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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 26th November 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MRS JUSTICE LAMBERT DBE

and

HER HONOUR JUDGE MUNRO QC

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

DANIEL QUINN

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Mr R Menon QC appeared on behalf of the Applicant

JUDGMENT
(Approved)

Tuesday 26th November 2019

LORD JUSTICE HOLROYDE:

1. On 19th February 2019, following a trial in the Crown Court at Northampton, the applicant was convicted of murder. On 21st February 2019, he was sentenced to life imprisonment with a minimum term of 27 years (less the 245 days during which he had been remanded in custody prior to trial).
2. His application for leave to appeal against sentence was refused by the single judge. It is now renewed to the full court.
3. For present purposes, the facts may be summarised briefly. The applicant was a drug dealer engaged in the trade of supplying crack cocaine. He was in dispute with one of his customers, a drug user called Cowdell. They would threaten each other when they met.
4. On 14th June 2018, Daniel Fitzjohn, then aged 34, chanced to meet Cowdell through mutual friends with whom he was drinking. Mr Fitzjohn was persuaded, against his initial wishes, to join the others in going to Cowdell's house. On the way there, Cowdell went into a shop to buy alcohol and encountered the applicant. Those two men argued. They either left, or were persuaded to leave, the shop. Outside, the applicant walked away, but only as far as the grounds of a nearby house where he armed himself with a piece of wood, returned to the area outside the shop and tried to hit Cowdell. Mr Fitzjohn put an end to that attack by intervening and punching the applicant, knocking him down. The applicant got into his car and drove it onto the pavement towards Cowdell, although he did not hit him. The applicant then drove away. The group, which included Mr Fitzjohn, continued towards Cowdell's house.
5. Before they reached the house, the applicant reappeared in his car. He was now accompanied by Parminder Sanghera. The applicant and Sanghera spotted the group and left the car. The applicant was armed with a knife, Sanghera with a machete. The group ran away. Most were able to make their way to Cowdell's house and safety. The unfortunate Mr Fitzjohn did not know where Cowdell's house was, and he became separated from the others. The applicant chased him down. He stabbed Mr Fitzjohn in the abdomen. Mr Fitzjohn was, in fact, fatally wounded by that stab, but he managed to run off. The applicant pursued him, caught up with him and stabbed him a second time to the abdomen. This second wound punctured the aorta, resulting in catastrophic blood loss. Mr Fitzjohn, sadly, died soon afterwards.
6. The applicant and Sanghera left the scene. They changed to a different car; they disposed of their weapons; and they left the area. Both subsequently handed themselves in to the police a few days later.
7. At the conclusion of his trial, the applicant was convicted of murder. Sanghera was convicted of manslaughter.
8. The applicant was 27 years old at the time of the murder. He had a previous conviction four years earlier for possessing a knife, for which a magistrates' court had imposed a short suspended sentence.
9. Victim Personal Statements were before the court from members of Mr Fitzjohn's family. They made clear the impact of the applicant's crime. Mr Fitzjohn left a 4 year old son.
10. The judge, His Honour Judge Mayo, was required by section 269 of the Criminal Justice Act 2003 to have regard, when setting the minimum term, to the general principles set out in Schedule

21 to that Act. It was accepted by the applicant that paragraph 5A of that Schedule applies to this case and that the starting point for the length of the minimum term was, accordingly, 25 years.

11. The judge found that the offence did not involve a significant degree of planning and premeditation and that, accordingly, the aggravating factor mentioned in paragraph 10(a) did not apply. The offence was, however, aggravated by the fact that the killing was in the context of the applicant's established drug supply operation, and by the relative sophistication of the steps which had been taken after the killing. The judge rejected a submission by Mr Menon QC, then as now appearing for the applicant, that the mitigating factors listed in paragraph 11(a) and (b) applied. As to the first, the judge was sure that the applicant had intended to kill. As to the second, there was some premeditation. The judge accepted that the applicant now has some insight into the impact of what he had done, and he acknowledged that the applicant had worked lawfully in the past. He did not, however, accept that the applicant was genuinely remorseful. In those circumstances, the judge imposed the minimum term of 27 years.

12. Mr Menon submits that that minimum term was manifestly excessive in length. He advances five points in support of that principal submission:

(1) The judge failed to give sufficient weight to the fact that none of the aggravating factors listed in paragraph 10 of Schedule 21 applied to this case.

(2) The judge was wrong on the evidence to find that the applicant intended to kill but, in any event, that could not be an aggravating factor justifying an increase in the minimum term.

(3) Although it is accepted that the wider context of this offence was one of drug dealing, this could not properly be regarded as a drugs-related killing.

(4) The judge gave insufficient weight to the fact that Sanghera was acquitted of murder. That acquittal, submits Mr Menon, must mean that the jury were not sure of any joint plan to kill or to cause grievous bodily harm. Mr Menon relies on that as supporting his proposition that any intention on the part of the applicant may have been formed only very shortly before the fatal stab wounds were inflicted.

(5) Finally, Mr Menon points to the fact that the applicant (now aged 28) had no previous convictions for violence, and submits that the conviction for possession of a knife in 2015 was a comparatively minor matter which could not justify any significant increase in the minimum term.

13. We are grateful to Mr Menon for the clarity of his well-focused submissions. We are particularly grateful because he has been good enough to appear *pro bono*. We are, however, unable to accept that the minimum term imposed by the judge was, even arguably, manifestly excessive in length. As the judge rightly pointed out, this murder had its origins in the dispute between the applicant and Cowdell, and that dispute related to the applicant's trade in supplying a Class A drug. The applicant was acting in furtherance of his drug-dealing activity when he picked a fight with Cowdell. When Mr Fitzjohn intervened in that fight, his knocking down of the applicant must have been, as the judge rightly observed, a considerable humiliation to the applicant. We have listened carefully to Mr Menon's submission that the drugs context forms no more than a part of the background. However, it seems to us that, when one stands back and asks the question: "Why did Mr Fitzjohn- who was aptly described by the judge as being in the wrong place at the wrong time - lose his life?" The answer is: "Because he humiliated the applicant by intervening when the applicant was seeking to further his drugs trade by attacking a drug user with

whom he was in conflict".

14. The circumstances of the offence show that the applicant acted out of a desire for revenge, having been humiliated in that way. He drove his car towards Cowdell, before leaving the scene of the shop. He went to collect weapons and assistance. He then set about, together with Sanghera, finding the target or targets for his vengeance. The CCTV footage, which was played at trial and which has been made available to this court, shows the speed with which the applicant was driving to and from the scene. Having identified Mr Fitzjohn, the applicant chased him and stabbed him. He then remorselessly pursued him and stabbed him again. Given that he was already wounded, and by that wound slowed in his attempt to escape, Mr Fitzjohn's last moments of life must have been lonely and frightening. The judge was entitled, and in our view correct, to find that the applicant intended to kill. With respect to Mr Menon's submission, we do not see that the jury's verdict in relation to Sanghera has any logical impact on that finding by the judge. Thus, a statutory mitigating factor on which the applicant sought to rely was not made out.

16. The judge rightly did not find a statutory aggravating factor of significant premeditation. He did, however, find, and in our view was entitled to find, that the offence was significantly aggravated by the link to drug-dealing activity.

17. The judge was also entitled to reject the suggested mitigating factor of a lack of premeditation. The applicant's actions plainly point to a determined attempt to find and attack the object of his vengeance. Although there was not significant planning, the judge was plainly entitled to find that there was some planning.

18. In all the circumstances, and for reasons which are essentially the same as those given more succinctly by the single judge when refusing leave, we are satisfied that there is no arguable ground on which the minimum term could be said to have been manifestly excessive in length. The circumstances justified an increase of two years above the statutory starting point.

19. Grateful though we are to Mr Menon, this renewed application accordingly fails and is refused.

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