[2019] EWCA Crim 1497
2019/01276/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 30th July 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE EDIS

and

HIS HONOUR JUDGE MARSON QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

ARAN SINGPHILA

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Mr J P McNamara appeared on behalf of the Appellant

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

Tuesday 30th July 2019

LORD JUSTICE MALES: I shall ask Mr Justice Edis to give the judgment of the court.

MR JUSTICE EDIS:

1. The appellant, Aran Singphila, is now 28 years old. On 13th March 2019, in the Crown Court at Southwark, he was sentenced by His Honour Judge Hehir to a total term of eleven years' imprisonment, against which he now appeals with the leave of the single judge.

2. The sentences were imposed in respect of four offences, of three of which he had been convicted by a jury. He had pleaded guilty to the fourth. The guilty plea was to an offence of possession of a knuckleduster, which was found by the police on him when he was arrested. That resulted in a concurrent sentence of nine months' imprisonment. It requires no further consideration by us, except as an aggravating feature of the other offences.

3. The sentences which are the subject of this appeal were: first, for false imprisonment, eight years' imprisonment; second, for blackmail, a concurrent term of eight years' imprisonment; and third, for possession of cocaine with intent to supply, a consecutive term of three years' imprisonment, making up the eleven years to which we have referred.

4. The convictions occurred during the currency of an eighteen month community order which had been imposed by magistrates on 23rd October 2017 for an offence of sending grossly offensive or obscene messages by an electronic communication network. The judge revoked that order, but imposed no additional penalty in respect of that offence in view of the sentences he imposed following the convictions. The judge made some other orders on which nothing now turns.

The Facts

5. The offences of false imprisonment, blackmail and possession of the knuckleduster took place on 2nd September 2018. The appellant was driving his motor vehicle in Sidcup in Kent, when he saw Sean Palmer in the street. Seeing Palmer, he decided to extort money from him. There does not appear to have been any prior planning or intention to do so, but he embarked upon the project with a degree of enthusiasm. He claimed that Palmer had been involved with him in the acquisition of some cocaine a few weeks previously and, as a result of that, owed him money. He told Palmer to get into the car and over a period of three and a half hours detained him against his will. He was driven around to three separate locations. He was repeatedly threatened with serious violence unless he met the appellant's demands for money. Initially, he demanded £200, but then increased his demand to £500. The appellant reinforced his threats by brandishing his knuckleduster and also a golf club which he had with him. At one point, he swung the golf club towards Palmer and also threatened to stab him.

6. During the period when he was detained against his will, Palmer telephoned friends and family in order to try to raise the money. He must have been very frightened. He telephoned his brother, Alan Palmer, who recorded the calls and also recorded conversations with the appellant. During those conversations, the appellant threatened violence to Alan Palmer. Alan Palmer had said that there would be consequences for the appellant and his family if his brother was harmed.

7. The appellant also humiliated and frightened Palmer by calling up a number of his contacts, asking them what he should do with his prisoner.

8. As a result of all this telephone contact, eventually somebody called the police. Because the location of the appellant and Palmer had been revealed, that person was able to direct the police to where they were to be found. The police arrived and arrested the appellant. They searched him and his vehicle. At that point, the knuckleduster, a modest quantity of cocaine, some cash and some mobile phones were recovered.

9. Examination of the mobile phones showed that the appellant was, and had been for an appreciable period of time, operating as a street-level dealer in cocaine.

10. The appellant was aged 28 at the time when he was sentenced. He had seven convictions for eleven offences, the first of which was committed as long ago as 2005, and the most recent of which was as recently as October 2017. His list of convictions included: common assault; criminal damage; an offence contrary to section 18 of the Offences against the Person Act 1861 (dating back to 2007), for which a significant custodial sentence was imposed; an offence of battery in 2010; possession of a Class A controlled drug in 2017; and the conviction for which the community order to which we have already referred was imposed.

11. The judge had presided over the trial. Although the appellant had not given evidence, a considerable amount of evidence was given about him. As a result of that, the judge was able to make some findings about what had happened, which he set out in his sentencing remarks. He said that the appellant had been operating as a cocaine dealer and that the victim (Palmer) was one of his customers. The appellant had known Palmer since secondary school and therefore knew that he was a vulnerable man with mental health difficulties. On the basis of the evidence, the judge found that the appellant is a sinister individual, willing and able to use the threat of immediate violence to intimidate others. He did not think that Palmer actually owed the appellant any money, but did not think that that was a relevant consideration one way or the other. The judge found that the appellant knew enough about Palmer to know that he was a person who was vulnerable and capable of being terrorised into giving money to the appellant.

12. The judge observed that the jury had obviously rejected the suggestion which had been floated before them, that the whole incident was a scam by Palmer to trick his brother Alan out of money.

13. The judge concluded that the offences taken together were serious offences which merited a custodial sentence of some length. He considered the sentencing guideline for possession of drugs with intent to supply and the guideline for offensive weapons and the guideline which deals with totality. He found that so far as the drug offence was concerned, the appellant was a street dealer with a significant role. That would involve a starting point of four and a half years' custody and a range extending upwards to six years.

14. The judge observed that there were no guidelines for false imprisonment or blackmail, but considered the decision of this court in *Attorney General's Reference Nos 92 and 93 of 2014* [2014] EWCA Crim 2713.

15. The judge identified a number of serious aggravating features in this case: the detention extended to a period of over three hours; it involved threats with two different weapons, although the judge acknowledged that no actual physical harm was caused. There was, nevertheless, considerable fear. The vulnerability of the victim was a relevant aggravating factor, as was the continuing effect on Palmer of the fright which he had suffered. It was an aggravating feature also that the offences against Palmer were committed in furtherance of the illegal business of dealing in drugs. The judge observed that the aggravating features which are

sometimes found in cases of this kind, such as detention in particular premises, the use of violence, or tying the victim up were absent; but he noted that the commission of these offences during the currency of a community order was an aggravating factor of its own.

16. The judge was unable to identify any substantial mitigation.

17. There was before him, as there is before us, a letter written by the appellant; and there were character references.

18. The judge observed that the imposition of the inevitable prison sentence would have an adverse effect on members of the appellant's family, but he said that that was the fault of the appellant. The judge did not make a finding that the appellant was dangerous, but took the view that a significant determinate sentence, outside the dangerousness regime, was required because, among other things, it would have the effect of protecting the public from the appellant. He said that he reduced all three of the sentences, which together constituted the term of eleven years, to reflect totality, and then imposed those sentences.

19. The grounds of appeal focus entirely on the sentences for false imprisonment and blackmail. We are concerned with the single issue of whether a total term of eleven years' imprisonment was manifestly excessive for all of the offending disclosed. That includes those serious offences committed on 2nd September 2018, but also the offending in relation to the controlled drugs which extended over a much longer period.

20. It is submitted by Mr McNamara, who appeared before us as he did before the sentencing judge, that the correct starting point for the false imprisonment and blackmail offences should have been five to six years' imprisonment, after considering the impact of totality. He refers us, in addition to the *Attorney General's Reference*, to which the judge referred, to a decision of this court in *R v James* [2015] EWCA Crim 339. He acknowledges that detailed consideration of the facts of earlier cases is of only limited value in assessing whether a sentence in a different case was or was not manifestly excessive. But in his succinct and attractive submissions, he invites us nevertheless to draw support for them from those decisions.

Discussion

21. We start with the drugs offence, which was significant street level dealing. The starting point is four and a half years' custody. But the appellant has previous convictions and he was clearly running his own business over a significant period of time. We consider that in these circumstances a sentence of five years' imprisonment would have been appropriate for this on its own. That means that the sentence of three years' imprisonment imposed by the judge was very significantly discounted to reflect totality and also to avoid double counting. In this context, by "double counting" we mean the need to avoid taking into account in aggravation of the blackmail and false imprisonment the fact that it was being done in pursuance of an illegal business when that illegal business will itself result in a consecutive term of imprisonment. It is important to retain appropriate proportionality.

22. The judge said that, in addition to discounting the drugs offence, he had also discounted the sentences for false imprisonment and blackmail, and made the sentence for the offence of having an offensive weapon concurrent for the same reasons. That presumably means that had the false imprisonment and the blackmail stood on their own, the sentence might have been ten years' imprisonment. That might have been somewhat above the sentencing level suggested in the *Attorney General's Reference*, but not by very much.

23. This was a serious case for the reasons clearly explained by the judge. As we have said, our

concern is whether eleven years' imprisonment for the totality of the offending is manifestly excessive, rather than with assessing the sentences individually and analysing the way in which the ultimate sentence was constructed.

24. We agree with the submission of Mr McNamara that detailed comparison of the facts of this case with those of earlier cases decided by this court is not a particularly productive exercise. There is a broad range which appears from the authorities, and it is for the judge to decide where in that range the particular case falls.

25. The most significant factor in fixing the appropriate sentence for this case is the vulnerability of the victim and the significant adverse ongoing consequences for him of what happened to him. The judge had well in mind the points which may be made in the appellant's favour, namely: that the detention was spontaneous and not pre-planned; that it lasted for three and a half hours, rather than over a period of a day; and that no physical violence was used. The judge acknowledged all of those factors and took them into account in assessing the sentence for those offences.

26. Having regard in particular to the term imposed in respect of the drugs offences, we consider that any excess which may be detectable in the sentences for the false imprisonment and the blackmail is more than compensated by the adjustment which was made to the sentence for the drugs offences.

27. In those circumstances, given the commission of these serious offences, against the background of the ongoing drug-dealing business, we consider that a total term of imprisonment of eleven years can properly be described as a severe term of imprisonment, but cannot properly be described as one which is manifestly excessive. The judge had plainly formed a view on the evidence about the appellant and reflected that view, as he was entitled to, in the sentence which he passed.

28. For those reasons, this appeal is dismissed.
