

ENGLAND AND WALES / JUDGMENT

Jacenciuk, R v

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral Citation Number: [2009] EWCA Crim 473 IN THE COURT OF APPEAL CRIMINAL
DIVISION No: 200806136 A1 Royal Courts of Justice Strand London, WC2A 2LL Tuesday, 17th
February 2009 B e f o r e: LORD JUSTICE RIX MR JUSTICE WALKER MR JUSTICE CALVERT

- SMITH
- ----- R E G I N A v BOGDAN JACENCIUK
- ----- Computer Aided Transcript of the Stenograph Notes of WordWave
International Limited A Merrill Communications Company 190 Fleet Street London EC4A
2AG Tel No: 020 7404 1400 Fax No: 020 7831 8838 (Official Shorthand Writers to the Court)
- ----- Mr T Banks appeared on behalf of the Appellant
- ----- J U D G M E N T LORD JUSTICE RIX: On 24th July 2008 at the Crown Court
at Inner London the appellant, Bogdan Janceniuk, pleaded guilty to arson being reckless as
to whether life was endangered, and on 23rd October 2008 His Honour Judge Smith QC
sentenced him to three and a half years' imprisonment, with a direction that 164 days spent
on remand should count towards the sentence. He now appeals against sentence by leave of
the single judge. The facts can be briefly stated. The appellant was residing at a hostel for
homeless men in London. The hostel had a capacity for 40 residents and the appellant
resided on the first floor. At about 8 pm on 10th May 2008 one of the residents heard the
smoke alarm go off and broke a lock on the door on one of the dormitories to gain access to
a fire. The appellant was standing next to the fire, holding a knife and a duvet that was on
fire. The fire was extinguished by staff and residents, prior to the arrival of the emergency
services. The appellant was restrained by staff and residents prior to the arrival of the
police, who arrested him. He was struggling violently and it was necessary to use leg
restraints. Two duvets, two duvet covers, one bed sheet, one mattress and some of the floor
linoleum were damaged. The damage was not extensive, however, and amounted in value to
some £200. On interview the appellant said that two hours before the incident he had been
drinking. He had three cans of beer with a friend whom he had met recently. He then went
to the sitting room of the hostel and drank some tea and had used his fishing knife to cut up
some slices of ham. He then went up to his room, which he shared with six other men. He
said he felt dizzy and he could not really remember what happened next. He recollected
setting fire to the duvet cover with a lighter. He said he lost touch with reality, but could not
give any further elaboration on what he meant. He said the next thing he remembered was
being in a cell at the police station. He said the dizzy feeling of losing touch with reality had

never happened to him before. He said he did not know why he set fire to something and stated that something in his self-conscious made him do it, something was telling him in his head, but he was not able to give any further information on that. He said he had no thoughts about further damage and did not have any deliberate intention to harm anyone. The appellant was born on 23rd September 1975 and so is now 33 and was of previous good character. He is Polish. A psychiatric report dated 17th September 2008 stated that he was not suffering from any major mental illness, but he did have a chronic history of alcohol abuse. The risks to others and himself would increase when he was intoxicated. If he received a custodial sentence he would need to be followed by the in-house psychiatric team in view of his history of self-harm and suicidal thoughts, which were usually precipitated by severe stress. A pre-sentence report dated 21st October 2008 made no recommendation. There was a low risk of him re-offending. He appeared to be genuinely mystified by his actions. In his sentencing remarks the learned judge said that this was a very serious offence. The circumstances were unusual and potentially extremely dangerous. He had set fire to more than one duvet and had a knife in his hand. There were scorch marks on the landing as well as in the room, so he must have carried the duvet out on to the landing at one point. Fortunately, the fire was quickly extinguished, but, in the absence of a fire alarm, there could have been much more damage to the hostel and residents. The appellant was very violent when he was detained and out of control, and that was a great concern with regard to how he should be sentenced. The appellant had said he felt he was losing touch with reality and that he felt someone was telling him to behave in this extraordinary way. Psychiatric concluded he was not suffering from any mental illness, but that the risk he posed increased when he was under the influence of alcohol or when he felt under severe stress. He had a history of self-harm when under stress. His future conduct could not be predicted, but he appeared to present a low risk of re-offending. He was not dangerous so a determinate sentence would be imposed. His actions could have caused very substantial damage to property and to life had prompt action not been taken. He had pleaded guilty at the earliest opportunity and was entitled to maximum credit for that. He was of good character. The judge said: "I agree with your counsel that it must be a concern to you that you remain bewildered by what caused you to behave in that extraordinary way and that is a source of concern and I have absolutely no doubt that you should take advantage of any psychiatric facilities that are made available to you in the future." There is a single ground of appeal, which is that in all the circumstances the sentence was manifestly excessive and that insufficient credit was given for his guilty plea.

- General's Reference No 5 of 1993
- General's Reference No 35 of 1996 In support of that submission, Mr Banks has put before us in his written submissions a

[1994] 15 Cr App number of cases, such as Attorney R (S) 201; Attorney

[1997] 1 Cr App R (S) 350; R v Clay [2003] EWCA Crim 2501; R v Brewis [2004] EWCA Crim 1919; and R v Bal

[2008] EWCA Crim 1434. These indicate that for this offence a sentence of three years on a plea of guilty is not untypical for offending which is more serious both in terms of premeditation, where such premeditation is sometimes accompanied by the motive of revenge, and also damage. In our judgment, the sentence of three and a half years on this appellant's plea of guilty, representing a sentence of just over five years on a trial, is manifestly excessive. It may be that the judge was influenced to his longer sentence by the thought that the appellant would be assisted by psychiatric help while in prison. Be that as it may, the judge was quite clear in his sentencing remarks, and for justifiable reasons on the material before us, that the appellant was not dangerous and that he presented a low risk of re-offending. While we have some concern arising out of the fact that, as the psychiatric report indicated, the medical experts have not yet got to the bottom of this appellant, nevertheless we consider that the proper sentence in all the circumstances should have been one of two years. We therefore allow this appeal, quash the sentence of three and a half years and substitute a sentence of two years. SMITH BERNAL
WORDWAVE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewca/crim/2009/473>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/jacenciuk-r-v-2009>

Prepared on 26 October 2026 · Esheria