

Neutral Citation Number: [2019] EWCA Crim 1018

No: 201900471/A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Wednesday, 5 June 2019

B e f o r e:

LORD JUSTICE FULFORD

MRS JUSTICE ANDREWS DBE

MR JUSTICE SWIFT

R E G I N A

v

PETER BEXLEY

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Ms A Bright appeared on behalf of the **Appellant**

J U D G M E N T

(Approved)

MRS JUSTICE ANDREWS:

1. On 1 May 2018, in the Crown Court at Canterbury, the appellant, Peter Bexley, then aged 28, pleaded guilty to an offence of possessing a prohibited firearm contrary to section 5(1)(aba) of the Firearms Act 1968 (count 1); an offence of possessing ammunition without a firearms certificate, contrary to section 1(1)(b) of the same Act (count 2); and an offence of failing to surrender to bail. On 19 November 2018 he was sentenced to 2 years' imprisonment on count 1 and a concurrent sentence of 12 months' imprisonment on count 2. He also received a concurrent sentence of 14 days' imprisonment for the Bail Act offence.
2. Count 1 was an offence which attracted a minimum term of 5 years' imprisonment, notwithstanding Mr Bexley's guilty plea, unless the court was of the opinion that there were exceptional circumstances relating to the offence or to the offender which justified it in not imposing the minimum term. In this case, the judge found that such exceptional circumstances existed. That is how he was able to justify imposing a lower sentence – in the event, one of 2 years' imprisonment.
3. Unfortunately, the judge made no express reference in his sentencing remarks to giving Mr Bexley credit for the plea of guilty. He did state, at one point, that he took account of the plea of guilty and its basis in reaching the conclusion that there were exceptional circumstances. But as Miss Bright, who very ably represented Mr Bexley before us on this appeal pointed out, in context that was a reference to the specific basis of plea and its factual grounds, which is not the same thing as a reference to giving credit for that plea.
4. Ms Bright made the fair and entirely appropriate submission that from the point of view of public confidence in the justice system, it is extremely important that, when sentencing a defendant who has pleaded guilty, if the judge is going to give credit for that guilty plea

in accordance with the sentencing guidelines, then he or she should say, in open court, that they are giving credit, and how much credit is being given. It is only when that is done that the defendant (a) can be confident that the judge has gone about calculating the sentence in the right way and (b) will have the proper information to enable him and his legal advisers to consider whether there are arguable grounds for appeal, for example, because the amount of credit was arguably insufficient, or because the overall sentence was too long.

5. Although in passing sentence the judge went to some care to address all the aggravating and mitigating features in the case, and indeed to make sure that Mr Bexley knew that the days that he had spent on remand should count towards the sentence he was passing, he did not expressly spell out how he got to the figure of 2 years. Therefore, it was difficult for anybody to tell whether he had taken into account the plea of guilty. This is extremely unfortunate.
6. However, as the single judge observed, the issue for this court is whether the sentence that he *did* impose was one that was too long, bearing in mind the fact that (as has now been confirmed) the plea of guilty was entered by Mr Bexley at the earliest opportunity. That would lead to full credit being given of one-third of the overall sentence that would have been passed following a trial.
7. It follows that, in order to reach the sentence that he did of 2 years' imprisonment, the judge must have had in mind, though he did not articulate it, a notional sentence after trial of 3 years' imprisonment. The only alternative way of looking at matters is that the judge intended a notional sentence after trial of 2 years' imprisonment, with a further reduction for the guilty plea, which he mistakenly overlooked. Looking at the way in which the judge expressed himself as a whole and particularly bearing in mind the specific

reference he made to the plea of guilty earlier in his sentencing remarks, it is difficult for us to conclude that that was what he intended.

8. On any view, there are extraordinary features to this case, which presented the judge with a very difficult sentencing exercise. On the morning of Saturday 24 March 2018 Mr Bexley walked into Dover police station and told the member of staff on duty that he wanted to hand in a firearm. He said that he had been assaulted and that the gun had been held against his head. He then produced a silver barrelled 9 mm Makarov pistol from inside his jacket. He was behaving very calmly and was quietly spoken. Neither of the two civilian members of staff who were then present felt that there was any attempt to intimidate them. He complied with their instructions to put the gun down and step away from it. He waited whilst a member of staff requested the Firearms Unit to attend. He provided his name and address. He also produced a bag which was found to contain three rounds of ammunition.
9. When he was searched by the police, he was found to be wearing a gun holster. He said that he had the holster because he had previously used it to carry a BB gun. That is not a prohibited weapon. He also had in his possession three Polaroid-type photographs of the gun which he admitted he had taken, he said, in order to prove his possession of it. One of those photos shows him with the gun in his hand.
10. In interview he told the police that he had been at a friend's house in London on the previous Tuesday (20 March), when the friend had produced the firearm from underneath his mattress. The appellant had wrestled the firearm from his friend and removed the magazine. At this point the friend's mother, who had come into the bedroom, told the appellant to get rid of the firearm. He took the firearm home and refused to return it to his friend because he feared that it might be used in gang violence. He was not sure what

to do with the firearm. By Thursday he had decided to travel to Dover to seek advice from his parents. They had initially kept the firearm, but his friend said he wanted it back. The appellant returned to London with the firearm but then decided to go back to Dover and hand it in to the police there.

11. Subsequent forensic examination of the gun showed that the firing pin had been removed and that the gun was therefore inoperable. It could have been reactivated by fitting additional components, but they would have to have been obtained, and it would have required a suitably skilled person to fit them.
12. The appellant's first appearance at the Crown Court was on 24 April 2018. On that occasion the matter was listed for a pleas and trial preparation hearing, but the appellant was not arraigned because the prosecution needed to obtain a report from a firearms expert. An indication was given that a guilty plea was likely to be forthcoming if the nature of the firearm (as a prohibited weapon) was confirmed. On that occasion the judge noted that there was a background of mental health issues and advised the defence that if they intended to rely on medical evidence to support an argument that exceptional circumstances justified passing a sentence lower than the mandatory minimum, they should put that in train straightaway.
13. At the adjourned hearing, the appellant pleaded guilty and sentence was adjourned to allow for a pre-sentence report and for psychiatric evidence to be obtained. His written basis of plea was as follows:
 - (1) He attended at Dover police station with the intention of handing in the gun and bullets to the police.
 - (2) He came into possession of the gun and the three bullets four days earlier when he took it off a friend.

(3) He has mental health problems relevant to the issue of delay in respect of his handing in the gun and bullets at the police station and his somewhat erratic behaviour during the four days when he retained possession of them.

14. In addition, when sentencing Mr Bexley, the judge indicated that it was part of his basis of plea that he only hesitated to take the firearm and bullets immediately to the police because he and his family had been subjected to threats and intimidation by the owner of the firearm. This was a significant feature of Mr Bexley's account to the author of the pre-sentence report, and the judge accepted it.

15. Mr Bexley failed to attend court on 28 July 2018 and a warrant was issued for his arrest. The warrant was executed on 12 September 2018, but the lack of appropriate reports led to the matter being further adjourned. Mr Bexley was then remanded in custody. That was when the 62 days which were ordered to count towards his sentence were spent on remand. In the meantime, however, on 16 October 2018 he received a total sentence of 6 months' imprisonment in East London Magistrates' Court for three offences of possessing an offensive weapon in public. The offensive weapons concerned were two iron bars and a knife and all these offences (to which he pleaded guilty) were committed on 27 August 2018. He was still serving that custodial sentence when he was sentenced for the firearms and related offences.

16. The judge had the benefit of a skeleton argument from defence counsel, which referred to the Avis guidelines and set out submissions as to why there were exceptional circumstances relating both to the offence and to the offender. As regards the offence, counsel referred to the fact that Mr Bexley had voluntarily gone to the police station with the intention of handing over the firearm in order to eliminate the risk that it could be

used by somebody for criminal purposes. He also referred to the fact that the forensic evidence demonstrated that the firing pin was missing. The forensic evidence also supported the appellant's account that he had never used it.

17. As regards the offender, counsel pointed to the absence of any previous firearm convictions and to Mr Bexley's mental health issues. These can be summarised as follows. Mr Bexley suffered a serious brain injury in 2010 following a roller skating accident, which caused damage to his left temple lobe and left him with an enduring personality change marked by impulsively, thoughtless actions, severe anxiety, fears of rejection and paranoid thoughts. According to the psychiatric report it also left him with a low threshold for manifesting short-lived psychotic symptoms following drug abuse. The psychiatrist did not recommend any mental health disposal, as the author of the pre-sentence report had envisaged might otherwise be the case. He explained his reasoning in his report and it is unnecessary to go into the details for the purposes of this appeal.

18. In the course of the sentencing remarks the judge was careful to take into consideration the mitigating features which he identified, but also to balance them against what he described as the concerning aspects to the case. He pointed to aspects of the reports which showed that the appellant had refused to engage constructively with treatment. He said there must remain concerns regarding his future behaviour. Although he had handed in the weapon only four days after coming into possession of it, he had not disclosed the identity of the individual from whom he had obtained it and although there was no evidence to indicate that he ever possessed the firearm with any criminal intent, as the judge put it: "... any involvement with potentially deadly firearms and those who carry the same, demand censure..."

19. The judge also referred to concerns regarding the appellant's conduct and decision making, the fact that he had committed other offences of an impulsive nature in the past and, perhaps most pertinently, the fact whilst unlawfully at large during these proceedings he was arrested for being in possession of offensive weapons in a public place. The judge also referred to the public concern about the prevalence of firearms on our streets.
20. As the judge said, the conclusions of the psychiatrist that there was no treatment available that could specifically address Mr Bexley's complex issues left the court with a very difficult dilemma. On the one hand, it was clear that his current behaviour may stem, at least to some extent, from the brain injury that he sustained. On the other hand, there must remain a very real risk that he would continue to pose a significant risk of further offending, particularly if he continued to abuse drugs.
21. We are in agreement with the judge that notwithstanding the very short period of time with which the appellant was in possession of the firearm this was a case in which an immediate custodial sentence was necessary, and Miss Bright did not seek to contend to the contrary. The question for this court is whether the length of that sentence was manifestly excessive.
22. We agree with the remarks of the single judge when giving leave to appeal, that, having sentenced Mr Bexley on his basis of plea the judge was unquestionably right to depart from the minimum sentence laid down by Parliament. However, as to the length that was imposed below that statutory minimum, the starting point for any sentencing judge must be that Parliament intended that a minimum period of 5 years in custody should be served for the possession of such items, even for a short time and even by defendants who, unlike Mr Bexley, are of previous good character, save in exceptional circumstances. As

a matter of policy this is intended to deter people from possessing such items.

23. In the present case, even though the gun was temporarily disarmed by the removal of the firing pin, it was nevertheless a potentially lethal weapon. Even in cases where exceptional circumstances have permitted departure from the minimum 5-year term for short-term possession of a disguised firearm, such as a Taser masquerading as a mobile phone, sentences of 3 years after trial and 2 years after full credit for an early plea of guilty have been endorsed by this court - see for example R v Rodgers (Georgina) [2016] EWCA Crim 801; R v Paterson (Todd David) [2017] EWCA Crim 1950 and R v Hussain [2018] EWCA Crim 2662. In such cases the items in question are not lethal weapons.
24. Bearing in mind the public policy underlying the minimum sentence for firearms offences, a reduction in the minimum term of 5 years by 2 years to 3, to take account of all the extenuating features which led to the conclusion that there were exceptional circumstances, before giving full credit for the guilty plea, cannot conceivably be regarded as producing a sentence which was manifestly excessive.
25. Therefore, although this court endorses the comments made on behalf of Mr Bexley by Miss Bright, that it is important for public confidence that sentencing judges should spell out the credit that they give to a defendant for pleading guilty, in the particular circumstances of this case we are nevertheless satisfied that the overall sentence imposed on him was not manifestly excessive. For these reasons, this appeal is dismissed.

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