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IN THE COURT OF APPEAL
CRIMINAL DIVISION



Neutral Citation Number: [2023] EWCA Crim 41

CASE NOS 202202324/A4 & 202202956/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 17 January 2023

Before:

LORD JUSTICE LEWIS
MRS JUSTICE CUTTS DBE
HER HONOUR JUDGE NORTON
(Sitting as a Judge of the CACD)

REX
V
ARCHIE TILLEY
GEORGE TILLEY

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MISS C DALY appeared on behalf of the Appellant Archie Tilley
MR A EISSA KC appeared on behalf of the Appellant George Tilley
MISS G WHITE appeared on behalf of the Crown

J U D G M E N T

1. LORD JUSTICE LEWIS: On 30 June 2022 in the Crown Court at Lewes, the two appellants were each sentenced following a trial for an offence of causing grievous bodily harm with intent. One appellant is George Tilley who was 13 at the time of the offence and 14 at the time of the sentence. The other appellant is his brother, Archie Tilley, who was aged 14 at the time of the offence and was 16 at the time of sentence. Each was sentenced to an extended determinate sentence of 12 years, comprising a custodial element of nine years and an extended licence period of three years. Each appeals against sentence with permission from the single judge.
2. The facts in summary are as follows. At 7.30 pm on Sunday 4 April 2021 police received reports of a man found unconscious in Longcroft Park. He had been subjected to a violent attack and beaten with a log. He had severe head and facial injuries. He was airlifted to hospital in Brighton. He was in a coma for many weeks. The injuries he suffered were catastrophic and included multiple injuries to the brain, skull, face and ribs. Thankfully he survived. The injuries have had a catastrophic and life-changing effect on him and his family. We have read the moving victim impact statement of the victim's wife who explains the impact of the assault and of the devastating injuries on her husband and indeed on the wider family who now care for him. Nothing that we say is intended in any way to minimise the horrific nature of the injuries afflicted on Alan Wilson, the victim in this case.
3. The offence occurred in this way. Mr Wilson had gone to the aid of his young son after he had received a telephone call that his son was being bullied in a park. George Tilley had pushed the young son over. Archie Tilley and a third person, Harry Furlong, were also present. Mr Wilson had approached the group and spoke to them and then walked away. The group of three had subsequently attacked him and beaten him with a log.

His son had telephoned his mother who told him to run home. His mother came to the park and found her husband unconscious, bleeding heavily from the head and having difficulty breathing. A log close by was covered in blood. The forensic evidence was that George Tilley and Harry Furlong had held the log.

4. George and Archie Tilley were seen on CCTV leaving the park. They arrived at a nearby railway station at 8.03 pm. The three were then seen re-enacting the dreadful assault that they had carried out to a group of girls and a couple before they got on the train. While they were on the train, Archie Tilley re-enacted the assault again for other passengers. They got off at another station and again demonstrated the dreadful assault that they had carried out.
5. George Tilley and Archie Tilley were convicted following a trial of causing grievous bodily harm with intent. Harry Furlong was convicted of causing grievous bodily harm.
6. Pre-sentence and psychiatric reports were prepared in respect of George and Archie Tilley. Despite his young age, 14 when he was sentenced, George Tilley already had five convictions for a number of offences, including four offences of battery and five of assault occasioning actual bodily harm. At the time that George Tilley committed this offence he was subject to a youth rehabilitation order and was also subject to a criminal behaviour order which prohibited him from entering a number of parks, including Longcroft Park where the attack took place. Archie Tilley already had convictions for three offences: two of assault committed in March 2019 and one of battery committed in November 2019. There was then a gap of about 16 months or so before he committed this offence. Archie was subject to a criminal behaviour order but that order did not prohibit him from entering Longcroft Park.
7. In sentencing the two brothers the judge said that the person who took the lead in the

attack was George Tilley. The attack however was a group attack instigated by George but with Archie taking a central and leading role alongside George in attacking Mr Wilson. The judge said that the actions of George and Archie Tilley went beyond anything that could be described as excessive self-defence.

8. The judge reminded herself that she was required to consider the over-arching principles set out in the Sentencing Council Guidelines on Sentencing Children and Young People. They says that the principal aim of sentencing is to prevent children and young people from re-offending. The judge also reminded herself of paragraph 6.46 of the guidance which says that a court may consider it appropriate in cases of those aged between 15 and 17 to reach a sentence broadly equivalent to one-half to two-thirds of the sentence that would be imposed on an adult for the offence in question and to allow a greater reduction for those aged under 15 but that those guidelines were not to be applied mechanistically.
9. The judge considered first whether the two appellants were dangerous within the meaning of the relevant provisions of the Sentencing Act 2020, that is whether in each of their cases they posed a significant risk that they would cause serious harm to members of the public by committing further similar offences.
10. The judge found that both appellants were dangerous. This conclusion was based amongst other things on the very serious nature of this offence, including as it did the use of a weapon, the inflicting of serious physical injuries on the victim, the sustained group attack on one person and the frenzied nature of this assault. That conclusion was also confirmed by the pre-sentence reports on each of the two appellants. Each was assessed as posing a high risk of re-offending and also of posing a very high risk of serious harm to others. The judge concluded therefore that an extended sentence, that is a sentence with a custodial element and a longer period on licence when released, was appropriate

and should be imposed.

11. The judge accepted that the two appellants were young and there were elements of immaturity and George was in the very low range of cognitive ability. There were no learning difficulties and no mental health issues in the case of either appellant. The judge referred to the previous convictions of each appellant which were an aggravating factor. In addition, George Tilley had committed this offence when he was already subject to a youth rehabilitation order and a criminal behaviour order which prohibited him from even going into Longcroft Park. The judge did not consider that either appellant had shown any remorse for what they had done.
12. The judge considered that the appropriate categorisation of the offence under the Sentencing Council Guideline for Assault was Category 1A. There was high culpability which fell within Category A, because there had been a prolonged and persistent attack and both appellants took an equal and central role in group activity. The level of harm fell within Category 1 as the assault caused grave and life-threatening injuries, resulting in a life-long dependency on third parties and there were permanent irreversible injuries which had a long life effect on the victim's ability to carry out normal daily activities. The starting point for sentence in the case of an adult would be 12 years' custody and the range to reflect aggravating and mitigating features would be between 10 to 16 years' custody. The judge said that the appropriate custodial element, having regard to the guideline for sentencing for assault and allowing for the appropriate adjustment for age, would have been a sentence of nine years' detention. The judge therefore imposed an extended determinate sentence of 12 years comprising a custodial element of nine years and an extended licence period of three years.
13. Pausing there, the sentencing judge did not expressly state what sentence an adult would

have received for this offence, nor did she identify the amount of reduction made to reflect each appellant's age.

14. Written grounds of appeal were prepared by Mr Wolkind KC and today Mr Eissa KC has relied on those written grounds and made further oral submissions on behalf of George Tilley. He submitted that the sentence was manifestly excessive as the judge had made an insufficient reduction in sentence to allow for George Tilley's age. We will return to that ground of appeal later in this judgment.
15. Secondly, Mr Eissa submitted that overall the sentence was too long particularly taking into account that the attack could be seen as not a wholly unprovoked attack, at least viewed from the perspective of George Tilley. In that regard Mr Eissa referred to some evidence that the victim's son had said that his dad was going to beat him up and that when he came he was angry and carried a piece of wood. Mr Eissa relied on parts of the pre-sentence report which he submitted suggested a shorter sentence was appropriate, as did the report of the psychiatrist.
16. We do not consider that there is any substance in this ground of appeal. The judge was entitled, indeed correct, to regard this as a Category 1A offence, the most serious categorisation for assault. The starting point for an adult would be 12 years' imprisonment with a range of 10 to 16 years' imprisonment. This was a vicious attack. It involved a group attacking one person and beating him senseless with a log, causing terrible and catastrophic injuries. The judge who heard the evidence at trial rejected the suggestion that the victim had approached the appellants a second time with a log. She said that the actions of the appellants were beyond anything that could be described as excessive self-defence. We therefore reject the second ground of appeal.
17. In her written and oral submissions, Miss Daly on behalf of Archie Tilley also submitted

that insufficient weight was given to age and immaturity and an insufficient reduction in sentence made. We will return to that ground later in this judgment.

18. Miss Daly submitted that there was only one factor indicating higher, that is Category A culpability on the part of Archie and that was that this was a prolonged or persistent attack. She submitted that Archie was not in a leading role and was initially acting in self-defence.
19. We reject this ground of appeal. There were two factors which placed this within the Category A culpability range, that is the most serious culpability range. First, this was a persistent attack which alone places it in Category A. Secondly, the judge who had heard the evidence described Archie Tilley as playing an equal and central role alongside his brother. That amounts to a leading role in group activity. The acts went far, far beyond anything that could reasonably be described as excessive self-defence. The judge was therefore correct to place this assault within Category 1A of the relevant guidelines.
20. In her written submissions, Miss Daly has submitted that the judge erred in saying that there were additional aggravating features in Archie Tilley's case. There is only one aggravating feature, not features, namely his previous convictions. In her written submissions Miss Daly had submitted that the lack of remorse meant only that Archie could not rely on that as mitigation, it did not amount to an aggravating factor.
21. We do not consider that there is any material error in this regard on the part of the judge. She was correct in regarding the previous convictions as an aggravating factor. The lack of remorse was strictly something that meant the appellant could not rely on that as a factor justifying any reduction in sentence. But reading the careful and considered sentencing remarks we do not consider that the judge was seeking to adjust the sentence

upwards because Archie showed no remorse for what he had done. Rather, the judge was simply identifying the factors relevant to sentencing.

22. For completeness, we note that Miss Daly initially sought permission to appeal on the ground that the finding that Archie was dangerous was wrong. The single judge refused permission to argue that ground. Miss Daly very sensibly has not sought to renew that ground of appeal today. In our judgment she is correct not to do so. The judge was entitled to find that Archie Tilley was dangerous within the meaning of the relevant statutory provisions given the nature of the offence and the views expressed in the pre-sentence report.

23. We turn then to the question of the reduction that should be given because of age and immaturity. The relevant guidelines are the Definitive Guideline on Sentencing Children and Young People. We are bound by law to follow and apply those guidelines. Section 1 of the guideline sets out the relevant principles. Paragraph 1.5 says:

"It is important to bear in mind any factors that may diminish the culpability of a child or young person. Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes."

24. The judge also referred to paragraph 6.46 which says this:

"When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half

to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age**. This reduction should be applied before any reduction for a plea of guilty."

25. It is also relevant to refer to paragraph 6.48 which says this:

"There is an expectation that custodial sentences will be particularly rare for a child or young person aged 14 or under. If custody is imposed, it should be for a shorter length of time than that which a young person aged 15 – 17 would receive if found guilty of the same offence."

26. The sentencing judge did not set out the sentence that she would have imposed on an adult, nor did she set out the percentage or the amount of the reduction made in the case of George and Archie Tilley. Often it will be helpful to do so. It will assist in the correct application of the guidelines and will enable the appellants and the victim and the victim's family to know precisely how age and immaturity have been assessed in reaching a sentence. In the present case counsel have pointed out for example that if the sentence had been reduced by half, then the sentence that would have been imposed on an adult would have had to be somewhere in the region of 18 years' custody. If the reduction was in the order of one-third then a sentence in the region of 13 to 14 years would have had to be imposed on an adult to result in an equivalent custodial sentence for a child of nine years.

27. In the circumstances the sensible approach is to consider the appropriate adult sentence and the appropriate reduction to determine if the custodial element of nine years is flawed. In the case of George Tilley, the starting point would have been 12 years' custody for an adult under the guidelines on assault. His previous convictions and the

fact that he committed the offence whilst subject to court orders were aggravating factors and would have justified an increase in the sentence to somewhere in the region of 14 years. Given the complete absence of remorse there was no mitigation justifying any reduction in sentence. If the sentence equivalent to one-half to two-thirds of the appropriate sentence for an adult had been imposed, that would have resulted in a sentence in the region of seven years to about nine years. In addition George was 14 at the time of sentencing. He would, considering paragraphs 6.46 and 6.48 of the guidelines have received a sentence below that - somewhere in the region of six-and-a-half years to reflect his age, immaturity and in his case his low cognitive abilities. To that extent the custodial element of nine years is manifestly excessive.

28. In the case of Archie Tilley, the starting point for an adult being sentenced for this offence would be 12 years' imprisonment. He had three previous convictions but these were committed about 16 months before this offence. He was not in breach of the criminal behaviour order as it did not prohibit him from entering Longcroft Park. The aggravating factor of the previous convictions would have resulted in an upwards adjustment to the sentence. There is no mitigation as he had not demonstrated any remorse. The likely sentence for an adult would have been in the region of 13 years' imprisonment. Archie Tilly was 16 at the time of sentence. A sentence of one-half to two-thirds would have been about six-and-a-half years to eight years. Further, it is right to note that Archie Tilly was only 14 at the time that he committed the offence. That would have pointed towards a reduction in the range of one-half of the appropriate sentence for an adult. That would result in a sentence in the region of six-and-a-half years. In the circumstances a custodial element of nine years was manifestly excessive.

29. In the circumstances, therefore, we allow the appeals of George Tilly and Archie Tilly.

In each case we quash the extended determinate sentence of 12 years and substitute an extended determinate sentence of nine-and-a-half years, comprising a custodial element of six-and-a-half years and an extended licence period of three years.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk