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IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 601



No. 201904594 A1

Royal Courts of Justice

Tuesday, 7 April 2020

Before:

LADY JUSTICE SIMLER DBE
MR JUSTICE MARTIN SPENCER
MRS JUSTICE FARBEY DBE

REGINA

V

RICHARD BROSCHE

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J U D G M E N T

MR JUSTICE MARTIN SPENCER:

- 1 The appellant renews his application for leave to appeal against a sentence of imprisonment of 20 months imposed by HHJ Thackray in the Crown Court at Kingston upon Hull on 30 October 2019 upon the applicant's plea of guilty to a charge of having an article with a blade or point contrary to s.139(1) of the Criminal Justice Act 1988. The applicant also pleaded guilty to an offence of breach of a Criminal Behaviour Order contrary to s.30(1) and (2) of the Antisocial Behaviour, Crime and Policing Act 2014, in respect of which a sentence of imprisonment of eight months was imposed and in respect of which no application is made.
- 2 The facts are clear from the summary prepared by the Criminal Appeal Office and need not be repeated for the purposes of this judgment.
- 3 The applicant had very significant previous convictions. The learned judge properly had regard to the Guidelines in relation to domestic violence, bladed articles, breach of Criminal Behaviour orders, totality and the Guideline in relation to the imposition of community and custodial sentences. He dealt with the bladed article offence as the lead offence and passed a concurrent sentence for the breach of the Criminal Behaviour Order. There was no dispute that within the Sentencing Guideline the offending had been culpability A as it had involved a bladed weapon. The Crown would submit that it was a category 1 case and the defence had submitted that it was a category 2 case. The learned judge found that the offending was somewhere between categories 1 and 2 with a risk of serious disorder.
- 4 The applicant's previous convictions included convictions for possessing a bladed article and threatening to kill and these significantly aggravated the index offending. So far as mitigation is concerned, the judge took account of the fact that the applicant had made some progress in custody. He also had regard to the applicant's mental health difficulties.
- 5 He had the principle of totality well in mind. He afforded the applicant credit of one-sixth from the sentence he would otherwise have imposed in relation to the bladed article offence, given that there had been a Newton Hearing in which the learned judge had wholly disbelieved the applicant's account. The learned judge said that the least possible sentence he could have imposed after a trial would have been one of two years' imprisonment. He reduced that sentence to one of 20 months' imprisonment to reflect and give credit for the applicant's guilty plea in the light of the Newton Hearing. He considered whether the sentence could be suspended, but concluded it could not. He concluded that the applicant could not be rehabilitated in the community and, in any event, the appropriate punishment could only be achieved by an immediate custodial sentence.
- 6 The application for leave to appeal was considered by the single judge, Mr Justice Griffiths, who said:

"The judge saw the CCTV and heard you give evidence at your Newton Hearing. He found as a fact 'You were in the business that day and setting out to intimidate and frighten people and that is why you were carrying the meat cleaver,' and that this was pursued 'with your ex-partner and then some youths in the street, waving the meat cleaver about, banging it on the bin as they cycled past you only a short distance away.' He was therefore entitled to identify the category 1 feature of an offence committed in circumstances where there was a risk of serious disorder. He was entitled to find it was very much aggravated by previous convictions. The Guideline starting point of 18 months with a range of one year to two and a half years shows that your sentence of 20 months was not manifestly excessive in these circumstances."

7 We wholly agree with the single judge and, in those circumstances this application is dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.