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IN THE COURT OF APPEAL  
CRIMINAL DIVISION  
ON APPEAL FROM THE CROWN COURT  
CARLISLE  
HHJ BATTY KC T20127151  
CASE NO 202301374/A1  
[2024] EWCA Crim 939



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 17 July 2024

Before:

LADY JUSTICE MACUR

MRS JUSTICE STACEY

THE RECORDER OF WOLVERHAMPTON  
(HIS HONOUR JUDGE MICHAEL CHAMBERS KC)  
(Sitting as a Judge of the CACD)

REX

V

SYLWESTER KAWALEC

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NON-COUNSEL APPLICATION

**J U D G M E N T**

MRS JUSTICE STACEY:

1. On 24 May 2013, the applicant was sentenced to life imprisonment for the offence of murder and was ordered to serve a minimum term of 22 years before being considered for release. He had been convicted of murder by a jury on 22 May 2013. At the same time he was sentenced to a concurrent term of 7 years for his role in a conspiracy to pervert the course of justice to which he had pleaded guilty on the first day of trial. Following refusal by the single judge, he renews his application for leave to appeal against sentence and an extension of time of 3590 days (9 years and 309 days) in which to do so.
2. On 14 October 2012, at around 5.45 am, the deceased (Piotr Kulinski) had been stabbed to death outside his home address in Carlisle as he had been leaving for work. Mr Kulinski had been stabbed seven times, four times in the back, once to the front of his leg, once to the buttock area, which caused a deep wound to his anus, and once to the back of the leg. Mr Kulinski's partner had witnessed the end of the incident and had seen two males (Piotr Zygnier and the applicant) attacking Mr Kulinski.
3. Some 2 weeks previously Mr Kulinski had made an anonymous 999 call to the police, in which he had stated that Piotr Zygnier, the applicant and others were members of a criminal gang that had been causing problems within the Polish community in Carlisle and that the previous day Mr Kulinski had been struck from behind by Mr Zygnier who had been carrying a screwdriver, which had caused a minor wound to his back. The Crown's case was that it had been Mr Zygnier who had stabbed the deceased and that the applicant went to the scene with the full knowledge that Piotr Zygnier had a weapon and that he was going to use it on Mr Kulinski intending to kill him. Others had helped

Mr Zygnier and the applicant flee the scene and dispose of important evidence, including blood-stained clothing and the murder weapon.

4. The applicant was subsequently arrested for the index offending. In subsequent interviews, he denied any knowledge or involvement in the offending and initially put forward an alibi. He later accepted that he was there, but denied killing anyone and denied knowledge of the knife or knowledge that the wounds would be or had been fatal.
5. The defence at trial appears to have been that the deceased had tried to attack the applicant's co-accused Mr Zygnier with a knife. The deceased had been disarmed by Zygnier and that the applicant had not himself used the knife and he was merely acting in defence of his co-accused.
6. The delay in bringing the application is explained by the negative advice on appeal against sentence, received from his counsel at the time. But now that the applicant sees other inmates who, in his opinion, have committed more serious murders as principals, he realises that his sentence was manifestly excessive.
7. The grounds of appeal advanced are firstly that he should have been sentenced on the basis of manslaughter, not murder given his role in the enterprise which was only protecting his co-accused; secondly, that insufficient account was taken of the applicant's previous good character and employment record; and, thirdly, that the sentence overlooked that the deceased had been abusive towards the applicant and his sister in the past.

8. In further letters of 28 December 2023 and 28 June 2024, in which the applicant sets out more detail to the grounds of appeal, he also advances further mitigation, that custody has been particularly harsh as both his sister and grandfather have died whilst he has been in prison.
  
9. The sentencing judge, who had the benefit of hearing all the evidence as trial judge, was best placed to interpret the jury's conviction. He clearly set out in his sentencing remarks, which were based on the evidence at trial, that the applicant had played a full and active part in the stabbing although not himself having held the knife. There was significant premeditation and planning by both the applicant and Zygnier to lie in wait for the deceased outside his home as he left for work at 5.40 am on a Sunday morning. The applicant went to the scene with full knowledge that his housemate and co-defendant Mr Zygnier had a knife with him in order to stab the deceased. A getaway car was ready to take both assailants away from the scene. It was a murderous attack on a defenceless man in a quiet cul-de-sac in a residential part of the city of Carlisle. The deceased was stabbed seven times by the applicant's co-accused, including the deep wound to his anus as he lay dying which the judge described as a gratuitous piece of savagery intended to cause extreme pain and humiliation. The attack continued even after the deceased's partner remonstrated with the assailants through the window of her house and told them that she would be calling the police.
  
10. Although the applicant did not himself do the stabbing, he played a full and active part and although he did not share Zygnier's intent to kill, which lowered his culpability, it was

still a serious offence. But the applicant had himself punched and kicked the victim, as he lay on his back dying and even after the deceased's partner had screamed at him to stop. The violence of his punches was noted by the independent eyewitness.

11. The judge accepted that the victim had previously been involved in a feud with the applicant and Mr Zygnier but accepted the evidence from a number of witnesses that he wanted to put the past behind him and lead a law-abiding life for the sake of his family and his 4-year-old son. He found that the victim was murdered because he was trying to stand up to the applicant and Mr Zygnier's gang. He had previously been stabbed by Zygnier with a screwdriver, which he had reported to the police anonymously.

12. The judge correctly noted that the starting point for the calculation of the minimum term was 25 years under the applicable law at the time (paragraph 5A of Schedule 21 of the Criminal Justice Act 2003). He further noted the aggravating features of the significant planning and premeditation and the additional offence of conspiracy to pervert the course of justice which the judge considered was extremely serious and included recruiting a host of others to assist in the destruction of incriminating evidence. He also noted the mitigating factors applicable to the applicant: the lack of intention that the victim would die; the fact that he had not wielded the knife or used a weapon other than his shod foot; the fact that in times past the applicant and his sister had been subjected to violence from the deceased. He noted the applicant's relative young age at 23 and that he was the youngest of the group. He also took into account the lack of any previous convictions and his employment record. He made an overall downward adjustment of 3 years to arrive at a final sentence of 22 years.

13. Turning to the grounds of appeal. The difficulty for the applicant is that the jury rejected his defence that he was acting in the defence of Zygner and it is not now possible for him to go behind the jury's verdict in an appeal against sentence. The judge accepted that, unlike Zygner, the applicant did not intend to kill the deceased and that enabled the judge to make some detection to the starting point but he specifically found that the applicant had intended some really serious harm to the deceased from the knife that he knew Zygner had taken to the scene.
14. The judge sentenced, correctly, in accordance with the jury's verdict, which it had been safe for them to reach. The judge also expressly took into account the applicant's mitigation and the points that were made in his favour. Given the identified aggravating features, the arrival at a final sentence of 3 years below the starting point, to take account of the mitigating features, it is not reasonably arguable that the sentence was manifestly excessive on the grounds advanced by the applicant.
15. Although not raised as a ground of appeal by the applicant who is unrepresented, during the course of the preparation for hearing, it was noted by the Court of Appeal office lawyers that the minimum term was not properly announced nor indeed calculated as required by the provision which then applied (section 269 of the Criminal Justice Act 2003) at the time of sentence. The applicant was entitled to receive credit for the 217 days on which he was remanded in custody prior to his conviction. He should have been informed that the minimum term was 21 years and 148 days. The Court has recently affirmed in R v Cookson and R v Sesay that the minimum term must be calculated having

taken into account time served which cannot lawfully be carried out administratively if calculations are incorrect.

16. Although we understand that the Prison Service have informed the applicant of the correct figures, namely 21 years and 148 days, it is necessary for us to correct the pronouncement of the minimum term to give it lawful effect. The imposition of a sentence which is inadvertently 217 days longer than intended by the judge is manifestly excessive and it is therefore in accordance with the interests of justice to grant an extension of time to allow the appeal on this limited ground to be considered.

We therefore grant leave to the applicant to appeal out of time, on the limited ground that the judge failed to calculate the days spent remanded in custody when pronouncing sentence, and the appeal is allowed to the extent only that we declare that the minimum term was 21 years and 148 days.

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