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No: 201903700/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 19 February 2020

B e f o r e:

LORD JUSTICE HOLROYDE

MRS JUSTICE CUTTS DBE

HIS HONOUR JUDGE WALL QC
(Sitting as a Judge of the CACD)

R E G I N A

v

MOHAMMED ADAN

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Mr J Cross appeared on behalf of the **Appellant**

J U D G M E N T

1. LORD JUSTICE HOLROYDE: This young appellant appeals with leave of the single judge against an extended determinate sentence of 18 years, comprising a custodial term of 15 years and an extended licence period of three years. The offences for which he was sentenced were very serious. The principal issue which arises in this appeal is whether sufficient weight was given to his young age at the time when he committed them.
2. The appellant was born 20 March 2001. On 28 March 2018, a week after his 17th birthday, he was made subject to a youth rehabilitation order for an offence committed six weeks earlier of possessing a bladed article, namely a lock knife, in a public place. One of the requirements of that order was a curfew with electronic tagging. The appellant was subject to the order, and wearing the tag, at the time of the offences with which we are concerned.
3. The appellant was a member of a gang, the Mali Boys, based in the Leyton area of London. That gang was involved in a long-running and violent dispute with a rival gang also based in Leyton, the Beaumont Gang. A close friend of the appellant and fellow Mali Boy had been killed by members of the Beaumont Gang.
4. On the afternoon of 13 April 2018, less than four weeks after his 17th birthday, the appellant was driving a car with two passengers who have not been identified. There were at least two handguns, at least one of which was capable of firing live rounds, in the car. The appellant and his companions saw four members of the Beaumont Gang walking on the pavement of Leyton High Road. One of those in the car fired two live rounds at their rivals, fortunately not hitting either them or any of the members of the public who were in the area. As they left the scene, at least one of the guns was brandished at two motorists whose vehicles were obstructing their path. The judge found that each of the three in the car had at some stage in this incident brandished one of the guns.
5. The car was later abandoned. No firearm was recovered, but examination of a spent cartridge case showed that it had been fired from a gun previously used to shoot at members of the Beaumont Gang.
6. In June and July 2018, aged about 17 years three months, the appellant was involved in dealing heroin and crack cocaine. He was in control of two drugs lines, receiving orders for drugs over the phone and arranging for runners, including some vulnerable persons, to deliver the drugs to the purchasers. Test purchases were made by undercover police officers who saw the appellant bringing the drugs to a runner who then handed them to the officers.

7. The appellant was arrested in August 2018. He made no comment when interviewed under caution but put forward a prepared statement in which he denied the firearms offences. He was remanded in custody. Whilst in custody he put forward one of the drugs lines as being his brother's phone number, and so was able to make calls to an associate in which he referred to the hiding of a firearm which had been used on 13 April, and also appeared to refer to a stock of 30 rounds of ammunition.
8. On indictment T20181284 the appellant was charged with two offences of conspiracy to supply controlled drugs of class A, namely diamorphine and cocaine. He pleaded guilty to those offences on 17 January 2019, when he was still 17 years old.
9. On count 1 of indictment T20187557, he was charged with possessing a firearm with intent to endanger life. That charge related to the handgun which fired the live rounds. On count 2, which related to the handgun used to threaten the two motorists, he was charged with possessing an imitation firearm with intent to cause fear of violence. He pleaded not guilty to both charges. His trial was listed for hearing on 15 February 2019, before his 18th birthday. It was adjourned to a later date following the service of additional prosecution evidence. On 25 July 2019 in the Crown Court at Snaresbrook the appellant was convicted of both offences.
10. At the sentencing hearing on 30 August 2019, the judge was assisted by a detailed pre-sentence report. From this it was clear that the appellant, despite his assertions to the contrary, had been associated with the Mali Boys from early adolescence and had progressed to a relatively senior rank within the gang. The report noted that the appellant had rejected attempts by Children's Services to divert him from the gang life into which he had been inducted at a very early age. It further noted that the appellant had consistently refused to accept responsibility for his actions and had shown no real remorse and no appreciation of the effect of his actions on his victims and others. The author of the report assessed the appellant as having a level of maturity which was at least equal to others of his age, and as having an insight into the frailties of others, a belief in his own importance and a willingness to engage in "impression management" to try to control how he is perceived by others. She recorded that the appellant had been behaving badly whilst in custody, resulting in a number of adverse adjudications, including for violence. She assessed him as posing a high risk of serious harm to others.
11. The judge also had a letter from the appellant himself. Regrettably this cannot now be found, but it is apparent from the judge's sentencing remarks that it spoke of the appellant's aspirations for the future.
12. Both prosecution and defence counsel had provided helpful sentencing notes in which

reference was made, amongst other things, to the factors relevant to the sentencing of firearms offences which are listed in the well-known cases of Avis [1998] 1 Cr.App.R 420 and Sheen and Sheen [2012] 2 Cr.App.R (S) 3.

13. The judge began his sentencing remarks by observing that he had watched the appellant throughout the trial, which had lasted for some four weeks and had included the appellant giving evidence for two days, and had found him to be "an intelligent and accomplished young man who has the potential to succeed" at whatever he did. He urged the appellant to make constructive use of the time he would inevitably have to spend in custody. This court echoes that encouragement.
14. The judge found the appellant to be a dangerous offender as that term is defined for sentencing purposes. No criticism is or could be made of that finding. He did not consider that a life sentence was necessary, but he concluded that an ordinary determinate sentence would not provide adequate protection for the public. He decided to reflect the overall criminality in the sentence on count 1 of the firearms indictment, with concurrent sentences for the other offences, taking into account the principle of totality. Again, no criticism is or could be made of that approach.
15. In what was clearly a reference to the Avis factors, the judge rightly noted that count 1 related to a loaded firearm which was fired in a public place, putting at risk of serious harm or death not only the intended victims but also members of the public, and that the appellant had been in possession of the firearm with the intention of shooting someone should the need arise
16. The judge emphasised that he kept in mind that the appellant, although 18 when convicted after his trial, was 17 when the offences were committed. At pages 4G to 5C of the transcript, the judge then said this:
 - i. "But, having said that, at 17 years old you were already immersed in gang-related activity and it is hard to see how it was youth or immaturity, rather than entrenched criminality, even in the absence of any raw numbers of convictions, that drove the commission of these offences. In respect of count one, possessing a firearm with intent to endanger life, the least determinate sentence that I could impose would have been one of 15 years' detention. And so the custodial period of your sentence will be 15 years, and the extended licence period will be three years, making an extended sentence of 18 years in total. For count two, possessing an imitation firearm with intent to cause fear of violence, there will be a concurrent determinative sentence of five years' detention and for counts three and four, conspiracy to supply class A drugs, these fall within Category 3 of the Sentencing Guidelines, with a significant role, and, so, having given full credit for your plea of

guilty, the sentence on each of those two counts is one of three years' custody, again to be served concurrently."

17. A report has been prepared for the assistance of this court by the appellant's prison offender manager. She records that the appellant wants to ensure that his life becomes more meaningful and is focused on doing what he can to achieve his release as soon as possible. She notes that the appellant disagrees with the comments in the pre-sentence report relating to "impression management" and states that his positive attitude towards rehabilitation is genuine.
18. The grounds of appeal are that the custodial term of 15 years is manifestly excessive in length, in particular because it fails properly to reflect the reduction which should ordinarily be made where an offender is aged under 18 at the time of the offences and because it fails to take into account that, but for the delay caused by the service of additional evidence, the appellant would have been convicted and sentenced as a young person rather than as an adult.
19. In his written and oral submissions, Mr Cross draws attention to the sentences imposed for the drugs offences. He points out that in the Sentencing Council's Definitive Guideline the starting point for a significant role in a Category 3 offence is four years six months' custody. He submits that the sentences of three years' detention clearly reflect the starting point for an adult offender, reduced by one-third to reflect the early guilty pleas, but not reduced on the basis of the appellant's young age. He goes on to submit that the custodial term of 15 years similarly shows little, if any, reduction to reflect the appellant's age when he committed the offences.
20. Mr Cross draws attention to some of the sentencing principles set out in the early paragraphs of the Sentencing Council's Definitive Guideline on Sentencing Children and Young People. He criticises as wrong in principle the approach taken by the judge in saying that the appellant's offending was driven by "entrenched criminality" rather than youth or immaturity. Mr Cross submits that the judge there fell into the error of double counting, because he had already increased the sentence to reflect the aggravating feature of the offences being gang-related. He submits moreover that the judge failed to take as his starting point the sentence which would have been passed if the appellant had been sentenced as a 17-year-old.
21. We have reflected on Mr Cross's submissions. The judge rightly provided for the protection of the public by imposing an extended determinate sentence, but he was faced with a difficult decision as to the appropriate length of the custodial term to reflect the overall criminality. The firearms offences were very serious. There is at present no definitive guideline for sentencing for firearms offences (though one is in course of preparation), but the relevant factors are well established following Avis and Sheen and Sheen, and the assessment of those factors in this case was decidedly adverse to the

appellant. The drugs offences were also serious, as their categorisation under the relevant guideline shows, and they had a number of aggravating features. But the judge also had to take account of the fact that the appellant was only just 17 at the time of the firearms offences and not much older when he went on to commit the drugs offences. We accept the submission that the judge, although sentencing an 18 year old, should have taken as his starting point the sentence which would have been imposed on the appellant as a 17 year old. Further, in the circumstances of this case, we do not think it would be appropriate to depart from that sentence simply because the appellant had attained the age of 18 by the time his trial was heard.

22. The Sentencing Council's Guideline on Sentencing Children and Young People indicates at paragraph 6.46 the following approach where a custodial sentence for a young offender is unavoidable:

- i. "When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.**"

23. We hesitate to differ from the judge who had the advantage of having observed the appellant at length during the trial. We also recognise that the appellant is at least as mature as others of his chronological age and perhaps more mature and insightful than many of them. However, the pre-sentence report makes it clear that he was recruited into gang culture at a very young age. In such circumstances, a judge faces a difficult task in assessing the inter-relationship between the youth and immaturity which may lead an adolescent to aspire to gang membership, and the criminality which may thereafter become entrenched as a result of gang membership. Such criminality may of course be relevant to an assessment of dangerousness and to a decision as to the form of sentence necessary to protect the public. But in the assessment of the seriousness of an offence, a young offender is usually treated more leniently than a mature adult offender, and it may well be unfair to deny a young offender the benefit of that approach on the basis that he displays attitudes which themselves reflect his exposure to malign influences when he is young and impressionable.

24. The judge did make an allowance for the appellant's young age. He did not however make clear the extent of that reduction. We see some force in Mr Cross's point that no reduction on grounds of age is apparent from the terms in which the judge expressed the sentences for the drugs offences. We are however bound to say that if those offences stood alone, having regard to their aggravating features, a mature adult offender could

confidently have expected a total sentence before reduction for any guilty plea comfortably in excess of four-and-a-half years' custody.

25. In the case of a mature adult offender, we take the view that the total custodial term for offences as serious as these would have been in the range of 18 to 20 years. In all the circumstances the appellant should, in our judgment, have received a total custodial term roughly equivalent to two-thirds of the appropriate adult sentence. It follows, with all respect to the judge, that he gave insufficient weight to the important factor of the appellant's age at the time of the offences.
26. We note also that the sentences for the drugs offences were expressed as sentences of detention in a young offender institution, a form of sentence which is not available in the case of an offender aged 17 at the date of conviction. Detention pursuant to section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 would have been available, and in all the circumstances the criteria for imposing such a sentence were met, but the sentences imposed were unlawful.
27. We therefore allow the appeal to this limited extent. We quash the extended determinate sentence imposed on count 1 of the firearms indictment and substitute for it an extended determinate sentence comprising a custodial term of 13 years and an extended licence period of three years. We quash the sentences of three years' detention in a young offender institution imposed for the drugs offences and substitute for them concurrent sentences of detention for three years pursuant to section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. The sentence on count 2 of the firearms indictment remains as before. Thus the total custodial term is reduced from 15 years to 13 years.

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