NEUTRAL CITATION NUMBER: [2019] EWCA Crim 1500

No: 201901096/A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 7 August 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE GOSS

MR JUSTICE KNOWLES

R E G I N A
v
COURTNEY MATTHEW

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Mr A Polson appeared on behalf of the **Appellant**

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

MR JUSTICE GOSS:

1. On 1 March 2019 in the Crown Court at Snaresbrook, following his earlier conviction after trial, the appellant was sentenced to an extended sentence of 11 years, pursuant to section 226A of the Criminal Justice Act 2003, made up of a custodial term of eight years and an extension period of three years for two offences of robbery and concurrent determinate sentences for four further offences of robbery, one offence of theft and one offence of having a bladed article. No separate penalty was imposed for possessing cannabis to which he had pleaded guilty at an early stage. He now appeals by leave of the single judge.

2. Four of the victims of the offences EA, KH, GA and AK are under 18 years of age and we make orders under section 45 of the Youth Justice and Criminal Evidence Act 1999 in respect of each of them that no matter relating to him shall, while he is under the age of 18 years, be published if it is likely to lead to his identification as a person concerned in these proceedings.

3. By way of overview, between 22 May and 5 June 2018, the appellant committed a series of street robberies in and around Leytonstone, where he was living, and in Walthamstow. He targeted young people, uttered threats, claimed to have weapons and produced a knife when robbing two of his victims. His defence at trial was that it may have been his brother who had committed the offences.

4. In more detail, at midday on 22 May 2018, 16-year-old EA met his friend KH, who was also aged 16. They caught a bus to the junction of Chingford Road and Hoe Street in Walthamstow when they were approached by the appellant from behind. He engaged them in conversation and asked EA if he could borrow his mobile phone. The appellant took the mobile phone, made a brief call and then put it in his pocket, thereby committing the offence of theft. The appellant then asked KH for his mobile phone. He told KH that he had a gun and showed an object that appeared to be a gun in his bag. KH then handed over his mobile phone. When KH grabbed the appellant's arm and asked for the phone back the appellant threatened to shoot him. The police were, in due course, called. The sentences for the theft and robbery offences were three and four years' imprisonment respectively.

5. Just over a week later, in the late afternoon on 1 June, the appellant approached James Shearman who was walking to a friend's house and asked for a cigarette. He bragged to Mr Shearman about his notoriety and said he had recently been released from prison after serving a sentence for manslaughter. He asked Mr Shearman for change as he had no money and was given £5 in loose change. He then asked to borrow Mr Shearman's mobile phone to call his girlfriend and Mr Shearman reluctantly handed it over. The appellant enquired about a ring worn by Mr Shearman and when he refused to give it to

him the appellant claimed to have a knife which caused Mr Shearman to hand the ring over and later report the robbery to the police.

6. Mr Shearman's fears prevented him from leaving his house after the incident and caused him anxiety and stress, which dissipated over time. The sentence for this offence of robbery was four years' imprisonment.

7. The following evening the appellant robbed two students, Cameron Barnett and Alexander Shaw as they were walking along a footpath. He asked them if they wanted to see his gun and demanded their mobile phones and money which they both handed over. He told them that his name was Ricardo Augustine and claimed to be a notorious gangster. He warned them not to run and said he would shoot them in the leg. The appellant walked them to a cashpoint where he made each withdraw £50 to give to him. He then told them to return to the footpath but they refused, fearing what would happen if they did. He told them that, as a result, they would not have their mobile phones returned, before he walked away. They went to a bar and called the police.

8. Mr Barnett found it difficult to sleep after the incident and had to receive counselling. He moved back to live with his parents and then moved home as a result of being a victim of this offence. Mr Shaw felt vulnerable and confused. His sleep pattern was interrupted and it took him a long time to get back to a level of complete normality. Both no longer go to Leytonstone. The judge passed sentences of five years' imprisonment for each of these robberies.

9. The remaining offences related to the robbery of two school children, AK and GA, one of whom was 15, committed in the mid-afternoon of 5 June, three days after the last offence. The appellant approached the boys and asked them the time before claiming to have recently been released from prison after 14 years. He lifted his top to reveal a large knife tucked into his waistband. He pulled out the knife and showed the boys the blade, ordering them to place any valuables into a black and orange sports bag he had been carrying. AK put his mobile phone, cash and a silver ring into the bag. GA put his mobile phone into the bag. The appellant walked away and the boys went to GA's home where they called the police. The sentences for the two offences of robbery were extended sentences of 11 years, comprising a custodial term of eight years and an extended licence of three years. There was a determinate sentence of two years for the bladed article offence. All sentences were ordered to be served concurrently.

10. The appellant was arrested on 12 June and denied any involvement in any of the offences. A number of the victims positively identified him in identification procedures.

11. The appellant was aged 28 at the date of sentence and had 25 convictions for 61 offences, spanning from 14 May 2003 to 16 November 2017, many of which were relevant to sentence. He refused to attend an arranged video link interview for a pre-sentence report. Information was provided about his previous compliance with probation services. He had demonstrated little motivation to address his offending behaviour or his drug use. He was assessed as posing a high risk of serious harm to known adults, namely his mother and adult sister, children and members of the public. The probation officer observed that the court may take the view that an extended sentence was required in order to manage his ongoing risk.

12. A psychiatric report from Dr Tim McInerny dated 1 November 2018 supported the view that the appellant had Attention Deficit Hyperactivity Disorder (ADHD) and it was likely that this would have contributed towards his offending, but he did not consider any other mental illness to have been a factor. In his opinion the appellant did not have bipolar disorder, but it was possible he may have a dissocial personality disorder. Dr McInerny thought it highly likely that the appellant would continue to commit acquisitive offences in the community unless he participated in long term rehabilitation. He also commented that the appellant's offending had not escalated into more serious violent disorder and he thought it was unlikely to do so in the near future - a point that has been emphasised to us in the helpful submissions addressed on the appellant's behalf by Mr Polson.

13. The appeal is confined to the finding of dangerousness and the passing of an extended sentence. It is submitted that the finding of dangerousness was not supported by the material before the court and the evidence indicated that the appellant carried out the robberies in a manner designed to avoid the need for physical harm. This was demonstrated by the method he used in his previous and current offending. It is urged that the learned judge placed too much reliance on the appellant's conduct during the course of the trial which was impetuous, and it is emphasised that when categorising the lead offences for which the extended sentence was passed as Category 2A, the judge was implicitly recognising that no serious psychological harm had been caused to the victims. There was, submitted Mr Polson, no evidence in his past offending of causing serious psychological or physical harm, although he accepted there was clearly a high risk of further specified offences being committed.

14. When passing sentence, the judge referred to the impact of the appellant's offences in which he targeted young people, particularly school children. He noted that when he was a juvenile the appellant had committed serious offences including robbery, possession of an imitation firearm, violence and dishonesty. As an adult he committed offences of burglary, theft, a series of robberies in 2008, theft from the person, criminal damage, resisting a police officer, battery and offensive behaviour. He was sentenced to four years' imprisonment in 2013 for a string of robberies. He used a similar modus operandi in those offences: approaching school children or sixth form students and

engaging them in distracting conversations before committing the robberies. He also told those victims he had been released from prison for manslaughter.

15. On the issue of dangerousness, the judge referred to the reports including the pre-sentence report that stated he did not base his finding on the reporting officer's conclusions. The appellant had committed a serious scheduled offence in the past. He based his findings on all the material and in particular what he described as the appellant's calculating attitude to robbery and the use of violence, coupled with an absence of self-control and now a propensity to arm himself with a weapon and actually to produce it. He said that he had both physical and psychological harm in mind when considering the risk of serious injury. He considered it would take very little to trigger a further lack of self-control and referred to the appellant's swearing in court and on a later occasion storming out of court when the case had to be adjourned. He did not consider a determinate sentence sufficient to protect the public and in the exercise of his discretion decided an extended sentence was necessary.

16. We consider the judge's process and reasoning was faultless. The extended sentence passed, both in terms of the length of the custodial element and the three-year period of extension was, in our judgment, one to which the judge was quite entitled to come. Accordingly, this appeal is dismissed.