The Criminal Appeal Reports (Sentencing) 1985

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VOLUME 7

THOMSON
SWEET & MAXWELL

This volume should be cited as 7 Cr. App. R. (S.)

ISBN 0 421 37220 6

Computerset by Promenade Graphics Ltd, Cheltenham
and Printed in Great Britain by
TJI Digital, Padstow, Cornwall

Divisional Court

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BEFORE

LORD JUSTICE WATKINS AND
MR. JUSTICE PETER PAIN

DARREN GERRARD SPENCER

January 14, 1985

Youth custody sentence—robbery—robbery of man in street—whether youth custody sentence appropriate—length of sentence.

References: youth custody sentence, *Current Sentencing Practice* E 2.4 (m)

Four years' youth custody reduced to three in the case of a youth of 18 who attacked a man in the street and stole a small amount of money.

The appellant, aged 18, pleaded guilty to robbery. At 10 pm. one evening he accosted a man who was walking his dogs, chased him, kicked him about the body and struck him with the dog leads. The appellant took £3 which the man offered and let him go. Sentenced to four years' youth custody with 130 days' youth custody concurrent on another charge of theft.

Held: this was a case when the protection of the public had to be considered, but in view of the appellant's youth, his plea of guilty and the fact that he had not previously been sentenced to custody, the sentence could be reduced to three years' youth custody.

Miss J. C. Cross for the appellant.

PETER PAIN J.: On August 16, 1984, in the Blackpool Magistrates' Court, the appellant pleaded guilty to an offence of theft and was committed to the Crown Court for sentence under section 38 of the Magistrates' Court Act 1980. On September 17, he pleaded guilty to robbery at the Crown Court at Preston and he was sentenced to 130 days' youth custody for the theft and four years' youth custody for the robbery. So far as the theft goes, we are not concerned with any appeal and we need deal with that no further. It is the matter of the robbery which we have to consider in respect of which he appeals to this court by leave of the single judge.

The facts of the robbery were these. At 10.00 p.m. on July 13, 1984, a Mr. Couch, a man of 56, was out walking his dogs in Fleetwood. He passed a gang of youths who shouted at him. Those youths had two dogs with them and Mr. Couch told them to keep their dogs on a lead. The appellant was one of that group of youths and he came towards Mr. Couch and asked him, according to his own statement, what he said, but at all events there is no dispute that Mr. Couch went on walking away and the appellant said: "I'm going to have you, old man." Mr. Couch began to run away and the appellant followed him. He pulled him down causing him to fall on the ground, he then kicked him about the body, ripped two dog leads out of his hands and, as the medical evidence would suggest and as the learned judge accepted, struck him with the dog leads. Mr. Couch thereupon told him to stop and said he would give him what he

wanted and he did in fact at the time have £73 in his wallet. He gave the appellant £3 and then told him that he could not give him any more, because he had a wife and three children to feed and the appellant (and this, at least, is to his credit) then took the £3 which he wanted to buy another bottle of cider with (because he was unquestionably drunk at the time) and let him go.

The appellant was arrested almost immediately and after an initial denial he admitted the offence. The unfortunate Mr. Couch sustained bruising and abrasions to his head and shoulders and three fractured ribs.

This appellant is only 18. That is a matter we have to bear in mind. He comes from a good home. That, of course, so far as his responsibility is concerned does not stand him in good stead, because there is less excuse than there might have been for someone who had been brought up in miserable circumstances as so many unfortunate youths we have to deal with are. He has got no excuse there. He appears from his record to have been making a nuisance of himself recently for various minor offences due to the fact that he will drink excessively. It is quite clear from the social inquiry report that drink underlies his problems and drink underlay his problems on this occasion. Unfortunately, his tendency to aggressive behaviour showed itself in this very serious offence.

It would seem (and we accept this from Miss Cross who, if we may say so, has put the case admirably) that this did not really start out as an ordinary street mugging. It started out with this drunken and aggressive young man apparently taking offence at some perfectly reasonable remark that Mr. Couch had made. Then, being in drink and his inhibitions being lowered, he engaged in this appalling assault. It was only at the last moment when Mr. Couch pleaded to leave him with some money that some sense of what he was doing seems to have entered his head.

This is a matter which one has to look at not only from the point of view of enabling this young man to rehabilitate himself, but also from the point of view of the public. If ever there were a case where one could say one had to consider the protection of the public, this is such a case. A middle-aged man (I will not call him an elderly man, although the appellant did) taking his dogs for a walk in the evening was subjected to this absolutely abominable assault.

In all the circumstances we have considered very carefully what Miss Cross has to say and we feel that at least this can be said, that the appellant did admit his fault and face up to matters by pleading guilty at the trial. In view of his youth and in view of the fact that this is his first period of custody and that he pleaded guilty, we feel that it is possible to reduce the sentence to a sentence of three years' youth custody, but for an offence of this nature a lengthy period of imprisonment is absolutely essential.

Accordingly, the sentence of four years' youth custody will be quashed, a sentence of three years' youth custody will be substituted for it and it will run concurrently with the 130 days' youth custody on the charge of theft.

BEFORE

LORD JUSTICE WATKINS AND MR. JUSTICE PETER PAIN

TREVOR FAIRMINER

January 14, 1985

Arson—setting fire to employer's premises while affected by drink—length of sentence.

References: arson, *Current Sentencing Practice* B 7–1.3 E

Four years' imprisonment upheld on a man who set fire to his employer's premises, causing damage to the extent of £500,000.

The appellant pleaded guilty to arson. He had broken into a warehouse belonging to his employers and set fire to a box. The fire caused £500,000 worth of damage. The appellant was intoxicated at the time of the offence; he had previously committed offences of criminal damage after drinking. Sentenced to four years' imprisonment.

Held: the sentence was justified.

Miss S. Bowman for the appellant.

WATKINS L.J.: On September 14, 1984, in the Crown Court at Nottingham, the appellant having pleaded guilty to arson was sentenced to a term of 4 years' imprisonment. One other offence of causing damage was taken into consideration. He appeals against the sentence with the leave of the single judge.

The circumstances of the offence of arson are these. In the afternoon of Saturday June 23, 1984, the appellant climbed through the roof and into the warehouse of his employers. They were Packchoice Ltd. The premises were in Nottingham. The appellant lived at the rear of the premises in a car park in a caravan which had been very kindly provided for him by his employers. When he entered the premises in the way I have described he was undoubtedly heavily intoxicated. He had been drinking from about midday. He took out his cigarette lighter and set fire to a box at the rear of the building. He then drove a fork-lift truck into the doors of the front of the building, the purpose of this being to smash them down so that he could escape from the consequences of what he had done. Among the consequences was that the fire he started caused damage to the value of £500,000.

The appellant went to a friend's house after escaping from the blaze. He was in a very excited state. He claimed to be looking for his girlfriend (a Miss Grundy). He had had an argument with her earlier in the day. She had previously been living with him in the caravan and had decided to leave. Whilst the blaze was being fought by firemen, the appellant was in his caravan. He was ejected from there by the police. He walked outside and there saw members of his own family who were watching what was going on. He told them that it was he who had started the fire. He then went off to a local public house nearby. He

seemed to those who were observing him at that stage to be drunk. He was arrested a short while later and immediately admitted what he had done. He was put in a cell at the police station. He seems to have completely lost control of himself there. He caused £265 worth of damage to it and he cut himself so badly that he had to be taken off to hospital.

The appellant has a criminal record of a rather unpleasant nature. He commenced offending in 1971. Since that time he has been convicted upon a number of occasions of offences including assault occasioning actual bodily harm, criminal damage upon a number of occasions, threatening behaviour and so on. He has been to borstal, he has been put on probation, he has been conditionally discharged and fined. None of those orders refraining from sending him to some form of custody has seemed to have had the slightest effect upon him either to cease offending or to drink to excess.

He is 28 years of age. He has been divorced from his wife of his only marriage by which there were two children. She has had and retains custody of their two children. One of his troubles is that he drinks regularly and excessively. When in drink he is a positive menace. Upon each of the occasions when he has committed the offence of criminal damage he has done so whilst intoxicated. Medical reports were before the learned judge below and, of course, have been seen by us, which indicate plainly that unless he determines to accept treatment for his alcoholism and perseveres with it he is going to continue to be addicted to drink and to be a danger to the public.

In an impressive submission Miss Brown has endeavoured to persuade us that the sentence passed was in all the circumstances excessive. She points to the fact that at the time he committed the offence of arson the appellant was under very considerable strain. His father was very ill with terminal cancer, his wife was demanding that he meet his obligations to his children, if not more and his girlfriend had left him that morning. Moreover, she points out that no one was injured as the result of the fire. It was not the intention of the appellant that anyone be harmed by what he did. He had no (and could not have had any) idea that by setting fire to a box in his employers' premises he was going to cause the vast amount of damage which ensued. He was doing well at his work with his employers at the time. His own sister was employed there, as was his girlfriend. It is inconceivable, therefore, it is submitted, that he wanted to harm his employers and to burn their premises down.

The judge, it is argued further, must in passing the sentence of so long a term as four years have paid inordinate attention to the consequences of the unlawful act and not enough to the nature of the unlawful act itself.

We bear well in mind those submissions, but we are left with the clear impression from the history of this man's offending and from the nature of his addiction to drink and what he is prone to do when under the influence of it, that he really is a danger to the public and the judge below was right so to adjudge. It is almost inevitable that a person such as this who reacts when in drink to some kind of strain which he is or may be under by wreaking damage upon the property of others sooner or later will wreak great damage. This is what happened on this occasion. It is, of course, right to say that it is not inevitable that the scale of damage done as a consequence of an unlawful act should substantially affect sentence, but where (as here) there has been committed one offence after another of criminal damage, the court cannot possibly be criticised for taking into account, as the judge obviously did, the scale of the damage

done. The sentence passed in all the circumstances was, in our view, totally justified. The appeal is therefore dismissed.

BEFORE

LORD JUSTICE WATKINS AND SIR JOHN THOMPSON

DARREN KNIGHT

January 15, 1985

Youth custody sentence—unlawful wounding—stabbing by youth of nineteen of previous good character—whether youth custody sentence justified—length of sentence.

References: youth custody sentence, *Current Sentencing Practice* E 2.4 (f).

Three years' youth custody upheld on a young man of nineteen who stabbed another man after an argument.

The appellant, aged 19, pleaded guilty to unlawful wounding contrary to Offences Against the Person Act 1861 section 20. Following an argument in a public house, he challenged another man to a fight: when the other man came outside with his friends, the appellant stabbed one of them in the chest with a knife. Sentenced to three years' youth custody.

Held: the sentence was not wrong in principle or inappropriate.

M. Grenyer for the appellant.

SIR JOHN THOMPSON: This is an appeal by leave of the single judge against a sentence passed on Darren Knight in the Crown Court at Nottingham on 4th June 1984 when he pleaded guilty on an indictment containing two counts—one under section 18 and one under section 20—to the section 20 count of unlawful wounding. By the judge's direction a verdict of not guilty was entered on the other count. He was sentenced to three years' youth custody.

The facts of the matter were these. He was a young man of 18½. On 26th October 1983 he met a man called Gary Roberts in a public house in Nottingham. There had been ill-feeling between the appellant and Roberts for some time. During the exchange of words that they had the appellant thought that he was either being called a homosexual or that that was hinted at in what Roberts was saying. The appellant left the public house with a man called Hufton who was accompanying him, and who was not charged, and outside he sent Hufton back into the public house to invite Roberts to come outside in order that there should be a fight. When Roberts did come out eventually he was accompanied by five or six friends. They were going through the pretence that they were army/SAS men. The appellant was not discouraged from whatever he intended to do by the number of men. He did not walk away or clear off. He walked up towards the group and he stabbed one of them—a man called Warriner—three

times. One of the wounds was deep and penetrated to within $\frac{3}{4}$" of the victim's heart. He then said to Warriner: "Do you realise you have been stabbed?" He then proceeded to cut the side of Warriner's nose with the knife. The appellant remained at the scene. He was arrested. When interviewed he admitted stabbing Warriner and said he had done so because he feared a personal attack. He was provoked and he panicked.

He was unemployed at the time. He is single. He has got a young woman to whom he is engaged. She is carrying his child, which is due to be born later this month. There is a very favourable prison report which says that, "he has co-operated in all aspects and has made every effort to derive some benefit from the facilities available to him during this sentence. He has never sought to diminish his responsibilities concerning the incident for which he was sentenced and has always expressed remorse for the offence and the effect this sentence has had on him and his family. He will be eligible for release on May 26, 1986 and will be eligible for parole consideration on May 26, 1985."

In a letter written by the appellant himself he seems to have got the impression that he will be favourably dealt with when parole is considered. But he makes the point that the baby unfortunately will be born before then in January. He has, as I have said, done very well in prison. He has been on courses and he has qualified himself in certain respects. He is said to be a quiet and well-behaved person. He was certainly of previous good character. After arrest and before trial he managed to get a job and there are favourable testimonials about him from the person who employed him. We are told that he has orally expressed a willingness to re-employ him upon his release.

It is accordingly clear, I hope, from what I have said that this is a sad case in which the task of the court is always a difficult one. We take the view that the learned judge appreciated that and that what he said in sentencing was entirely appropriate. He said: "Mr. Grenyer"—who appeared for him below and has appeared for him today—"has said, and said very well, everything that could possibly be said in your favour, but I have to consider the victim, and I have to consider society as a whole. This was a vicious, cruel attack on another human being by you, wielding a knife. One of the blows was $\frac{3}{4}$"away from the victim's heart. That means you were $\frac{3}{4}$" away from a possible murder charge. There was stabbing; there was slashing. You, and people like you, must know that as far as this court is concerned, attacks with knives are going to be punished. Knife attacks in Nottingham must be—and as far as I am concerned are going to be—stopped. It seems only the courts have the will to stop it. Until people actually realise that attacks with knives are serious matters, it seems to me they will continue.

"You took the knife out with you. I do not know. There may be today many people carrying knives around in the way that you were. In situations, particularly after a night's drinking in public houses, unfortunately, those knives come out. I can only advise anybody who happens to hear about this case, and is carrying a knife around with him, to destroy it.

"You are 19 years of age. In those circumstances, statute restricts the punishment available to me, but in my view, this case is far too serious for a non-custodial sentence." He then proceeded to sentence the appellant to 3 years' youth custody.

We agree with what the learned judge said. Sympathetic as one must be to a man as young as this with as many good qualities, we cannot say that the sen-

tence was wrong in principle or inappropriate. The appeal is accordingly dismissed.

BEFORE

LORD JUSTICE STEPHEN BROWN AND
MR. JUSTICE LEGGATT

IAN WESTON HOLDEN

January 15, 1985

Compensation order—means of offender—ability to pay compensation within reasonable time—length of time over which compensation should be payable.

References: *Current Sentencing Practice* J. 2.3 (c). Commentary: [1984] Crim.L.R. 397.

A compensation order should not be made in an amount greater than the offender can pay within one year.

The appellant pleaded guilty to five counts of burglary, two of theft and one of attempted theft, and asked for 28 other offences to be taken into consideration. The appellant had been involved with other youths in a number of burglaries of schools and other thefts: many of the offences involved the theft of bicycles. Sentenced to three months' detention centre order and ordered to pay £598.14 by way of compensation.

Held: except in cases where the defendant has the money in hand, a court should be slow to order him to pay substantial compensation, especially when it is to be paid after the completion of a custodial sentence. The defendant's financial circumstances in the present case were much worse following his conviction and sentence, as he had lost his job and had been unable to find another, and it would take six years, at the rate prescribed by the magistrates' court, to pay the compensation ordered. The Court had frequently observed that any such order which due to lack of means takes more than a year to pay off is wrong in principle. Although those observations were made primarily with reference to fines, they were apt also in relation to compensation orders. The Court would accordingly substitute a compensation order for £100.

C. Metcalf for the appellant.

LEGGATT J.: On May 4, 1984 at Grimsby Crown Court, before Judge Kellock, the appellant, Ian Weston Holden, pleaded guilty to five counts of burglary,

two counts of theft and one count of attempted theft with 28 other offences taken into consideration. In respect of those offences he was sentenced to three months' detention centre on each count concurrent and ordered to pay the sum of £598.14 by way of compensation. The appellant was aged 18 and was concerned, in relation to several of the offences, with other youths who, having played a lesser role, were variously sentenced to community service orders, fines, or, in the case of the youngest of them who is no older than 14, remitted to the juvenile court. The appellant now appeals against sentence by leave of the single judge.

The first three counts which refer to the appellant related to burglaries of schools in Grimsby in which the appellant and various of his co-accused participated at the beginning of 1983, entering the schools by windows and plundering them of miscellaneous items. The fourth count concerned a burglary committed by the appellant alone, also in March 1983. In that burglary he stole a bicycle valued at £150. The next three counts in the indictment concerned the theft of bicycles by the appellant and certain of his co-accused. The last count was one in respect of which the appellant, together with the other of his co-accused, was arrested whilst attempting to unlock a bicycle chained up outside the Grimsby Leisure Centre.

The reason, no doubt, why the appellant was particularly interested in bicycles was that at the time of his arrest he was employed by a local cycle dealer earning £32 a week. He had been in that employment for some while. With the death of the director, who had previously run the bicycle shop, the appellant had been proffered the opportunity of a better position in the shop. The learned judge, in those circumstances, observed to the appellant that he had used his opportunities as a commercial activity. He was at the centre of a web, far more involved than the co-accused. He had stolen from his employers which involved a breach of trust. Taking account of his plea of guilty the learned judge thereupon imposed the sentence, to which we have referred, of three months in a detention centre.

Appearing on his behalf before this court today, Mr. Metcalf makes no quarrel with that part of the sentence, but makes his plea only in relation to the compensation order. Except in cases where a defendant has the money in hand, a sentencing court must be slow to order him to pay substantial compensation or monetary penalty, especially where that is to occur after he has completed a custodial sentence. The danger of making such an order is well illustrated here, where the appellant's financial circumstances are much worse following, and no doubt because of, his conviction and custodial sentence. It would now take the appellant six years at the rate prescribed by the magistrates, who no doubt had regard to his means, to pay off the compensation ordered by the Judge to be paid. That is because having served his sentence of detention the appellant has lost his job and has so far been unable to find a substitute.

This Court has frequently observed that any such order which, due to want of means, takes more than a year to pay off is wrong in principle. Those observations may have been made primarily with reference to fines, but they are apt also in relation to compensation orders. Accordingly, this Court will quash the compensation order made by the court and substitute an order for the payment of £100. To that extent, therefore, this appeal is allowed.
