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IN THE COURT OF APPEAL  
CRIMINAL DIVISION

Case No: 2020/02102/B4 & 2020/02100/  
[2021] EWCA Crim 835



Royal Courts of Justice  
The Strand  
London  
WC2A 2LL

Friday 21<sup>st</sup> May 2021

LADY JUSTICE NICOLA DAVIES DBE

MR JUSTICE SPENCER

THE RECORDER OF SHEFFIELD

(His Honour Judge Richardson QC)

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

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**REGINA**

- v -

LEE JACK PRICE

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Non-Counsel Application

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JUDGMENT

**MR JUSTICE SPENCER:**

1. This is a renewed application for a lengthy extension of time in which to apply for leave to appeal against conviction and sentence, following refusal by the single judge.
2. For the conviction application the extension required is 391 days; for the sentence application, 265 days. We accept that a substantial part of the delay arose because documents posted by counsel to the Criminal Appeal Office appear not to have been received, although we note that both applications were, in any event, already considerably out of time. We have, nevertheless, considered the merits of the proposed appeals without regard to the question of extensions of time.
3. The applicant is now 39 years of age. On 20<sup>th</sup> June 2019, in the Crown Court at Liverpool, he was convicted by the jury of three counts of conspiracy to possess firearms and ammunition. Count 1 alleged a conspiracy to possess firearms for sale or transfer; count 2 alleged a conspiracy to possess section 1 firearms; count 3 alleged a conspiracy to possess ammunition without a firearms certificate. Some months earlier, at the PTPH, the applicant had pleaded guilty to conspiracy to supply Class A and Class B drugs (counts 5 and 6).
4. In a separate trial, on 25<sup>th</sup> July 2019, in the Crown Court at Swansea, the applicant was convicted by the jury of two counts of conspiracy to supply Class A drugs, heroin and crack cocaine.
5. On 24<sup>th</sup> October 2019, he was sentenced for all the offences by the judge who had presided over the Liverpool trial, His Honour Judge Watson QC. For the firearms conspiracies on the Liverpool indictment the applicant was sentenced to a total of 15 years' imprisonment. For the drugs conspiracies on the Liverpool indictment, to which he had pleaded guilty, he was sentenced to concurrent terms totalling six years' imprisonment. For the drugs conspiracies on the Swansea indictment, he was sentenced to a total of seven and a half years' imprisonment, which was ordered to be served consecutively to the 15 years on the Liverpool indictment. His total sentence was, therefore, 22½ years' imprisonment.
6. The application for leave to appeal against conviction relates solely to the firearms conspiracies on the Liverpool indictment. There is no appeal against conviction in respect of the Swansea indictment. The application for leave to appeal against sentence necessarily relates to both the Liverpool and the Swansea indictments.  
The conviction appeal
7. We turn first to the proposed appeal against conviction. The facts are summarised in the Criminal Appeal Office Summary in considerable detail and are well known to the applicant. They are not repeated here in more than the barest outline.
8. In short, the Liverpool indictment concerned the activities of two organised crime groups based in Liverpool. One of them was headed by the two co-accused Jake Burrows and Callum Burrows, who are brothers. Their involvement in supplying Class A and Class B drugs led them to deal with another organised crime group, which was under the control of the co-accused Christopher Wallace. The offending was uncovered as part of a police investigation named "Operation Bombay".
9. The applicant was a very close associate of the Burrows brothers. The organised crime group headed by Wallace had customers in and around North Wales, as well as on the south coast of England. Wallace was one of the sources of the Class A drugs that the Burrows brothers were supplying. Over the course of nine months, from August 2017 to May 2018, there were 75 known drug runs from Merseyside to Wales or to Plymouth. During the course of Operation Bombay, the police made a number of seizures of drugs and cash.
10. On 15<sup>th</sup> December 2017, the police raided the applicant's home address at 128 Eastern

Avenue, Speke, and found that it was being used as a mixing factory for the supply of Class A drugs. The police recovered packages containing cocaine valued at around £9,300.

11. Linked to the drugs business, there were outbreaks of violence in Speke in 2017 in which firearms were discharged. The first incident was in March 2017, when a Tikka rifle was fired into a house in Ramsbrook Close, causing gunshot wounds to three men inside, one of whom required major surgery.
12. Three months later, on 3<sup>rd</sup> July 2017, there was a retaliatory attack at the home address of the applicant and his family, during which a shotgun was fired four times into the house. Fortunately, no one was injured on that occasion. That firearm was never recovered.
13. The Burrows' organised crime group used a particular method of concealing firearms by burying them in readily accessible locations so that they could be used if and when the need arose. In total, between June 2017 and March 2018 ten viable firearms and a large quantity of ammunition were recovered by the police. One of the firearms recovered was the Tikka rifle used in the Ramsbrook Close shooting. Police seizures of the weapons from time to time meant that the organised crime group had to source fresh guns in order to re-stock.
14. The prosecution case was that the applicant's home address at 128 Eastern Avenue was used as a hub for the various operations of the Burrows brothers' organised crime group. It was evidently recognised as such by the rival organised crime group, hence the retaliatory firearms attack on the house on 3<sup>rd</sup> July.
15. Prior to that, there had already been suspicious activity at 128 Eastern Avenue. On 16<sup>th</sup> June 2017, the applicant had been cycling on Eastern Avenue when he saw police officers. He ran to his house and handed a white item the size of a fist to Jake Burrows, who then made off from the rear of the property. The prosecution case was that 128 Eastern Avenue, and the applicant himself, were important cogs in the drugs business and accordingly also in the associated firearms conspiracies.
16. Although the applicant's case was that his involvement in the Class A drugs conspiracy was confined to 15<sup>th</sup> December 2017, which was the basis of his guilty plea, the evidence at trial proved the contrary. For example, on 19<sup>th</sup> October 2017, there were telephone calls between the applicant and various co-accused including Paul O'Neill, who was heavily involved in mixing drugs and producing crack cocaine. Shortly after those phone calls, O'Neill arrived at the applicant's house, where a bag was delivered to Callum Burrows, who had just arrived.
17. There were other similar observations of activity by the Burrows brothers at the applicant's home address. The prosecution case was that the applicant's deep involvement within the drugs conspiracy demonstrated how trusted he was by the Burrows brothers and that this trust and involvement extended also to the firearms conspiracy.
18. On 15<sup>th</sup> October 2017, the co-accused Wallace arranged to acquire a number of handguns and ammunition from criminals in Nottingham. Later that day, the Burrows brothers met with Wallace at Jaxon Motors in Birkenhead to examine the firearms. There were three guns. One of them, a Smith and Wesson pistol, was later found buried in the garden of 132 Eastern Avenue, close to and easily accessible from the applicant's house at number 128.
19. Following the meeting at Jaxon Motors, the Burrows brothers drove to Speke, with Wallace in convoy behind. During the journey, Callum Burrows made a phone call to the applicant, which lasted for 17 seconds. One minute later, the applicant, using a different number, returned the call. The prosecution case was that the destination of the convoy was the applicant's home at 128 Eastern Avenue, and that it was no coincidence that the Smith and Wesson revolver, with 39 rounds of ammunition, was recovered from the rear garden at 132 Eastern Avenue the day after the applicant's

- arrest, packaged, as other firearms had been, in a zip-lock bag and bearing the DNA of the co-accused Paul Gregory from Nottingham.
20. The hiding of firearms close to but away from his house was entirely consistent with the way the Burrows brothers operated. A French St Etienne revolver was recovered from Alder Woods. Two sawn-off shotguns were recovered from Millwood Woods. The firearms were used to enforce debts and to protect their territory in a drugs turf war.
  21. The prosecution case was that the applicant, as a long-term associate of the Burrows brothers, was deeply and closely linked to them. The applicant was also linked to the co-accused Ross, who was involved with the firearm discharged in Ramsbrook Close in March 2017. The prosecution case was that the applicant played a vital role in the firearms conspiracy, in particular concerning the Smith and Wesson and the ammunition found with it.
  22. The applicant's case was that he had admitted the full extent of his role in the conspiracy to supply Class A drugs. All the evidence of his involvement could be explained by his admission to participation in that agreement. It was more consistent with a drugs conspiracy than with involvement with firearms and ammunition. His case was that the prosecution had overstated his role within the Class A drugs conspiracy. In a number of searches of his property the police had never found Class A drugs until 15<sup>th</sup> December. He was not in contact with anyone who played a part in the organisation or delivery of the firearms on 15<sup>th</sup> October. There was no DNA or fingerprint evidence linking the applicant to any firearm or ammunition. The gun was not found in his own garden, or even immediately next door. The suggestion that he personally was the target of the firearms attack on his house on 3<sup>rd</sup> July was undermined by the fact that the police never gave him an *Osman* warning that they believed his life to be in danger.
  23. In his police interview, the applicant said that he allowed his house to be used for the purpose of Class A drugs only on 15<sup>th</sup> December because he had been threatened and he owed drugs people £500. He had no knowledge of the Smith and Wesson revolver found buried in the garden at 132 Eastern Avenue.
  24. The judge rejected a half-time submission on behalf of the applicant that there was no case to answer. The applicant did not give evidence.
  25. The sole ground of appeal is that the applicant's convictions on counts 1, 2 and 3 are unsafe because they are inconsistent with the evidence in the case when it is considered in its entirety. The grounds assert various features of the evidence which, it is said, undermine the safety of the convictions. We do not propose to recite those points in any detail. It is submitted, in particular, for example, that the applicant was not linked by any forensic or observation evidence to any of the firearms or ammunition recovered. There was an absence of contact between the co-accused and the applicant on the days when firearms and/or ammunition were recovered, despite his allegedly being the Burrows brothers' right-hand man. Whilst there was said to be a targeted firearms attack on the applicant's home, the police never gave him an *Osman* warning, which would have been required if the police had thought it was a targeted attack against him personally.
  26. It is of crucial importance to note that there is no complaint in the grounds of appeal that the judge was wrong to reject the submission of no case to answer. Nor is there any complaint about the summing-up, either as to the directions of law or as to the fairness or accuracy of the judge's summary of the evidence.
  27. The prosecution case against the applicant on the firearms conspiracy was based on a mass of circumstantial evidence. We have not been provided with a transcript of the judge's ruling on the half-time submission of no case to answer, because there is no criticism of that ruling in the grounds of appeal. The basis of that submission must, however, have been that the circumstantial evidence did not establish a case to answer.

It follows from his rejection of that submission, that the judge was satisfied that a reasonable jury, properly directed, could properly convict the applicant on each of the three firearms counts. The absence of any challenge to that ruling means that we must – and do – proceed on the basis that the judge's ruling was correct. The applicant did not give evidence. The jury, therefore, had no evidence from the applicant to contradict or undermine the prosecution's circumstantial case, or to explain away the incriminating stands of circumstantial evidence from which, taken together, his guilt could properly be inferred.

28. We have examined with care the individual points made in the grounds of appeal, but essentially they are no more than jury points, however eloquently expressed. No doubt they were made forcefully by counsel in his closing speech. In effect, this court is being invited to conclude, on a paper exercise, that there is a lurking doubt about the safety of verdicts of guilty returned by a properly directed jury at the conclusion of a trial which lasted several weeks. We are quite unable to accept such an invitation. Nor are we able to accept that the convictions are, even arguably, unsafe.
29. As the single judge pointed out in his reasons for refusing leave, it is conceded in paragraph 14 of counsel's advice and grounds that there was evidence from which the jury could infer that the applicant had joined the conspiracies charged in counts 1 to 3 of the indictment. The applicant had the opportunity to give evidence in his own defence and to deal with the evidence against him. He declined to do so and to face cross-examination. The jury considered all the points raised on the applicant's behalf, but they were sure of the applicant's guilt. It is not arguable that the convictions are unsafe or that the trial was in any way unfair.
30. We refuse the renewed application for leave to appeal against conviction, and consequently we also refuse the extension of time.  
The sentence appeal
31. We turn to the application for leave to appeal against sentence. It is necessary, first, to outline briefly the facts of the Swansea offences of conspiracy to supply Class A drugs.
32. The conspiracy involved the supply of heroin and crack cocaine from Liverpool into mid-Wales in a "county lines" operation. The police investigation named "Operation Regent" ran from August 2016 to the end of August 2018, broadly overlapping with Operation Bombay in Liverpool. The organised crime group in Liverpool with which the applicant was associated established two hubs in mid-Wales, in Llandrindod Wells and Newtown. Heroin and crack cocaine were delivered from Merseyside to mid-Wales using a number of couriers who, in turn, would take the profits back to Merseyside. There were in total 130 trips identified by surveillance. The organised crime group sent "bulk" text messages to alert known Class A drug users in the Powys area that drugs would be available for purchase.
33. The prosecution case once again was that the applicant's home address at 128 Eastern Avenue, Speke, was the hub for the Liverpool organised crime group involved in the conspiracy. The applicant was in regular contact with several of his co-accused who were the couriers. He was in communication prior to, during and following travel to and from Liverpool on drug runs. During the conspiracy the applicant used three different mobile phone numbers. He was also in contact with the couriers based in mid-Wales on dates when they travelled up to Liverpool. The applicant travelled himself to Llandrindod Wells from Liverpool on 3<sup>rd</sup> /4<sup>th</sup> October 2016 with one of the co-accused, Jack Ross.
34. It was a feature of the conspiracy that the couriers would carry the drugs "internally" in the hope of avoiding detection if stopped by the police. Two co-accused who were stopped and arrested in Llandrindod Wells were found to have secreted significant quantities of heroin and crack cocaine. Michael Williams was stopped on 21<sup>st</sup> December 2016 in possession of two phones and £2,360 in cash. Secreted within his

body crack cocaine and heroin were found, with a street value of £2,600. Following his arrest, the organised crime group moved him from Llandrindod Wells to Newtown. Another co-accused, Ryan Langshaw, replaced him in Llandrindod Wells. Langshaw was at the applicant's home in Speke on 15<sup>th</sup> December 2017, when the applicant was arrested.

35. There was evidence that when couriers were stopped by the police they would make a phone call to the applicant, no doubt on his instruction. All this pointed to the applicant playing a leading role in the conspiracy.
36. As to the scale of the mid-Wales "county lines" operation, during one of the drug runs in May 2018 packages of heroin and cocaine were seized from the co-accused O'Hara, with an estimated street value of some £8,000. On the assumption that each drug run involved similar quantities of heroin and crack cocaine, it was estimated that the conspiracy may have involved as much as 10.7 kilos of Class A drugs, with a street value of around £1.17 million. That is twice the indicative amount for category 1 under the guideline, for which the starting point for "leading role" is 14 years' custody.
37. In October 2019, Judge Watson had to sentence a total of 22 defendants. A week was set aside for the sentencing hearing. Those who had not pleaded guilty had been convicted in various trials. The judge had presided himself over several of the trials, as well as the applicant's trial.
38. The judge first indicated his general findings before turning to the individual defendants. In relation to the firearms offences, he noted that they were all working weapons, some in very good condition. The judge was satisfied that Wallace was at the top of his organised crime group and that the Burrows brothers were at the top of theirs. The Burrows brothers already had access to their own firearms before Wallace supplied them with drugs and firearms. The Burrows brothers relied on the applicant to help with both firearms and drugs.
39. There was evidence from a senior police officer of the impact of the offending on the local community in Speke. There had been a dramatic reduction in crime as a result of Operation Bombay.
40. The judge considered the relevant authorities on sentencing for firearms, including *R v Stephenson* [2016] 2 Cr App R(S) 12. At that time there was no Sentencing Council guideline for firearms offences. The judge posed and answered the required questions in *R v Avis* [1988] 2 Cr App R(S) 178. He noted that there were ten weapons, three of which were loaded when found; another three had ammunition available. All the long weapons had been sawn-off and shortened, even the final Smith and Wesson. The Tikka rifle had been fired in Ramsbrook Close in a targeted attack. There was no evidence that any of the other weapons had been used. However, the weapons were available to the conspirators for use by others outside their own organised crime groups. The availability of ammunition for each weapon led the judge to conclude that once transferred or sold to others, the weapons would be used to endanger life.
41. The judge said that for those defendants involved in the firearms conspiracy there had to be an element of deterrent sentencing. The offences particularly in count 1, conspiracy to possess firearms for sale or transfer to another, were at the upper level of gun crime. Those involved must have known that the guns were available to people who would intend to endanger life.
42. In relation to the Liverpool drugs conspiracies, there were at least 75 known trips. Not all would have involved two kilos of drugs and some may have been to collect money. However, in total there must have been well over 35 kilos of heroin supplied – seven times more than the indicative weight in the guideline for category 1. The guideline indicated that where the operation was on the most serious and commercial scale involving a quantity of drugs significantly higher than category 1, sentences of 20 years and above might be appropriate, depending on the role of the offender.
43. The judge observed that any submission by an individual defendant that he had only

- been involved on a few days, or in relation to a single count, were misplaced. Such submissions ignored the important fact that, whatever the acts of an individual, it was the joining of the wider conspiracy and the intention to assist in the wide range of the conspiracy that elevated the culpability of an individual and the gravity of the offence.
44. Turning to the position of the applicant, the judge rejected the applicant's assertion, through his counsel, that he had been involved with Class A drugs only on 15<sup>th</sup> December 2017 when his house was raided. The applicant did not give evidence at trial. He had also declined the opportunity to give evidence at the sentencing hearing in support of his basis of plea. The applicant, therefore, fell to be sentenced on the wider basis advanced by the Crown, namely that the applicant's house, 128 Eastern Avenue, was the centre of the drugs activity for a period of months. The fact that the applicant's house was targeted for a drive-by shooting was an indication of the drugs activity that lay behind the door.
  45. The judge found that on 16<sup>th</sup> October 2017 the Smith and Wesson pistol arrived and was stored next door but one to the applicant's house. It was a weapon more associated with Class A drugs. The co-accused O'Neill arrived at the applicant's house on 19<sup>th</sup> October 2017. He was a mixer of Class A drugs. The applicant also associated with the money man, the co-accused Marlow. The judge was in no doubt that the two kilos of heroin which the co-accused Richie had with her on 15<sup>th</sup> November 2017 were for the Burrows brothers, and that the applicant would have been involved in its distribution. The applicant was a very close associate of the Burrows brothers. He was well aware of and participated in the conspiracy to possess prohibited firearms for sale or transfer, especially given the events on 3<sup>rd</sup> July. He used others to distance himself from drugs and guns. The revolver was kept two doors away.
  46. In relation to Operation Regent, the applicant had been convicted in Swansea after a trial. He was part of a "county lines" team, working in mid-Wales, supplied from Liverpool. There were some 130 trips. The applicant was linked to around 80 of the trips. Whilst the quantity of drugs was smaller than in the Liverpool conspiracy, it was still a category 1 case. The two police operations were contemporaneous.
  47. It was conceded on behalf of the applicant that the court should aggregate the sentences for the drugs conspiracies on the two indictments, subject to applying a discount for the guilty plea to the Liverpool conspiracy, and subject to totality. The applicant's criminal record was an aggravating feature. He had a conviction for robbery in 2015, committed with his co-accused in the present conspiracies, Jake Burrows and Shaun Connolly. The judge accepted that there was no evidence of high living by the applicant. It was said that he was not a sophisticated individual. Nevertheless, he was very persistent and prolific.
  48. There was no pre-sentence report. None was necessary. Nor is one necessary now. A very lengthy custodial sentence was inevitable.
  49. The judge was satisfied that the starting point for the most serious offence in the firearms conspiracy (count 1) was 14½ years' imprisonment. A modest increase to 15 years was appropriate, balancing the aggravating and mitigating factors. The sentences on counts 2 and 3 would run concurrently. The judge accepted that the Liverpool Class A drugs conspiracy (count 5) had to be looked at alongside the Swansea Class A drugs conspiracy. The judge was satisfied that in both operations the applicant had played a "leading role" and that the appropriate sentence overall for the drugs conspiracies would be 15 years' imprisonment. There would be a discount of 25 per cent for the guilty plea to the Liverpool conspiracy. The judge was concerned that a consecutive sentence of 15 years' imprisonment for the drugs conspiracies would lead to a disproportionately high sentence of 30 years' imprisonment overall. Accordingly, an adjustment would be made. For the drugs conspiracies there would instead be concurrent sentences totalling seven and a half years' imprisonment, which would run consecutively to the 15 years for the firearms

conspiracy, making a total of 22½ years' imprisonment.

50. It is unnecessary to set out in detail the sentences on any of the co-accused. No complaint of disparity is made in the grounds of appeal. It should be noted, however, that Jake Burrows was sentenced to 19 years' imprisonment in respect of the firearms conspiracies, and to a consecutive sentence of six and a half years for the drugs conspiracies, making a total sentence of 25½ years' imprisonment. Callum Burrows was sentenced to 16½ years' imprisonment for the firearms conspiracies and three and a half years to be served consecutively for the drugs conspiracies, making a total of 20 years' imprisonment. Their applications for leave to appeal against sentence were refused by the single judge, and refused on renewal by the full court on 13<sup>th</sup> October 2020: see *R v Burrows, Burrows and Morgan* [2020] EWCA Crim 1464.
51. It is submitted in the grounds of appeal against sentence that the judge wrongly elevated the applicant's role in the Burrows' organised crime group to a level which was not supported by the evidence. In so doing, it is said that the sentences for the firearms conspiracy and the Liverpool Class A drugs conspiracy were too high. In particular, there was no forensic evidence linking the applicant to the firearms. The only two matters highlighted by the Crown in relation to firearms were the drive-by shooting at the applicant's address and the phone calls made between the applicant and Burrows. It is submitted that the judge paid insufficient regard to the principle of totality in passing a sentence of 22½ years' imprisonment. Both the drugs conspiracies ran for about the same time and were similar in nature.
52. We have considered the grounds of appeal and counsel's detailed written submissions in support. We are quite unable to accept that this sentence was, even arguably, manifestly excessive. As the single judge observed in his reasons for refusing leave, the sentencing judge was uniquely well placed to assess the level of involvement and participation of the various conspirators and to draw conclusions from the evidence he had heard. In relation to the Swansea trial, presided over by a different judge, there was no dispute about the applicant's role or about the level at which he operated. The applicant had made assertions about the limited role he had played in the Liverpool conspiracies, but he had never given evidence to substantiate those assertions either at the trial or at the sentencing hearing. The judge, therefore, had to draw conclusions from the evidence he had heard, and, in doing so, he acted only on conclusions of which he was sure.
53. We agree with the single judge that it is evident from the judge's necessarily lengthy and detailed sentencing remarks that he analysed the evidence very carefully. His conclusions about the applicant's role and his involvement are not susceptible to criticism. It was correct in principle to impose a consecutive sentence for the drugs conspiracies. The judge had totality well in mind and on that account reduced the sentences he would otherwise have imposed. We agree that the applicant's offending was at a very serious level. A very lengthy sentence was called for.
54. We also observe that the focus must be on the overall length of the sentence that the applicant received, rather than its component parts. The Class A drugs conspiracies merited a far longer sentence than seven and a half years' imprisonment, had those conspiracies stood alone. The conspiracies together involved quantities of Class A drugs many times the indicative quantity for category 1 under the guideline. The applicant played a leading role in both conspiracies. The starting point for each of the drugs conspiracies was, therefore, 14 years' imprisonment.
55. It follows that even if, which we do not accept, any criticism could properly be made of the sentence of 15 years' imprisonment for the firearms conspiracy, the same overall total sentence of 22½ years' imprisonment could equally have been arrived at quite properly by a commensurately higher consecutive sentence for the Class A drugs conspiracies.
56. As it is, we are quite satisfied that the individual sentences the judge passed were fully

justified. The way in which they were structured was impeccable. It is not arguable that any part of the sentence or its totality was manifestly excessive. The total sentence was, unarguably, just and proportionate.

57. Accordingly, we refuse the renewed application for leave to appeal against sentence. Consequently, we also refuse the extension of time.

Postscript

58. Before leaving the case, we wish to pay tribute to the evident care and thoroughness with which His Honour Judge Watson QC approached the difficult sentencing task he faced in this very serious and complex case, and to the clarity with which he explained his reasoning.

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