

NCN: [2019] EWCA (Crim) 1862
201805278/ C2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Friday 25 October 2019

B e f o r e:

LORD JUSTICE SIMON

MR JUSTICE WILLIAM DAVIS

and

SIR KENNETH PARKER

REGINA

- v -

MUATAZ AHMED ALI

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Miss E Stuart-Smith appeared on behalf of the Appellant

Mr B Temple appeared on behalf of the Crown

J U D G M E N T

LORD JUSTICE SIMON:

1. On 18 July 2018 in the Central Criminal Court the appellant pleaded guilty to counts 4 and 5 on an indictment.

2. On 6 December 2018, following a trial in the Central Criminal Court before Mr Recorder Sells QC and a jury, he was convicted on counts 2 and 3. On the following day, 7 December, he was sentenced by the Recorder as follows: on count 2 (possessing a firearm with intent to cause fear of violence, contrary to section 16A of the Firearms Act 1968), to eight years' imprisonment; on count 3 (possessing ammunition without a firearm certificate, contrary to section 1(1)(b) of the 1968 Act), to a concurrent term of two years' imprisonment; on count 4 (having an article with a blade or point, contrary to section 139(1) of the Criminal Justice Act 1988), to a consecutive term of two years' imprisonment; and on count 5 (possessing a controlled drug of Class B, contrary to section 5(2) of the Misuse of Drugs Act 1971), to a concurrent term of six months' imprisonment. The total sentence was, therefore, one of ten years' imprisonment.

3. The appellant now appeals against that sentence by leave of the single judge.

4. During the course of the evening of 19 June 2018 a London minicab driver, Samson Ayele, was instructed to collect a male named "Tazz" from the Kingsmead Estate, London E9. He drove there and picked up the appellant. The booked journey was to Westerham Avenue, N9, and then on to Marsh Wall, E14. The appellant paid him £50 in cash by way of advance. While en route to Westerham Avenue, the appellant asked him to stop the car on Church Road. The appellant got out and walked down a side street. When he returned, Samson Ayele continued with him on the journey to Marsh Wall.

5. At around 12.50am uniformed police officers travelling in three marked police vehicles stopped the minicab in Fore Street, N18. The appellant was the sole passenger. As he was taken from the car a knife fell from his right side to the ground. One of the police officers searched the vehicle and found a sock containing a pistol concealed in the rear pouch of the front passenger seat.

6. The pistol was later forensically examined. It was a CZ model 9 millimetre Parabellum calibre self-loading pistol, loaded with a magazine with 15 undischarged bullets. Having checked the firing marks made on the bullets by the firearm against other fired bullets from other incidents, a forensic scientist concluded that the firearm had been used to fire two 9 millimetre Parabellum bullets and the cartridges cases found nearby in Kingsmead Way, E9, on 17 April 2018.

7. When he was interviewed by police on 19 June 2018 in respect of these offences, the appellant declined to answer all questions.

8. The appellant was aged 22 at the date of sentence. He had two previous convictions. In 2015 he received a conditional discharge for theft of a cycle; and in 2018 he was fined for possession of cannabis. He had no prior experience of custody.

9. There was no pre-sentence report. We are satisfied that none was required either at the sentencing hearing or on this appeal, and none has been sought.

10. In passing sentence the Recorder noted that the appellant had been travelling in a minicab through London with a fully loaded, automatic pistol and knife. The Recorder had no doubt that his conduct that night was part of an organised criminal enterprise in which he had played his

part. There was well-known public concern about knife and gun crime. The courts had stated that the requirements of public policy was material to the imposition of sentences.

11. The Recorder had been referred to a number of authorities and had taken into account the history of the firearm which had been used on a number of previous occasions in the last two years in the commission of very serious crime (albeit not by the appellant).

12. In mitigation, the Recorder took into account the appellant's limited previous convictions and his relative youth. Such people were commonly used by others in these types of offences. He said that he took into account totality, and passed the sentences to which we have referred.

13. In the grounds of appeal and in her oral submissions today, Miss Stuart-Smith has submitted, first, that the consecutive sentence of two years' imprisonment for possession of a bladed article (count 4) was manifestly excessive. Both prosecution and defence counsel agreed that the starting point on the guidelines was a term of six months' imprisonment, with a range of three to twelve months. The two year sentence was, therefore, significantly above the starting point and significantly beyond the appropriate range. Furthermore, the appellant had pleaded guilty to the bladed article offence during the plea and trial preparation hearing, and it does not appear from the sentencing remarks that the appellant was given 25 per cent credit for that plea.

14. Second, and linked to this point, Miss Stuart-Smith urged that insufficient regard was paid to totality. The following points bore on the appellant's culpability and therefore the seriousness of the firearms offences: first, he had only been in possession of the firearm for between ten and twelve minutes; second, there was text message evidence that he was being directed where to go and what to do; third, he was aged 21 at the time, was only lightly convicted and had not previously served a custodial sentence; fourth, his family had fled from Somalia when he was

aged 6, he had been brought up in difficult circumstances, he had obtained a number of GCSEs and a Level 3 Diploma in Engineering, but had been unable to find work; and finally, his father was disabled.

15. For the prosecution, Mr Temple submitted that the sentence for the bladed article offence was severe but that, if one is looking at totality, the overall sentence was fair, just and proportionate in view of the accumulation of weapons: a knife and a firearm carried at the same time.

16. The starting point is that there can be no justifiable criticism of the sentences passed for the firearms offences. Those who are lightly convicted, or of good character, are frequently used by criminals to look after or transport guns. The offence in this case involved possession of a loaded, automatic weapon with the intent required for a section 16A offence.

17. The possession of the knife was both a separate offence and aggravated the seriousness of the offending. However, we are persuaded that, by reference to the Sentencing Council's definitive guideline on bladed articles and offensive weapons, this was category A culpability, since it was a bladed article, and category 2 harm. The starting point, therefore, was a term of six months' imprisonment. This was the appellant's first relevant offence and therefore the minimum term provisions did not apply.

18. However, we regard it as an aggravating factor that the knife was carried with the gun. This justified an uplift to eight months' imprisonment, before credit was given for the guilty plea.

19. We do not consider that the Recorder was in error in making the sentences consecutive.

That approach recognised the criminality of carrying knives as part of a criminal enterprise.

20. Accordingly, we quash the sentence on count 4 and substitute a consecutive term of six months' imprisonment. The other sentences are unaffected, and so the total term will be one of eight and a half years' imprisonment instead of ten years. To that extent, the appeal is allowed.