ENGLAND AND WALES / JUDGMENT

Broadbent, R v

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Neutral Citation Number: [2017] EWCA Crim 2505 IN THE COURT OF APPEAL CRIMINAL DIVISION 2017/04073/A2 Royal Courts of Justice The Strand London WC2A 2LL Tuesday 12 th December 2017 B e f o r e: LORD JUSTICE SIMON MRS JUSTICE YIP DBE and HIS HONOUR JUDGE LUCRAFT QC (Sitting as a Judge of the Court of Appeal Criminal Division)

- - - - - - - - - - - - - - - - R E G I N A
- v - DAVID ALAN BROADBENT
- - - - - - - - - - - - - - - - Computer Aided Transcription by Wordwave International Ltd trading as DTI 165 Fleet Street, London EC4A 2DY Telephone No: 020 7404 1400; Fax No 020 7404 1424 (Official Shorthand Writers to the Court)
- - - - - - - - - - - - - - - - Mr J Troup appeared on behalf of the Appellant
- - - - - - - - - - - - - - - - J U D G M E N T LORD JUSTICE SIMON:

1. On 5th July 2017, the appellant pleaded guilty before the Lancashire Magistrates sitting at Preston to a number of offences and was committed for sentence to the Crown Court. On 7th August 2017, in the Crown Court at Preston, he was sentenced by Mr Recorder Hussain QC as follows: on the sole committal offence under reference S20170416, for theft, a term of three months' imprisonment; on committal offence 1, under reference S2070417, for theft from a motor vehicle, a term of three months' imprisonment; on committal offences 2 and 3, under the same reference, for racially aggravated public order offences, contrary to section 28 of the Crime and Disorder Act 1998, twelve months' imprisonment; on committal offence 4, also under the same reference, for assault of a constable in the execution of his duty, contrary to 89(1) of the Police Act 1996, six months' imprisonment; and on the sole committal offence under reference S20170418, for possession of a bladed article, contrary to section 139(1) and (6) of the Criminal Justice Act 1998, nine months' imprisonment. The sentences were ordered to be served consecutively, save for the term of three months under S20170416, which was ordered to be served concurrently, and the sentences for offences 2 and 3 under reference S20170417, which were ordered to be served concurrently with each other, but consecutively to the other sentences on the same committal reference and the reference under reference S20170418. The total term was, therefore, one of 28 months' imprisonment.

2. The appellant appeals against sentence with the leave of the single judge.

3. An initial point arises in relation to those offences committed to the Crown Court under section 6 of the Powers of Criminal Courts (Sentencing) Act 2000. In relation to these offences, the total maximum sentence available to the Crown Court was limited to those that would have been available in the magistrates' court (six months' imprisonment). Three of the committals were section 6 committals: the sole offence under reference S20170416, and offences 1 and 4, committed to the Crown Court under reference S20170417. In relation to those offences, the overall sentence was seven months' imprisonment, which exceeded the sentencing powers available to the court.

4. It is convenient at this point to turn to the facts of the case and first to the theft committed to the Crown Court under reference S20170416. At approximately 15.30 on 8th May 2017 the appellant stole alcohol to the value of about £50 from Sainsbury's in Preston town centre. He was seen to enter the store, walk to the alcohol aisle and place a number of items into his bag before leaving without making payment. He was followed by a member of staff and was compliant when asked to return to the store. All the items were recovered. The appellant immediately admitted the theft to the police. The offence was, in any event, captured on CCTV footage.

5. The next four offences committed to the Crown Court under reference S20170417 were all committed while the appellant was on bail. Late on the afternoon of 20th June 2017, a taxi driver left his motor vehicle parked and unattended on Meadow Street. When he returned some time later, he saw the appellant leaning through the passenger door. He had in his hand a pair of sunglasses belonging to the taxi driver. He confronted the appellant, who responded by throwing the sunglasses to the ground. He then walked away and joined a group of men nearby. The taxi driver saw that the contents of his car had been disturbed and flagged down a passing police van. He identified the appellant as the man responsible for stealing his sunglasses. When the officers approached, the appellant tried to run away.

6. Police Constable Hopkins recognised the appellant immediately. The appellant became aggressive with the officer and had to be handcuffed. He was arrested at 18.25 but was too violent to be properly cautioned. Police Constable McDonald then joined Police Constable Hopkins. The appellant became increasingly aggressive and began to throw himself against the police van. He headbutted the van and bit Police Constable McDonald on the left arm. In response he was taken to the ground, where he continued to be aggressive, biting out at the officers and spitting. This was witnessed by members of the public. The appellant was heard to be verbally abusive to some of the onlookers. He shouted, "Fucking Pakis, what are you fucking looking at, you all fucking killed – nearly killed my daughter last week".

7. By this time there were a number of police officers on the scene. Police Constable Patel was referred to by the appellant as a "fucking Arab" and a "little Arab fucker". The appellant also used racially offensive language towards Police Constable Spence, saying "Get away from my leg, you fucking Nigger, I'll fucking take your fucking head off, you fucking Wog". The verbally aggressive behaviour from the appellant continued while in the police van and later in the custody suite.

8. The appellant was interviewed the following day. He accepted that he was present at the time, but denied the theft or using any racially offensive language. He then accused the taxi driver of using racist language towards him. He was again released on police bail.

9. The final offence was possession of a bladed article. The offence occurred in these circumstances. On 30th June 2017 police officers were contacted about an incident at Boots store in Preston town centre. Police Constables Till and Jones, although some distance away from the store, saw the appellant and had reason to suspect that he may have been involved. He was searched and found to be in possession of a lock knife. He was then arrested. When handcuffed, he became aggressive with the officers. The lock knife was a brass handled lock knife.

10. The appellant was aged 36 at the date of sentence. He had been before the court on no less than 51 occasions and had been dealt with for a total of 129 offences between February 1994 and June 2017. Among these were 42 theft and similar offences, 30 offences relating to the police, the courts and prisons, three offences against the person and three offences of having an offensive weapon.

11. A pre-sentence report recorded the appellant's remorse for his offending, which was attributed to his substance misuse, difficulties due to his mental health, poor reasoning, and limited victim awareness. He was assessed as posing a high risk of re-offending and a medium risk of committing a serious, violent offence within two years. The author of the report proposed a suspended order with a rehabilitation activity requirement for up to 20 days, and a six month drug rehabilitation requirement as an alternative to immediate imprisonment.

12. The Recorder rightly regarded that as an unrealistic proposal and in passing sentence noted the appellant's very bad record for offending, which included convictions for possession of an offensive weapon in 2000 and possession of a prohibited weapon (liquid gas) in 2004. He also had a large number of convictions for dishonesty. In the past he had been given non-custodial community or suspended sentence orders, all of which he had breached.

13. The Recorder regarded as an aggravating feature the fact that the offences on 20th and 30th June had been committed while on police bail. It had been submitted on the appellant's behalf that he had drug and alcohol dependency and had been sectioned in the past under the Mental Health Act. The court had also heard about the appellant's personal circumstances, particularly in relation to his family. The court also took into account the loss of his accommodation if he were sent to prison, and gave full credit for the guilty pleas

tendered in the magistrates' court. Nevertheless, the Recorder considered that the offending passed the custody threshold and imposed the sentences totalling 28 months' imprisonment, to which we have referred. No separate penalty was imposed in respect of the appellant's breach of a conditional discharge, as the court took this into account as an aggravating feature, along with the breaches of police bail.

14. On behalf of the appellant, Mr Troup makes a number of points which are elaborations of, if not departures from, his written Grounds of Appeal. Essentially, his submission is an objection to the overall sentence as a matter of totality. In particular he focuses on the sentence for the assault on the police constable in the exercise of his duty, which sentence, he says, should have been passed concurrently. In relation to the racially public order offence, he submits that the increase for the racial aggravation element was too high.

15. We have considered these submissions. With full benefit for the guilty pleas, the Recorder's starting point must have been three and a half years' custody (42 months). In our view, there is only one point on this appeal, apart from the limitation on the powers of the Crown Court in relation to offences committed from the magistrates' court, namely: was the overall sentence of 28 months' imprisonment too long as a matter of totality?

16. The offences were committed on three days, and the appellant was on police bail after the first offence. The offences against the police officers on 20th June were serious and involved a significant degree of violence and spitting, as well as the elements of gratuitous racial aggravation, all in a public place. The offences deserved condign punishment. They were the actions of someone who was dangerously out of control.

17. Ten days later, while again on bail, this time for two sets of offences, the appellant was found to be carrying a knife in a public place, with further acts of aggression towards the police while carrying out their duty.

18. The appellant's record showed that the previous sentences had had very little, if any, effect on his offending. In our view, the overall sentence was at the upper end of a bracket for appropriate sentences as a matter of totality, but did not result in a sentence that was manifestly excessive in the circumstances.

19. As the single judge noted, the Recorder was entitled to conclude that the time had come when people in Preston – and its police officers – deserved a break from the appellant's disruptive and persistent criminal behaviour.

20. In view of the limitations on the power of the Crown Court to sentence for the three section 6 committal offences, we will quash the sentence of three months' imprisonment for the theft offence under reference S20170416 and substitute a consecutive term of two months' imprisonment. We will quash the sentence of three months' imprisonment for the theft offence under reference S20170417 and substitute a concurrent term of two months' imprisonment. The sentences on offences 2 and 3 will remain unaffected (twelve months' imprisonment concurrent with each other), but to run consecutively otherwise. We quash

the sentence of four months' imprisonment on offence 4 under the same reference and substitute a consecutive term of two months' imprisonment. The consecutive sentence of nine months' imprisonment for the offence under reference S20170418 will remain unaffected.

21. The total sentence, therefore, will be one of 25 months' imprisonment (rather than 28 months). To that limited extent the appeal is allowed.

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