

Neutral Citation Number: [2012] EWCA Crim 1667

No: 201105308 A7

**IN THE COURT OF APPEAL**

**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 6th July 2012

**B e f o r e:**

**LADY JUSTICE HALLETT DBE**

**MR JUSTICE OUSELEY**

**MR JUSTICE HADDON-CAVE**

**R E G I N A**

v

**CARLTON FITZWARREN CHANNER**

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**Mr P Rowlands** appeared on behalf of the **Appellant**

**Judgment**

As Approved by the Court

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1. LADY JUSTICE HALLETT: On 27th October 2005, at the Birmingham Crown Court before His Honour Judge Maxwell, the appellant pleaded guilty to an offence of attempted wounding with intent to cause grievous bodily harm. Later the same day he was sentenced to a term of imprisonment for public protection, a period of 23 months was specified as the minimum term. He appeals against sentence by leave of the single judge, who also granted the necessary extension of time of nearly six years.
2. The facts can be taken shortly. During the night of 6th July 2005 police were called to a block of flats in Birmingham where the appellant lived, because he was throwing things from the window. The police had to force entry. When they did so, they found him in his flat on the floor. He became abusive and violent and pointed a knife at them. During the ensuing struggle he made several attempts to stab one of the officers in the torso. Fortunately, the officer was not injured, only his coat was cut. The appellant was then restrained and arrested.
3. During his detention a number of assessments of his mental health were made. They were not assisted by the fact that the appellant denied any history of mental health problems and remained uncommunicative. A nurse conducted an assessment and concluded he was not fit to be interviewed. A doctor agreed. A Dr O'Donnell recommended a mental health assessment. A mental health team were called and they assessed him as not mentally ill. A solicitor, however, formed the view that he needed an appropriate adult.
4. At the time of sentence the judge had before him a report from another doctor who had done his best to assess the appellant, Dr Bello. He concluded that the appellant was not suffering from any mental illness, although the appellant had caused grave concerns to medical practitioners in the past. Dr Bello opined that the appellant did not require inpatient treatment or medication, but he did need to be monitored closely to manage the risk that he posed to members of the public. Despite the fact that by this time it was known the appellant had suffered three episodes of disorder, the doctor suggested the most likely diagnosis was one of Acute Transient Psychotic Disorder.
5. Conscious of the appellant's history of bizarre behaviour and numerous previous convictions for aggressive and violent behaviour, the judge passed the only sentence available to him which would provide sufficient protection for the public. No complaint is made about his decision in the light of the material then available.
6. However, this court now has available to it fresh evidence from Dr James Reed and Dr Jeremy Kenny-Herbert. They have been responsible for treating and caring for the appellant during his detention. In their considered opinion the appellant was misdiagnosed in 2005.
7. In summary, they informed us in writing and orally that in 2008 the appellant was diagnosed as suffering from paranoid schizophrenia, characterised by complex persecutory delusions, grossly disordered thinking and extremely bizarre, inappropriate and hostile behaviour. When in an acute phase, he poses an immediate risk of harm to

others, both through direct aggression and as a consequence of his disturbed behaviour. His illness has had a direct causative effect upon his offending. Because of his illness he cannot cope with the prison system, and that is why he has been transferred to the Reaside Clinic and the care of Dr Reed and his colleagues.

8. The reason why his illness may not have been diagnosed back in 2005 is that his illness has developed in an atypical manner. It has been very unstable and subject to rapid relapses and recoveries, which is not common. It was only following his severe deterioration in custody that the true nature of his illness became apparent, and the doctors then realised that he must have been suffering from schizophrenia for many years, albeit with an unusual presentation.
9. The doctors are firmly of the view that his illness is of a nature and degree that requires hospital treatment and that the most appropriate disposal now is that he be sentenced to a Hospital Order under section 37 of the Mental Health Act 1983. To varying degrees they suggest that a restriction order under section 41 without limit of time should be made. Dr Reed has no doubt that that is necessary properly to protect the public. A bed is available at the Reaside Clinic.
10. Thus Mr Rowlands, on behalf of the appellant, invited us to follow the course proposed by the doctors. He submitted it is now in the interests of justice for the court to intervene and substitute a hospital order with the restrictions to which we have referred. He relied on the decision in R v Roden [2006] EWCA Crim 1121, where a similar course was followed.
11. We are satisfied on the evidence before us and in the light of the submissions made by Mr Rowlands that it is proper for the court to receive the fresh psychiatric evidence under section 23(2) of the Criminal Appeal Act 1968.
12. However, we still wished satisfy ourselves that if we followed the course proposed the public would be properly protected. We asked Dr Reed about the appellant's dangerousness. His replies indicate that he is obviously as concerned as we are to ensure that the appellant is not released unless and until he is no longer a danger and will not be a danger away from the structured and supportive environment of the Raeside Clinic.
13. We are satisfied, therefore, having heard from Dr Reed and having read the reports, that it is appropriate in this case to take an exceptional course. We shall follow the unanimous recommendations of the experts. We shall quash the original sentence and replace it with a Hospital Order under section 37. It will be accompanied by a section 41 restriction without limit of time, which we have absolutely no doubt is required to protect the public. The appellant is undoubtedly ill and undoubtedly dangerous. The order and restriction will benefit him and the community. The appeal will be allowed to that extent.