

## **Regina v Haruna Al-Rasheed Sani Daura**

No: 200900501/A3

Court of Appeal Criminal Division

3 June 2009

**[2009] EWCA Crim 1328**

**2009 WL 1894633**

Before: Lord Justice Rix Mr Justice Griffith Williams The Recorder of Cardiff (Sitting as a Judge of the CACD)

Wednesday, 3rd June 2009

### **Representation**

- Mr W Mousley appeared on behalf of the Applicant.

### **Judgment**

The Recorder of Cardiff:

1 We are grateful for the succinct and effective way in which Mr Mousley has advanced this relatively unusual application.

2 On 7th July 2008 at Sheffield Crown Court this applicant, having pleaded guilty to assault occasioning actual bodily harm, was sentenced to 15 months' detention in a young offender institution. Three others involved in the same offending were similarly sentenced to 15 month periods of imprisonment or detention. In relation to this applicant 144 days served on remand were ordered to count off his sentence, pursuant to section 240 of the Criminal Justice Act 2003 .

3 The facts of this offence were relatively serious, in so far as this was violence by a group who had travelled a significant distance for the purpose of attacking the lone victim who had been lured to his fate. Obviously, if the other counts of kidnapping, robbery and false imprisonment had been brought home against this applicant and his co-defendants lengthy sentences would have followed but they were not.

4 The applicant was born on 14th March 1988 and was therefore aged 20 at the time of sentence. He was of previous good character. The applicant is a Nigerian national.

5 The applicant seeks a substantial (5 months and 14 days) extension to the period for commencing this appeal. The reasons given for the need for that are not particularly convincing and involve criticisms of solicitors and counsel originally instructed which are disputed. There is a clear possibility that the real reason for an appeal against sentence being commenced late is connected with the applicant's immigration status. The applicant has now been released from custody. Nonetheless we have considered the merits of this application.

6 The applicant pleaded guilty at trial but in particular circumstances, namely when the complainant could not be traced and the prosecution were accordingly placed in some difficulty. It also needs to be recognised that the applicant's plea related only to what happened in Sheffield and during the car journey. The more serious events that took place later were not brought home against him.

7 No pre-sentence report was requested or obtained although the defendant was relatively young and of previous good character.

8 In his sentencing remarks the judge did not identify what starting point he took, made no reference to the Sentencing Guideline Council guidelines and did not indicate what discount for plea he gave. The Sentencing Guidelines Council sentencing guidelines indicated that the appropriate starting point in a case of this type, "premeditated assault, minor non-permanent injury" is 36 weeks custody. That, of course, is at the end of a trial but here there was significantly

aggravated violence, planned group violence for a defined motive. The aggravation was such as to take the sentence up from the starting point to, in our view, a sentence of 16 months in a young offender institute at the end of a contested hearing. That is in relation to the Sheffield and car matters alone. There is also the question of discount for plea. As to that, the relevant guidelines do not really cater for a situation such as that which arose here. This was no plea borne of remorse with its promise of better prospects of rehabilitation. Nor was there any advantage to the court in terms of getting trials on quicker and dealing with other work. This was a late plea. Nonetheless some real credit was due for the plea and we consider 25 per cent would have been appropriate. That reduces the sentence here from 16 months at the end of the trial to 12 months on the plea.

9 We grant the application for an extension of time to appeal since to refuse it would prevent us from correcting a recognisably excessive sentence and for that reason alone. The extent to which the appeal is allowed is that the sentence is reduced from one of 15 months to one of 12 months. The sentence in any event has been served. The direction in relation to section 240 of the Criminal Justice Act 2003 is unaffected.

10 LORD JUSTICE RIX: The extension of time is granted. Permission to appeal is allowed. The sentence is reduced to one of 12 months.

11 MR MOUSLEY: Thank you my Lord.

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