IN THE COURT OF APPEAL

CRIMINAL DIVISION

[2020] EWCA Crim 607

No. 201904476 A3

Royal Courts of Justice

Wednesday, 8 April 2020

Before:

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

REGINA

V

ARMAN REZAZADEH

Computer-aided Transcript prepared from the Stenographic Notes of
Opus 2 International Ltd.
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

MR J. HAYES appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE MARTIN SPENCER:

1 With leave of the single judge the appellant appeals against a sentence of 45 months' imprisonment imposed by HHJ Chambers QC in the Crown Court at Birmingham on 28 November 2019 for five offences was of racially aggravated damage to property. The offences were all committed in the early hours of 21 March 2019. Over a period of a few hours, the appellant made attacks on five separate mosques in the Birmingham area.

2 The first mosque was at Witton Islamic Centre less than a mile from the appellant's home. There he smashed five windows and the glass in the double door, causing damage estimated at a cost of £4,500. However, as the learned judge remarked, the damage consisted not so much in the pure monetary value as in the impact of what he did on the community of the mosque itself and the wider Muslim community. Sentencing the appellant, the learned judge said this:

> "Birmingham has a long history of religious toleration and harmony, not only between the faiths, but within the faiths as well. You quite deliberately and seriously offended against that. You were motivated by your religious hatred, you being of the Shia faith and the mosques being Sunni Muslim mosques."

3 In committing this damage, which was in part captured on closed-circuit television, the appellant could be seen using a sledgehammer and the judge found that he had gone equipped with both a sledgehammer and another weapon such as a golf club. He was seen wearing dark clothing and a dark hat and had set out to disguise himself.

4 That first attack was at 1.54 a.m. The second, two minutes later, was at the Masjid Madrassa Faziul Islamic Centre. Again, the windows and the door were smashed. The third mosque attack was at the Al-Habib Trust just under a mile away. This was at 2.16 in the early hours of the morning. In that mosque was a teacher who was woken by the sound of breaking glass and must have been terrified. The fourth mosque attack was at the Jamia Mosque, a further mile away from the Al-Habib Trust, and was attacked at 2.27 with two front windows on the front doors being smashed. Finally, the appellant attacked the Jam-E-Masjid Qiblah Hadhrat Sahib Gulhar Shareef, the attack taking place at 03.12 hours. The five windows at the front were smashed.

5 The following day the appellant turned himself in at the police station and admitted his responsibility. However, when interviewed on 25 April 2019 he denied his responsibility and Mr Hayes has reminded us that in the intervening period the appellant had suffered a serious relapse in his mental health and that this was, at least in part, the reason for the deranged account he gave in the interview on 25 April 2019. He has of course again admitted his responsibility by reference to his pleas of guilty, for which he was afforded a 25 per cent discount from the sentence he would otherwise have received by reason of his pleas.

6 At the time of these offences, the appellant was aged 34, having been born on 12 December 1984. He is now 35. He lives with his parents and sister in Handsworth Wood and had suffered mental health issues for some significant period of time. In 2014 he was diagnosed with drug-induced psychosis, for which he was medicated. His family said that his illness would often manifest itself in relation to religious issues. In the period preceding these offences he had not been compliant with his medication and his sister said that his mental health had deteriorated in the preceding months.

7 On the evening before the attacks the family had celebrated the Iranian new year and the appellant came home at about 9 o'clock in the evening having purchased a bottle of vodka. The family ate and had a few drinks together and the rest of the family went to bed, but the appellant left the house in the early hours in order to commit these offences.

8 Clearly, the principal matter relied on in mitigation was the appellant's mental health. The court had available a psychiatric report and addendum report from Dr Kennedy, a consultant psychiatrist. His diagnosis was one of psychosis, but it was his view that it was induced by the appellant's voluntary consumption of cannabis. The appellant was a habitual user of cannabis and had been for many years and, as a result, his mental health had relapsed. He had been warned about the effect of cannabis abuse on his mental health, but had ignored that warning.

9 In considering the appropriate sentence, the learned judge, acknowledging that this was not an easy sentencing exercise, addressed the two usual components of seriousness; namely, harm and culpability. He considered the harm to have been extremely substantial with a huge impact on the local and wider Muslim community. Victim impact statements had been read to the court from each mosque attesting to the fear engendered by these attacks where even the adults were frightened to go and pray, frightened both for themselves and for their children.

10 Turning to culpability, the learned judge addressed the role played by the appellant's mental illness and how it should be taken into account in the sentencing process. He said:

> "Whilst I am satisfied that at the material time you were suffering from mental illness, I am not satisfied that your responsibility has been substantially impaired. In my judgment, culpability remains high. I say that for a number of reasons. First, that you were suffering from self-induced psychosis. Secondly, you had stopped taking your medication at the material time. Thirdly, you have chosen to commit the offences whilst consuming a substantial amount of vodka and, fourthly, clearly this offending was planned and premeditated. You selected your targets, you went in dark disguised clothing, you went out armed with a sledgehammer and another weapon."

11 The learned judge had regard to the Sentencing Guidelines issued by the Sentencing Council. He considered that the offences together fell within category A for culpability, given the high degree of planning and premeditation. Although an element under category C is whether the defendant's responsibility is "substantially reduced by mental disorder or learning disability", he considered that the culpability remained in category A for the reasons he had indicated; namely, that it had been self-induced mental illness with a deliberate failure to take medication in the knowledge that this, combined with the continuing consumption of cannabis, would have an adverse effect on his mental health. So far as harm was concerned, he considered this to be category 1, given the serious distress caused throughout the Muslim community in Birmingham.

12 An offence in category 1A, before racial aggravation is taken into account, carries a starting point of 18 months' imprisonment and a category range of six months to four years' imprisonment for a single offence. The learned judge considered that, but for the racial aggravation, the sentence would have been one of two years' imprisonment before discount for the pleas of guilty. The learned judge then went on to consider the Sentencing Guidance for racially and religiously aggravated criminal damage and the requirement to set the level of such aggravation. He took the view that this was a case of high level racial or religious aggravation where the racial or religious motive provided the dominant motivation for the

offence. He took the view that it was in fact the sole motivation in this case. He also took into account that the aggravated nature of the offence had caused serious fear and distress throughout the local Muslim community and more widely. He therefore enhanced the sentence to one of five years' imprisonment from the sentence which would otherwise have been imposed of two years' imprisonment, which he then reduced by 25 per cent to reflect the plea of guilty and the sentence was, accordingly, 45 months. Rather than impose separate consecutive sentences for each offence, the learned judge, rightly and appropriately, set the sentence for a single offence and imposed similar concurrent sentences for each of the other counts.

13 On behalf of the appellant, Mr Hayes has submitted in writing that the sentence imposed was wrong in principle and manifestly excessive by reason of the fact that the learned judge erred by ignoring the psychiatric reports of Dr Kennedy outlining the severe mental illness being suffered by the defendant at the time the offences were committed. He submitted in his written grounds of appeal that the learned judge should have followed the guidance in the case of *PS, Dahir and CF* [2019] EWCA Crim 2286 at para.18 on the approach to be taken in sentencing those who are mentally ill:

> "It follows that in some cases, the fact that the offender suffers from a mental health condition or disorder may have little or no effect on the sentencing outcome. In other cases, it may have a substantial impact. Where a custodial sentence is unavoidable, it may cause the sentencer to move substantially down within the appropriate guideline category range, or even into a lower category range, in order to reach a just and proportionate sentence. A sentence or two ... should be included in the remarks."

We consider this to be an expression of common sense in relation to the sentencing process by the sentencing judge.

14 In his oral submissions, Mr Hayes has slightly changed the focus of his written submissions and has submitted that one of the matters which the learned judge failed properly to take into account was not so much the mental illness of the appellant at the time that the offences were committed, but the mental illness of the appellant at the time of sentencing. Mr Hayes has submitted that at the time of sentence the appellant was seriously mentally ill and he has submitted that this could and should have been taken into account by the judge in accordance with the case of *PS*. We do not agree with that. In our judgment, the appropriate time to consider mental illness, and the time which the court was addressing in the case of *PS,* was the time that the offences were committed, because that is the time which relates to the culpability of the appellant in relation to the offences for which he falls to be sentenced. Of course, if at the time of sentence the mental illness of an appellant had deteriorated to the extent that, for example, he is not able to serve a sentence of imprisonment, the judge can make an appropriate order, such as a hospital order combined with a prison sentence or the like, but that was not the situation in this case and was never submitted to be the situation in this case. It was always the fact that the appellant was considered to be capable of serving a sentence of imprisonment and, in those circumstances, we consider that the learned judge was absolutely correct to consider the culpability of the appellant at the time of the offences, not at the time of sentence. Furthermore, in our judgment, there is no merit in the suggestion that the learned judge ignored the psychiatric reports of Dr Kennedy. He plainly had them well in mind. Nor can it be said that the learned judge took no account of the defendant's severe mental illness at the time of the offences. Consideration of it formed an important part of the sentencing remarks. It seems to us that the question is whether he took sufficient account of the defendant's mental health and whether, in the circumstances, the sentences imposed were so high as to be properly described as manifestly excessive. In our judgment, they were not.

15 As the learned judge remarked, this was not an easy sentencing exercise. We cannot fault the approach which the learned judge took. He had proper regard to the Sentencing Guidelines. He had proper regard to the culpability of the appellant and to the harm caused by these offences and, rightly in our judgment, he considered that the appellant retained responsibility for his actions despite the mental health issues from which he was suffering. As the learned judge said, those mental health issues did not prevent him from planning these attacks, arming himself with weapons and disguising himself and, in any event, the extent of his mental health issues was influenced by his own actions or omissions in failing to comply with his own medication regimen and in taking cannabis and alcohol. We have considered whether the increase in sentence from the two years which the learned judge would have imposed to five years was so high as to be manifestly excessive, but in our judgment, although this was undoubtedly a significant enhancement of the sentence, it did not stray into the realm of being excessive or manifestly excessive. The learned judge rightly took into account the effect which these offences had had on the community, an effect which far outweighed the pure monetary loss caused by the defendant's actions. As a local judge in the community, he was well placed to assess that impact and to make a judgment as to how it should properly be reflected in the sentence to be imposed in this case.

16 In those circumstances, this appeal is dismissed.

CERTIFICATE

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

Transcribed by ***Opus 2 International Limited***
Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
CACD.ACO@opus2.digital

This transcript has been approved by the Judge.