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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

DALE HAYWARD
STEVEN WEAVING

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Furnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk
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Miss L Hardy appeared on behalf of **Dale Hayward**

Miss L Thandi appeared on behalf of **Steven Weaving**

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

MR JUSTICE JEREMY BAKER:

1. On 13 May 2019 Dale Hayward and Steven Weaving, having earlier pleaded guilty at Derby Crown Court to offences of common assault and assault occasioning actual bodily harm, were sentenced to 11 months' detention in a young offender institution in relation to the latter offence and no separate penalty was imposed for the former offence.
2. Their co-accused Seth Bryan and Archie Head, who had also pleaded guilty to assault occasioning actual bodily harm, were made the subject of suspended sentence orders comprising eight months' detention suspended for a period of 18 months with unpaid work and curfew requirements. A community order was imposed upon Jack Hussain who had pleaded guilty to an offence of threatening behaviour.
3. Dale Hayward and Steven Weaving appeal against sentence with permission of the single judge.
4. The incidents from which these offences arose took place late at night on 18 November 2017 in Belper, Derbyshire. The complainant, who was 16 years of age was walking along the road, when he heard his name being shouted by the appellants and their co-accused, who were in a stationary motor vehicle. When the complainant went over to the motor vehicle, Hayward alighted from it and struck him at least twice to the head. Others joined in this initial attack, including Weaving who punched him numerous times. It does not appear the complainant was significantly injured and he was able to escape down the road. This comprised the events included in the offence of common assault.
5. Unfortunately, Hayward and some of the others in the group, albeit not including Weaving, followed the complainant and surrounded him. A second attack was then launched on him which included the striking of multiple punches to his head and he fell to the ground. The attack continued with further punches to his head and also some kicks to his legs. Eventually the complainant was able to get up and he again made his escape down the road. This comprised the events included in the offence of assault occasioning actual bodily harm (count 2) to which Dale Hayward had pleaded guilty.
6. By now the complainant's face was injured and bleeding and he made his way to a local public house and sought assistance from some adults. Despite this, Weaving approached the complainant and forcefully punched him to his face, knocking him to the ground. This comprised the events included in the offence of assault occasioning actual bodily harm (count 3) to which Steven Weaving had pleaded guilty.
7. As a result of the attack upon the complainant, he suffered various soft tissue injuries, including a possible nasal fracture as a result of the events of count 2 and an undisplaced fractured of the jaw as a result of the events in count 3.
8. Although these incidents were reported to the police by the complainant on 18 November 2017, the police did not interview Hayward until 28 March 2018. Thereafter, despite having made admissions about his own role and that of his co-accused, the appellants were not summonsed until 8 February 2019.
9. As a result, although Hayward was 17 years of age and Weaving 18 years of age at the time of the commission of the offences, they were respectively 18 and 19 at the date when they were sentenced. Although neither had previous convictions at the time when

they committed the offences of assault occasioning actual bodily harm, both had committed a previous offence for which they had been dealt with by the courts prior to their appearance at Derby Crown Court on 13 May 2019. In the case of Hayward he had committed an offence of aggravated vehicle taking for which he had been made the subject of a referral order. In the case of Weaving he had committed an offence of possession of a class B controlled drug for which he had been conditionally discharged.

10. The court had before it a pre-sentence report in respect of Hayward, in which he acknowledged that as a result of drinking excessive quantities of alcohol with his co-accused he had assaulted the complainant for which he was remorseful. It was noted that Hayward now had full time employment and that although he posed a medium risk of harm to the public he presented a low risk of re-offending. The response to his referral order was stated to be good. There were also two written references from members of his family which stressed the positive aspects of his personality and in particular the beneficial effects of his increasing maturity since the commission of these offences.

Sentencing remarks

11. In the course of his sentencing remarks, the judge determined that both counts 2 and 3 were Category 1 offences within the relevant sentencing guidelines, such that the appropriate starting point for an adult offender would have been 18 months' custody. He noted that the offences were aggravated by the fact that the appellants were intoxicated with alcohol at the time and the offences took place late at night in the town centre. He indicated that he intended to increase the sentence in respect of counts 2 and 3, in order to reflect the criminality involved in the offence of common assault.
12. In the case of Hayward the judge acknowledged that due to his age at the date of the commission of these offences it was correct to bear in mind the Sentencing Council guideline in respect of sentencing children and young people. He also acknowledged that there had been delay in this case which was not the fault of the appellants and that both of them had matured during the intervening period. However, despite these matters he considered that appropriate punishment could only be achieved by immediate custody.

Grounds of appeal

13. On behalf of Hayward, it has been argued by Miss Hardy in her written submissions that the sentence imposed failed to sufficiently take into account the appellant's age at the date of the commission of the offences. It was pointed out that there were considerable delay prior to the issue of the summons in this case and that in the meantime the appellant has made positive improvements in his life, such that any sentence of custody ought to have been suspended.
14. Likewise, in Weaving's case, Miss Thandi argues that the sentence imposed on him failed to take sufficiently into account his relatively young age, his lack of previous convictions and the period which has elapsed since the commission of the offences.

Discussion

15. These were, on any view, an unpleasant set of offences in which a young man of 16 years of age was repeatedly attacked by a group of males late at night in the town centre, leaving him with painful and in relation to count 3 (where Weaving was acting alone) serious injury. The judge was entitled to determine that both counts 2 and 3 were Category 1 offences within the relevant sentencing guidelines. So far as count 2 is concerned, this was a sustained assault on the complainant. Not only did Hayward play

a leading role as part of a group attack, but there was the use of a weapon equivalent, albeit not by him, and albeit that the kicking was aimed at the complainant's leg and was not the main characteristic of the offence. In relation to count 3, not only was the injury sustained serious in the context of the offence but Weaving deliberately caused more harm than was necessary for the commission of the offence. In those circumstances, the appropriate starting point for an adult was 18 months' custody, with a category range of between one and three years. Moreover, not only were the offences aggravated by the factors indicated by the judge, but he was entitled to reflect the criminality involved in count 1, by increasing the period imposed on counts 2 and 3.

16. In the case of Hayward, given his age at the time of the commission of these offences, there was a need for the judge to have regard to the matters set out in the Sentencing Council's guideline relating to sentencing children and young people. In that regard one of the matters to which consideration was required is that the court may feel it appropriate to apply a sentence broadly within the region of half to two-thirds of the adult sentence for those aged between 15 to 17. In our judgment, if these offences had involved adult offenders, then prior to any reduction to reflect the timing of the appellants' pleas of guilty, a term of two years' custody would have been appropriate, such that if a two-third reduction is applied to this figure, then the resulting period of 16 months, which when reduced by 25 per cent to take into account the timing of the pleas of guilty, results in a period of 12 months' detention.
17. In this regard, Weaving, who was in fact an adult at the time of the offending, may consider himself fortunate that the judge appears to have made a similar reduction in his case. However, we note that there was only a year's difference in age between Weaving and Hayward and the judge may well have been of the view, in line with the observations of the Lord Chief Justice in Attorney General's Reference (R v Clarke and others) [2018] EWCA Crim 185 that there was little difference in their levels of maturity.
18. In these circumstances there can be no complaint about the length of the periods of detention imposed upon either of the appellants in this case, as imposed by the judge. This leaves the question as to whether it was wrong in principle for the judge to have imposed the periods detention immediately, as opposed to ordering their suspension.
19. It is in this context that we consider the issue of delay has its most potent effect. First, we note that there was indeed here a significant period of delay between the commission of the offences and the issuing of the summonses. Secondly, the delay was not in any way the fault of either of the appellants. Thirdly, during the intervening period both have matured significantly. Fourthly, neither had previous convictions at the time of the offending. Fifthly, both were young. Sixthly, the nature of the assault was not one which necessarily demanded the imposition of an immediate custodial sentence as may often be the case where there is deliberate kicking aimed at a person's head whilst they are on the ground.
20. In those circumstances, we consider that having regard to the sentencing council's guideline concerning the imposition of community and custodial sentences, it would have been possible for the court to have suspended the terms of detention in both of these appellants' cases.

Conclusion

21. However, events have moved on since the original sentencing exercise and we note that so far as Dale Hayward is concerned he has already been released on home detention

curfew and such is the length of the period imposed upon Weaving that he is likely to be released from the sentence of detention relatively soon. In these circumstances, we do not consider that it is appropriate to suspend the periods of detention at this juncture, as much of the punitive element of the sentences has already been effected. Therefore, at this stage, we intend to substitute for the sentence of 11 months' detention which was imposed upon counts 2 and 3 (count 2 affecting Dale Hayward and count 3 affecting Steven Weaving) periods of detention in a young offender institution upon each of them of 6 months.

22. As we have already noted, Dale Hayward has been released from home detention curfew and therefore will not be required to return to custody as a result of the sentence we have now substituted. In so far as Steven Weaving is concerned, the purpose of our sentence is to ensure his immediate release from custody.
23. Accordingly, we quash the earlier sentences and substitute those which we have outlined. To that extent the appeal is allowed.

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

Lower Ground, 18-22 Fumival Street, London EC4A 1JS
Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk