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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202003146/A1

NCN: [2021] EWCA Crim 1133

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 14 July 2021

LADY JUSTICE SIMLER DBE
MR JUSTICE MURRAY
MR JUSTICE WALL

REGINA
V
ABDULSHERE ALI

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MISS F ARSHAD appeared on behalf of the Appellant

J U D G M E N T

1. MR JUSTICE WALL: On 21 December 2018 in the Crown Court at Birmingham, the appellant pleaded guilty to five counts of robbery, eight counts of having an article with a blade or point, one count of aggravated vehicle taking and three counts of attempted robbery. On 6 February 2019 he was sentenced as follows: for each offence of robbery, a term of six years and six months, and for each offence of attempted robbery a term of three years. All of those sentences were imposed under section 91 Powers of Criminal Courts (Sentencing) Act 2000. They were ordered to run concurrently with each other. The judge imposed no separate penalty on each offence of having an article with a blade or point and on the offence of aggravated vehicle taking, save that in respect of the latter offence the appellant was disqualified from driving for a period of four years and three months and thereafter until he passed an extended retest. That period of disqualification was made up of a discretionary disqualification of 12 months and an uplift of three years and three months said by the judge to be under section 35A of the Road Traffic Offenders Act 1988.
2. Each of these offences concerned an attack on a taxi driver. They were committed with a co-defendant. The modus operandi was similar in each case. Either the appellant, or more usually his co-defendant, would telephone for a minicab and when it arrived the appellant would produce a knife and use it to threaten the driver and demand that he hand over money or his mobile telephone.
3. His co-defendant pleaded guilty to the same counts of robbery and attempted robbery and was sentenced to four years and six months' detention under section 91.
4. Counts 1 and 2 occurred on 12 July 2018. The driver in that case, Mohammed Khan was threatened by the appellant with a knife while his co-accused threatened him with a key: £55 in cash was taken.
5. Counts 3 and 4 occurred on 2 August at 1.20 in the morning. The appellant held a Rambo-style knife to the throat of Asad Majid and demanded that he hand over his money. This incident lasted for 10 minutes and eventually £80 in cash was handed over by the taxi driver.
6. Counts 5, 6 and 7 occurred on 7 August at 8.10 pm. On this occasion the appellant was accompanied by two other men. They got into the taxi of Mr Tashoma. The appellant pulled out a knife and held it towards the taxi driver, who managed to get out of his car and run away. This time the car itself was driven off and later found abandoned, some damage having been done to it.
7. Counts 8 and 9 occurred on 25 August 2018, between 11 o'clock at night and midnight. The taxi driver, Mohammed Iqbal, picked up two passengers who refused to pay their fare and became aggressive. The appellant, one of those passengers, pulled out a knife and threatened Mr Iqbal. Mr Iqbal's mobile telephone and approximately £60 in cash was taken from him.
8. Counts 10 and 11 occurred just before 9 o'clock the next evening. The victim Abdulhalim Abdilla went to Salisbury Town where he found the appellant in the company of a number of women. He refused to take that many people in his taxi, whereupon the appellant drew a knife and demanded money from him. The females persuaded the appellant to leave without obtaining any property.
9. Counts 12 and 13 occurred on 28 August at approximately 8.30 in the morning. The taxi driver this time, Mr Botan was called to Salisbury Town. When he arrived the appellant got into his cab and demanded money. He produced a knife and pressed it against

- Mr Botan's throat. Mr Botan managed to get away without handing over any property.
10. Counts 14 and 15 happened shortly thereafter the same morning. The driver in this case, Salim Doost attended Salisbury Town whereupon the appellant got into his cab. He produced a knife from his jacket pocket and tried to take the keys away from the driver, but the driver managed to get away.
 11. Counts 16 and 17 occurred just a few minutes later. The appellant got into Nazir Hussain's taxi with his co-defendant. The co-defendant reached across and stole Mr Hussain's mobile telephone. When Mr Hussain protested, the appellant pulled out a knife and made a demand for money. Mr Hussain bravely stood up to the appellant and said that he would fight him if he persisted and this caused the appellant to run away.
 12. The appellant was 15 years of age when he committed all of these offences and at the time he was sentenced. He was of previous good character. His co-accused Faiza Bibi was 16 at the time of the offending, but 17 at the time of sentence. She similarly was of good character.
 13. Imposing sentence, the judge identified each of these offences as falling within the higher culpability bracket of the relevant guideline, that relating to street and less sophisticated commercial robbery. That is because in each case a bladed item was produced in order to threaten violence. In three cases (counts 1, 8 and 16) the judge found that the harm fell into Category 1 because of the serious psychological harm caused to the victim or the serious detrimental effect that the offending had on the victim's business. He based this on the victim impact statements provided to him.
 14. In the other cases, victim impact statements revealed that the taxi drivers had been significantly affected by what had happened to them but not to the extent as to place the offences into Harm Category 1.
 15. As for the more serious of the offences, the judge found correctly that the starting point for an adult would have been one of eight years' imprisonment in each case. For those which were in the lower category of harm, the judge again correctly identified the starting point for an adult as being a term of five years. Overall, the judge concluded that the correct total sentence after trial for an adult who had committed all of these offences would have been a term of 15 years' imprisonment.
 16. The judge pithily summarised why he felt that even for someone as young as this appellant a sentence under section 91 was necessary. He said:

"Well how serious was this? Planned, concerted, persistent...

This was a team effort; significant force threatened."

17. He described some of the knives employed by the appellant in the course of this offending as "some of the most horrific type of weapon that people will see on the streets". He went on to say that had there been only one offence of its type he would have reduced the sentence by 50 per cent to reflect the appellant's youth, but because there were a number of offences he would only reduce it by one-third. That resulted in a sentence of 10 years from which he deducted full credit for guilty pleas, making, he said, the total term one of six years and six months.
18. Originally there were three grounds of appeal advanced. First, that the judge erred in not passing a non-custodial sentence on the appellant. Secondly, that the judge wrongly categorised some of the robberies as falling into Category 1A. Thirdly, that the judge erred in not reducing the adult sentence by 50 per cent before imposing the discount for

guilty plea.

19. Today, in oral argument, only the third of those grounds was pursued by Miss Arshad. In cogent and persuasive submissions, attractively presented, she urged us to say that the judge should have reduced the adult sentence by the full 50 per cent. First, she submitted that a different constitution of this court had already considered the case of the co-accused some time ago. Just as with this appellant, the sentence of the co-accused had been reduced by one-third from what the judge would have found to be the appropriate adult term. This court allowed her appeal so that the appropriate adult term was reduced by 50 per cent. We were urged to say that this appellant should be dealt with in similar fashion.
20. Secondly, realistically accepting that any assessment of the appropriate reduction depended on an assessment of the maturity of a particular appellant, Miss Arshad made a number of submissions relating to the lack of maturity exhibited by this particular appellant. In general she urged us to find that the use of a traceable phone to commit each of these offences, and the fact that taxis were called either to the home address of this appellant or of his co-accused meant that these were unsophisticated offences showing in the appellant a lack of maturity. She also relied on the pre-sentence report prepared for the sentencing judge which found that the appellant was immature for his age, was impulsive and lacked thinking skills. She also relied on a Speech and Language Therapy Report which was prepared on the appellant after he was sentenced and therefore was not available to the sentencing judge. That report set out a number of significant difficulties faced by this appellant in communicating with others.
21. The ground now advanced is not one opposed by the prosecution. We have considered it. We find that there is no justification for reducing the amount of discount afforded to this appellant by virtue of his age by reference only to the number of offences he committed. This was the first time that he had been before a court. He was only 15 at the time of committing the offences and at the time of sentence. Significantly, his overall term, like that of his co-defendant, had been increased to reflect the number of offences he had committed. In those circumstances it would be unjust also to reduce his discount for age for the same reason: to do so would be to factor the same feature twice into the sentencing process. We also take on board that this point has already been taken successfully by his co-accused Faiza Bibi before a different constitution of this court. Although she played a lesser role than did the appellant, it would in our judgment result in an injustice if we did not increase the age discount in the case of a 15-year-old, when it has already been increased in the case of someone aged 17.
22. The result of this is that the sentence of 15 years should have been reduced to one of seven-and-a-half years to reflect the appellant's age, and then by a further one-third to reflect credit for his guilty pleas. The appropriate total term therefore was one of five years and not one of six years and six months.
23. The sentences of six years and six months on each offence of robbery will be quashed and in each case replaced with one of five years. The other sentences will remain as they were, save that the driving disqualification will be reduced to one of three years and six months, comprising a 12-month discretionary disqualification on count 7, with an uplift of two years and six months under section 35B of the Road Traffic Offenders Act 1988 to reflect the amount of time the appellant is likely to spend in custody on the robbery offences. To that extent this appeal is allowed. The only other thing we need

to say for the sake of clarity is that, this appellant now having turned 18, there are no continuing reporting restrictions in this case.

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