Neutral Citation No. [2023] EWCA Crim 64

IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202202241/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 20 January 2023

Before:

LORD JUSTICE DINGEMANS

MRS JUSTICE MAY DBE

HIS HONOUR JUDGE CONRAD KC
(Sitting as a Judge of the CACD)

REX

V

ALEXANDER RAMSAY

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MR J TALBOT appeared on behalf of the Applicant.

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is a hearing of a renewed application for leave to appeal against sentence following refusal by the single judge.
2. The applicant is a 36-year-old man, who had before these matters some 25 convictions for 43 offences. Mr Talbot, appearing on behalf of the applicant has pointed out, those were for offences of a completely lower level of criminality than the matters with which we are concerned this morning. He was also a man, who it is apparent from the references which we have seen and which were provided to the sentencing judge, was a much loved father of six children and who provided support to family members. He pleaded guilty on 25 March 2022 in the Crown Court at Harrow to a count of transferring a prohibited weapon contrary to section 5(2)(a) of the Firearms Act 1968. He was tried in respect of counts for possessing a firearm with intent to endanger life contrary to section 16 of the Firearms Act, possession of ammunition with intent to endanger life contrary to section 16 of the Firearms Act, possession of a prohibited firearm contrary to section 5(1)(aba) of the Firearms Act and possession of ammunition contrary to section 1(1)(b) of the Firearms Act.
3. The applicant was convicted after a trial of those counts on 20 May 2022 and on 17 June 2022 he was sentenced to 16 years' imprisonment for possessing the firearm with intent to endanger life, 16 years concurrent for possession of ammunition with intent to endanger life and no separate penalty was imposed for the possession of the prohibited firearm and possession of ammunition and to 5 years concurrent for transferring a prohibited weapon.
4. It has been brought to our attention by a note on behalf of the Registrar that the count 3

for possessing a prohibited firearm and the count 4 for possessing the ammunition required mandatory minimum sentences of 5 years unless there were exceptional circumstances. The judge should not therefore have ordered a separate penalty. We will return to that point at the end of the judgment.

Factual circumstances

5. We turn then to the factual circumstances. On 29 September 2021 the applicant had arranged for a submachine gun and ammunition to be moved from Susan Atkin's address in London. DNA from him was found on the gun's grip and DNA of both the woman concerned and the applicant was found on the ammunition. On 29 September police surveillance was undertaken on the home of another woman in Diamond Street NW10. At approximately 19.34 hours that woman pulled up outside the address in her Vauxhall motorcar. At 19.53 hours she left the property and was seen to pass a black rucksack into the first woman's vehicle before going inside. The first woman placed the rucksack in the boot of her car and drove away. At 20.30 hours armed police stopped the first woman's vehicle on the A416 in Chesham. She was the sole occupant. The black rucksack contained a loaded firearm. In the backpack's front pocket was a white sock which contained a further 10 rounds of ammunition. The firearm was made safe and the woman was arrested. The firearm was a 9 millimetre Makarov calibre Polish PM63 submachine gun. The serial number had been removed from the right said of the gun's side. It had a two-stage trigger pull and in fully automatic mode would continue to fire until the trigger was released or the magazine was empty. The gun was in full working order in both semi and automatic modes and there were five unfired 9 mm cartridges found inside the 15 round magazine as well as the 10 unfired 9 mm cartridges found in a sock. The ammunition was tested and was live.

6. The applicant and the other woman were both arrested on 25 November 2021. The mobile telephones of all three were seized and call data showed that on 29 September there were 25 telephone calls between the applicant and the second woman before her arrest and the second woman had sent the applicant a text message saying: "What should I do?" and he had then telephoned the first woman in a call lasting 49 seconds before calling the second woman again. The applicant organised the collection of the firearms and directed both women.

Proposed grounds of appeal

7. The submissions on behalf of the applicant are that the sentence was manifestly excessive. This was because first, there was a wrong categorisation of the offending, and secondly, the judge was wrong to make an upward adjustment having come to the category whether it be category 2A or 2B under the Guidelines. We grant leave for the application to consider the points which have been raised on behalf of the applicant, and because it is necessary to address the issues of counts 3 and 4.
8. In our judgment, dealing with the question of categorisation, it is relevant to note that it was common ground that this was a category 2 matter. That was because there was a high risk of death or severe physical or psychological harm. The second point to note is that the judge who passed the sentence was the judge who had heard the trial. He considered and found that the appellant (as he now is) had a leading role where offending is part of group activity. That is challenged on behalf of the appellant.
9. In our judgment, the difficulty with that challenge is that the judge was the trial judge and had heard all the evidence about the organisation. The appellant submits that the police adduced in evidence nothing more than was already disclosed by the brief summary of factual circumstances, namely that the appellant had moved the weapon by directing the

two women.

10. In our judgment, although Mr Talbot is right that group activities can vary in any number of different ways, the judge was perfectly entitled to find that the appellant had the leading role in a group activity. It is plain when one looks at the whole of the sentencing remarks that the appellant identified that both of the women were vulnerable. The judge was also right to identify that this was group activity, because the appellant was involving two others to transfer and move this lethal weapon. In those circumstances, the judge was entitled to make the finding that this was category 2A for the purpose of the guideline.

11. That is not the end of the submissions before us, because a category 2A matter has a starting point of 14 years and a category range of 11 to 17 years. The judge stated that he was going up from the starting point by 2 years to reflect the particular aggravating feature of the appellant's involvement of two vulnerable women in this offence. It is also right to note that what the judge was putting all of the criminality on to counts 1 and 2, making them concurrent with each other and all the other sentences that were passed. In these circumstances it is impossible to say that the increase from 14 to 16 years was manifestly excessive or wrong in principle.

12. We have considered the points that have been made on behalf of the appellant about the lack of a reduction for mitigation but, as the judge pointed out, this was a serious offence. The judge did not go into particular detail in relation to the previous convictions and they were obviously of a completely different magnitude. Overall, in our judgment, the judge was entitled to come to the overall sentence of 16 years.

13. That then just leaves the adjustment that is necessary to make in relation to counts 3 and 4. The transcript at the end of the sentence hearing is a bit cryptic. There might be a

suggestion that in fact the judge had intended, at least in relation to one of those counts, to pass a sentence of 5 years and make it concurrent. Mr Talbot, who was there and who has done his honest best to recollect what happened, thinks that was probably a reference to count 5 where there was a concurrent sentence of 5 years and certainly the record suggests that no separate penalty was ordered for counts 3 and 4.

14. The only issue that we need to consider is whether in the circumstances we have power to substitute for “no separate penalty”, two concurrent sentences of 5 years' imprisonment. That is because section 11(3) of the Criminal Appeal Act 1968 provides:

> "... the Court shall so exercise their powers under this subsection that, taking the case as a whole, the appellant is not more severely dealt with on appeal than he was dealt with by the court below."

15. Mr Talbot very frankly, and in our judgment correctly, identified that in circumstances where the court would impose concurrent sentences on counts 3 and 4 the appellant would not be more severely dealt with on appeal because he would remain as he is, namely sentenced to the 16 years. In those circumstances, we accept that we do have power to put right the failure of the court below to order the mandatory minimum sentences. We will therefore adjust counts 3 and 4 by imposing 5 year sentences of imprisonment but make it clear that that is concurrent to the sentence of 16 years' imprisonment which has already been passed and in that respect he has not been more severely dealt with.

16. The net effect of all of these changes is that the appellant remains as he was, which is subject to the sentence of 16 years' imprisonment. We are very grateful to Mr Talbot for his assistance.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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