Neutral Citation Number: [2019] EWCA Crim 1313
2018/04526/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 11th July 2019

B e f o r e:

LORD JUSTICE SINGH

MR JUSTICE NICOL

and

SIR JOHN ROYCE

R E G I N A

- v -

SONNY KEVIN LYNE

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Mr P Mason appeared on behalf of the Applicant

J U D G M E N T
(For Approval)

Thursday 11th July 2019

LORD JUSTICE SINGH: I shall ask Mr Justice Nicol to give the judgment of the court.

MR JUSTICE NICOL:

1. This is a renewed application for leave to appeal against sentence after refusal by the single judge.

2. In the Crown Court at Taunton, the applicant faced an indictment containing three counts. The first was wounding with intent, contrary to section 18 of the Offences against the Person Act 1861. To that count he initially pleaded not guilty. The second count was an alternative of unlawful wounding. It is unnecessary to say more about count 2. The third count was having an article with a blade or point, contrary to section 139(1) of the Criminal Justice Act 1988. On 12th July 2018, the applicant pleaded guilty to count 3. On 17th August 2018, he changed his plea from not guilty to guilty to count 1.

3. On 11th October 2018, he was sentenced by His Honour Judge Cook on count 1 to an extended sentence of ten years, comprising a custodial term of eight years and an extended licence of two years. On count 3, the judge imposed a concurrent term of one year's imprisonment.

4. The facts of the offences were as follows. The victim of the section 18 offence was a man called Oscar Evett. He and the applicant used to be friends at school. They had not seen each other for some time but met by chance on 18th April 2018. They arranged to meet for a drink that evening. They did indeed meet in a public house and they had some drinks. They went to a friend's house and carried on drinking. In the early hours of the following morning, the applicant called a friend for a lift home. At some stage, as the applicant and Mr Evett were

being driven in the friend's van, there was an altercation between the applicant and the driver of the van. They then drove to a supermarket car park, where Mr Evett got out of the van and said that he would make his own way home. He sat down on a step. The applicant sat down next to him.

5. The applicant then took a bread knife from his sleeve. He swung it downwards and hit Mr Evett on the head. He swung the knife again at Mr Evett's face. Mr Evett was able to move his face out of the way. The applicant swung the knife a third time, horizontally, and slashed Mr Evett across the face. Mr Evett fled.

6. The police were informed and the applicant was arrested at his home. He smelled of alcohol. His clothing was bloodstained. A bloodstained bread knife was also found. Mr Evett was taken to hospital. He had a wound from his nose to his chin which required surgery. He also had a 2 centimetre wound to the back of his head. The cut to the front of his face needed 80 stitches. The wound at the back of the head was stapled.

7. The judge had two Victim Personal Statements. The first was from Mr Evett's mother. It is dated 18th May 2018. She said that Mr Evett could not at that stage face providing a Victim Personal Statement himself. She said that his life had been turned upside down. He had lost his job and he could not return to work as a labourer on a building site. The scar on his face was a cause of intense embarrassment for him. It led to him concealing his face whenever possible. He was reluctant to meet friends with children for fear of frightening them.

8. The second Victim Personal Statement, which was from Mr Evett, was dated 10th October 2018. He said that not only had he lost his job, but he had lost his flat in consequence as well. He said that the pain from the blows had been horrendous. The incident had been terrifying and

he was reminded of it every time he looked in a mirror. He was still unable to talk properly and he had developed depression.

9. The applicant is now aged 23. He was born on 21st 1996. He has appeared before the courts on seven previous occasions for fourteen offences between 2013 and 2015. His offences included, in 2013, assaulting a constable; in 2014, battery and criminal damage; and in 2015, threatening behaviour. All of the previous convictions had led to non-custodial sentences.

10. The judge had a report from Dr MacGregor-Morris, a consultant forensic psychiatrist. She recorded that in her opinion the applicant had been subjected to a traumatic early life during which he had witnessed severe domestic violence. He was subjected to verbal and physical abuse by his father. At 15 he was diagnosed with ADHD, and he had later been prescribed anti-psychotic medication. As an adult, he had described hearing voices telling him to harm himself or others. His presentation was complicated by the use of illicit substances. He was not physically dependent, except on codeine for a period. In terms of diagnosis, health services had wondered about psychosis, possibly induced by drugs, or schizophrenia. However, Dr MacGregor-Morris said that the preferred diagnosis was of an emotionally unstable personality disorder. The doctor agreed with the current assessment of colleagues within the prison of the applicant's mental health difficulties. He had been diagnosed with adult ADHD. In the doctor's view, he did not suffer from psychosis, and the criteria for schizophrenia did not appear to be met. His ADHD needed to be treated. He might benefit from psychological therapy. The doctor said that a mental health disposal would not be appropriate, and a hospital order was not recommended. His psychological and mental health needs could be met and managed within a custodial setting.

11. The judge also had a pre-sentence report. The applicant said that he had no memory of the

offence due to his misuse of prescription medication, the consumption of alcohol and his destabilised mental health at the time. He described feelings of remorse, guilt and shame. He acknowledged the significant harm caused by his actions. He made no effort to minimise the harm that had been caused or to justify his actions. The probation officer said that there was an established pattern of offending and that the current offence was an escalation in its seriousness. There was an identifiable link between his drug misuse and the risk of offending and harm he posed. The probation officer suggested that much of his offending occurred when he was not in control of his own thinking and behaviour. The applicant said that his mental health always deteriorated as a result of his use of drugs. He indicated that he would drink on top of his prescription medication to relieve the effects of his mental health. The probation officer also reported that the applicant had engaged fully with the Mental Health In-reach Team in custody. The probation officer had seen the psychiatric report to which we have already referred. She noted the view of Dr MacGregor-Morris that the applicant did not suffer from psychosis.

12. The probation officer said that the present and previous offending evidenced a pattern of impulsive, violent behaviour. The current matters demonstrated that the applicant had the capacity to cause serious harm. His violent behaviour was not limited to strangers, but could extend to friends if he felt mistreated. It appeared that he could act in an unpredictable and explosive manner if he perceived that this was justified to meet his ends. On this basis, he was assessed as posing a high risk of serious harm to known adults and the public. If not sentenced to custody, he would continue to pose an imminent risk of serious harm. Such a risk could not be managed under a community sentence.

13. In passing sentence, the judge summarised the facts of the case and the two Victim Personal Statements to which we have made reference. He said that he had seen the photographs showing the dreadful injuries to Mr Evett. The judge referred to the applicant's age and his

previous convictions. He noted that one of the assaults in those previous convictions had been on a female stranger whom the applicant had attacked for refusing to give him a lift home. He had not committed violence on the present level previously.

14. The judge noted that in mitigation it had been said that there had been no offending for a number of years and that his offending was in consequence of the traumas of his early childhood. He had not been in trouble between 2015 and 2018.

15. It was argued that in terms of dangerousness, the danger only arose if the applicant was misusing alcohol and that the criteria for an extended sentence were not met, because the current offence had been committed out of the blue. He had a limited criminal history and there was no pattern of behaviour. Thus, this might be seen as a one-off offence, for which a determinate sentence would suffice.

16. The judge noted the contents of the pre-sentence report. The applicant had had periods of homelessness and was homeless at the time of the present offence. He had left mainstream education at the age of 13. He had struggled with relationships due to him also struggling with his emotions. He had misused cannabis since the age of 16, as well as cocaine and heroin. Drug misuse was linked to his offending. At the time of the present offence, he was drinking eight cans of lager a day.

17. The judge considered that, by reference to the Sentencing Council's guideline on assault, this was a sustained assault. Serious injury had been caused which had required 80 stitches. It was clearly greater harm. The applicant had used a weapon and he intended to commit more serious harm than had resulted. The least starting point for a determinate sentence would be twelve years. That was increased, taking into account the ongoing effect on the victim and the

applicant's previous convictions. But it was mitigated by his remorse, his age and his mental health. Those matters in combination brought the starting point (i.e. the sentence after trial) back to twelve years.

18. Although the applicant had initially pleaded not guilty, the judge said that he would give full credit for the plea of guilty. Culpability had been admitted on the first occasion and the subsequent delay in him pleading guilty was to allow the defence solicitors an appropriate opportunity to make proper investigations. The custodial term was, therefore, reduced to eight years.

19. The applicant had been convicted of a specified offence. The judge was required to consider dangerousness and whether he presented a significant risk of causing serious harm by committing further specified offences. The judge was satisfied that the applicant did present such a risk and that there was an emerging pattern of impulsive violence. The judge was clear that an extended sentence did not automatically follow from a finding of dangerousness, but he thought that the public could not be adequately protected unless an extended sentence was passed. He imposed the sentence to which we have referred.

20. The Advice on Appeal in this case was drafted by Mr Patrick Mason, who represented the applicant at the sentencing hearing. He has appeared *pro bono* before us and we are grateful to him for his assistance. Mr Mason argues, first, that the judge was not entitled to make a finding that the applicant posed a significant risk of serious harm to members of the public. He observes that there was nothing in the previous convictions which suggested that the applicant was dangerous. There had been no offending for four years before the present offence. The pre-sentence report was, he submits, wrong to suggest that the applicant was prone to impulsive behaviour. The single incident representing the present offence did not justify that conclusion.

The present offence had caused a "vivid" injury. Mr Mason argues that the judge had been over-influenced by this.

21. Secondly, Mr Mason submits that the judge's custodial term was manifestly excessive. Of the three blows, only two connected. He submits that this did not amount to a sustained attack for the purposes of the guideline. He also argues that the injury was not serious when seen in the context of section 18 offences generally. He argues that the offence should have been treated as towards the lower end of category 1, or in category 2.

22. In refusing leave, the single judge said this:

> "The judge was right to take the view that this was a category 1 offence within the guidelines for section 18 offences. Greater harm was plainly caused by the very serious knife wound to Mr Evett's face that required 80 stitches. He has been left with extremely serious facial scarring and psychological injury. Higher culpability was clearly established by your use of a knife and by the finding that the judge was entitled to make, that your intention was to commit even more serious harm.
>
> The offence was aggravated by (1) your previous record of offending and particularly your convictions for violence; (2) the ongoing effects upon Mr Evett; and (3) the commission of the offence while drunk. The judge was entitled to take the view that such aggravating features were balanced by the mitigating factors (namely your age, mental health and remorse), thereby bringing him back to the starting point of twelve years. The judge's sentence of eight years after full credit for your guilty plea was entirely appropriate.
>
> Having considered the facts of this offence, your previous convictions, the pre-sentence report and the psychiatric report, the judge was entitled to find that you are dangerous within the mean of section 229 of the Criminal Justice Act 2003. Accordingly, the judge was entitled to pass an extended sentence. The extension period of two years was just and proportionate and was not such as to 'crush' you."

23. It is sufficient to say that, having reviewed all the papers, and notwithstanding Mr Mason's

submissions, both written and oral, we entirely agree with the single judge.

24. This renewed application is accordingly refused.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk
