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IN THE COURT OF APPEAL
CRIMINAL DIVISION
CASE NO 202301386/A1-202301418/A1
NCN [2023] EWCA Crim_1271



Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 19 October 2023

Before:

LADY JUSTICE MACUR DBE

MR JUSTICE HOLGATE

MRS JUSTICE ELLENBOGEN DBE

REX

V

BOE BARTON
RICHARD SAMPSON

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MR N RHODES KC appeared on behalf of the Appellant Barton.
MR R THYNE KC appeared on behalf of the Applicant Sampson.

J U D G M E N T

1. MR JUSTICE HOLGATE: On 30 June 2022, in the Crown Court at Sheffield before HHJ Kelson KC, Boe Barton was convicted of murder. Both he and Richard Sampson were convicted of having an offensive weapon in a public place. The jury was unable to agree on whether Sampson was also guilty of murder. But at a retrial before the same judge, Sampson was found guilty of murder on 30 March 2023.
2. On 31 March, the judge sentenced Barton (who was then aged 17) to detention at His Majesty's Pleasure, with a minimum term of 18 years less time spent on remand, and to a concurrent sentence of 18 months' detention for the offensive weapon offence. He sentenced Sampson (who was then 50) to imprisonment for life, with a minimum term of 28 years less time spent on reman, and a concurrent sentence of 18 months' imprisonment for the offensive weapon offence.
3. Barton appeals against sentence with the leave of the single judge. Sampson renews his application for leave to appeal against sentence following refusal by the same single judge.
4. On 30 July 2021, Richard Sampson (then aged 49) and Boe Barton (then aged 15 years 5 months) murdered 42-year-old Anthony Sumner. There had been a pre-existing dispute between Sampson and Mr Sumner, which stemmed from the latter's belief that Sampson had reported him to security in Asda for shoplifting. Barton was the younger brother of Sampson's partner.
5. At 3.25 am on 29 July 2021, Sampson reported to police that the windows to his flat had been smashed. By mid-afternoon, Sampson had concluded that Mr Sumner was responsible and was looking for him. He went, with others, to the flat of Mr Wesley Bailey, a friend of Mr Sumner), at Queen Mary Court, Sheffield, where he had been staying. Mr Sumner was not there, and Sampson left.

6. At about 11.00 pm Mr Sumner and Mr Bailey were seen on CCTV walking along a road not far from the flat. About a minute later Sampson and Barton were seen jogging behind the other two men going in the same direction. They were tracking Mr Sumner. Shortly before midnight, Mr Sumner was walking along Queen Mary Road with Mr Bailey as they made their way back to the flat. Sampson and Barton were lying in wait nearby. They wore face masks, and they were armed. The pair chased Mr Sumner into the garden of a neighbouring property where they cornered him.
7. Sampson hit Mr Sumner nine times with a machete. He brought the weapon down onto the victim's head three times, driving it with great force into the skull. One blow removed a piece of bone. Barton stabbed Mr Sumner to the chest with a knife four times. Three of these wounds penetrated the chest cavity. One in particular proved to be fatal, by causing catastrophic loss of blood into the chest cavity. Both Sampson and Barton fled the scene and disposed of their weapons. Local residents went to Mr Sumner's aid. He was treated by police and paramedics but was pronounced dead at the scene shortly after midnight.
8. We have read the moving victim personal statements of Mr Sumner's mother, aunt and partner, and also of two residents who witnessed the attack. Two children lost their father.
9. Barton was aged 15 years and 5 months at the time of the murder, 16 when convicted and 17 years when sentenced. In September 2021 he received a 9-month referral order for breach of a conditional caution for possessing a bladed article in a public place in February that year. In November 2021 he received a conditional discharge for an assault by beating on 8 May 2021.
10. We have read the pre-sentence report on Barton and the addendum to that report. He was

said to have been unable to discuss the offence or to explain why that was so. A week before the offence, Sampson had started to pester him and put him under pressure to spend time with him, possibly seeking introductions to drug dealers. Barton was the youngest of eight siblings. The report described the poor and abusive family upbringing. Social care records referred to violence, drug and alcohol misuse, criminal behaviour and domestic abuse within the family. The authority had carried out multiple assessments between 2006 and 2021. Barton's father had often been in prison and had had little involvement in his upbringing. His mother had suffered poor health in recent years. Social Care had made plans to find appropriate adult supervision for Barton. Barton's education had been disrupted by exclusions and moves to other schools. A report from the safeguarding lead at a school for special needs described Barton as being emotionally much younger than his biological age, with similar needs to that of a young child. He struggles to regulate his emotions, which means that he can present as being both verbally and physically aggressive.

11. Dr Tom Matthews, a clinical psychologist, carried out a cognitive and adaptive behaviour functioning assessment on Barton in September 2022. He was assessed as falling within the learning disability range for cognitive ability and above that range, but moderately low, for adaptive behaviour. However, it appears to us that the author of this report was being asked to focus on identifying Barton's needs during the custodial sentence rather than relating his assessment to Barton's involvement in and responsibility for the murder.
12. No pre-sentence report was prepared for Sampson. We agree that no such report was necessary. Sampson's antecedents included some historic, relatively minor offences of no significance to his sentence in this case.
13. In his careful sentencing remarks, to which we pay tribute, the judge said that he was sure

that Sampson had taken the machete to the scene of the murder and so the starting point for the minimum term was 25 years. Likewise, Barton had taken the knife to the scene.

14. Applying paragraph 5A of schedule 21 to the Sentencing Act 2020, which had come into force two days before Barton's conviction, the starting point for the minimum term in relation to an offender aged 15 or 16 at the time of the offence was 17 years.
15. With regard to aggravating factors, the judge said that the offenders had followed the victim and ambushed him. There was a significant degree of planning or premeditation in relation to the violent attack, which had been two on one. The victim had been cornered and attacked savagely when unarmed and defenceless. The offence had taken place at night and in a public place. Both offenders wore masks and disposed of their weapons. Sampson had enlisted the help of a 15-year-old boy, who had no involvement in his grievance, and he had been the main aggressor in the attack.
16. With regard to mitigating factors, the judge accepted that the words spoken by Sampson just after the attack suggested that he had no intention to kill. But the judge said that the nature of the blows he had inflicted was also significant. He was satisfied that although Sampson had not intended to kill, he had intended to cause harm of the utmost gravity which fell just short of an intention to kill. He was relatively lightly convicted but the judge did not accept that there had been any meaningful provocation.
17. The judge was also satisfied that Barton had not intended to kill. But stabbing Mr Sumner repeatedly where he did, showed his determined intent to cause the victim really serious bodily harm. The judge also weighed the mitigating factors in his case, taking into account the pre-sentence report and the psychologist's report.
18. In the advice prepared by leading counsel for Sampson, it was submitted that the lack of intention to kill should have resulted in a substantial reduction in the minimum term.

The weight attached by the judge to the various aggravating factors suggested that he had increased the starting point of 25 years to well above 30 years before allowing for mitigating features. Thus, he said, the minimum term was manifestly excessive. We have also considered the letter from the applicant, dated 16 October 2023 and the Respondent's Notice.

Discussion

19. We agree with the single judge that the uplift in the minimum term from 25 to 28 years was not manifestly excessive. In R v Peters [2005] 2 Cr App R(S) 101, this Court said at [14] that the legislation provides that a lack of intention to kill *may* provide mitigation, “but not necessarily and not always”. Whether it does and, if so, the extent of any mitigation, is sensitive to the facts and circumstances of each individual case. At [16] the Court said that “... it cannot be assumed that the absence of an intention to kill necessarily provides any or very much mitigation.”
20. In this case, the judge found that Sampson's intention fell just short of an intention to kill. As the trial judge, he was in a good position to be able to draw that conclusion. In our judgment, the reasons he gave for doing so are compelling. Accordingly, any reduction for that factor had to be substantially outweighed by the aggravating features of this case and a significant uplift from the starting point was required. It is not arguable that the minimum term imposed on Sampson was manifestly excessive. Accordingly, the renewed application for leave to appeal against sentence is refused.
21. We are grateful to Mr Rhodes KC for his submissions on behalf of Barton today. In summary, he submits that the minimum term of 18 years' detention did not adequately reflect the mitigating factors applicable in Barton's case, namely:

- (1) There was no intention to kill.

- (2) The applicant's chronological age was towards the lower end of the range for 15 to 16 years old.
 - (3) The applicant's immaturity relative to his chronological age, his low level of cognitive functioning and poor decision making under the influence of much older Sampson, who instigated the offence, and had the leading role.
22. Mr Thyne KC, on behalf of the prosecution, accepted that the appellant's age was towards the lower end of the 15 to 16 year range referred to in para.5A of sched.21 and that there was evidence of immaturity and cognitive ability significantly below his chronological age. However, he submits that the judge had full regard to all matters of mitigation and had been well placed to assess the aggravating features of the offending and to strike the appropriate balance.
23. We say straightaway that no sentence that a court can pass can compensate for the terrible loss of life felt by the victim's family and friends.
24. In our judgment, the nature of the repeated blows to the chest inflicted by Barton mean that his intention fell not far short of an intention to kill. He was determined to inflict grave harm. This was not impulsive behaviour. The appellant took part in a planned attack, having tracked the victim and then lain in wait wearing a mask. Viewed in context, the absence of an intention to kill did not call for the substantial reduction for which Mr Rhodes contended. Quite properly, the judge's approach was influenced by the terrible brutality of this attack.
25. Nevertheless, a court must also give due weight to the circumstances of the particular young offender before it. We acknowledge that it was not an easy sentencing exercise for a court to take into account all the nuanced considerations applicable in this case and we accept that the judge did have regard to the relevant factors. We list those we consider to be of particular importance. The appellant had not long passed his 15th birthday when he committed the murder (see Attorney-General's Reference (SK) [2023] 1 Cr App R(S) 26

at [27]). More importantly, there was also his immaturity relative to chronological age, his upbringing as summarised in the pre-sentence report, his vulnerability to being swayed by other, particularly older, people and Sampson's leading role and influence on the appellant.

26. After anxious consideration, we conclude that the judge did not give sufficient weight to the overall effect of all these matters when taken together, so that the resultant minimum term he imposed was manifestly excessive. Taking all the relevant factors into account, we consider that the minimum term should be reduced from 18 to 16 years. To that extent only, the appeal of Barton is allowed. We should make clear that the revised minimum term is 16 years subject to the deduction of the time specified as having been spent on remand, which may be corrected administratively if necessary.

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