[2019] EWCA Crim 1495
No: 2019 00833/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 19 July 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE JAY

MR JUSTICE EDIS

R E G I N A

v

DANIEL LESLIE HALLGATE

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Mr AD Smith appeared on behalf of the **Appellant**

J U D G M E N T
(As approved)

MR JUSTICE EDIS:

1. Daniel Leslie Hallgate is now 31 years old. On 11th February 2018 he was sentenced to a total term of 2 years and 7 months' imprisonment in respect of three offences to which he had earlier entered guilty pleas. There is no challenge to the approach of the sentencing judge to credit for the plea, which, so far as the most material of the sentences is concerned, was 25%.

2. The three offences for which that sentence was imposed were as follows: first of all, an offence of having an offensive weapon, contrary to section 1(1) of the Prevention of Crime Act 1953, for which a term of 6 months' imprisonment was imposed; secondly, an offence of affray, contrary to section 3(1) of the Public Order Act 1986, for which a term of 2 years and 3 months was imposed; and finally, an offence of an assault on a constable in the execution of his duty, for which 4 months' imprisonment was imposed. Those first two sentences were concurrent with each other, but the third sentence was consecutive to them, making a total of 2 years and 7 months.

3. There had originally been on the indictment some offences against a female victim, but those were not pursued and not guilty verdicts were entered. The result of all that was that the appellant fell to be sentenced for what happened after the arrival of the police in the circumstances which we will now set out.

4. The credit of 25% for the plea of guilty to the offence of affray means that the judge took as a sentence before plea discount for that offence a period of 3 years, which is the maximum allowed by statute, which is the principal ground of appeal against it. We shall return to that later.

5. The offences were committed against the background of a domestic dispute between the appellant and a woman called Angie Hill, which took place on 2nd September 2018. The police had attended that address earlier in the morning after some concerned neighbours had called them having become aware of a loud dispute. That seemed to settle and the officers left. But at about 10 am a member of the public again called the police because they had become aware that the appellant was calling for a knife outside in the street and was seen to be kicking his way into his partner's property. Whatever may be the rights and wrongs of that were never determined, for the reasons we have given.

6. However, officers did then attend in a car. By this time the appellant was topless in the street. He was seen by them to bend down and pick up a large hunting knife. He then ran towards the female victim, before turning towards the police car while holding the knife in a threatening manner. The police reacted to this by knocking him over with the car, hitting him in the right leg, causing him to fall into a hedge and then on to the ground. They were not able to detain him at that point and he ran into the garden of

a neighbouring property, putting the knife against his neck and threatening to kill himself. One of the officers had a taser and eventually they were able to subdue him. However, in the meantime he had escaped into a house and was seen there trying to cut his own wrists. He was threatening to kill himself, waving the knife around, and also had some fuel of some kind and a lighter; he threatened to set himself alight. More officers attended. An armed response unit came. Eventually the appellant was persuaded to throw the knife out of the window before surrendering himself. He was found to be very drunk or otherwise affected by other intoxicants.

7. He went to hospital because of his injuries, accompanied by two officers. He became aggressive during the journey, hitting himself a number of times in the face with his handcuffs and kicking out. That caused him to bleed, and he spat blood all over the face of one of the officers, who made a victim personal statement setting out the alarm which the potential consequences of that kind of assault had caused him. Eventually in hospital the appellant was sedated and then taken to the police station.

8. This appellant has a highly significant criminal record: he has 16 convictions for 40 offences between 2003 and 2018. These convictions include offences of damaging property on a significant number of occasions, including old offences but also an offence as recently as 2018; offences of assault occasioning actual bodily harm; assaulting a constable; common assault; battery; breach of an anti-social behaviour order; robbery, including a conviction as recently as 2013; and a very serious offence of prison riot (which is a form of public order offence) from 2012 when a term of 6 years' imprisonment was imposed.

9. The court had available a pre-sentence report with an assessment of his risk. He was assessed as posing a high risk of serious harm to members of the public, his ex-partner and any future partner, and a medium risk of serious harm to staff who are looking after him. It appeared that the offences which were before the Crown Court on the relevant occasion had been committed while on licence, and this was a relevant factor to risk.

10. The judge referred to the licence when passing sentence. He observed that, because of it, the sentences which he was about to impose were academic. We think he may not have been right about that in fact, because of the information that we have about the licence period. But whether he was or not, the sentencing process was not academic and the sentences obviously ought to be appropriate for the offences which were before the court whether or not they may have had other consequences so far as any licence is concerned. He said that the offence of affray fell at the top of the scale because it was serious and sickening. He then proceeded to impose the sentences we have described.

11. There is one single ground of appeal, attractively and succinctly argued before us this morning by Mr Smith on the appellant’s behalf. That relates only to the sentence for the

offence of affray, which, as we have said, was based upon a starting point before plea discount of 3 years, namely the maximum. It is said that worse offences of affray come before the courts and that it was not a case where the maximum sentence available should have been chosen. It is submitted that the consequence of that is that the total sentence was too long.

Discussion

12. In our judgment this was a bad case of affray. It is true that after the police had decisively intervened by knocking him over in their car the appellant's threats of violence were entirely aimed at himself. However, before that time he was brandishing a knife in a public street in the presence of his victim and of the police. If they had not been there it cannot be known what would have happened. Even after he had seen them he continued to use the knife in the aggressive way which we have described. Of course, the possession of the knife was itself a criminal offence for which a concurrent term was imposed. There is a guideline in relation to that offence but not in relation to the offence of affray. The guideline for the possession of the knife offence would suggest a much lower sentence than the 3 years which was imposed in respect of the affray, but nevertheless the maximum term available for such an offence is one of 4 years, which, in our judgment, is of some relevance when considering the argument made on the sentence of affray in the case. In our judgment any offence of affray involving a knife in public is a very serious affray. Not all affrays involve lethal weapons. This one did. The imposition of a maximum penalty, when that is fixed by Parliament at a relatively low level, does not the require the case to be the worst imaginable. The position is explained by the then President of Queen's Bench Division in R v Bright [2008] EWCA Crim 462; [2008] 2 Cr App R (S) 102.

13. This appellant, in our judgment, poses a serious risk of harm. That is derived from the circumstances of the offences themselves and also his past conduct. That, of course, does not engage the regime for dangerous offenders because of the nature of these offences. However, it is relevant because one purpose of the sentence in this case is the protection of the public. His previous convictions are serious aggravating features in relation to this serious case, and, in our judgment, the judge was entitled to take a sentence for the first and second offences taken together of 3 years before discounting by 25% for the plea. There is no challenge to the consecutive term in relation to the unpleasant assault on a police officer. In the light of that conclusion, therefore, we cannot say that the sentence which was imposed on this appellant was manifestly excessive or wrong in principle, and this appeal is dismissed.

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