

Neutral Citation Number: [2019] EWCA Crim 1321

No: 201902016/A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday 16 July 2019

B e f o r e:

LORD JUSTICE LEGGATT

MR JUSTICE POPPLEWELL

HIS HONOUR JUDGE MARSON QC

(Sitting as a Judge of the CACD)

R E G I N A

v

FRAZER SKINNER

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Mr S Batterton appeared on behalf of the **Appellant**

J U D G M E N T

Approved

MR JUSTICE POPPLEWELL:

1. On 24 May 2019 in the Crown Court at Liverpool, the appellant was sentenced by Mr Recorder Harrington to five months' imprisonment for possession of a bladed article. The Recorder also activated 12 months of a suspended sentence order to run consecutively, making a total of 17 months' imprisonment. Additionally the appellant fell to be sentenced for driving whilst under the influence of drugs, for which the Recorder imposed no separate penalty save for the mandatory disqualification of 12 months, plus a discretionary period of eight months to reflect the custodial element of the prison sentence after allowance for time served on remand.
2. The appellant appeals against sentence with leave of the single judge.
3. He is now 22 and was of previous good character until the age of 20, when there occurred the incident which gave rise to the suspended sentence order. On that occasion he used threatening words or behaviour towards someone outside a night club, for which he was cautioned, but more significantly he was in possession of a Taser disguised as a mobile phone which he discharged in the course of the altercation. He was sentenced for that offence on 19 January 2018 at the Crown Court in York to detention in a young offenders institution for two years, suspended for two years, with an unpaid work requirement of 200 hours.
4. Three months into that sentence he committed the instant offences on 28 April 2018. He was in his car and was being followed by a police car. He pulled over voluntarily and gave the officer his name and address. The officer could smell cannabis and undertook a search of the car where he found a kitchen knife of over three inches in length in the driver's side well. The appellant told the officer that it was for cutting up his

sandwiches. The appellant was taken to the police station where he admitted to having smoked cannabis the day before and having taken cocaine two days earlier. He tested positive under the drug driving procedures. He gave answers in his police interview in which he again said that he kept the knife in his car to cut up sandwiches for his lunch breaks at work.

5. He was not arraigned until 13 December 2018 at the PTPH where he pleaded not guilty and a trial date was fixed. In the meantime, he breached the requirements of his suspended sentence order by failing to attend and a further 25 hours of unpaid work were added to that sentence.
6. On the day of his trial, he was re-arraigned and pleaded guilty on the basis that the knife was for making sandwiches at work. The basis of plea was rejected by the Crown and the Recorder held a Newton hearing at which evidence was given by the appellant, his mother and a work colleague. The Recorder rejected the evidence of the appellant and his work colleague that that was the purpose of possession of the knife, although the Recorder said he was unable to make any positive findings as to its purpose.
7. By the time of the sentencing hearing, the appellant had completed all 225 hours of unpaid work under his suspended sentence order.
8. On this appeal, it is submitted that the sentence should have been suspended; that the length of the suspended sentence which was activated was excessive given that he had completed all of the unpaid work requirement; and that the total length of the custodial sentence of 17 months was manifestly excessive. It is accepted that the knife offence falls within Category 2A of the relevant guideline which identifies a starting point of six months and a range of three to 12 months' custody. It is argued that insufficient account was taken of the following mitigating factors: the lack of evidence of any intention to use

the knife to threaten or in self-defence; the appellant's young age at the time (he was not quite 21); his previous good character before the Taser offence; his late plea of guilty; the length of time since the commission of the offence; his engagement with the requirements of the suspended sentence order and in particular completion of the community requirements; and the fact that he is expecting his first child. It is submitted on his behalf that he has matured and accepted responsibility for his actions.

9. We have no doubt that an immediate custodial sentence was called for. The bottom of the range set out in the guideline for possession of a knife is three months' imprisonment and the modern scourge of knife crime dictates that immediate custodial sentences will normally be called for. In this case the offending was significantly aggravated by the fact that this was a second weapons offence. A sentence of five months gave ample, perhaps generous, credit for the mitigating factors identified.
10. As to the suspended sentence order, this was imposed for what was itself a serious offence involving discharging a disguised Taser in the course of an altercation outside a nightclub, meriting a sentence of two years in custody. The appellant was well aware, as the Recorder observed, that he must abstain from further offending if he was to avoid serving that sentence in prison. The activation of only half the custodial element of the sentence adequately reflected the completion of all the work hours and took account of the principle of totality.
11. Accordingly, the appeal will be 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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