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No: 201900380/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday 20 June 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MRS JUSTICE SIMLER DBE

MR JUSTICE BUTCHER

R E G I N A

v

TOMMIE RAY SWEENEY

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Mr M Lewis appeared on behalf of the **Appellant**

Mr S Heptonstall appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

MR JUSTICE BUTCHER:

1. On 2 January 2019 in the Crown Court at St. Albans the appellant, Tommie Ray Sweeney pleaded guilty on re-arraignment to four offences: three counts of robbery and one of attempted robbery. On 23 January 2019 he was sentenced by His Honour Judge Warner for the three counts of robbery to five years four months' detention in a young offender institution, those sentences to run concurrently, and for the count of attempted robbery to three years' detention in a young offender institution, that sentence to run concurrently with the sentences for the robberies. He now appeals to this court against sentence by leave of the single judge.
2. The facts may be summarised briefly as follows. In the early hours of 28 February 2017, the appellant with others robbed three young men, each aged 17 years, and attempted to rob a fourth. Those offences occurred in Cassiobury Park, Watford after a music event which was targeted at young people aged between about 16 and 19. In relation to the first robbery victim, he described being robbed by a group of men who had covered their faces with either balaclavas, hoods or scarves. His bag was searched before one of the men demanded his mobile telephone which he handed over. He was asked to provide his mobile telephone PIN number. Another male held a knife to his lower back. He was told to delete his iCloud details to prevent the mobile being traced and in fear he gave an incorrect passcode and was struck to the side of the face before being sprayed in the face with CS gas. The group pulled at his bag and demanded his belt. He ran away to a train station and one of his friends flagged down a passing police car to report the offence. In addition to the mobile telephone and belt, £25, his driving licence, phone charger, Oyster travelcard, cash card and sunglasses were stolen.

The incident lasted somewhere between 10 and 30 minutes. The victim sustained a piercing to his lower back where the knife was held and burning to his face. He suffered ongoing psychological difficulties as a result, to which we will return.

3. The second victim was also approached by the group. They demanded his mobile telephone and wallet. At least one of the group was holding a knife. One of the group sprayed him in the face. He was pushed to the floor. While he was still on the ground members of the group rifled through his pockets taking his wallet and mobile telephone. He was kicked in the head before the group walked away.
4. The third victim was approached by five males, all in possession of knives. He complied with their demands for his mobile telephone. He was pushed and his bag snatched. Items including £5, his bank card and a provisional driving licence were taken from the bag, which was discarded before the group ran away.
5. The victim of the attempted robbery was followed by the group and grabbed from behind. One of the group held a canister towards him and said: "Do you want me to spray you?" Another was visibly in possession of a knife. The victim punched one of them and ran away to call the police.
6. Officers recovered two balaclavas and a canister of CS spray from a children's nursery situated next to Cassiobury Park. One of the balaclavas was found to have the appellant's DNA on it. When he was arrested his mobile telephone contained photographs of him at the relevant location at the relevant time wearing a face covering.
7. Certain victim personal statements were before the Crown Court. Of most significance was that of the first victim we have mentioned. He described how the incident had left long-term psychological effects on him, especially from the anxiety

caused by being sprayed with CS gas and the recurring thought of "what if it had been acid?" His anxiety had led him to have suicidal thoughts for a while and had led to his developing involuntary tics. All of this had had effects on his family and friends, his mother worrying acutely about him when he was out lest he should become again the victim of such a crime.

8. In sentencing the appellant, the judge said that these were knife-point robberies committed by a group and that it was a joint enterprise in which the appellant had played a willing and active part. He referred to the fact that the appellant was 17 at the time of the offence and 19 at sentence. He referred to the fact that the appellant had previous convictions for robbery. First, he had a conviction for an offence committed in January 2016. Secondly, he had been sentenced in September 2016 for two offences of robbery committed the previous month. The judge said that the circumstances of at least the latter two offences were similar to those with which the judge was dealing at that point, in that they involved robberies in a park. The judge recorded that a sentence had been imposed in September 2016 of a 24-month youth rehabilitation order and that the instant offences had been committed by the appellant during the currency of that order. The judge observed that the order had not acted as a deterrent. He did not re-sentence the appellant in respect of that order but treated it as an aggravating feature of these offences. The judge recorded that the appellant had pleaded guilty on the day of trial and that he would receive a 10 per cent credit as a result. The judge said that the offences were on the border between Categories 1 and 2 of the sentencing guidelines. He said that the offences alone merited a starting point of eight years' detention and that there were a number of aggravating features which increased the appropriate starting point to 10 years. In mitigation the appellant was a

17 year old at the time and this would be his first experience of custody. The judge said he had read the references provided and heard the appellant's father's evidence. He said that he took into account the pre-sentence report and made no finding of dangerousness. He then imposed the sentences which we have mentioned, giving credit for the plea of guilty, which we have also mentioned.

9. As the judge said, the appellant was aged 19 at the time of sentence. He had convictions for seven previous offences. Those convictions included the three offences of robbery in 2016, to which we have referred. The appellant had also been convicted of a non-dwelling burglary in 2016, of being carried in a motor vehicle taken without consent in 2016, and of using threatening, abusive words or behaviour likely to cause harassment, alarm or distress, also in 2016.
10. It has been argued before us today that the sentence imposed by the judge was manifestly excessive. Mr Lewis has argued two grounds. He contends most significantly that insufficient account was taken of the fact that the appellant was 17 at the time of the offences. He also contends that insufficient consideration was given to the mitigating factors including the appellant's father's evidence which supported his remorse. Mr Lewis has also called attention to the fact that there was no re-offending during the period on which the appellant was on bail and that there have been no disciplinary reports while the appellant has been serving the sentence which Judge Warner imposed.
11. In relation to those matters, we consider that the appellant is indeed to be commended for the fact that he did not re-offend while on bail and the fact that there have been no disciplinary reports seems to us to show there are grounds for hope for the future for this appellant. Nevertheless, in relation to the sentences which this appeal is brought

against, we consider that given the nature and number of the offences, the judge was entitled to impose the sentence which he did and it cannot be said to be manifestly excessive. He was entitled, in our judgment, to take a sentence for the robbery counts before allowing for the appellant's youth and other mitigating factors of 10 years. These were cases clearly involving high culpability and serious psychological harm or something close to it. The sentencing guidelines relate to a single offence. Here there were three robberies as well as the attempted robbery. This was thus a serious course of criminal conduct. There was clearly significant planning in that the gang had equipped themselves for the robberies and targeted an event where young people could be isolated. There was the fact of disguise; there was in addition to the use and the threat of knives the use of CS gas; there was the disposal of evidence. In the case of the appellant, furthermore, there was the very significant aggravating factor that he had previous convictions for offences of this type and that the present offences were committed while he was subject to the youth rehabilitation order imposed for the earlier offending. In our view, those matters justified a sentence of 10 years before considerations of youth, other mitigation and plea.

12. As to the reduction for youth and other mitigation, this was from 10 to six years. The appropriate allowance for age and immaturity is a matter of judgment and degree. The extent to which the age of a young person affects his culpability needs to be seen in the context of the offence of which he has been convicted. Here the appellant had demonstrated a considerable degree of criminal maturity with his record of previous similar offending and the sophistication of the execution of the offences for which he was being sentenced. We can see no basis for faulting the judge's allowance for immaturity and youth. No criticism is made of the credit he gave for the appellant's

guilty plea.

13. In the circumstances, we do not consider that the sentence imposed was excessive and still less manifestly excessive. The appeal is accordingly dismissed.

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

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