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2013/03550/A5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2014

Before:
THE LORD CHIEF JUSTICE OF ENGLAND and WALES
LORD JUSTICE TREACY
and
MR JUSTICE SIMON

- -

Between:

REGINA	**Respondent**
- and -	
JURANIR SILVERTRE GOMES MONTEIRO and others	**Appellants**

(Transcript of the Handed Down Judgment.
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Adam Morgan for the **appellant Gomes Monteiro**
James Murray-Smith for the **Respondent in the appeal of Gomes Monteiro**
Edward Boateng-Addo for the **appellant NT**
Duane Bridger for the **appellant Smith**
Mohammed Hussain for the **applicant Varey**
Michael Edmonds for the **applicant Shakespeare**
Muthupandi Ganesan for the **applicant RAB**
Henry Day for the **applicant LD**
John Price QC and **Benedict Kelleher** for the **Respondent** in the other appeals

Hearing date: 30 January 2014

Judgment
As Approved by the Court

Lord Thomas of Cwmgiedd, CJ :

1. The court ordered these six appeals and applications to be heard together so that it could review whether the guidance given in *R v Povey* [2008] EWCA Crim 1261 by Sir Igor Judge CJ (as he then was) was being followed and applied, and so that it could decide whether any further guidance was required. We are very grateful to the Ministry of Justice and Mr John Price QC for the very considerable assistance they have given in obtaining the information to enable us to do this.

The offences

2. The principal offences in relation to offensive weapons are those under s.1 of the Prevention of Crime Act 1953 (as amended) (the 1953 Act) and s.139 and s.139A of the Criminal Justice Act 1988 (CJA 1988).

3. In addition on 3 December 2012 amendments to the 1953 Act to add s.1A and to the CJA 1988 to add s.139AA came into force. S.139AA of the CJA 1988 provides for a mandatory minimum sentence on those over 18 of six months imprisonment (save where it was unjust to do so) for using a knife to threaten in a public place or school. Provision is also made for a similar minimum sentence of four months for those aged 16 and 17. S.1A of the 1953 Act makes broadly similar provision in relation to offensive weapons.

The guidance in R v Povey

4. In *R v Povey*, Sir Igor Judge made clear the dangers caused by carrying knives and the escalation that had occurred in the number of offences involving knives and in particular the carrying of knives in public places. He made clear that sentences passed by courts must focus on the reduction of crime, including its reduction by deterrence and the protection of the public. This court in further judgments and the subsequent guidelines issued by the Sentencing Council have made clear the seriousness with which the use of a knife or similar weapon in any crime must be treated.

5. It is evident, from appeals before this court from the Crown Court and in the appeals before us, that in the Crown Court the guidance given by Sir Igor Judge and repeated by him in other cases is being followed. No further guidance is required.

6. However for offences that either do not come to court where cautions are administered or are dealt with in the Magistrates' Court and Youth Court, the position is more complex, particularly in relation to those between 10 and 15 and those aged 16 and 17.

7. This is illustrated by some of the matters that arose in the appeals before us. For example, a caution was given to one of the appellants (Gomes Monteiro) for possession of a flick knife at a school when he was 15 – see paragraph 31 below. Another appellant (RAB) had at the age of 14 received in accordance with the

statutory regime a nine month referral order for possession of a lock knife in a public street – see paragraph 84 below. A co-defendant of another appellant (Smith) who was nine months younger than Smith had received a youth supervision order for the offence for which Smith received a sentence of 30 months imprisonment - see paragraphs 56 to 59 below. A Magistrates' court had imposed a community order on another appellant (Varey) for a second offence of carrying a knife whilst stealing from shops - see paragraphs 66 and following below.

8. We therefore asked for information about the way in which the police, the Magistrates and the Youth Court approached the imposition of cautions and sentencing respectively.

ACPO Guidance on the use of cautions

9. Cautions in relation to knife crimes are issued by the police in accordance with Guidelines issued by ACPO entitled *Guidelines on the investigating, cautioning and charging of Knife Crime Offences* issued in July 2009. It states:

> "The starting point for police will be an expectation to charge 16 and 17 year olds (unless there are exceptional circumstances) in all cases.
>
> In the case of any young person aged 15 or under in the cases of simple possession with no aggravating factors, the starting point will be the issuing of a warning"

10. Account is also taken of the *ACPO Youth Offender Case Disposal Gravity Matrix;* its guidance is:

> "It is recommended that forces follow a national agreement to interpret Knife-Crime offences as follows:
>
> The first arrest of a youth under 16 for simple possession of an Offensive Weapon or Sharp Pointed Blade, with no aggravating factors, will result in the first instance with a youth conditional caution. This must be supported by an appropriate YOT intervention, preferably with elements focussed on anti-knife crime education. A youth aged 16 or over will normally be charged.
>
> The second arrest of a youth under 16 for simple possession of an Offensive Weapon or Sharp Pointed Blade will result in a charge (unless, in exceptional circumstances, 2 years have passed and it is considered appropriate to give another youth conditional caution).

> The first arrest of a youth of any age for simple possession of an Offensive Weapon or Sharp Pointed Blade, with aggravating factors, will result in the first instance with a charge."

11. The most recent version of this matrix was issued in March 2013. It is essentially unchanged (save to make reference to youth conditional cautions in place of warnings). It makes clear, however, that an offence under s.139A or s.139AA of the CJA 1988 or under s.1A of the 1953 Act committed by a youth aged 16 or over should normally result in a charge and should not be dealt with by an out of court disposal.

The Magistrates Courts and the Youth Court

12. The Guidance for Magistrates was revised in August 2008. Although that Guidance referred to the earlier decision which *R v Povey* followed, the timing meant *Povey* had not been handed down and the original guidance did not refer to the increase in knife crime as set out by Sir Igor Judge in that judgment. However, the Sentencing Guidelines Council issued a Note (with effect from 4 August 2008) headed "Sentencing for possession of a weapon – knife crime", which specifically sets out the effect of the decision in Povey on the guideline. It is therefore essential that Magistrates' Courts strictly apply the guideline as explained in this Note in relation to knife crime and the starting point of 12 weeks custody for the lowest level of offence involving the use of knives.

13. In the Youth Court the principles are set out in the Guideline of the Sentencing Guidelines Council dated November 2009 entitled: "*Overarching Principles: Sentencing Youths*". There are also a number of statutory restrictions; for example a first time offender under 15 who pleads guilty to one of the offences relating to knives or offensive weapons can only be made subject to a referral order (as we have mentioned at paragraph 7 above).

The statistics

14. In the first nine months of 2013 there were 12,132 offences under s.1 of the 1953 Act and s.139 and s.139A of the CJA 1988 Act. 18% resulted in a caution, 28% resulted in immediate custody. The results have been broadly consistent for the past 5 quarters; the 28% of cases resulting in custody can be seen as an increase from 18% current before *Povey*, whereas the number of cautions is falling.

15. 813 offences were committed by those between 10 and 15. 43% were given a police caution and 47% a community sentence. Only 4% were given an immediate custodial sentence.

16. We were provided with statistics for 2013 that showed that out of the 89 over 18s who had pleaded guilty or been convicted of offences under s.139AA of the CJA 1988 or s.1A of the 1953 Act, 49 had been given sentences of immediate custody; 3 had received a caution; 7 community service and 19 a suspended sentence. Three were 18, 16 and 17 year olds; 10 had been sent to immediate custody.

Conclusion

17. As we have stated, no further guidance is needed in relation to the Crown Court pending the issue of a guideline by the Sentencing Council. However there are two observations we make.

18. First, it is important that the Youth Court plays the closest attention to the guidance given in *Povey*. Given the prevalence of knife crime among young persons, the Youth Court must keep a very sharp focus, if necessary through the use of more severe sentences, on preventing further offending by anyone apprehended for carrying a knife in a public place and to securing a reduction in the carrying of knives. Such sentences fulfil the principles applicable to the sentencing of such persons as set out in s.142A of the Criminal Justice Act 2003 and the Sentencing Council Guidelines. The appeals of NT and RAB illustrate the very serious consequences that can follow from the carrying of knives by young persons and why it is of great importance that the Youth Court maintains the sharp focus called for in *Povey* by imposing appropriate sentences that will contribute to preventing further offending and to a reduction in knife crime.

19. Second, it is important particularly in relation to knife crime that the guidance given in respect of cautions is aligned to the sentencing practice (as it should be in the light of our observation) in the Youth Court, the Magistrates' Court and the Crown Court. There is an urgent need for this to be done.

20. We turn to the six cases.

JURANIR SILVETERE GOMES-MONTEIRO

The background

21. On 27 October 2012 there was a party to celebrate a birthday in Hackney. Many of those who attended were of the Guinea Bissau community in London. Amongst those was Jason Dos Santos.

22. Through various social networking sites others who had not been invited came to the party. Some belonged to a gang called "the Portuguese Mafia". At the party, probably as a result of a previous incident at an earlier party, members of the gang set

about one of the others. There was a serious and violent fight within the house between a number on both sides. Knives were used and at least one was seriously stabbed. Jason Dos Santos escaped from the house, most likely through the back garden, and ran down the street with others, being pursued by members of the gang. He was caught by eight members of the gang who attacked him with at least one knife and a belt, kicked and punched him. He received serious injuries which we shall describe. The incident was caught on CCTV.

23. A woollen hat belonging to the appellant, then aged 18, was recovered from the scene of the stabbing. Of all the participants in this serious violence he was the only one to be arrested and tried. On 17 May 2013 at the Crown Court at Snaresbrook before Mr Recorder Holborn and a jury he was convicted of wounding with intent contrary to s.18 of the Offences against the Person Act 1861 (the 1861 Act) and having an offensive weapon. He was subsequently sentenced by the judge on 21 June 2013 to nine years detention in a young offender institution for the offence contrary to s.18 of the 1861 Act with a concurrent sentence of one year for having an offensive weapon. He appeals against sentence by leave of the Single Judge.

The seriousness of the offence

24. We consider first the seriousness of the offence. The judge found that the appellant, although he might not have been a member of the Portuguese Mafia gang, had joined in with that gang on that night at the party and involved himself in the culture of that gang. It is clear that he had had a substantial quantity of drink. He then joined in the pursuit of Jason Dos Santos down the road.

25. It is common ground on the appeal that the appellant approached the scene of the attack approximately 30 seconds after the main group chased the victim along the street. It is clear on the judge's finding and the jury's verdict that he joined in the attack at that stage whilst another gang member stabbed Jason Dos Santos and others subjected him to a vicious and brutal beating. The judge was satisfied that the appellant used a belt in the attack on Jason Dos Santos and stamped on him. The judge was satisfied that the jury convicted the appellant on a joint enterprise basis because, apart from using the belt and stamping on Jason Dos Santos, he was fully aware that Jason Dos Santos was being stabbed.

26. It has been submitted that those findings are open to criticism. We cannot see any basis for criticising them. The judge found first that he was a, but not the, leading member of the group that attacked Jason Dos Santos; second that he most certainly did not have a subordinate role in the attack. We again do not see how those findings can be criticised given the fact that the judge heard the evidence at the trial.

The harm caused

27. We next turn to the harm caused. The judge obtained for the purposes of sentencing statements from the doctors at the hospital about the injuries sustained by Jason Dos Santos. He also had statements from two police officers who had tended him at the scene and taken him to the hospital. We see no reason to criticise the judge for taking into account all of that evidence.

28. There were a total of eleven wounds inflicted on Mr Dos Santos, three on the torso (one of which was to the chest), six on the legs and two on the scalp. They required stitching in theatre. They had a lasting physical and emotional effect on him. One of the wounds passed deeply behind the right femur. He was in hospital for two to three days. It is quite clear from the statement of the police officers that there was significant bleeding at the scene and on the way to hospital and the victim was veering in and out of consciousness.

29. Mr Dos Santos also made a victim personal statement in which he described the longer term effect of the attack on him; although he had made a good physical recovery (apart from the scarring and difficulty in bending and moving his leg) he did not go out to parties and did not trust people.

The sentence

30. The judge placed the offence into category 1/category 2 of the Guideline; it was submitted on behalf of the appellant that the judge should have concluded the offending behaviour fell within category 2, principally on the ground of his lesser role; as we have set out we cannot accept this. This was, in our view, an offence within category 1. A person who has caused the injury of the type caused in this case and has the culpability of participating in an attack of this type in a leadership role, is plainly within category 1. The use of a knife in a public street is a very serious aggravating factor.

31. The appellant was only 18 both at the time of the attack on Jason Dos Santos and his conviction. Nonetheless he had a caution imposed by the Cambridgeshire Police for carrying a flick knife on school premises imposed on 29 March 2010 (when he was 15) in accordance with the guidance to which we have referred at paragraphs 9 to 11 above and a conviction for common assault on 17 January 2012 for which he had received a referral order. We take the view that a previous conviction for the possession of any bladed article, but particularly a knife such as a flick knife, is a seriously aggravating factor in a subsequent offence involving a knife for the reasons we have given.

32. The only mitigating factors were his age and his working on a part-time basis whilst also engaging in full-time education; he spoke a number of languages. He had

obtained eight GCSEs with good grades and had gone on to study art as well as travel and tourism.

33. In the light of the factors we have set out, particularly his use of the belt, his knowledge of the use of the knife in the attack and his previous caution for possession of a flick knife, there is no proper ground for criticising the sentence imposed by the judge. The appeal is dismissed.

NT

The background

34. On the evening of Monday 18 February 2013 KW (the victim) who was then aged 14, had been at McDonald's in Lewisham with friends. The appellant, who was born on 10 November 1999 and then aged 13, and another youth, SB, confronted the victim wanting a battery for a mobile phone. Nothing came of that but the victim and his friends went to the Ladywell Youth Club to roller skate. The appellant and his friends also went to the same club.

35. When the youth club closed at 9.15 p.m. the youths congregated outside. An argument developed between another of the appellant's friends, TM, and a girl. TM turned on the victim. That fight descended into insults and violence between a number of those present, including the appellant. The victim hit back at TM and the appellant. The victim who was still on roller skates, then calmed down and skated a short distance away. The appellant ran after him, produced a knife and stabbed the victim twice in the chest and abdomen. The victim described the knife as a fat knife with a long blade; one witness described it as 2.5 inches wide, but not that long. Another as a kitchen knife. It was never found. TM ran off. The victim collapsed. He was taken to hospital by helicopter and underwent emergency surgery. The appellant was interviewed the following day and made no comment on the advice of his solicitors.

36. On 2 July 2013 the appellant was convicted at the Crown Court at Woolwich before His Honour Judge Moss QC and a jury of attempted murder. He was subsequently sentenced on 26 July 2013 to a 13 year extended sentence under s.226B of the Criminal Justice Act 2003, comprising a custodial term of ten years and three years extended licence. His application for permission to appeal had been referred to the court by the Registrar. We grant leave.

The seriousness of the offence

37. We consider first the seriousness of the offence. On the jury's verdict the appellant had attempted to kill the victim. The judge who had had the benefit of hearing the evidence found that the appellant had come to the youth club on that evening armed with a knife; the judge expressly rejected the applicant's evidence that he had been given a knife at the scene.

The harm caused

38. It is clear that the harm was of a very serious level. The wound was so deep that the knife entered through the chest and penetrated the kidney. He was found to have a collapsed lung, a penetrating gastric injury, a shattered spleen and very serious renal injury. He underwent emergency surgery, including the removal of the spleen. He was in the high dependency unit for two days; his wounds have healed, but he will require life-long antibiotic medication. The judge was satisfied that he was lucky to have survived.

The aggravating and mitigating features

39. An aggravating feature of the case was that the applicant, despite the fact that he was then only 13, had a number of previous convictions.

i) On 7 July 2011 he had been convicted of common assault at the Youth Court and received a six month referral order. He had been part of a group that had surrounded a 14 year old girl in a park; he was said to have held a knife to her throat and demanded her phone. Although he pleaded guilty to the assault he denied possession of a knife.

ii) On 10 May 2012 he was convicted of assault occasioning actual bodily harm and received a nine month rehabilitation order. The case against him was that he had taken a magazine from the victim, and then assaulted the victim punching him in the face.

iii) On 20 December 2012 he was convicted of disorderly behaviour and received a conditional discharge. He had used threatening and abusive language to a bus driver.

As the judge rightly commented, he had a pattern of offending behaviour that was of great concern.

40. It is clear from the pre-sentence report that the applicant had had a difficult home life, living first with his mother and then for some years with his father with little contact with his mother. He developed emotional and behavioural difficulties at school and was transferred to a school to cater for children with those needs. At that school and at the secure children's home at which he had been placed after his remand for the purposes of these proceedings, reports showed his ability to do very well at subjects but to have serious behavioural problems. An assessment carried out showed that he had suspected Attention Deficit Hyperactivity Disorder and Oppositional Defiant Disorder; he had then been assessed as having moderate to high Attention Deficit Hyperactivity Disorder, Conduct Disorder and Oppositional Defiance Disorder. He was being placed on medication. The judge also had a report from the secure children's home.

41. The appellant accepted that he had stabbed the victim. Although he continued to deny that he intended to cause serious injury or to kill the victim, the writer of the pre-sentence report accepted that the appellant showed genuine remorse for what he had done. The writer of the pre-sentence report was nonetheless of the view that the applicant presented as a high risk of causing serious harm.

The finding of dangerousness

42. The judge concluded that he was a youth who met the dangerousness criteria of s.226B of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO 2012). He considered that an extended determinate sentence was the appropriate sentence.

43. In *R v Burinskas* [2014] EWCA Crim 334 this court set out at paragraphs 24-30 the main features of the operation of the provisions of LASPO relating to extended sentences (s.226A) and at paragraphs 41-44 the approach that a court should follow when applying the dangerousness provisions of the Act. It is not necessary to make any separate observations in relation to s.226B in relation to this appeal.

44. On the appellant's behalf it has been contended that the judge was not entitled to make the finding of dangerousness and should not have done so without obtaining a full psychiatric report.

45. We were provided with a more recent report from the secure children's home at which the appellant was held. His medication had been changed and his behaviour had improved significantly; he had also shown more commitment to his learning and engagement with the staff; there has been a vast improvement in his school reports. He was responding well to the offending behaviour programmes.

46. We have carefully considered the further material before us. It does not cast any doubt on the basis on which the judge proceeded. On all the evidence the judge was entitled to make a finding of dangerousness. He had heard the evidence at the trial;

the pre-sentence report and the report from the secure children's home provided considerable information about his mental state. It was not necessary for the judge to have a psychiatric report.

The length of the sentence

47. It was also contended that a custodial sentence of ten years was manifestly excessive.

48. In *Attorney General's Reference 127 of 2010* [2011] EWCA Crim 760, [2011] Cr App R (S) 99 this court, drawing on the Sentencing Guidelines Council's youth sentencing guidance, set out at paragraph 17 a guide to the proportion of the sentence of imprisonment for an adult prisoner a sentencing court should impose when considering such a sentence for a person of the age 15, 16 and 17, having regard to both his chronological age and his maturity. For a person of 13 that proportion will be even lower.

49. It seems to us in the light of the further information before us, particularly the effect of the medication, his real engagement with the staff at the secure children's home and the youth of the appellant, the custodial term of ten years for a person of the appellant's youth was too long. We propose therefore to quash the custodial term of ten years, but substitute for it a custodial term of seven years, leaving in place the extension period. We therefore allow the appeal to that extent; his sentence will therefore be an extended sentence of ten years, comprising a custodial term of seven years and an extension period of three years.

RHYS SMITH

The background

50. On 10 November 2011 the appellant (born on 4 May 1994 and then aged 17) and a co-defendant, Willis (born on 9 February 1995 and then aged 16), approached a group of young males and females aged about 16 at a bonfire and firework night in a park in Rye. After speaking amicably, Willis and the appellant began shouting and swearing at the group, claiming to be from a gang in London. Willis pulled out a knife and held it to the throat of one of the young people. When another of the group of young people intervened, Willis held the knife to his throat. Willis then waved the knife around at the faces of the young group, saying that he was going "to do" all of them. Willis was challenged by one of the group and then backed off shouting and swearing.

51. The appellant then asked Willis for the knife, took it from him and shouted at the group holding the knife outstretched: "Do you think I'm a prick?" He then held the knife to the face of one of the group saying "Do you think I'm a dickhead? Do you not think I will stab all of you including you two girls?" It was clear that the group of young persons was very frightened.

52. The police were called and the appellant and Willis were detained. The knife had been thrown away. The appellant told the police it was in the bin. It was a kitchen knife with a serrated blade about four inches long.

53. At his interview the appellant gave a prepared statement saying he was in drink, apologising for his behaviour and saying he would not do so again.

The procedural history: the sentences passed on the appellant and Willis

54. Willis and the appellant were bailed to attend the Hastings Magistrates' Court on 20 November 2011. Willis attended and entered a plea of not guilty; the appellant did not attend. A warrant was issued and the matter was adjourned for two weeks to 4 December 2012. At the hearing on 4 December 2012 Willis was committed for trial at the Youth Court, as the warrant against the appellant had not been executed and Willis, though only nine months younger than the appellant, was still only 17.

55. On 6 December 2012 the appellant was arrested. He was then sentenced at the Canterbury Magistrates' Court to a period of imprisonment for other matters. On 20 December 2012, when he was 18, he pleaded guilty at Hastings Magistrates' Court to possession of a bladed article and was committed for sentence. On 31 January 2013 in relation to the events we have described he was sentenced at the Crown Court at Lewes by His Honour Judge Kemp to 30 months detention at a Young Offender Institution.

56. Willis changed his plea on 23 April 2013 shortly before his trial that had been fixed in the Youth Court for 1 May 2013. He had convictions for malicious damage in 2007, robbery in 2009, battery in 2010, and racially aggravated intentional harassment in 2011. He was sentenced by the Youth Court at Eastbourne on 4 June 2013 to a Youth Rehabilitation Order with programme and supervision requirements.

57. We asked for enquires to be made as to whether the Youth Court at Eastbourne was aware of the sentence passed on the appellant. There was no record and no recollection that the matter had been drawn to the attention of the Youth Court. We infer that it is highly unlikely that the Youth Court was told. The CPS accepts that it was at fault in failing to draw the sentence imposed on the appellant to the attention of the Youth Court. It has resulted in serious injustice.

The basis of the appeal

58. The appellant had a history of offending behaviour. In April 2009 he was given a four month referral order for theft and possession of cannabis. In March 2010 he was given a further six month referral order for battery. In November 2010 he was given an 18 month referral order for theft, but that was revoked in April 2011 when he was sentenced to a four month detention and training order. He had further convictions

for theft and other dishonesty in 2012. In September 2012 he was given a conditional discharge by Magistrates for possession of a prohibited weapon – a device for the discharge of CS gas. At the time of sentence he had unpaid fines and other orders totalling £810.10 and was subject to an 18 month suspended sentence; he had not complied with the conditions; he had breached them twice and committed two offences during its operation.

59. The appellant appeals by leave of the Single Judge solely on the grounds of disparity with the sentence imposed in the Youth Court on Willis. He did not seek leave on the grounds that the sentence was either wrong in principle or manifestly excessive viewed on its own, given the seriousness of the offence and his past offending behaviour. As the Single Judge rightly observed in granting leave to appeal, though the sentence was severe, it was not manifestly excessive in the light of the offence and the previous convictions. An extension of time was granted by the Single Judge.

60. The sentence passed by the Youth Court is inexplicable given the gravity of the offence committed by Willis. He should have received a significant custodial sentence in the form of a Detention and Training Order. The disparity in their punishment, even taking into account the more serious prior offending behaviour of the appellant and the fact he was older by nine months, was unjust: see the discussion at paragraphs 7 and 8 of *R v Coleman* [2007] EWCA Crim 2318. Accordingly we quash the sentence of 30 months youth custody (though entirely merited) and pass in its place a sentence of 20 months youth custody.

PETER WILLIAM VAREY

The background

61. In the early afternoon of 3 November 2013 the applicant was shopping at an ASDA supermarket. He was seen to put an item into his pocket, discard the other items and make to leave. When he was stopped by security guards, he produced a Stanley knife from his pocket and threatened the guards. They backed away and he ran from the store.

62. On the following day, 4 November 2013 the applicant entered Millets where he stole a North Face jacket.

63. Some days later on 26 November 2013 the applicant was seen to be acting suspiciously in Boots. He was searched and found to be in possession of a Stanley knife. He was arrested

64. On 12 December 2013 at the Crown Court at Bradford he pleaded guilty to three offences. He was sentenced by the Recorder of Bradford, His Honour Judge Roger Thomas QC, to 15 months imprisonment for threatening with a bladed article on 3

November contrary to s 139AA of the CJA 1988, to six months consecutive for the theft on 14 November and to 15 months consecutive for possession of a bladed article on 26 November contrary to s.139 of the CJA 1988, making a total of three years. His application for leave to appeal was referred to the court by the Registrar.

The application for leave to appeal

65. The applicant was some 41 years of age. He had a very lengthy record of previous offending commencing in 1994. The offences were largely theft, but there were also offences of resisting arrest and breaching non-custodial orders. Much of the offending was due to his significant drug habit. It is important to note that in July 2012 he had been sentenced to six months imprisonment for being in possession of a craft knife. In March 2013 he was given a community order for theft from shops and being in possession of a craft knife. He continued to steal from shops. On 25 October 2013, shortly before the first of the present offences, the magistrates had deferred sentence on offences of theft until January 2014.

66. Although it was accepted that no complaint could be made for the sentence in respect of the offence of threatening with the knife on 13 November 2013, it was contended that the sentence for possession of a knife on 26 November 2013 was too long, as he had not then threatened anyone with it; that the sentence for theft was too long; that the sentences in total were too long.

67. We do not agree. The judge rightly identified the gravity of the offences for which the appellant was sentenced and the escalation from theft to committing such offences as carrying a Stanley knife. He had been given a short sentence of imprisonment by the Crown Court at Bradford for carrying a knife in July 2012; he had been given another chance in March 2013 when the wholly exceptional course was taken by magistrates in giving him a community order and a drug rehabilitation order for possession of a craft knife when stealing. He had not desisted. Nor, as the evidence from the probation officer made clear, had he cooperated with the probation service. A very lengthy sentence was inevitable; the total of three years cannot in any way be criticised. There is no merit in the application. It is therefore refused.

HARRY WILLIAM SHAKESPEARE

The background

68. In the early hours of 15 June 2013 the victim and a friend went to meet the applicant, then aged 22, to buy some cocaine. The victim approached the applicant in his car and handed him £40. The applicant did not hand over any drugs but showed the victim a large knife. He accused the victim of trying to set him up for a robbery. He got out of his car, but did not take the knife with him. He assaulted the victim, punching him numerous times about his face and head and kneeing him in the left eye. The attack caused the victim bruising and swelling to the left eye, bumps to the

left side of his head and forehead and a minor cut to his nose. The applicant then got back into the vehicle.

69. The victim, fearing that the knife would be produced and used, ran back to his friend's car. The friend drove off. The applicant who was in drink followed at high speed; he had no licence and no insurance. He rammed the car. The friend was able to continue to a police station, although followed by the applicant at high speed most of the way.

70. On 28 June 2013 the applicant pleaded guilty before the Magistrates to threatening with a bladed article in a public place, dangerous driving, theft and assault. He was committed to the Crown Court for sentence.

71. On 8 August 2013 at the Crown Court at Chelmsford before His Honour Judge Turner QC, he was sentenced to a total of 21 months imprisonment. A six month sentence was passed for threatening with a bladed article contrary to s.139AA of the CJA 1988 and consecutive sentences of 12 months, one month and two months respectively were passed for dangerous driving, theft and assault. The Single Judge refused leave to appeal. The applicant renews his application to this court.

The application for leave to appeal

72. Although the applicant was 23 at the time of the sentencing hearing, he had appeared before the courts on nine previous occasions largely for drugs offences, but including one offence of possessing an air gun in a public place. In March 2010 he was sentenced to 30 months for robbery and on 13 August 2010 to a consecutive sentence of 12 months for assault occasioning actual bodily harm. He was on licence at the time of these offences.

73. Although it was accepted that it was permissible to pass a consecutive sentence for the offence of dangerous driving, it was argued that it was wrong to pass consecutive sentences for the other offences; they should have been made concurrent.

74. In our view no criticism can properly be made of the total sentence of 21 months. The sentence of 12 months for the dangerous driving was entirely justified. There was no basis for departing from the minimum sentence of six months for the offence of threatening with a bladed article under s.139AA of the CJA 1988. It would have been permissible for the judge to have passed a longer sentence for the offence under s.139AA to reflect the theft and the assault, but the way the judge sentenced the applicant made clear that he received the statutory minimum for the offence under s.139AA and received a further three months for the assault and theft.

75. The application is refused.

RAB

The background

76. On the afternoon of Wednesday 26 December 2012 two youths bullied a 14 year old schoolboy who, after leaving the Walworth Academy in his school uniform, was in a street near the Old Kent Road. Others joined in the bullying including the applicant, then aged 16, who lashed out at him. A knife was seen tucked into the waistband of one of them. A truancy officer intervened. Before the incident escalated further the 14 year old ran off and the youths dispersed as they saw a police van. The 14 year old telephoned a friend, Huy Pham (18 years old), and told him what had happened. Pham told the 14 year old to wait. Pham then arrived in a motor vehicle driven by Ayodele (who was 20) and Chambers (aged 21) as a passenger. The 14 year old got into the vehicle. They drove to an estate in Walworth.

77. The 14 year old recognised a group of youths standing on a balcony as those who had confronted him. The group included the applicant. Pham, Chambers and Ayodele went up to the balcony and spoke to the group about bullying their 14 year old friend. They wore hoods and their faces were masked.

78. The applicant was unable to get away. There was a confrontation. Pham hit the applicant with a belt buckle. Chambers pushed the applicant. The applicant then produced a knife and stabbed Chambers in the chest, penetrating his heart. Chambers collapsed and died. The applicant then threatened Ayodele with a knife. Pham tried to run away. The applicant caught him but Pham curled up in an attempt to protect himself. The applicant lent over and stabbed Pham in the leg. Ayodele then punched the applicant who turned and swung the knife, cutting Ayodele's neck in such a way that the wound required five stitches.

79. The applicant was identified from YouTube footage and tried at the Crown Court at Southwark before His Honour Judge Pitts and a jury for three offences :

    i) The murder of Sean Chambers.

    ii) Wounding with intent of Ayodele.

    iii) Wounding with intent of Pham.

80. He was acquitted of the murder of Sean Chambers and wounding Ayodele with intent. He was convicted of wounding Pham with intent. It is clear that by the acquittals in respect of the count of murder and the s.18 offence in respect of Ayodele, the jury accepted the defence of self defence. The judge sentenced the applicant to six years detention under s.91 of the Powers of Criminal Courts (Sentencing) Act; he stated that

if the applicant had been over 18, he would have received a sentence of 8-10 years. Leave to appeal was refused by the Single Judge. He renews his application to the full court.

The seriousness of the offence and the harm caused

81. We first consider the seriousness of the offence. The judge who had heard the evidence was entitled to find that the applicant was carrying the knife, not because he was expecting particular trouble nor because of threats; he was carrying it for protection as part of his ordinary daily clothing, because it made him feel safer or perhaps because it added to his aura with other young people. That cannot be any justification for carrying a knife or bladed weapon. The judge found there was absolutely no need for him to have taken out his knife when he tried to get away. There was no need for him to have used the knife on Pham. The judge concluded that he was under no threat from Pham as he lay curled on the floor. The evidence was clear that the applicant leant over and deliberately stabbed him.

The application for leave to appeal

82. There can be no doubt, as the judge was plainly entitled to find, that the very serious aggravating factor in this case was the fact that the appellant carried a knife on him as an ordinary part of his everyday appearance. He had deliberately used the knife on Pham when he was on the ground. It was very serious criminality.

83. As to the harm caused, the wound was a 1-2 cms long wound to the left thigh. It was closed with three stitches.

84. The applicant had had a difficult upbringing, going to Jamaica and then returning to the UK. On 22 September 2010 when was just 14 he pleaded guilty to possessing a lock knife in a public place. This related to an incident three months earlier when he was 13. He had been with a group of other youths when the police stopped them; he attempted to dispose of it, but was noticed. His sentence was a nine month referral order

85. The judge was entitled to conclude that there was little provocation in relation to the applicant's stabbing of Pham. It was an offence which fell at the top end of category 2. His previous conviction for carrying a lock knife was a seriously aggravating factor. In our judgment, the sentence of six years, taking account of the applicant's age, cannot be faulted. The application is refused.

LD

Background

86. On 31 October 2012 the complainant, a youth then aged 15, was at a party in Hitchin. The applicant, who was born on 22 June 1996 and then aged 16, and some of his friends were also at the same party. The complainant had been associating with a girl whom the applicant had hoped would become his girlfriend. The applicant felt slighted as a result of a previous incident and that he had been shown disrespect.

87. Whilst the applicant and his friends were in the kitchen he enlisted their help, put on some gloves, picked up a knife and lunged towards the complainant, aiming for his abdomen. The complainant managed to move out of the way a little but was stabbed in the inner thigh. The complainant kicked out, managed to free himself and ran out of the kitchen whilst one of his friends grabbed the applicant's wrist to prevent him using the knife again. The complainant made his way outside and was found bleeding profusely. An ambulance attended and he was taken to hospital where his wound was stitched; the judge commented that it was good fortune that the femoral artery was not severed. The victim personal statement made clear that, although he did not have any residual pain or any other physical effects, he was still affected by the incident at home and at school; he did not go out at all.

88. The applicant was arrested some days later. He was tried at the Crown Court at Cambridge before His Honour Judge Hawkesworth and a jury on a count of wounding with intent. He was convicted of that offence on 3 May 2013. On 7 June 2013, when aged 16, he was sentenced to an extended sentence of ten years imprisonment, comprising a custodial term of six years and an extension period of four years. His application for leave to appeal was refused by the Single Judge. He renews it to this court.

The application for leave to appeal

89. It is accepted on behalf of the applicant that when the judge placed the offence within category 2 of the sentencing guideline, he was correct in doing so. Greater culpability existed in view of the use of the weapon, the intention to commit more serious harm than actually resulted from the offence and the circumstances in which the crime was committed.

90. It was also accepted that the judge was entitled to find that the applicant was dangerous. There were ample grounds for doing so given his record of previous offending to which we will refer, the judge's own assessment and the careful pre-sentence report.

91. The ground of appeal is that the custodial term was too long. It is premised upon the submission that the judge failed to give sufficient weight to the age of the applicant and to take into account his background circumstances. As was set out in the pre-sentence report, his family background was chaotic, he was beyond the control of his mother and used to getting his own way for a long time, associating with other criminals of his age and acting as a leader.

92. Although he was only 16, he had a significant criminal record. On 9 January 2008 when he was not yet 11 he was convicted of using threatening words or behaviour. He was given a referral order a few months later. On 13 August 2008 he was convicted of another similar offence and given a supervision order with a curfew and electronic tagging. Encompassed within those sentences were two further offences of malicious damage and common assault. In February 2008 he was convicted of arson, two offences of malicious damage and two offences of battery. On 13 August 2008 he was convicted of burglary and theft. On 19 November 2008 he was convicted of two offences of battery. On 5 February 2009 he was found in breach of his curfew order. On 26 March 2009 he was found guilty of theft, malicious damage and battery. On 5 January 2010 he was convicted of common assault and given his first custodial sentence of detention and training for four months. On 11 March 2010 he was found guilty of failing to comply with that order. On 1 July 2010 there were numerous further failures to comply with that order. On 1 August 2010 he was found guilty of malicious damage. He was convicted of a similar offence on 9 December 2010. There were subsequent further convictions on 20 January 2011 for malicious damage. On 13 June 2011 he was involved in aggravated vehicle taking and given a further detention and training order for four months. On 15 July 2011 there was theft from a dwelling and on 15 December 2011 theft from a person. On 30 August 2012 there were two offences of battery on two females and further offences of failing to comply with orders imposed upon him. On 27 September 2012 he was made subject to a youth rehabilitation order which was in force at the time of this offence; despite his arrest and remand for this offence he was given a four month detention and training order on 10 January 2013 by magistrates for breach of the youth rehabilitation order imposed on 27 September 2012.

93. The pre-sentence report recorded that, although he had been under statutory supervision for the past five years, he had always re-offended and failed to comply with requirements. He had been placed in custody seven times. He had made no real use of the help offered, except for short periods. In his period of remand after October 2012 he had been highly disruptive and involved in violent incidents though he had in the six weeks prior to sentence been better behaved. He refused to cooperate with the writer of this pre-sentence report. He expressed no remorse.

94. In our judgment the judge's approach to sentencing this applicant cannot be faulted. He had regard to all the relevant matters and properly discounted the sentence that would have been applicable to an adult. This application is therefore refused.