

No: 201900242/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Neutral Citation number;[2019] EWCA Crim 1661

Wednesday, 5 June 2019

B e f o r e:

LORD JUSTICE FULFORD

MRS JUSTICE ANDREWS DBE

MR JUSTICE SWIFT

R E G I N A

v

CALLUM JOHN CONNERTY

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Mr J Rowan appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

1. MRS JUSTICE ANDREWS: On the evening of 18 November 2018 the appellant and two accomplices committed a robbery at a convenience store in Bootle. All of them were armed; one with a crowbar, one with a sledgehammer, and the third with an unspecified weapon. All were disguised. One of the other robbers brandished his weapon at the man working behind the counter, a Mr Mikov, and threatened him. He also grabbed him by the arm.

2. The main target of the robbery was an ATM machine, which one of the men persistently tried (without success) to open with the sledgehammer. The appellant, seeing that his accomplice was having little luck, then had a go at trying to prise it open with the crowbar.

3. The entire incident was captured on CCTV. Apart from the terrified Mr Mikov the incident took place in front of a young lady who was a customer in the shop at the time. She too was badly shaken. Fortunately, Mr Mikov managed to sound the alarm and the police arrived on the scene soon afterwards. They incapacitated the appellant with a Taser and arrested him. His companions made off with a significant amount of tobacco products which the appellant can be seen on the CCTV loading into a box from behind the counter. These items were never recovered, and their value is unknown.

4. The appellant admitted his guilt straightaway, commenting that it was the first time he had ever been involved in a robbery. That was true, although he had ten previous convictions for an assortment of offences including petty theft and drugs offences. He was on licence at the time for an offence of aggravated vehicle taking.

5. On 18 December 2018, in the Crown Court at Liverpool, the appellant pleaded guilty to robbery, and was sentenced by the Recorder of Liverpool (His Honour Judge Goldstone) to 5 years' imprisonment, having been given full credit for his plea. He appeals against that sentence by leave of the single judge.

6. This was plainly a case in which a lengthy custodial sentence was inevitable, and this very experienced judge rightly considered it unnecessary to obtain a pre-sentence report. He had the benefit of a report from a GP, Dr Hopkins, which gave relevant details of the appellant's medical history.

7. There was no dispute that this offending fell within harm category 2 of the Definitive Sentencing Guidelines for robbery of this nature (street and less sophisticated commercial robbery). The prosecution contended that it was a case of medium culpability (category B) but the Recorder queried whether it fell within high culpability (category A) by reason of the use of very significant force in the commission of the offence, notwithstanding that the force in question was used against property (the ATM) rather than a victim.

8. Whilst it is clear from his sentencing remarks that the Recorder would have favoured that analysis if it had been necessary to resolve the issue, in the event he proceeded to sentence the appellant on the basis that even if this were a case of medium culpability, there were so many serious aggravating factors that, even after taking into account the limited personal mitigation to which he referred, he was justified in moving above the upper limit in the guidelines for that category.

9. The Recorder adumbrated six aggravating factors, namely the fact that the offence was committed whilst the appellant was on licence, the targeting of high value property, the length of time over which the

robbery took place, the fact that there were a group of robbers, the attempted disguise and the fact that a significant amount of planning was involved, which he justifiably inferred from the nature of the weapons used and the targeting of the ATM.

10. In the light of these factors he took the view that notwithstanding the range for a category 2B offence is between 3 and 6 years' imprisonment, with a starting point of 4 years, the notional sentence after trial would have been one of 7 years 6 months. That is only 6 months short of the upmost end of the range for a high culpability (category 2) robbery, which has a starting point of 5 years' imprisonment and a range of 4 to 8.

11. It was accepted on behalf of the appellant by Mr Rowan today, that defence counsel had conceded that in principle that the judge was entitled to move beyond the upper limit of the medium culpability range because of the aggravating factors he identified. However, Mr Rowan contended that that did not justify him in taking a notional sentence after trial that was towards the very top of the high culpability range. He submitted that, having used those factors to bring the case into the higher category, there would be an element of double counting involved to then use them to elevate the sentence to one that was near the top end of that range.

12. We agree. The many aggravating factors identified by the judge justified him passing a sentence at the very top of the medium culpability range, which overlaps with the lower end of the higher culpability range, and indeed is above the starting point in that higher range. The appropriate notional sentence after trial in this case would have been one of 6 years. After giving full credit for the early guilty plea, that would produce a sentence of 4 years' imprisonment.

13. This appeal is therefore allowed. The sentence of 5 years' imprisonment is quashed, and a sentence of 4 years' imprisonment is substituted.

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