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No: 201902030/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday 20 August 2019

B e f o r e:

LADY JUSTICE RAFFERTY DBE

MR JUSTICE JEREMY BAKER

MRS JUSTICE McGOWAN DBE

R E G I N A

v

DREW HACKETT

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Mr J Gould appeared on behalf of the **Appellant**

J U D G M E N T
(Approved Judgment)

MR JUSTICE JEREMY BAKER:

1. On 21 May 2019 Drew Hackett, having previously pleaded guilty to an offence of assault occasioning actual bodily harm at Sheffield Crown Court, was sentenced by His Honour Judge Kelson QC to an immediate term of 12 months' imprisonment.
2. His co-accused Malachi Reid and Kane Chattoo had also pleaded guilty to the offence of assault occasioning actual bodily harm and were each sentenced to 12 months' imprisonment. Although the period of 12 months' imprisonment was imposed immediately upon Reid, Chattoo was made the subject of a suspended sentence order.
3. Drew Hackett appeals against sentence with the permission of the single judge.

The offence

4. The offence took place in the early hours of 8 August 2017 in Sheffield City Centre. The complainant had been out at a nightclub with two of his friends, as had the appellant and his co-accused. Once outside, one of the complainant's friends got into conversation with Malachi Reid who punched him to the face. The complainant went to intervene and this part of the incident ended with the complainant and his friends walking away from the appellant and his co-accused.
5. However, the complainant was pursued by the appellant and his co-accused who struck out at the complainant whilst he was stood up; Malachi Reid striking out at him and Kane Chattoo punching him to the face. In the course of the incident the complainant fell to the ground, whereupon the appellant kicked him twice to the head. The appellant and his co-accused then ran off and were only traced by being identified through CCTV footage from the scene. When they were interviewed by the police, neither the appellant nor his co-accused made any comment.
6. In the meantime, the complainant had been taken to hospital suffering from bruising and a wound to one of his eyelids. He also had bruising to his jaw and a chipped tooth. The injury to the eye resulted in traumatic hyphema which affected his vision and gave rise to the risk of his retina becoming detached. In a victim impact statement the complainant explained that prior to the incident he had been a relaxed individual, but he was now anxious and easily frightened, he did not go out in the City Centre and had undergone counselling.

The appellant

7. The appellant had one previous court appearance at Sheffield Crown Court on 9 April 2018 when for an offence of unlawful wounding, contrary to section 20 of the Offences Against the Person Act 1861, and possessing cocaine, he was sentenced to a total of 27 months' imprisonment. These offences had taken place in the early hours of the morning of 26 November 2016. The appellant had been out at a nightclub when he had used a bottle to attack an individual who suffered 22 stitches to repair damage to one of his arteries, together with a fractured nose.
8. The court had the benefit of a pre-sentence report which contrasted the confrontational attitude which the appellant had exhibited when he had been interviewed in respect of the earlier wounding offence, with the remorseful attitude which he now exhibited. It was noted that during his earlier period of imprisonment he had completed courses designed to assist his rehabilitation and that since his release he had not re-offended. He had attended all of his supervision appointments and had formed a new relationship as a result of which he was about to become a father.

Sentencing remarks

9. In the course of his sentencing remarks, the judge determined that the offence of assault was a Category 1 offence; greater harm being indicated by the sustained nature of the assault, while higher culpability was indicated by the use of a shod foot to cause the injuries. In addition, the judge considered there were a number of aggravating factors including the fact that the assault had taken place in the context of a group attack at night in the city centre. Moreover, it took place at a time when the appellant was under investigation for the earlier incident of violence on 26 November 2016.
10. The judge accepted the mitigation as described in the pre-sentence report. Moreover, he accepted there had been significant delay in prosecuting the offence of assault which had been the subject of a postal requisition procedure as a result of which the appellant was now to be sentenced for the offences of wounding and assault on two separate occasions when otherwise they may have been dealt with at one and the same occasion. In the event the judge determined that prior to any reduction for plea, the offence of assault would have merited a period of two years' imprisonment. He reduced this by 25 per cent to take into account the timing of the appellant's plea of guilty and further reduced the period to 12 months to take into account the delay which had taken place and the principle of totality.

Grounds of appeal

11. On behalf of the appellant, it is argued by Mr Gould, to whom we are grateful for his succinct and cogent submissions, that the sentence of 12 months' immediate imprisonment was either wrong in principle, as it ought to have been suspended, or alternatively it is manifestly excessive as a sentence of immediate imprisonment. He points out that since the commission of the offence of assault the appellant has served a

significant period of imprisonment for the wounding offence and he relies upon the appellant's progress since his release from the previous custodial sentence. He points out that there had been delay in prosecuting the appellant for the offence of assault and that taking the wounding and assault offences together the effect of the judge's sentence was to impose a total sentence of three years and three months' imprisonment which he argues is excessive.

Discussion

12. On any view the offence of assault was of some seriousness involving, as it did, late night violence in the city centre, when a group of males attacked another group for no apparent reason in the course of which the complainant was put to the ground and kicked in the face by the appellant on two occasions, as a result of which he suffered a potentially serious physical injury, which has also had an adverse psychological effect upon him. The judge was correct to determine that this was a Category 1 offence within the relevant sentencing guideline with an appropriate starting point of 18 months' custody and a category range of one to three years. Moreover, the judge was correct in concluding that the aggravating factors, which he had identified, justified a period of two years' custody prior to the reduction to reflect the timing of the appellant's plea of guilty.
13. It is regrettable that the prosecution of the offence of assault had been the subject of delay which resulted in the appellant being sentenced on two separate occasions, when it is possible that without such delay the appellant could have been dealt with for the offences of wounding and assault on one and the same occasion; albeit we would add in parenthesis that had the appellant chosen to admit the offending when he was first interviewed by the police this delay may have been avoided.
14. Moreover, we note that the appellant spent his time in custody constructively and that since his release he has made progress not only in his attitude towards his offending but also in his personal circumstances.
15. However, the real questions which arise at this stage are, first, whether the sentence of three years and three months' custody for offences of wounding and assault taken together has resulted in a manifestly excessive term, and secondly, whether with the mitigating factors advanced on his behalf, the period of imprisonment imposed upon the appellant should have been suspended.
16. In relation to the first of these questions we acknowledge that as at the date of the sentencing hearing on 9 April 2018, the appellant had no previous convictions. However, both the offence of wounding and the offence of assault were serious examples of their kind, involving as they did late night unprovoked city centre violence in which significant injury was caused by the use of weapons or equivalent items. Both of these offences were Category 1 offences within the relevant sentencing guidelines and both had

aggravating factors which justified a significant increase from the appropriate starting point which in the case of the wounding offence was three years' custody. The judge in the present case was alert to these factors and in our judgment the reduction which he provided from 18 months to 12 months sufficiently took into account the principle of totality.

17. In relation to the second of these questions, we consider that despite the mitigating factors relied upon by the appellant, in view of the nature of the attack in this case which included the deliberate kicking of the complainant in the face whilst he was laid on the ground, the judge was entitled to determine that appropriate punishment could only be achieved by immediate custody, such that within the relevant sentencing guideline in relation to the imposition of community and custodial sentences the judge was justified in imposing an immediate rather than a suspended period of custody in this case.

Conclusion

18. In these circumstances, we do not consider that the sentence of 12 months' immediate imprisonment is either manifestly excessive or wrong in principle and accordingly the appeal must be dismissed.

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