Neutral Citation Number: [2019] EWCA Crim 1406

No: 201803438 A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 5 March 2019

B e f o r e:

LORD JUSTICE MALES

MR JUSTICE SWEENEY

HIS HONOUR JUDGE MARTIN EDMUNDS QC
(Sitting as a Judge of the CACD)

R E G I N A
v
ANTHONY WALTERS

Computer Aided Transcript of the Stenograph Notes 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 C Dunn appeared on behalf of the **Appellant**

APPROVED JUDGMENT

1. MR JUSTICE SWEENEY: On 5 July 2018, at the conclusion of a 4-day trial before His Honour Judge Bayliss QC and a jury in the Crown Court at Leeds, the appellant, who is aged 34, was acquitted of three offences of attempted murder (Counts 1 to 3); but was convicted of an offences of arson with intent to endanger life (Count 4). On 10 August 2018, he was sentenced by the judge to an extended sentence of 20 years - comprised of a custodial term of 15 years and an extension period of 5 years. The appellant was also made the subject of a restraining order, pursuant to section 5(1) of the Protection from Harassment Act 1997. He now appeals against sentence by leave of the single judge, limited to the length of the extended sentence.

2. Two of the persons concerned in the proceedings, namely the children of Nicola Haith, are under 18. In relation to each of them, we make an order under section 45 of the Youth Justice and Criminal Evidence Act 1999 that, whilst they are under 18, nothing may be included in any publication which identifies them as a person concerned in these proceedings. We have anonymised our judgment accordingly.

3. The facts, in short, are these. The appellant was cautioned for criminal damage in 2008 but was otherwise of previous good character. In September 2017, the appellant's relationship with his then partner of 7 years, Katie Brady, broke down. They have a young son who was then aged 5. All attempts to reconcile were in vain. The appellant was distraught at the prospect of a split. Katie Brady had a friend of many years standing called Nicola Haith, who had stayed with her and the appellant in their home. Nicola Haith has two children: a daughter, to whom we shall refer as A, then in her early teens; and a son B, then aged 5. The appellant blamed Nicola Haith for the break-up of his family. He sent abusive messages to her, to Katie Brady, to A, who had been close to the appellant prior to the split, and to A's father, who the appellant barely knew, as well as to others, complaining that Ms Haith had poisoned Katie Brady against him, that she was a cancer in their family, that she was a slut and unworthy of her life, and that her children were unsafe in her care.

4. The messages from the appellant increased in frequency and spite into January 2018. Neither Ms Haith nor her daughter responded to them. Rather, they blocked the appellant on their phones and on social media. However, in the appellant's mind, Ms Haith remained the reason why his family could not reunite.

5. On 23 January 2018, the appellant bought liquid petroleum distillate accelerant from a store near his home in the Doncaster area. He arranged a false alibi with a friend, Richard Jones, to the effect that he had spent that night on Jones' sofa. However, at around 10.30 pm he boarded a train from Doncaster to Leeds wearing dark clothing, a hoody, gloves and a backpack containing the accelerant. CCTV footage from Leeds station caught him lingering there, with the hour getting late, until he eventually approached a taxi. He instructed the driver to take him to the area where he knew that Ms Haith and her children lived, having visited their home as a friend before the split.

6. Between 12.15 and 12.30 am, the appellant was dropped off a short walk from Ms Haith’s address. He told the taxi driver that he would need a lift later, so the driver gave the

appellant his card. CCTV from houses in the vicinity showed the appellant walking towards the address. One clip showed that the appellant had the bottle of accelerant in his hand. At around 1.20 am, the appellant poured accelerant in through the letterbox of the front door and set fire to it, after which he walked away.

7. Nicola Haith and her children were asleep in the house, as the appellant knew that they would be. She was woken by the fire alarm. She left her bedroom on the first floor and saw an orange glow at the bottom of the stairs. She realised from the noise and smell that there was a fire. B, aged 5, as we have mentioned, woke up. His mother sent him upstairs to his sister's attic bedroom and the three of them huddled there while Ms Haith called the fire brigade. She was told by them to block the door to the room and to open a window if they could, but the attic window could not be opened or smashed, and smoke soon started to come into the room. Very quickly, the three of them could not see for the smoke and they were struggling to breathe.

8. Upon the arrival of the fire brigade, fortunately within a few minutes, firefighters could see flames coming out of the front door and that the porch was engulfed. However, knowing that Ms Haith and her children were inside, they did not wait for the heat to subside, as would have been their usual practice, but entered the property with zero visibility and felt their away towards the bedrooms. The entire hallway was alight.

9. By sweeping his leg across the floor of the attic room, one of the firefighters, Shabir Khan, knocked his foot against Ms Haith, who was coughing on the floor. His colleague, Michael O'Connell, found A and lifted her to the Velux window, which Khan had opened for air. B was found in a ball on the floor and was also rescued.

10. Mr Khan said in evidence that if the fire brigade had arrived only a couple of minutes later, Ms Haith and her children would have been completely overcome by the smoke, leading to loss of consciousness and death. All three had to be treated for smoke inhalation. Nicola Haith's carboxyhaemoglobin level was 13 per cent, whereas the normal level is 3 per cent.

11. While the fire brigade was in attendance, the appellant called the taxi driver, pretended to him that he was now going to Sheffield, and was picked up and dropped back at Leeds station. However, despite the appellant's attempts to anonymise his appearance, the taxi driver later identified him. At all events, the appellant travelled back to Doncaster.

12. The effect on Ms Haith's family has been severe, as demonstrated by her Victim Personal Statement. Her anxiety medication has had to be upped and any small noise at her front door, even just the letterbox going, causes her to remember the fire. Her son B suffers nightmares. His behaviour has changed. He has become aggressive and is frightened for his family, thinking that something bad is going to happen and that he will be left on his own. Ms Haith's daughter A also suffers psychologically, including having mood swings. Nicola Haith originally blamed herself for the fire. But investigation of it soon showed that it had been set deliberately. The estimated cost of the damage resulting from the fire was in excess of £5,000 and it also destroyed items of sentimental value that cannot be replaced.

13. On his arrest on 3 February 2018, the appellant denied all knowledge of the arson. In interview, he gave the arranged false alibi, which was duly backed up by Richard Jones. However, the following day, in another interview, the appellant admitted that he had travelled to Leeds and had gone to Ms Haith's home. Nevertheless, he then claimed that his intention had been to spray graffiti on her front door, that he had been put off by pedestrians walking past and that he had not set the fire.

14. At trial, however, the appellant admitted that he had set the fire, but claimed that his intention had only been to frighten Ms Haith. That was rejected by the jury, who were clearly sure that his intention was to endanger life.

15. There were four reports before the judge: a pre-sentence report, two psychiatric reports and a psychological report. The author of the pre-sentence report recorded that the appellant had said in interview he had projected his anger at the ending of his relationship with Katie Brady on the wrong person and that he had also expressed remorse. The author opined that it was highly concerning that the appellant had known that Ms Haith and her children were likely to be asleep in the property when he had set the fire. In the result, the appellant was assessed as posing a high risk of serious harm to the victims and to members of the public generally.

16. The author of the psychiatric reports, Dr Kent, concluded that the appellant did not suffer from any serious mental illness, that there was nothing to suggest that he had any psychopathic personality traits, but that he did have long-standing difficulties with depression. Dr Kent also underlined that the appellant continued to minimise the offence and was considered to have limited problem-solving skills. There was a potential risk within any future relationship, about which, given what the appellant had done, there was, said Dr Kent, a real concern - albeit that the appellant seemed to have gained some insight and no longer seemed angry with the victim.

17. The author of the psychological report, Dr Wood, concluded that, at the time of his examination, the appellant was suffering from clinically significant depression and that he posed a risk of harm to himself. His inability to cope in what had been a highly dysfunctional relationship, had, Dr Wood opined, had an indirect effect on his behaviour at the time of the offence.

18. There was also a testimonial from the prison chaplain, who said that the appellant continued to carry a lot of anger towards those who he believed had driven him to commit the offence.

19. During submissions, the judge was referred to three cases in relation to sentence for offences of arson with intent to endanger life, namely *R v Frankham* [2007] EWCA Crim 1320; *Attorney General's Reference (No. 68 of 2008)* [2008] EWCA Crim 3188, albeit a case involving recklessness rather than intent; and *R v Ajmal* [2010] EWCA Crim 536. However, beyond the fact that, in the first two of those cases, it was suggested that the starting point after trial for such offences tended to fall within the range of 8 to 10 years, the prosecution submitted that each case was decided on its own facts and that all were less

grave than the appellant's offence.

20. There was also brief reference to the Sentencing Council's Draft Guideline in respect of offences of arson, but it was rightly accepted that it was not appropriate for the court to refer to it.

21. In passing sentence, the judge rehearsed the facts, analysed the three cases to which he had been referred and concluded that the appellant's culpability could not have been higher. There had been a significant degree of planning. He had obtained accelerant. He had travelled to Leeds and he had deliberately waited until the early hours, when he knew the victims would be asleep, and he had left the scene without summoning help. He had also set up a false alibi in advance. But for the bravery of the firefighters, the judge observed, all three victims would have died. In the event, the offence had resulted in intense psychological harm to all three victims.

22. Ultimately, the judge concluded, given the content of the reports and the testimonial, and given his own observations during the trial, that the appellant was a very dangerous man who presented a significant risk of serious harm by committing further offences of arson. It was against that background that the judge imposed the 20 year extended sentence to which we have already referred.

23. On the appellant's behalf, in the combination of his written and oral submissions, Mr Dunn submits that the custodial term of 15 years' imprisonment was simply too long. In addition to the authorities that were before the judge, he also refers us to three earlier cases: *R v Cheeseborough* [1982] 4 Cr App R (S) 394; *Attorney General's Reference (No. 66 of 1997)* [2001] Cr App R (S) 149; and *Attorney General's Reference (Nos. 78, 79, 85 of 1998)* [2001] Cr App R (S) 371.

24. Mr Dunn emphasises that in each of the *Attorney General's References* and in *Frankham* a starting range of 8 to 10 years after a trial was identified or confirmed. He further submits that while each of the cases to which he had referred turned on its own facts, there is nothing so different in the facts of the appellant's case to warrant the length of sentence that the judge imposed, which was more in keeping with a Level 1 offence of attempted murder involving some psychological harm which, under the relevant Guideline, has a starting point of 20 years' imprisonment.

25. During his oral submissions, Mr Dunn endeavoured to revive interest in the Draft Guideline - but only to the extent of its conclusion as to the current level of sentencing. He repeated his assertion that the facts of this case are very similar to the facts of a number of the other cases which he cited, and submitted that in those circumstances, when compared to the average hitherto, the sentence imposed was too long. He accepted that the footage of the fire graphically showed the extent to which the front of the house was ablaze and accepted as well that it was only because of the bravery of the firefighters that the outcome was not far, far worse. He underlined in mitigation that the appellant has no previous convictions and is aged 34 and accepted that the appellant is not entitled to any discount for plea.

26. In our view, cases of this type are ultimately decided on their own facts. Having presided over the appellant's trial, the judge was in the best possible position to assess the gravity of the appellant's offence. It seems to us that the judge was entitled to conclude, as we have indicated that he did, that the appellant's culpability could not have been higher. The appellant acted in cold blood and out of revenge for a perceived wrong. The offence was carefully planned, including a prearranged false alibi. His intention was to endanger the lives of three people in their own home, two of them children, one of whom was 5 years old. He waited until the early hours, when they would all be asleep, the effect of which was that the danger to them was maximised, and after setting the fire he did nothing at the scene to mitigate the effect of what he had done.

27. As to harm, the three victims suffered the terror of waking to a fire downstairs that had already taken hold and barred their escape. They had to retreat to the top of the house, where they were overcome by smoke. They were all only a short time from death, when, solely because of the quite extraordinary bravery of the firefighters who put their own lives in danger, they were rescued and, unsurprisingly, they have suffered, as the judge found, intense psychological harm consequent on their ordeal.

28. Equally, there is no merit, in our view, in the suggestion that a custodial term of 15 years is too close to the sentence that would have been appropriate for attempted murder. Here, the comparison must necessarily be with three attempted murders, where, applying level 1 of the relevant Guideline on these facts, the ultimate custodial term, if determinate, would inevitably have been well in excess of the starting point of 20 years.

29. Accordingly, we conclude that, although undoubtedly severe, the custodial term imposed by the judge was within the appropriate range, as indeed was the length of the extension period.

30. In the result, this appeal is dismissed.

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