge had presided over two separate trials arising out of the same incident. At various stages some offenders in this violence had entered guilty pleas.

2. The applicant renews his application for leave to appeal against sentence after refusal by the single judge.

3. On 12 August 2017 a serious episode of public disorder took place outside The Cornwall public house which is located in a residential area not far from Cardiff City football stadium. Cardiff City was playing Aston Villa at home. Some time after the match had concluded, at approximately 6.45 pm, a number of Aston Villa supporters arrived at Cornwall Street in a hired minibus. They had been drinking heavily. There were a number of Cardiff City supporters both inside the Cornwall and outside on the front. There were also women, elderly people and children inside. What followed was captured on CCTV. Around 15 men alighted the bus and headed towards The Cornwall. A serious violent incident then took place. Bottles, cans and glasses were used as weapons. At least three men were punched and kicked while they were on the floor. The disorder moved to the side entrance of The Cornwall where the applicant had been standing. The applicant threw a bottle towards the Aston Villa group before going back inside. Some of the Aston Villa group attempted to enter the public house. Darren Simms was

one of the Aston Villa supporters. He stepped through the side entrance and began to throw punches. The applicant grabbed an item from the bar and threw it. Simms was initially confronted by one of those inside before being physically attacked by the applicant and another. The applicant also kicked out at Simms whilst he was on the floor. He then followed Simms into the foyer and threw a punch in his direction. The applicant went back inside the public house and collected a chair which he took towards the front entrance. While some of the Aston Villa group returned to the bus, two of those inside The Cornwall went back outside. One put his fists up in a threatening manner towards the Aston Villa group and a second confrontation occurred outside which appeared to involve the applicant. Once the violence dissipated the Aston Villa group returned to the bus.

4. The applicant was arrested on 7 November 2017 and gave "no comment" replies to all questions.

5. Having concluded two trials the judge, in passing sentence on a number of offenders including the applicant, reached the conclusion that the Cardiff City supporters had not planned or wanted any trouble. The judge was sure that trouble had been planned by the Aston Villa supporters on the bus which had diverted from its expected route from the football ground and onto the M4 motorway. Those on the bus wanted to fight Cardiff City supporters and were, in the judge's opinion, prepared to invade the public house to do so. He was fortunate that serious injury was not caused.

6. Whilst the judge found that it was not possible to make "very fine gradations of culpability" he carefully categorised those whom he had to sentence into three groups. Two of the Aston Villa supports and the applicant, he concluded, were responsible for the most serious violence and were the most culpable. He found that the applicant had been inside the public house but had not started the violence. Having seen the Aston Villa Group arrive from a side door, the applicant threw a bottle towards them which had inflamed the situation. The applicant went inside the public house to find more objects. He threw a glass at the Aston Villa group. When Darren Simms went to the ground the applicant kicked him in the head and as Simms went to leave the applicant punched him hard to the back of the head. The judge concluded that the applicant relished his involvement.

7. He was 30 and had eleven convictions, many of which involved public disorder and three of which involved football disorder. In 2011 the applicant was convicted of violent disorder for which he received a custodial sentence and was made subject to a Football Banning Order that he then subsequently breached. He was convicted by the jury of this offence. For anyone involved in such serious episode of public disorder the judge concluded that a custodial sentence was appropriate.

8. The two other offenders within the first group which the judge identified were Brett Clarke and Ryan White, both of whom were Aston Villa supporters. He found Clarke to have been the most violent. He was 40 and with no relevant convictions. He was convicted after a trial. White was in the middle of the Aston Villa group. He was entitled to full credit for his guilty plea entered back in April 2018. Clarke was sentenced to 3 years' imprisonment and White to 2 years.

9. In sentencing the applicant, the judge took into account the fact that he had not been looking for trouble that day and secondly, the impact of his service as a member of the Parachute Regiment.

10. In arriving at the term of 2 years and 9 months' imprisonment the judge allowed a further reduction in his sentence compared with what he described as the "starting points" for Clarke and White.

11. Mr Christopher Rees, who represented the applicant throughout the Crown Court proceedings and today, does not argue that the judge was wrong to place the applicant into the first category in terms of the amount of violence used.

12. The short point raised in written grounds and argued before us today is whether the discount applied to the sentence arrived at by the judge for the applicant's personal mitigation, was insufficient to the extent that it yielded a sentence which was manifestly excessive.

13. We have read the combined appeals of *R v Wiggin and Ors [2014] EWCA Crim 1433* and can derive no guiding principles on the approach which the judge in this case ought to have applied in sentencing the applicant. We observe that there are as yet no guidelines for public order offences from the Sentencing Council.

14. The applicant was 30 years of age at the date of sentence. He had previous convictions for public order offences spanning the years 2002 to 2015. There had been a gap of nearly 2 years between his last conviction and the violent disorder which leads to this application. He joined the parachute regiment in 2004 and was deployed to Afghanistan in 2008. After a total of 7 years' service he was dishonourably discharged. The judge was supplied with a battery of references from HM Forces, employers and the applicant himself. The applicant indicated in his letter to the judge that as a paratrooper you were "expected to be mentally prepared and not show any weakness. This mentality and my pride had prevented me from seeking the help I had needed". He expressed regret for his offending.

15. After his time as a soldier the applicant went on to commit violent disorder in February 2010. It is plain from the disposal that this was connected to a sporting event. He received a 12 month sentence for this, at the Crown Court Isleworth, in February 2011, on a plea of guilty. The Football Banning Order imposed on sentence was breached in 2014 and the applicant was fined.

16. During the period between committing the second violent disorder which gives rise to this application in August 2017 and the applicant's trial, he was assessed in February 2018 by a veterans' therapist and put on a waiting list for trauma-based therapy. Details of the provisional diagnosis of PTSD and the broad proposals for ongoing treatment were set out in reports which were before the sentencing judge. We have read these with care.

17. In our judgment, it was quite correct for the judge to conclude that the applicant's record of service balanced out his previous bad character for public order offences. We are also of the view that it is the existenceof PTSD as opposed to a working diagnosis thereof which can provide personal mitigation.

18. We are cognisant of the fact that Judge Bidder QC conducted the trial and was best placed to form his own view of the character and attitude of the applicant from this as well from the documents supplied to them for the purposes of sentence. The choice of any discount which he may have decided to allow for personal mitigation was entirely within his discretion and this court will always hesitate before interfering with such decisions.

19. In our conclusion the judge did not err. We conclude that this is a sentence that was not manifestly excessive or arguably so and this application is dismissed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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