Neutral Citation Number: [2024] EWCA Crim 1382

Case No: 202403231 A1
202403268 A3
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202403274 A5

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

(1) THE CROWN COURT AT INNER LONDON
HHJ Kelleher

(2) THE CROWN COURT AT NEWCASTLE UPON TYNE
HHJ Paul Sloan KC, the Recorder of Newcastle

(3) THE CROWN COURT AT TEESSIDE
HHJ Francis Laird KC

(4) THE CROWN COURT AT PLYMOUTH
HHJ Robert Linford

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/11/2024

Before :

THE LADY CARR OF WALTON-ON-THE-HILL,
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE HOLROYDE, VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
and
MR JUSTICE BENNATHAN

- -

Between :
(1) OZZIE CUSH (2) PAUL WILLIAMS
(3) DYLAN WILLIS (4) AMINADAB TEMESGEN

Applicants

-and-

REX

Respondent

- -

Alex Granville (instructed by **Reeds Solicitors LLP**) for the **1st Applicant**
Sophie Allinson-Howells (instructed by **Armstrong Westgarth Law**) for the **2nd Applicant**
Gary Wood (instructed by **Smith & Graham Solicitors**) for the **3rd Applicant**
Zoe Kuyken (instructed by **Plymouth Defence Solicitors**) for the **4th Applicant**
Duncan Atkinson KC (instructed by the **Crown Prosecution Service**) for the **Respondent**

Hearing date: 7 November 2024

- -

Approved Judgment

The Lady Carr of Walton-on-the-Hill, LCJ:

Introduction

1. In late July and August 2024 a series of violent disturbances erupted across England, following a tragic incident on 29 July 2024, when three young girls were fatally stabbed at a dance class in Southport. The violence, fuelled by misinformation and far-right sentiment, spread to various towns and cities across the nation. Mosques and hotels housing asylum seekers were targeted. Significant damage was caused, and injuries were sustained. Those subjected to violence or threats of violence included police officers, whose duty it was to protect the communities under attack. Many of those responsible for the violence in England were quickly identified, arrested and brought before the courts, where they were swiftly convicted and sentenced.

2. We have before us applications for leave to appeal against sentences imposed on four individuals each convicted, following a guilty plea, for his participation in incidents of serious public disorder:

   i) Whitehall on 31 July 2024: Ozzie Cush, then aged 20, pleaded guilty at his first appearance before the Reading Magistrates' Court on 8 August 2024 to a single offence of assault by beating of an emergency worker contrary to s. 1 of the Assaults on Emergency Workers (Offences) Act 2018. He was sentenced on 9 August 2024 by His Honour Judge Kelleher sitting in the Crown Court at Inner London to 46 weeks' detention in a Young Offender Institution;

   ii) Sunderland on 2 August 2024: Paul Williams, then aged 45 years, pleaded guilty at his first appearance before the South Shields Magistrates' Court on 9 August 2024 to a single offence of violent disorder contrary to s. 2(1) of the Public Order Act 1986. He was sentenced on 16 August 2024 by His Honour Judge Paul Sloan KC sitting in the Crown Court at Newcastle upon Tyne, the Recorder of Newcastle, to 26 months' imprisonment;

   iii) Middlesbrough on 4 August 2024: Dylan Willis, then aged 18 years, pleaded guilty at his first appearance before the Teesside Magistrates' Court on 20 August 2024 to a single offence of violent disorder contrary to s. 2(1) of the Public Order Act 1986. He was sentenced on 2 September 2024 by His Honour Judge Francis Laird KC sitting in the Crown Court at Teesside to 14 months' detention in a Young Offender Institution.

   iv) Plymouth on 5 August 2024: Aminadab Temesgen, then aged 19 years, pleaded guilty at his first appearance before the Plymouth Magistrates' Court on 28 August 2024 to a single offence of violent disorder contrary to s. 2(1) of the Public Disorder Act 1986. He was sentenced on 30 August 2024 by His Honour Judge Robert Linford sitting in the Crown Court at Plymouth to 14 months' imprisonment. (We note at once that the imposition of a sentence of imprisonment on a person aged under 21 years is prohibited by s. 227 of the

Sentencing Act 2020 (the Sentencing Code). The sentence should have been one of detention in a Young Offender Institution).

The role of the courts and relevant sentencing principles

3. We begin by referring to two provisions of the Sentencing Code: s. 57, relating to the purposes of sentencing adults, and s. 59, relating to sentencing guidelines and the duty of the court.

4. Subject to certain exceptions which are not material to these applications, s. 57(2) provides that, when sentencing an adult aged 18 or over at the time of conviction, the court:

"*must have regard to the following purposes of sentencing –*

a) the punishment of offenders,
b) the reduction of crime (including its reduction by deterrence),
c) the reform and rehabilitation of offenders,
d) the protection of the public,
e) the making of reparation by offenders to persons affected by their offences."

5. It can be seen from the chronologies outlined above that the individual cases before us came on for sentencing in the Crown Courts within days of conviction in the Magistrates' Courts. This judicial expedition was in line with the court's duty to have regard to the reduction of crime by deterrence and the protection of the public.

6. By s.59:

"*Every court –*

a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and

b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so."

7. In each of the cases before the court, the offence concerned is the subject of a specific definitive guideline published by the Sentencing Council. Also relevant in some of the cases is the Imposition of Community and Custodial Sentences guideline ("the Imposition Guideline").

8. In the context of widespread and significant public disorder, it is not only the precise individual acts of an offender that matter. It is the fact that the offender is taking part in violent disorder, threatening violence against other people and/or property, and is part and parcel of widespread threatening and alarming activity. That is the gravamen of the offending: being one of those who, by weight of numbers, pursues a common and unlawful purpose. Thus, whilst what an individual offender may have done themselves is of relevance, their acts must not be taken in isolation; rather the court must look at the whole picture. That principle is well-established by cases such as *R*

v Caird and others [1970] 54 Cr App R 499 at 506 to 508; *R v Fox and Hicks* [2005] EWCA Crim 1122; [2006] 1 Cr App R (S) 17 at [16]; and *R v Blackshaw and others* [2011] EWCA Crim 2312; [2012] 1 Cr App R (S) 114 at [8].

9. In *Fox and Hicks* the court at [16] encapsulated the principle in these terms:

> "*In the case of public disorder it is important for the court to look at the whole picture, and although what an individual may have done by himself is of relevance, that is simply part of the whole to which he is contributing in his way, and the larger picture must be taken account of."*

10. In *Blackshaw* this court considered appeals against sentences imposed for offences committed in the summer of 2011 in a series of riots and incidents of serious disorder which began in London and spread to other parts of the country. The sentences under consideration had been imposed, not for offences contrary to the Public Order Act 1986, but rather for offences of burglary and theft committed during the disorder by persons looting shops. The court made clear that the context of the offending made the individual offences more serious than they would be if they stood in isolation, and justified sentences in excess of those which would be appropriate for offences of burglary and theft committed in different circumstances.

11. The weight to be given in the sentencing process to the need for deterrence may similarly vary according to the context of the offending. If public safety is under threat because of the potential spread of violence across the nation, then deterrence may be of the highest importance. The cases now before us illustrate the speed with which disorder in one part of the country may be replicated in other areas, each incident encouraging and promoting further incidents elsewhere. Defendants who choose to involve themselves in activity which threatens the safety and well-being of communities across the nation must therefore expect severe sentences designed not only to punish them but also to deter others. As it was put by Lord Judge CJ in *Blackshaw*:

> "*4. There is an overwhelming obligation on sentencing courts to do what they can to ensure the protection of the public. Whether in their homes or in their businesses or in the street and to protect the homes and businesses and the streets in which they live and work. This is an imperative…the imposition of severe sentences, intended to provide both punishment and deterrence, must follow. It is very simple. Those who deliberately participate in disturbances of this magnitude, causing injury and damage and fear to even the most stout-hearted of citizens, and who individually commit further crimes during the course of the riots are committing aggravated crimes. They must be punished accordingly, and the sentences should be designed to deter others from similar criminal activity."*

12. It should be noted that the offence of violent disorder, contrary to s. 2 of the Public Order Act 1986, requires the use or threat of unlawful violence by 3 or more persons present together, and may be committed in private as well as in public places. It can of course be committed, as it was in each of these cases, by a very much larger number of persons present together. The statutory maximum penalty of 5 years' imprisonment therefore applies to a wide range of offending.

13. That feature of the offence, and the principles to which we have referred, were taken into account by the Sentencing Council in developing the Violent Disorder Guideline, and the guidelines relating to other offences involving public disorder, all of which came into effect on 1 January 2020. The public consultation which preceded the definitive guideline noted that the offence of violent disorder can involve a broad range of activity, including offences akin to riot where all of the elements of the (yet more serious) offence of riot may not be made out.

14. With that in mind, the offence range stated in the Guideline goes up to 4 years 6 months' custody. The culpability and harm factors to be considered at step 1 of the sentencing process require consideration of, amongst other things, the scale and seriousness of the incident of disorder, and the nature and extent of the harm caused or threatened. The focus at step 1 when considering culpability category B is on the nature of the incident itself.

15. When applying an offence-specific sentencing guideline, a sentencer is required (by s. 60(4) of the Sentencing Code) to decide which of the categories most resembles the offender's case, in order to identify the sentence starting point. The sentencer may then make an initial adjustment of that starting point, upwards or downwards, to reflect particular features of culpability and/or harm such as the presence of a multiplicity of features of the relevant category; or the presence of a feature indicative of a lower category; or an assessment that the particular offence comes high, or low, in the range covered by the relevant category.

16. In cases such as those now before the court, a particular offence may properly be regarded as coming high in the range where one or more of the guideline factors is present to an unusually large or serious extent – for example, where the offender has participated in an incident which involves very widespread and/or particularly large scale acts of violence, and/or which contributes to a wider picture of incidents of disorder in different parts of the country. It may also come high in the range where the overall picture which the court must take into account makes it particularly important for the sentence not only to achieve appropriate punishment for the individual offender but also to deter others from engaging in similar disorder.

17. At step 2 of the sentencing process, when the sentencer is considering aggravating and mitigating factors, the Guideline includes a specific caution against double counting of "aggravating factors which were relevant to the culpability assessment, particularly in cases where culpability is assessed as high". Such caution is always necessary when applying a sentencing guideline, because the guideline offence range and sentence starting points will reflect the inherent seriousness of the offence. However, the aggravating and mitigating factors at step 2 include several which focus on the precise role played by the individual offender and identification of such factors as aggravation will not necessarily involve double-counting.

18. The Guideline applicable to offences of common assault on an emergency worker, for which the maximum penalty is 2 years' custody, requires the sentencer to determine the appropriate sentence for the basic offence of common assault and battery (which has a maximum sentence of 6 months' custody) and then to apply an uplift in accordance with the guidance given at step 3 of the process. The Guideline

specifically states that the uplifted sentence "may considerably exceed the basic offence category range". The Guideline states that the sentencer should state in open court that the offence was aggravated by reason of the victim being an emergency worker, and should also state what the sentence would have been without that element of aggravation.

19. The non-exhaustive list of aggravating factors applicable to the basic offence does not include express reference to the offence being committed in the context of public disorder; but in the light of the principles we have stated, that context can undoubtedly be regarded as a serious aggravating factor.

20. Some of the submissions made to the court suggest that there is an issue as "*whether the application of deterrent sentences inherently prevents consideration of suspended sentences",* "*prevents exceptions due to the offender's specific role or to the mitigation available* " and "*curtails the need for a pre-sentence report*." We do not consider that any such generic issue arises, because issues such as whether a pre-sentence report is required, or whether a custodial sentence of 2 years or less can and should be suspended, will require fact-specific decisions in each case. For the avoidance of doubt, however, we make clear that sentencers must follow any relevant guideline and consider all features of the case in order to determine what sentence is just and proportionate in all the circumstances. The need for a sentencer to give due weight to deterrence does not of itself preclude consideration of whether, in accordance with the Imposition Guideline, a custodial sentence of appropriate length can be suspended. Where the offending involves serious public disorder, however, the application of that guideline may well lead to the conclusion that appropriate punishment can only be achieved by immediate custody.

21. Against the above background, we turn to the merits of each of the individual cases.

The individual cases

Ozzie Cush

22. On 31 July 2024 there was a protest held in Whitehall. In the event no widespread disturbance ensued, but at the time of the applicant's offence people were shouting aggressively at police officers and refusing to comply with a dispersal order. The Court has watched body worn footage from one of the police officers involved. The air of menace and the potential for violence is tangible. Police Constable Munt was filming the protestors when the applicant kicked out at him, striking his hand. It was, on the evidence we have seen, a hard kick, but fortunately no lasting injury was caused. PC Munt wrote of shaking his hand to get the feeling back into it as it was smarting from the blow. In passing sentence, the judge was to comment that, "*Your action also ran the risk of inflaming the wider situation and encouraging others to attack the police*". That comment was both justified and significant.

23. The applicant pleaded guilty at the first opportunity and was committed for sentence. He was 20 years old. At the time of the offence, he was awaiting sentence after pleading guilty to 2 offences of criminal damage: one was committed some 6 weeks before the instant offence, the other committed 2 days after when, on being released

from Croydon Police Station, he smashed a glass pane. The judge had the advantage of a pre-sentence report which wrote of the applicant reporting traumatic events in his childhood and suggested that this may have led to some memory lapses and emotional instability. The same report offered the possibility of a community order with conditions of unpaid work and a number of Rehabilitation Activity Requirement Days.

24. For the applicant it is submitted that the judge was wrong to characterise the harm as category 2 rather than category 3, and that the sentence imposed was manifestly excessive. The grounds of appeal point out that the eventual sentence was in the order of 4 times the upper end of the range even for the A2 categorisation at which the judge arrived. It is also submitted that the judge interrupted the probation officer during his oral report to the court, with the result that the officer's recommendation was not taken into account.

25. The judge explained his approach in commendably concise and well-structured sentencing remarks. He accurately summarised the applicant's conduct as follows:

> "*Your action in kicking the officer was clearly deliberate. It displayed a complete contempt for the police on your part. You clearly intended to make contact with the officer and cause him physical harm. Your action also ran the risk of inflaming the wider situation and encouraging others to attack the police, although fortunately, at that time at least, that did not happen."*

26. The offence involved high culpability because the applicant used his shod foot as a weapon equivalent. Although it was submitted that the harm caused was in category 3 ("no/very low level of physical harm and/or distress"), the judge held that it fell within category 2 ("minor physical or psychological harm/distress"). In the light of the officer's description of the immediate pain which he experienced, and his needing to shake his hand in order to regain feeling in it, the judge was entitled so to hold.

27. A basic offence in category 2A attracts a starting point of a medium level community order, with a category range from a low level community order to 16 weeks' custody. Whilst the judge did not identify what sentence he would have passed without the element of aggravation arising by reason of the victim being an emergency worker, he did rightly observe that the Guideline's starting point:

> *"... applies to all common assault offences. Where the offence is committed against a police officer, that is an aggravating factor which may justify a sentence considerably exceeding the range for the basis offence. In this case, the significance of that aggravating factor is magnified for the reasons I have already explained. The officer was not just carrying out his duty but was doing so in particularly challenging and volatile circumstances."*

28. This case provides, in our view, a clear illustration of the need to consider the seriousness of offending such as this by reference not only to the applicant's specific conduct but also to the wider context. The applicant was on bail for a recent offence of criminal damage. He must have known (from the loud and clear police announcements) that the police had issued a dispersal order. The applicant began to walk away from the police, but instead of continuing to do so, he went back

deliberately to attack the officer who was filming events. That action clearly risked provoking similar violence from others, in circumstances where the police were having to respond to a challenging situation. A very substantial uplift from the sentence which would have been appropriate for the basic offence was clearly necessary. The judge took into account the mitigation available to the applicant, including his youth, poor mental health and possible personality disorder, but was entitled to give much of it limited weight, given the deliberate nature of the offending. We can see no basis on which it could be argued that the sentence of 16 months' (or 69 weeks') custody, before the appropriate reduction for the guilty plea, was manifestly excessive.

29. The judge reflected on whether the sentence could be suspended. He expressly considered, but rejected, factors identified in the Imposition Guideline as favouring suspension. He concluded that those factors were in any event clearly outweighed by the circumstances of the case, and that appropriate punishment could only be achieved by immediate custody. The judge was plainly entitled to reach that conclusion. We are not persuaded that he failed properly to consider all possible alternative outcomes. Having heard all of the background, it was pre-eminently for his judgement whether he needed to hear more from the probation officer than he did.

30. For those reasons, the application for leave to appeal against sentence is refused.

Paul Williams

31. On 2 August there were riots in Sunderland. There was very widespread destruction. Police officers were injured and there was extensive damage to property. In the middle of that disturbance the applicant shouted at the police line, assumed a boxer's stance and urged the officers to come and fight with him. He took his top off and the volume of noise from the crowd, already loud and intimidating, rose appreciably. The applicant was persistent, loud and abusive. He threw a drink at the police that struck a shield; then later he threw a piece of metal which fell just short of police lines. The CCTV of the event shows the applicant as being very loud and very aggressive. He was later identified from CCTV and arrested. He pleaded guilty in the Magistrates' Court. The judge had the assistance of a witness statement from the Chief Constable of Northumbria Police setting out the extent of the damage and injuries caused.

32. The applicant was 45. He was clearly drunk during these events. He has a number of previous convictions which, while not the most serious, stretch from 1997 to 2021 and include cautions or sentences for violence, obstructing police, harassment, and breach of court orders. He had never previously served a custodial sentence. A pre-sentence report described a difficult childhood and some mental health difficulties, namely anxiety, depression and panic attacks. He played a role in caring for his unwell mother. Before his arrest the applicant had care of his 14-year old son who lived with him, and regular contact with his daughter who lived with his former partner but would regularly stay with the applicant. By the time of sentence, the son was also back living with his mother, the applicant having been remanded in custody. The pre-sentence report wrote of the applicant's genuine remorse at his conduct. The judge was provided with a report from the Children and Family Court Advisory and Support Service which concluded the applicant and his former partner were co-

operating well and the children were happy with their accommodation and contact arrangements.

33. For the applicant it is submitted that the sentence should have been limited to 2 years, and then suspended. It is said that there was double-counting in respect of the applicant's involvement as an active and persistent participant.

34. The judge described the applicant and others as having participated in an orgy of destruction, violence and disorder, which moved from area to area, was sustained and persistent, and involved serious acts of violence towards persons and property. He referred to the statement of the Chief Constable and described the impact of the offending on her officers and on the community. In a succinct and correct statement of principle, the judge said:

> "*... it is an unavoidable feature of mass disorder that each individual act, whatever might be its character taken on its own, inflames and encourages others to behave in similar fashion. That is why the court will have regard to the overall picture. Those participating in mass disorder must expect severe sentences, intended not only to punish but also to deter others from copying their example."*

35. The judge rightly held that this case fell within category B1 of the Guideline, which carries a starting point of 3 years' custody with a range of 2 to 4 years' custody. It is important to note that culpability was in category B because 3 of the 4 factors listed in that category were present. Harm was in category 1 because multiple category 2 factors were present: in fact, all 6 of the factors listed in category 2. The multiplicity of culpability factors justified a significant initial adjustment upwards from the category starting point. Some further upwards adjustment was justified because all category 2 harm factors were present, and the case was therefore even more serious than a case with multiple such factors.

36. It is accepted rightly for the applicant that the offence was aggravated by the applicant's intoxication. We are not persuaded that the judge fell into the error of double counting in relation to the other two aggravating factors which he identified. The nature of the overall incident in which the applicant was involved was reflected in the category B culpability factors. But all those factors would have been present even if the applicant had not himself been as active and persistent a participant as he was, or if he had not himself thrown missiles at the police. The judge was entitled to take into account those features of the applicant's personal role in the overall disorder, consistent with the list of aggravating factors set out at step 2 of the Guideline.

37. In those circumstances, a sentence at or near the top of the category range was appropriate before consideration of the applicant's personal mitigation. There were undoubtedly valid points to be made on his behalf, as the judge rightly accepted, including in particular the applicant's care responsibilities towards his mother, and the negative effects which the applicant's imprisonment would have on his two children. The children's rights had to be considered, and it was of course no fault of theirs that their father had chosen to behave as he did. It is, however, clear that the judge carefully considered that aspect of the case. He took into account, rightly, that

the children were, and would remain, in the care of their mother. We have the benefit of a pre-appeal report, which confirms that the applicant's son and daughter remain with the mother, and that his son's upset would be managed by the family.

38. In our view, the judge properly reflected all the mitigating features in deciding that the appropriate sentence, before credit for the guilty plea, was 3 years 3 months' imprisonment. It follows that the final sentence was of a length which could not be suspended.

Dylan Willis

39. On 4 August there was a protest in Middlesbrough that turned violent. The disorder was on a large scale. The Chief Constable made a witness statement setting out its extent: police were assaulted, an extensive range of properties were damaged, shopkeepers and other members of the public reported feeling scared. In what appears to be the early stages of these events, the CCTV shows the applicant throwing a brick against the window of a Chinese takeaway several times until the window broke. The applicant handed himself in to the police when he saw published images and realised that he was wanted.

40. The applicant was 18 and of previous good character. His mother had been unable to cope with him living with her, so at the time of the offence he was homeless, or at least sleeping at the homes of any friend who could accommodate him. A pre-sentence report listed his many problems: he had been in care, diagnosed with ADHD and there were other mental health concerns about self-harm in the past. The report recommended an unpaid work order with some courses and activities.

41. The applicant's grounds of appeal argue that his sentence was manifestly excessive, essentially on the basis that the judge did not make sufficient allowance for his mitigation, both as to his limited role and his personal mitigation.

42. In passing sentence, the judge took Category B1 in the Sentencing Council Guidelines which, as already mentioned, carries a starting point of 3 years' custody, with a range of 2 to 4 years' custody. The judge went above 3 years to 3 years and 3 months to allow for the widespread disorder of which the applicant's offending was part. He then made a reduction of 18 months to reflect the applicant's age and lack of maturity, his developmental challenges and low IQ, that he was a vulnerable care leaver, and that he handed himself in to the police. The consequent 21 months was then reduced by a third for his early guilty plea, leading to the final sentence of 14 months' detention in a Young Offender Institution.

43. The judge was faced with a difficult sentencing exercise, dealing with this young complex offender as similar disturbances wracked the country. His choice of category under the Guideline was unarguably correct and his addition of some months for the aggravation of the broader context of the applicant's offending was, if anything, moderate.

44. To state, as we have done, that an offender's sentence has to reflect both his actions and the overall disturbance is not to say that the nature and extent of the individual

actions are immaterial. Indeed, as set out above, step 2 under the Guideline requires them to be considered. Here there was a brief attack aimed at property not people, albeit it involved the use of a brick. In terms of mitigation, it was significant that the applicant handed himself in to police, in terms of remorse and acceptance of responsibility. His youth and background were also important. The courts have long observed that an offender's 18th birthday is not a "cliff edge", and in dealing with an 18 year old who is immature and has a low IQ, a court may need to approach sentence as if dealing with one who, in law, is a child. In addition, the applicant was of previous good character after a childhood which had exposed him to trauma and abuse, and following which he was left as a vulnerable young person supported by the local authority as a care leaver.

45. In the probation officer's assessment, the applicant's ADHD and autistic spectrum condition significantly impacted his thinking and conduct. The judge was rightly directed to the Sentencing Council Guideline for offenders with mental disorders, developmental disorders or neurological impairments. The applicant would easily be drawn by others, and his lack of maturity played a role in his offending behaviour. The applicant's various intellectual and developmental problems also meant he was vulnerable to unhelpful influences in custody.

46. Counsel has not argued against the judge's conclusion that a custodial sentence was unavoidable and necessary to mark the seriousness of the offence. We are not persuaded that there is any basis for criticising the length of the custodial term which the Judge reached by the route we have identified. The central issue in this appeal is whether this Court should interfere with the Judge's conclusion that appropriate punishment could only be achieved by an immediate custodial sentence.

47. We have found this a difficult decision. We are persuaded that the exceptional, and exceptionally powerful, combination of personal mitigating features should have led the judge to conclude that appropriate punishment could be achieved by a suspended sentence.

48. Accordingly, whilst we have hesitated to differ from the conclusion reached by the Judge, we have concluded that this court should interfere with the decision below. We therefore grant leave to appeal. We quash the sentence of 14 months' immediate detention and substitute a sentence of 14 months' detention in a Young Offender Institution suspended for 2 years, with a Rehabilitation Activity Requirement for up to 40 days.

Aminadab Temesgen

49. On 5 August there was a disturbance in Plymouth. The judge described it as people descending on the city who "*ran amok, threw stones fireworks and missiles intent on damaging property and harming others…It was widespread lawless behaviour with people both using and threatening unlawful violence"*. On the CCTV of these events the applicant first appears in the main, right wing, demonstration where, he said, he was racially abused. He was pushed to the other side of police lines where there were a number of counter-demonstrators. Shortly thereafter he covered his face with a surgical mask then threw an object over the police lines towards the other protest: it

was probably a drink because it spilled liquid. He ducked away, then again threw another object, probably a bottle. When later arrested, he confessed and apologised.

50. The applicant was 19. He had been hoping to pursue a career in the law. He pleaded guilty at the first opportunity and had character references from his church and community describing him as a good, well-behaved young man. At the hearing it was said he had no previous convictions but a caution for battery in April 2024. A post-sentence report also mentions a dangerous driving offence to which he had entered a guilty plea earlier in the year.

51. For the applicant it is submitted the judge chose too high a category of culpability, category A, erred in failing to obtain a pre-sentence report, and was wrong not to have suspended the sentence.

52. In his sentencing remarks the judge considered the Violent Disorder Guideline. As the applicant accepts, harm was in category 1 because of the presence of multiple category 2 factors. The judge held that culpability was in category A because factors in category B were present *and* there was "targeting of individual(s) by a group". Category A1 has a starting point of 4 years' custody and a range from 3 to 4 years 6 months.

53. We grant leave. With great respect to the judge, we accept the submission that he fell into error in categorising the case as he did. The category A culpability factor relates to the targeting by a group of an individual, or of individuals who are fewer in number than the group. It is therefore not a factor which applies where – as here - one group is using or threatening violence against another group. The judge should, therefore, have placed the case into category B1, with a starting point of 3 years' custody and a range from 2 to 4 years' custody. Further, we agree that in a case such as this it would have been preferable for the judge to obtain a pre-sentence report, as Mr Atkinson KC for the respondent fairly conceded. Here, after all, was a young defendant with family commitments facing custody for the first time.

54. Was the sentence wrong in principle or manifestly excessive as a result? We have no doubt that it was not. We accept the respondent's submission that the number of category B culpability factors justified an initial upwards adjustment of the starting point. The judge was then correct to identify 3 aggravating features of the appellant's individual actions within the overall disorder: he was an active and persistent participant, undeterred by being pushed back and struck by a police officer in the early stages of his involvement; he thereafter put on a mask, plainly because he did not want to be readily identifiable as he pursued his intended actions; and he threw 2 missiles. Before consideration of mitigation, therefore, a sentence in the upper part of the B1 category range was appropriate.

55. The mitigation was substantial. The judge no doubt felt able to proceed without a pre-sentence report because he was going to sentence, as he made clear, on the basis that he accepted, for example, the appellant's immaturity, previous good prospects and heavy family responsibilities. We have the benefit of a prison report and a pre-appeal report, which we have taken into account in reaching our conclusion today. The pre-appeal report suggests that the familial burden impacted his "*emotional management*

and decision-making". This adds little to the picture that was already before the judge.

56. The eventual sentence of 21 months, before credit for the guilty plea, did not fail to accord sufficient weight to the overall mitigation.

57. The judge considered whether the sentence could be suspended. He accepted that most of the factors listed in the Imposition Guideline as favouring suspension were present. He was entitled, nonetheless, to conclude that appropriate punishment could only be achieved by immediate custody. The judge did not express that conclusion in the precise terms used in the Imposition Guideline; but we do not accept the submission that the judge's use of the phrase "this is far too serious for anything other than immediate custody" indicates an error of principle or of approach. It is clear that the judge had the Imposition Guideline in mind, and he applied it correctly.

58. For those reasons, there is no good ground on which to challenge the imposition of an immediate sentence of 14 months' custody. The sentence was expressed as one of imprisonment, a sentence which was not available because of the appellant's age. The sentence was therefore unlawful and must be corrected, though the correction will make no difference to the length of the sentence. We accordingly allow the appeal to the extent we quash the sentence of 14 months' imprisonment and substitute a sentence of 14 months' detention in a Young Offender Institution.

Conclusion

59. For these reasons:

    i) We refuse leave to appeal against sentence in the cases of Cush and Williams;

    ii) We grant leave in the cases of Willis and Temesgen;

    iii) We allow the appeal in the case of Temesgen for the sole and limited purpose of correcting the unlawfulness of the sentence of imprisonment passed on him. We quash that sentence and substitute it with a sentence of 14 months' detention in a Young Offender Institution. All other aspects of the sentence remain in place as before;

60. We allow the appeal in the case of Willis. We quash the sentence of 14 months' immediate detention and substitute a sentence of 14 months' detention in a Young Offender Institution suspended for 2 years, with a Rehabilitation Activity Requirement for up to 40 days.