

[2019] EWCA Crim 1715  
2019/00433/A2  
IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Tuesday 8<sup>th</sup> October 2019

B e f o r e:

LORD JUSTICE HADDON-CAVE

MRS JUSTICE COCKERILL DBE

and

HIS HONOUR JUDGE BATE

(Sitting as a Judge of the Court of Appeal Criminal Division)

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**REGINA**

- v -

**MOHAMED QASIM**

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

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**JUDGMENT**  
**Approved**

**LORD JUSTICE HADDON-CAVE:**

1. On 6<sup>th</sup> February 2018, in the Crown Court at Reading, before His Honour Judge Lamb, the appellant, Mohamed Qasim (now aged 25) pleaded guilty to one count of causing grievous bodily harm with intent, contrary to section 18 of the Offences against the Person Act 1861, and to one count of having an offensive weapon, contrary to section 1(1) of the Prevention of Crime Act 1953.
2. On 12<sup>th</sup> October 2018, the appellant was sentenced by His Honour Judge Grainger to an extended sentence of fifteen years, comprising a custodial term of ten and a half years and an extended licence period of four and a half years on count 1, and to a concurrent term of fifteen months' imprisonment on count 2.
3. Two co-accused, Haroon Shouqat and Amjid Hussain, were convicted following a trial of causing grievous bodily harm with intent and each was sentenced to nine years' imprisonment.
4. The appellant appeals against sentence with the leave of the single judge, who granted an extension of time of 82 days.

**The Facts**

5. This case concerned a violent attack with a hammer on Mr Lewis Davis, who was a homeless drug user. The attack took place on 6<sup>th</sup> January 2018 outside a block of nearly empty flats called Ashbourne House in Burlington Avenue, Chalvey near Slough.
6. Shouqat and Hussain had spent an hour with Mr Davis in Slough prior to the offence. Mr Davis and Shouqat knew each other a little. Shouqat drove them in his car to the block of flats. Hussain was in the front passenger seat and Mr Davis was in the rear of the car. Somebody was alerted to their departure by telephone, probably in a mobile call made by Hussain. Mr Davis went to Ashbourne house with them, thinking that they were going to smoke drugs.
7. The Crown's case was that Mr Davis was lured to that location by Shouqat and Hussain, with a view to an attack being launched upon him by the appellant.
8. The evidence of an independent witness was that the appellant approached the parked car with a hammer. As the appellant approached, Shouqat got out of the car and opened the rear driver's side door. The appellant leant into the back of the car and began repeatedly to hit Mr Davis on the head and in the face with the hammer. A sustained attack ensued. Mr Davis thought that there were up to 20 hammer blows. The independent witness said that there was a minimum of ten swipes with the hammer. Many of the blows fell on Mr Davis' shoulders, arms and body, as well as his head.
9. The co-defendant, Shouqat, knelt in the driver's seat, facing backwards, and assisted the appellant by holding Mr Davis down so that he could not escape. Hussain came around from the passenger's seat and did the same from outside the car. He stood behind the appellant, leant into the back of the car and held Mr Davis down.
10. When Mr Davis managed to wriggle out, Hussain and the appellant began to punch and kick him to the ground. Mr Davis got up and ran off. He was pursued by Hussain and the appellant. Mr Davis managed to summon help.

11. The three attackers made off in Shouqat's car. The police arrived and blocked them. The appellant and Shouqat were arrested at that point, but Hussain decamped from the back of the vehicle and was arrested a fortnight later.

12. Mr Davis suffered a number of fractures to his jaw, the side of his face and to his left cheek arch, as well as a black eye. He spent eight days in hospital and underwent surgery for the insertion of metal plates in his jaw. We have seen the medical report of Dr Jonathan Lewis and the photographs of the victim's injuries.

13. At the time of sentence, the appellant was aged 24. He had two previous convictions. In August 2015, he received a twelve month conditional discharge for possession of Class B drugs. In the same month, he received a suspended sentence of six months' imprisonment, suspended for eighteen months for an offence of affray.

14. There was a pre-sentence report before the sentencing judge. It assessed the appellant as posing a high likelihood of reconviction and a high risk of serious harm to known adults and the public. We will return to that report in due course.

15. The sentencing judge sentenced all three co-defendants together following the trial of Shouqat and Hussain. He stated that the background to the offence was drug taking and drug dealing. He ignored the appellant's basis of plea. He stated that as the basis of plea sought to exonerate Shouqat, the jury had clearly disagreed with it and in so far as it alleged an attack on a friend of the appellant the previous evening, that would make the appellant's position worse by indicating that this was clearly some sort of revenge attack. Accordingly, the judge said he would ignore it.

16. The judge said that this was a joint attack and that the categorisation within the guidelines could be considered generally in relation to all three defendants. It was an attack of greater harm because it was a sustained attack on a man who was vulnerable, not so much by virtue of his homelessness and other personal difficulties, but by the fact that he was, effectively, trapped in the back of the car. The injuries were not the worst that could be imagined for a section 18 offence, but were still very serious. It was greater culpability, because it was a co-ordinated and pre-planned attack, and it involved the repeated use of a weapon.

17. Whilst the leading role in the violence was that of the appellant, the other two defendants took Mr Davis to this location in the full knowledge that an attack was to take place. They played a full part in keeping Mr Davis trapped and pinned down. The judge said that whether or not they knew that a hammer was to be used in the attack while they were driving to the location, they certainly knew that one was being used, as they themselves became physically involved in the attack. The judge went on to state that this was a category 1 offence, for which the starting point for a person of good character, after a trial, was twelve years' custody, with a range of nine to sixteen years.

18. The judge considered each of the defendants individually. He noted that the appellant was lightly convicted. He took into account the pre-sentence report, gave the appellant credit of 25 per cent for having pleaded guilty at the plea and trial preparation hearing, and then went on to consider the question of dangerousness.

19. In light of the pre-sentence report and the particularly nasty nature of the attack, the judge concluded that the appellant posed a serious risk of harm to the public and assessed him as dangerous. It was on that basis that the judge proceeded to pass an extended sentence on the

appellant of fifteen years, comprising, as we have said, a custodial term of ten and a half years and an extended licence period of four and a half years. It is apparent that the judge's starting point for the custodial part of the sentence was fourteen years, as he said, allowing a 25 per cent discount for the guilty plea, which brought it down to ten and a half years.

20. The judge then went on to deal with the co-defendants. He noted that Shouqat was more heavily convicted than the appellant, but for the most part for offences of dishonesty rather than violence. He noted that Shouqat had played a vital role in the offence in getting Mr Davis to the location, and had then assisted the appellant in the attack by keeping him pinned down.

21. The judge concluded that the appropriate sentence for each of the two co-defendants was nine years' imprisonment.

22. We have been much assisted today by the helpful and clear written and oral submissions of Mr McGrath, who appears on behalf of the appellant. In summary, Mr McGrath first submits that the fifteen year extended sentence was manifestly excessive. He submits, first, that the starting point of fourteen years was too high; and secondly, that there is in this case, in any event, a serious disparity between the sentence which was passed upon the appellant and the sentences that were passed on the two co-defendants. He submits that the disparity is one of five years, because the starting point for the appellant was fourteen years, before discount for the guilty plea; whereas the sentences imposed on each of the two co-defendants, Shouqat and Hussain, was nine years' imprisonment after trial.

23. Secondly, Mr McGrath submits that the judge was, in any event, wrong to make a finding of dangerousness in the appellant's case.

24. We have carefully considered Mr McGrath's submissions on each of these points. This was, on any view, as he accepts, an extremely nasty and violent attack. As the judge noted, it is sheer luck that the blows with the hammer did not wreak serious life-threatening – or, indeed, life-ending – injuries upon the victim. This was a sustained attack with a weapon on a vulnerable victim, who was being held down. It involved planning and a group operation. Mr McGrath does not take issue with the judge's clear finding that the appellant played a leading role in this joint enterprise. It was, after all, the appellant who took the hammer to the scene and then rained down blows upon the hapless Mr Davis. In our judgment, if this sentence had stood alone, a starting point of fourteen years' custody for the count 1 offence would not, on any view, be manifestly excessive.

25. The issue raised by Mr McGrath is whether that sentence, relative to the sentence passed upon the two co-defendants, could be said to have been unfairly high. We have carefully reflected upon that submission too. We are mindful of the fact that the sentencing judge also had the benefit of being the trial judge of the two co-defendants. He, therefore, had the benefit of hearing the evidence not just of the two co-defendants, but of the eye-witnesses. No doubt it was on that basis that the sentencing judge was able to conclude that it was the appellant who had the leading role, and further, that it was unclear whether or not the two co-defendants were aware until he produced the hammer and started to attack Mr Davis, that the appellant would be armed in this terrible manner.

26. The issue before this court is whether the different level of sentences between the appellant and the two co-defendants was so great as to make it unfair. We are not persuaded that the disparity is so great as to make it unfair, not least because, as we have said, we are reluctant to disagree with the judge who had the benefit of seeing the witnesses and hearing the evidence at the trial. Accordingly, we reject Mr McGrath's first ground of appeal.

27. We turn to the question of dangerousness. In our judgment, this issue is less troublesome than the first. In the pre-sentence report, Mr David Gibson of the Probation Service says this:

"It is my view that [the appellant] currently poses a high risk of serious harm to known adults and the public. There are identifiable indicators of risk of serious harm. The potential event could happen at any time and the impact would be serious. [The appellant] acknowledged that he was dealing drugs and that he knew the victim from previous drug dealings. He stated that the day before the offence, the victim had robbed his associate of drugs and money and he told the victim that he would 'find him' and 'get him', indicating that he was seeking revenge.

It is my view that there was a degree of planning regarding the offence and it is of concern that [the appellant] showed little insight, regret, remorse or empathy towards the victim. Given the lifestyle [the appellant] was living involving organised pre-criminal associates, it is my view that another offence of this nature could happen again if [the appellant] was confronted, challenged or involved further in the drug trade and this could happen at any time. I would express concern about the level of violence used which was extreme and that this is associated with a lack of remorse or victim empathy."

28. In the light of those clear observations by the author of the pre-sentence report, and the nature of this extremely violent attack, in our judgment, the sentencing judge was fully entitled to conclude that the appellant was indeed dangerous and fulfilled the requirements of the dangerousness provisions.

29. In those circumstances, an extended sentence of fifteen years, comprising a custodial term of ten and a half years and an extended licence period of four and a half years was open to the judge and, in our judgment, cannot be said to be manifestly excessive.

30. For those reasons, this appeal is dismissed.

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