

Neutral Citation Number: [2019] EWCA Crim 1503

No: 201901969/A3

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 9 August 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE GOSS

MR JUSTICE KNOWLES

R E G I N A

v

FREDRICK OWUSU-ACHEAMPONG

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Mr S Caulfield (Solicitor Advocate) appeared on behalf of the **Appellant**

J U D G M E N T

(As approved)

MR JUSTICE GOSS:

1. This is an appeal by leave of the single judge against the sentence of thirteen-and-a-half months' imprisonment imposed on the appellant in the Crown Court at Woolwich for an offence of having a bladed article on 25 April 2019. He pleaded guilty on 27 March 2019 when the case had been listed for trial. No separate penalty was imposed for an offence of possession of cannabis for which he had been committed to the Crown Court for sentence following his guilty plea in the Magistrates' Court on 29 October 2018. The committal was mistakenly pursuant to section 6 of the Powers of Criminal Courts (Sentencing) Act 2000. There was no power to commit under that section. The applicable provision was section 4 of that Act. In line with the decision of this court in R v Luff [2013] EWCA Crim 1958, in which the authorities on this issue were reviewed, the validity of the committal was not affected thereby, and the committal should be and is treated as having been under section 4. Appropriate ancillary orders were made at the Crown Court.
2. At 3.38 am on 14 October 2018 the appellant's image was captured on CCTV in the High Street, Croydon when he was carrying a large kitchen knife. The charge described it as an eight-inch black-handled knife. Police officers saw the appellant and pursued him. He passed through a large group of people on the pavement outside a nightclub. The event was captured on CCTV. He was intoxicated. The knife is clearly visible in his left hand. Many of those in the street saw the knife and looked at and watched the appellant as he went through them, although none reacted in any extreme way or sought to confront him. He was clearly looking around at individuals in the crowd, inferentially looking for someone or some people.
3. He subsequently crossed the road, dropping the knife which he then retrieved, causing traffic to have to avoid him before going out of sight of the cameras. He must have been aware of the police for he went down an alley and disposed of the knife down a drain. The police were waiting for him at the end of the alley. Upon his arrest a small quantity of cannabis was found in his possession.
4. The appellant was 30 years of age when sentenced. He was a single man, studying for a degree in business management and an NVQ qualification to become a qualified electrician. He also held a part-time job in Waitrose. Although not of previous good character, he had no relevant previous convictions.
5. The pre-sentence report revealed that in the early hours of the morning when he committed the offence, he had gone out from the hotel in which he was staying with his girlfriend armed with the knife to look for acquaintances who had attacked him a short time earlier and "bruised his ego". He accepted he had consumed alcohol. He appeared to the report writer to be remorseful and recognised he had been stupid. He was assessed as presenting a medium risk of re-conviction and a medium risk of harm to members of

the public. A 12-month community order with an unpaid work requirement and a rehabilitation activity requirement of up to 30 days was proposed by the report writer.

6. The sentencing judge determined the offence fell within Category 1A of the relevant guideline by reason of the appellant's possession of a bladed article in a public place and the risk of very serious disorder. The appellant had returned to his hotel deliberately to arm himself in order to search out his assailant and walked towards and through a group of people in the street. The starting point was therefore one-and-a-half years' custody under the guideline and the sentencing range was one year to two-and-a-half years' custody.
7. Relevant aggravating factors were that he committed the offence whilst under the influence of alcohol and attempted to conceal or dispose of evidence, namely the knife. Factors reducing seriousness were his lack of relevant previous convictions, he was hard working and in recent times he had been trying to better himself. The effect of his father's death some years ago continued to haunt him. His apparent remorse was accepted. The judge, however, observed that the appellant had plenty of time to cool off after the first incident and referred to his deliberately arming himself to retaliate and the problem that, with carrying a knife, it was available for use often with serious or fatal consequences in a matter of seconds.
8. The offence was so serious, in the judge's mind, that it required a custodial sentence. After trial, balancing the aggravating and mitigating factors in the case and including credit for the frank admissions to the probation officer, the appropriate sentence was one of 15 months reduced by 10 per cent for his late guilty plea at trial.
9. Mr Caulfield, who represents the appellant at this hearing and to whom we are grateful for his submissions, does not challenge the imposition of a sentence of imprisonment or its length, but takes up the comments of the single judge when granting leave in relation to its suspension. The term of imprisonment was an entirely appropriate application of the guideline; he advances and pursues a single ground of appeal, namely that the judge did not give sufficient thought to the relevant sentencing guideline when exercising his discretion as to whether to suspend the period of imprisonment that he did impose.
10. The comment the judge made was:
 - i. "I can find no reason at all for suspending the sentence in this case."
11. If he did go through the factors identified in the Definitive Guideline for the Imposition of Community and Custodial Sentences, the judge did not articulate his conclusions. However, it is implicit in the circumstances of the offence, its commission and the

sentencing remarks that he concluded that the appellant presented a risk to the public and the nature of the offence was such that appropriate punishment could only be achieved by immediate custody.

12. Mr Caulfield has helpfully referred us to those factors to be considered that indicate it may be appropriate to suspend a custodial sentence, namely the realistic prospect of rehabilitation and strong personal mitigation in this case. However, we are satisfied that the sentencing judge was entitled to conclude that only an immediate custodial sentence was the appropriate penalty, having regard to the necessary elements of punishment and deterrence for this kind of offence. Knife crimes and their consequences are all too familiar in current times. Accordingly, this appeal is dismissed.

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

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