



Neutral Citation Number: [2023] EWCA Crim 1349

Case No: 202301305

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT SITTING AT MANCHESTER
Mrs Justice Yip
05C10085522

Date: 15 November 2023

Before :

Dame Victoria Sharp, President of the King’s Bench Division
Mrs Justice McGowan
and
Mr Justice Chamberlain

Between :

Thomas Cashman

Applicant

- and -

Rex

Respondent

John Cooper KC (instructed by) for the Applicant

Hearing date: 15 November 2023

Approved Judgment

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Dame Victoria Sharp, P:

This is a case in which a reporting restriction order was made by the court below under section 46 of the Youth Justice and Criminal Evidence Act 1999. The terms were read out in court. For the avoidance of doubt, at the outset of hearing of the present application, an order was made in identical terms for the purposes of the proceedings before this court. The reporting restriction order does not prevent the public reporting of this judgment.

1. On 30 March 2023, in the Crown Court sitting in Manchester, Thomas Cashman was convicted following a trial before Yip J and a jury of all five counts that he faced: first, the murder of Olivia Pratt-Korbel (count 1); secondly, the attempted murder of Joseph Nee (count 2); thirdly, the wounding of Cheryl Korbel with intent to cause grievous bodily harm (count 3); and finally, of two counts of possessing firearms with intent to endanger life (counts 4 and 5).
2. On 3 April 2023, he was sentenced as follows: to imprisonment for life on count 1 with a minimum term specified of 42 years, less 182 days spent on remand; to imprisonment for life on count 2, with a minimum term specified of 22 years; to 10 years imprisonment on count 3 and to 18 years' imprisonment on each of counts 4 and 5. All sentences were concurrent. The applicant's total sentence therefore, was imprisonment for life with a minimum term specified of 42 years, less 182 days spent on remand.
3. The applicant now renews his application for leave to appeal against sentence, following refusal by the single judge.
4. The circumstances in which these offences occurred are notorious. The serious injury by shooting of Cheryl Korbel and the fatal injury of her daughter, 9-year-old Olivia, by the same bullet that had already seriously injured her mother, occurred in the Korbels' home in Liverpool while the applicant was chasing and attempting to murder Joseph Nee.
5. The salient facts were summarised by the trial judge in her sentencing remarks in this way:

“All five offences arose out of the events of 22nd August 2022, when, armed with two guns, the defendant set out to kill Joseph Nee. He lay in wait before opening fire in a residential street. CCTV captured him standing over Mr Nee, shooting at close range. When the first gun malfunctioned, Mr Nee was able to scramble away. But the defendant had a second gun ready. He relentlessly pursued Mr Nee, causing him to seek refuge by barging into the home occupied by Olivia's family. Undeterred and wholly unconcerned for the safety of others, he continued to shoot at Joseph Nee, firing into that family home. Olivia, just nine years' old, heard the commotion from her bed. Unsurprisingly, she came downstairs to seek the comfort of her mother. Her last words were: “Mum, I'm scared”. In a terrible twist of fate she had stepped directly into the line of fire. As her mother battled to keep the front door closed, the defendant fired a shot that passed straight through the door, then through Cheryl Korbel's wrist and into Olivia's chest, killing her. The defendant then managed to get his hand inside the door and fired another shot inside the house. Fortunately, the door was closed on his hand and the bullet discharged into the door frame, avoiding the people inside”.

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6. As the judge observed, the killing of Olivia shocked not only the city of Liverpool but the nation.
7. Cheryl Korbel was a wholly innocent woman unconnected with Joseph Nee who had opened her door to see what was happening outside. Despite the terrible pain inflicted on her, she had fought to keep the trouble outside and had desperately tried to save Olivia. Emergency services arrived swiftly, but they were unable to save Olivia who died later that night in hospital. Ms Korbel was unable to be with her daughter when she died, because of the emergency treatment her own gunshot wounds required.
8. Mr Nee too suffered serious gunshot injuries. His shooting involved a significant degree of planning and premeditation on the part of the applicant, which went well beyond the premeditation that many, if not most murders involving the use of firearms involve.
9. The applicant had sourced not one, but two guns, presumably to allow for one misfiring; he knew what van Mr Nee was driving and, as the CCTV footage amply demonstrated, he had been looking out for Mr Nee earlier that day. The applicant spotted Mr Nee's van, he changed his clothes, concealed his face and headed to the van, but by then it had left. Later, however, the applicant spotted the van again. Realising Mr Nee was likely to remain where he was until the end of the televised football, he changed his clothes and lay in wait. Mr Nee left the house he had been in at about 10pm. He and a man he was with walked into the road where Olivia lived with her family. As they did so, the applicant ran up behind them and used a 9mm self-loading pistol revolver to fire three shots at Mr Nee, inflicting a gunshot wound to his stomach which he was lucky to survive. Mr Nee escaped and was picked up by associates and taken to hospital before the Police arrived.
10. The applicant was arrested on 4 September 2023. He denied any involvement in the offences, a position he maintained throughout his trial. The judge ordered the applicant to attend his sentencing hearing, but he refused to leave the cells.
11. The applicant is now 34. Prior to his convictions in this case, he was not of good character. He had 18 previous convictions including for theft, and kindred offences, and for possession of class B drugs. There was no history of violence, save for one minor offence of battery, but, as the judge observed when sentencing him, the applicant made it clear during the trial that he was a criminal who used threats and violence when it suited him.
12. In her sentencing remarks, the judge explained the approach she had adopted to the sentences for the individual offences, so that the applicant and others would know how she had arrived at the eventual sentence she imposed. She said, however, that the reality was the offending could not be compartmentalised and the minimum term to be served, of 42 years less time spent on remand, reflected the totality of his offending.
13. Starting with count 1, Schedule 21 of the Sentencing Act 2020 provides the statutory framework for sentencing for murder.
14. The starting point under Schedule 21, para. 2(2)(b)(a) for the murder of a child involving a substantial degree of planning or premeditation is a whole life order. The judge said this did not apply to this case, because the planning and premeditation was not directed at the child. Rather it was the applicant's settled intention to do all that he

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could to murder Mr Nee. That said, however, the seriousness of the murder, taken in combination with the other offences was particularly grave such as to require a lengthy minimum term. The starting point, in Schedule 21, para. 3(2)(b), for a murder involving the use of a firearm, was 30 years. Having used this as the starting point, the judge then had to and did consider the non-exhaustive list of aggravating features set out in Schedule 21, para. 9, together with any other relevant factors.

15. First, there had been a significant degree of planning or premeditation, albeit directed at Mr Nee and not Olivia. Secondly, though the judge did not necessarily accept the concession made that Olivia was a particularly vulnerable victim, whether she was or not was academic. The real gravity of this case was that a young child was shot and killed in her own home – as the judge put it, shooting into a family home with no regard for who may be caught in the cross fire was obviously a very significant aggravating factor to be reflected in the minimum term. Thirdly, none of the statutory mitigating features applied. Whilst there was no intention to kill Olivia, the fatal shot was fired with the clearest possible intention to kill and this was premeditated. Had the applicant planned to kill Olivia, he would have faced a whole life term. Had he killed Mr Nee on his own, the use of two firearms and the firing of shots into a family home would still have required a substantial uplift. The fact that Olivia was killed made the offence more serious still. Care had to be taken not to double count features that were common to counts 1, 2 and 3. The overall sentence had, however, to reflect the fact that harm was not limited to killing Olivia but included serious injury to two other people.
16. As for count 2, the judge said that, had she been sentencing the applicant for this offence alone, she would have imposed a life sentence, because of the obvious risk of serious harm that he posed to members of the public. This was a category 2A offence within the relevant Sentencing Council's Guideline, with a starting point of 30 years and a range of 23 to 35 years. Even though a Category A case, the offence was aggravated by the planning, the relentless pursuit of Mr Nee and the use of two firearms, so a figure towards the upper end of the range should be selected (but discounted by one third to reflect the early release provisions which apply to a determinate sentence). For Count 3, the offence fell into Category A2, within the relevant Sentencing Council Guideline, with a starting point of 7 years and a range of 6 to 10 years. The offence was aggravated by being committed against a woman in her own home and a sentence at the top of that range was appropriate. The firearms offences, counts 4 and 5, were part and parcel of the other offences, and the judge said it would be artificial to consider them on their own. These were category A1 offences within the relevant Guideline. Since the sentences would have no impact on the overall sentence the applicant had to serve, the judge simply adopted the starting point within that Guideline for that category of offending – 18 years for each offence.
17. The submissions now made on behalf of the applicant are in substance, two-fold. First, Mr Cooper KC submits that the uplift from the starting point of 12 years was too great and did not fairly reflect the facts of the offending, in particular the (lack of) sophistication and level of the planning involved. In addition, there was a failure to factor in the absence of offending of violence in the applicant's background.
18. Secondly, there was a failure to recognise as a mitigating circumstance that the applicant would be 76 before consideration could be given for his release on licence. In that latter context, in his written submissions Mr Cooper referred us to a number of

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decisions of this court. He relied, in particular, on the case of *R v Reeves* [2023] EWCA Crim 384.

19. We can deal briefly with the first submission.
20. Where the court passes a life sentence for an offence, the sentence for which is fixed by law, and sets a minimum term, section 322 of the Sentencing Act 2020 requires the court to take into account the seriousness of the combination of the offence and any one or more offences associated with it.
21. When setting the minimum term for murder, it followed that the judge was required to take into account the attempted murder of Mr Nee, the serious wounding of Cheryl Korbel in her own home and the consequence of the applicant's determination to murder Mr Nee, which was the killing of a nine year old child when she had come downstairs from her bed to be comforted by her mother. This is what the judge did. She had heard the evidence during the trial. Her sentencing remarks were immaculately structured and well-reasoned and they accurately encapsulated the relevant aggravating features that were present.
22. It was common ground that a starting point of 30 years for murder involving the use of a firearm was the correct one. The uplift of 12 years from that starting point represented a little over half of the sentence on Count 2 alone. Having regard to the totality of the offending in this case and its seriousness, which the judge correctly identified, it cannot sensibly be argued the overall sentence imposed was excessive, let alone manifestly excessive.
23. Mr Cooper in his written submissions, though with less emphasis orally, sought to rely on a number of other decisions of this court to demonstrate that the overall sentence in this case was too high. It is sufficient to say that comparisons in the context of offending such as this are likely to be invidious and unhelpful. What was said in *R v Erskine* [2009] EWCA 1425, by the late Lord Judge CJ, at [63] in relation to the citation of authority in a different statutory context, is also apposite here: "The principles for the exercise of the statutory power are set out in the statute. No further elaboration is necessary. Each case depends upon the application of the powers as set out in the statute in the context of specific facts in the individual case, no more and no less."
24. As for the second argument, with respect to Mr Cooper we do not consider the authority of *Reeves* is of assistance either. It is not authority for the proposition for which it is cited (*viz.*, that old age on release *per se* is a mitigating factor). No point of principle arises therefore which assists the applicant or this court.
25. The sentence imposed by the judge was a long one. It means that the applicant will be well into his 70s before he can be considered for release on licence. That, however, is a consequence of the commission by him of these terrible crimes, rather than of any error of approach on the part of the judge. The applicant invaded the home of a family in his determination to execute Joseph Nee, whom he had already shot. He then murdered by shooting Olivia, a little girl of nine, and seriously injured her mother. These events have left Olivia's mother and her family with a lifelong sentence of trauma and loss. There were no mitigating features. There was no remorse. The sentence ultimately arrived at was entirely merited on the facts, and the contrary is not arguable. The application for leave to appeal against sentence is refused.

