



APPEAL COURT, HIGH COURT OF JUSTICIARY

[2018] HCJAC 63
HCA/2018/000388/XC

Lord Menzies
Lord Turnbull

OPINION OF THE COURT

delivered by LORD TURNBULL

in

APPEAL AGAINST SENTENCE

by

IG

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: V Dow; Adams Whyte (Livingston)
Respondent: H Carmichael, AD; Crown Agent

18 September 2018

[1] The appellant in this case is a child aged 14 years. On 25 June 2018, he pled guilty to charges two, three and four on the indictment which he faced. Each charge arose out of conduct which took place on 15 September 2017 at a school in West Lothian where the appellant was at that time a pupil and aged 13 years. Charge two was a charge of having with him an article which had a blade or was sharply pointed namely a knife, contrary to the

Criminal Law (Consolidation) (Scotland) Act 1995. Charge three was a charge of assaulting LG, a 14 year old pupil at the school, by repeatedly punching him on the head and body to his injury. Charge four was a charge of assaulting RM, also a 14 year old pupil at the school, by punching him on the head, struggling with him, whereby he was struck on the head with a knife, all to his severe injury and permanent disfigurement. The appellant was sentenced to a *cumulo* sentence of 15 months' detention, which the sheriff reduced to a period of 12 months to reflect the utilitarian value of the guilty plea.

[2] It was explained to the sheriff that the background to these incidents was that there had been ongoing issues between the appellant and a particular group of boys within the school. The appellant had been assaulted in August 2017 by members of this group. This assault had been filmed on a mobile phone and the film taken had been posted on social media. Thereafter, the appellant and the complainer LG arranged over social media to meet for a fight at the school. The appellant's explanation was that he decided to take the knife with him in order to threaten any other members of the group whom he believed might intervene. The incidents described in the charges occurred at around 8.30am in the canteen area of the school where many other pupils were present. The pupil LG was punched to the head by the appellant, he fell to the ground and was repeatedly punched on the head and body. This fight between the two boys was separated and the appellant began to walk away whereupon the complainer RM approached him asking him why he was hitting the other boy. RM then pushed the appellant, these two struggled and engaged in a fight together during the course of which they fell to the ground. During this incident the complainer was struck on the right cheek with a knife which was being held by the appellant. The incident was separated by some older boys and the head teacher attended. RM was seen to have a

notable and serious facial injury and was taken to hospital. He required five stitches to a deep laceration on his right cheek.

[3] The court was informed at the date of sentencing, some nine months after the incident, that the complainer still had a clearly visible scar on his cheek of which he felt very self-conscious. A victim impact statement was provided to the court in which the complainer explained the impact which the scar to his face has had upon him and his concerns about the effect that it will have in the future such as, for example, when he attends for job interviews. The sentencing sheriff also had available to him the advice of the Children's Panel, which was to the effect that they would recommend support rather than punishment and asked for the case to be remitted to the Children's Hearing system. He also had a Criminal Justice Social Work Report which suggested that the case should also be remitted to follow the advice of the Children's Hearing.

[4] The sentencing sheriff concluded that the offence was of a seriousness that was not appropriate to remit to the Children's Panel. Whilst he recognised that the Panel could no doubt help provide advice and support, he concluded that such a disposal would not address other important aspects of sentencing. The sheriff recognised that charge four did not reflect that the injury inflicted was intentional, however he considered that it was of crucial importance in assessing the appellant's culpability to recognise that he had deliberately taken a knife to school in the knowledge that he was to become engaged in a fight and that he did that in order to threaten any other members of the group whom he believed might intervene.

[5] Counsel for the appellant contended that the imposition of a period of detention by the sheriff was excessive and inappropriate. The background circumstances to the offences were reiterated and it was submitted that the sheriff erred in failing to attach sufficient

weight to these. It was stressed that the appellant took the knife because he was fearful and he did not intend to assault anyone with it. The appellant's own circumstances were revisited and the efforts which he had made to engage with support services since the date of the offence were explained and emphasised. It was also submitted that the sheriff had erred in failing to give sufficient regard to the appellant's age and the availability of a disposal which would address the causes of his offending, thereby reducing the risk of further harm. Counsel referred to what had been said in the cases of *Kane v HM Advocate* 2003 SCCR 749 and *Smart v HM Advocate* [2016] HCJAC 73 concerning the approach to be taken by the court in sentencing a young offender. Counsel submitted that the sheriff had placed too much weight on the sentencing aims of retribution and deterrence and on the nature and the seriousness of the offence, rather than having regard to the need for, and the availability of, rehabilitation of the appellant.

[6] The report from the sentencing sheriff makes it plain that he was fully aware of the circumstances surrounding the commission of the offences to which the appellant pled guilty. He described this as a sad and anxious case. The sheriff recognised that a sentence of detention could only be imposed if no other method of dealing with the appellant was appropriate and he recognised that his priority was to prevent further offending by the appellant and to have full regard to his welfare as a child. He concluded that to take proper account of the appellant's actions in taking a knife into school, to take account of the terrible outcome of the incident and the undoubted concern which existed amongst parents, teachers and others regarding knives being taken into school, it was important for there to be a measure of punishment for what he saw as a grave crime. He concluded that it was important for the court to make it plain that the taking of knives into school would not be

tolerated and would be dealt with seriously. The sheriff concluded that these objectives could only be achieved by the imposition of a custodial sentence.

[7] We have carefully considered the information provided by the sheriff to us in his report and we have given careful consideration to the sensitively and well-presented submissions on the appellant's behalf in what is plainly a serious and anxious case. We consider that the background of bullying which was referred to is a relevant consideration and one which the sheriff ought to have given due consideration to. We are also impressed by and take account of certain of the comments in the Criminal Justice Social Work Report. We note, for example, at page 3 of 8 that the appellant was said to have shown a level of insight into his offending and it is noted that he had engaged in work to address some of the issues which have contributed towards his behaviour whilst working alongside the West Lothian Criminal and Youth Justice Team. This engagement, it was said, suggests that the appellant does recognise the need to accept the consequences of his behaviour. It is also noted that the appellant has been affected by his involvement with the criminal justice system and he appears to have recognised the importance of making changes to his behaviour for the future. The author goes on to note that the appellant displayed a level of recognition regarding the impact of his behaviour on the victims which was appropriate for his age and had shown an understanding of the impact of his behaviour on his family and expressed regret for this.

[8] These are important considerations and are observations which we think can distinguish the appellant from many of those who are described in such reports. It is also, in our opinion, important to recognise that there is no background of trauma or abuse or the like disclosed in the social enquiry report concerning the appellant. The social enquiry report reflects a good family background and a caring and loving environment. This again

distinguishes the appellant's case from, for example, cases such as *Kane* and *Smart*. We recognise the legitimacy of the sheriff's concerns as set out in his report and which were canvassed with counsel appearing on the appellant's behalf. But we accept and agree that he has failed to adequately balance these concerns against the positive elements contained within the social enquiry report to which we have drawn attention.

[9] Nevertheless, the circumstances of the offences disclose a serious matter and given the consequences of the appellant's conduct we do not think it is appropriate to remit the case to the Children's Panel. The court would wish to keep control of the disposal of the case and to be in a position to revisit that if necessary. That having been said, we are prepared to give effect to the submissions advanced on the appellant's behalf and to quash the sentence of detention imposed. In its place we shall impose a Community Payback Order with a supervision requirement for a period of 18 months.