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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202101953/A2-202101952/A2

NCN: [2021] EWCA Crim 1160

Royal Courts of Justice

Strand

London

WC2A 2LL

Friday 16 July 2021

LORD JUSTICE SINGH

MR JUSTICE GOOSE

HER HONOUR JUDGE DHIR QC

(Sitting as a Judge of the CACD)

**REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 CRIMINAL JUSTICE ACT 1988**

REGINA

V

YETKIN EKEN

DOGAN KARABULUT

Computer Aided Transcript of Epiq Europe Ltd,  
Lower Ground, 18-22 Furnival Street, London EC4A 1JS  
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)  
MS S PRZYBYLSKA appeared on behalf of the Attorney General.

MR G ARNOLD appeared on behalf of the Offender Eken.

MR W PAYNTER appeared on behalf of the Offender Karabulut.

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

LORD JUSTICE SINGH:

***Introduction***

1. This is an application on behalf of the Attorney General for permission to make a Reference to this Court, under section 36 of the Criminal Justice Act 1988 ("the 1988 Act"), on the ground that the sentences imposed on the two respondent offenders were unduly lenient.
2. On 27 May 2021, after a trial which took place in the Crown Court at Woolwich and which finished on 26 May after 6 weeks, the offenders were sentenced by HHJ Shorrocks. For present purposes there were three relevant counts on the indictment. Count 1 was an offence of conspiracy to be knowingly concerned in the fraudulent evasion of a prohibition on the importation of a prohibited firearm, contrary to section 1(1) of the Criminal Law Act 1977. The maximum penalty is life imprisonment. There is no relevant guideline. Both respondents were convicted on count 1. Count 2 was an offence of conspiracy to sell or transfer a prohibited firearm. The maximum penalty is life imprisonment. The Sentencing Council has issued a relevant guideline on firearms transfer and manufacture. Both respondents were convicted on count 2. Count 4 was possession of ammunition without a firearms certificate. The maximum penalty is 5 years' imprisonment. The Sentencing Council has issued a relevant guideline on firearms, possession without certificate. Only one of these respondents (Eken) was convicted on count 4. The first respondent (Eken) was sentenced to 13 years' imprisonment on count 1, 13 years on count 2 and 3 years on count 4. All were made concurrent, making a total sentence of 13 years.
3. The second respondent, Karabulut was sentenced to 8 years' imprisonment on each of counts 1 and 2, made concurrent, so making a total sentence of 8 years.

***The Facts***

4. The facts are agreed for present purposes and are set out more fully in the Final Reference on behalf of the Attorney General. In summary, the case involved two separate conspiracies to supply firearms. The first, which was reflected in counts 1 and 2, involved the importation of firearms into the UK by Eken, a Turkish national who was a lorry driver. Karabulut's role included facilitating payment to Eken and meeting him to exchange guns for money.
5. The second conspiracy, reflected in counts 3 to 5, again involved the importation of firearms into the UK by Eken. Karabulut was not convicted of any offence in relation to the second conspiracy.
6. Eken worked as a lorry driver with routes from Istanbul to the UK. Four firearms were seized as a result of three trips to the United Kingdom made by him. All were prohibited weapons. There was an inference that other firearms had been brought to the UK by him during the period covered by counts 1 and 2. This, which was the first conspiracy, was organised by a man called Memet, who has pleaded guilty and awaits sentence. Memet travelled to Turkey to arrange the purchase of weapons which were then imported by Eken.
7. There was evidence that Eken imported the firearms from Turkey to the UK on 9 August 2019. The weapons (two prohibited converted blank firing pistols) were transferred by

Eken to Karabulut and then on to Memet on that date. Memet was then arrested and the firearms were seized.

8. The judge sentenced Eken on the basis that multiple firearms were imported by him but did not make any specific finding as to the number of importations.
9. Karabulut allowed Memet to use the kebab shop that he managed as headquarters over a period of a month. The evidence of his involvement began on 7 July 2019 and ended with the arrest of Memet on 9 August. Karabulut was in regular close contact with Memet by telephone. He also facilitated contact between Memet and a man called Murat, the leader of a notorious criminal gang called the "Tottenham Turks", who were to be the ultimate recipients of the firearms. The unchallenged evidence of a co-defendant at trial was that this was a violent gang whose members were involved in the supply of Class A drugs and who made use of firearms. Karabulut's other activity involved sending money transfers to Eken, taking delivery of cash sent in payment for firearms and meeting him to collect firearms on 9 August 2019.
10. In relation to the second conspiracy, this only has relevance for present purposes to Eken. On 9 August 2019, when Memet was arrested, Eken was not at this stage. Instead he went on to bring further firearms into the UK in his lorry. The second conspiracy was organised by a man called Thompson, the head of a criminal gang based in Aylesbury. There was evidence to suggest that Eken met associates of Thompson's in Thetford in September 2019. Subsequently, he went to Turkey and brought firearms into the UK on 14 October 2019. He travelled again to Thetford. He met an associate of Thompson to make the exchange. The associate was stopped nearby by police. In the boot of his car was a holdall containing six handguns, 126 rounds of live ammunition and a kilo of heroin. Eken was acquitted of involvement in the supply of the heroin. He also was stopped and had with him a bag containing £9,000 in cash and an unregistered SIM bought earlier that day by Thompson.

### *The Sentencing Process*

11. Eken was born on 1 September 1973. Karabulut was born on 1 January 1981. Neither offender has any previous convictions. In the circumstances, no pre-sentence report was required or obtained. There were no victim impact statements either.
12. In his sentencing remarks the judge found that this was a medium scale operation by reference to the relevant guideline. It involved neither automatic weapons nor a significant number of weapons, which he indicated would be 30 or more. However, the weapons were to be sold to serious criminals to be used in serious crime, in particular to the Tottenham Turks. He found that Karabulut's involvement ceased when Memet was arrested but Eken continued to play his role. Without Eken the guns could not have been collected from Turkey and delivered to the UK. The judge was satisfied that had Eken not been arrested he would have continued to import firearms for money using his employment as a cover. Given the period of his involvement, the quantity of ammunition and the fact that six guns were actually delivered he could only be described as a key facilitator. In the judge's assessment his case fell into category 2A of the guideline. The starting point in his case was 16 years with a range of 12 to 18 years. He reduced the starting point by 3 years to reflect Eken's good character and the fact that he would be serving his sentence in a foreign land. The sentences imposed were therefore 13 years concurrent on counts 1 and 3 and 3 years concurrent on count 4 in

respect of the ammunition.

13. Karabulut allowed Memet to use his legitimate shop business as his headquarters. He was involved in the hope of making substantial money. His assistance was useful but not key. He played a significant role in a significant enterprise. He knew the guns were destined for the Tottenham Turks but there was no evidence that he was a member. His case fell into category 2B of the guideline. The starting point in his case was 10 years with a range of 8 to 14 years. He reduced the starting point by 1 year to 9 years as Karabulut's involvement was limited to a month and then reduced it further to 8 years on account of his good character. He imposed sentences, as we have said, of 8 years concurrent on counts 1 and 2. An appropriate order was made about days spent subject to qualifying curfew.

***The Approach to be taken by this Court***

14. In Attorney-General's Reference No 4 of 1989 (1990) 90 Cr App R 366 at 371, Lord Lane CJ said that:

"A sentence is unduly lenient ... where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate."

15. He went on to state that even where this Court considers that a sentence was unduly lenient, it has a discretion as to whether to exercise its powers.

***Submissions on behalf of the Attorney General***

16. On behalf of the Attorney General, Ms Przybylska submits that there were the following aggravating factors. First, compatible ammunition was supplied with the firearm - this is relevant to Eken's case only. Secondly, there was in the case of each offender the use of a legitimate business to provide cover. She accepts that there were two mitigating factors. First, neither offender had previous convictions. Secondly, they were both of positive good character. Nevertheless, she submits that the sentences passed in this case were unduly lenient. The fundamental error into which the judge fell, she submits, was to place the case overall into the wrong category, that is category 2 rather than category 1. The judge appears to have been unduly influenced by the number of weapons imported. But she submits that is only one of the category 1 factors and is not determinative of the category. The other relevant factors for a category 1 case, that is a large scale commercial and/or highly sophisticated enterprise, were that the operation took place over a significant period: in the case of the first conspiracy about 4 months; that it took place over a significant geographical range because there was cross border importation from Turkey to the UK in both conspiracies and there was a close connection to Organised Criminal Groups. The guns were sold directly to criminals in both conspiracies.
17. She submits that the judge correctly regarded Eken as a key facilitator and therefore there was high culpability, that is A. It is also accepted that Karabulut was not a key facilitator and that his role was a significant one, so placing him in medium culpability, that is category B. It is submitted that the starting point therefore for Eken should have been, since it was a category 1A case, 20 years' custody with a range of 16 to 28 years.

18. It is submitted that the aggravating factors required an uplift from that starting point, as did the need to reflect the total criminality across all three offences of which he was convicted.
19. It is accepted that the judge was entitled to reduce the sentence to reflect Eken's positive good character and the likely impact of a custodial sentence on him and his family. In particular, a lengthy sentence in this country would mean that he would be separated from his two children for many years. Nevertheless, it is submitted that the sentence of 13 years in total was unduly lenient.
20. In the case of Karabulut it is accepted that his culpability was category B but it is submitted that the judge's error in placing the harm in category 2 rather than category 1 meant that the sentence in this case too was wrong. The starting point for a category 1B case is 14 years' custody, with a suggested range of 12 to 18 years. It is submitted that the aggravating factor required an uplift from that starting point. It is accepted that the judge was entitled to reduce the sentence to reflect the limited period of involvement of Karabulut as well as his good character. The impact of custody on him and his family who live in Turkey was also something that the judge was entitled to take into account in reducing the sentence. Nevertheless it is submitted that a total sentence of 8 years was unduly lenient.
21. At the hearing our attention has also been drawn to the fact that a number of other offenders have been sentenced at the Crown Court at Southwark by Judge Tomlinson in relation to matters essentially arising from the same or similar conspiracies. We were informed, although we do not have the details, that at least one reason why there was a severance of the cases was to do with insufficient courtroom being available, which is understandable in the current conditions caused by the pandemic.
22. We do not have precise details of those other matters. Nevertheless our attention was drawn to them to support the submission on behalf of the Attorney General that the assessment made by Judge Shorrocks was wrong. It is pointed out that in the case of Thompson, who was sentenced on 15 July 2021, the judge said that the harm in that case fell on the border between categories 1 and 2. We are told that he said that if there had been a trial in that case the sentence would have been 21 years' imprisonment. A sentence of 15 years was imposed after a guilty plea.
23. We were also informed, both in writing and at the hearing today, of the sentence which had been imposed at Southwark by Judge Tomlinson in the case of a man called Kaliq. He was sentenced to 14 years' imprisonment. We note importantly, that Kaliq's case was known to Judge Shorrocks, as appears from the record of the sentencing hearing on 27 May 2021, at page 3E-F.

***Submissions for the first respondent Eken***

24. On behalf of the first respondent Eken, Mr Arnold submits that having presided over the trial the judge was in an excellent position to make the assessment of whether this was a category 1 or a category 2 case. He submits that the enterprise was far from the large scale or sophisticated enterprise which is mentioned in the description of a category 1 case in the guideline. He says that this was not of the largest scale. There were no automatic weapons. He describes the enterprise as being a "cottage" industry and could be described as being amateurish, in contrast to cases where there are shipments of guns with an efficiency and professionalism, that was entirely absent. He submits if the case

was correctly placed in category 2A the guideline recommends a starting point of 14 years' custody, with a suggested range of 12 to 18 years. Further, he submits that there was positive personal mitigation. Eken was the breadwinner for his young family and elderly parents. There are a number of good character references. On that basis the initial starting point taken by the judge of 16 years cannot be criticised. In fact, as he observed at the hearing before us today, a starting point of 16 years is in fact the bottom of the suggested range for a category 1A case. That would suggest that the judge ultimately did consider that this case was close to or at the cusp between categories 1 and 2. Further, the judge was entitled to reduce that after taking into account the impact of the pandemic on conditions in prison and the fact that Eken would be serving a long sentence in a foreign country.

### ***Submissions for the second respondent Karabulut***

25. On behalf of the second respondent, Mr Paynter submits that the judge was well placed, having heard all the facts in detail at the trial, to assess which category this offending fell into. He submits that the judge did not have regard only to the number of weapons but also the fact that they were not automatic weapons which again pointed away from category 1. He submits that the length of the criminal activity was to be measured in months and not years. The geographical range was not large within the United Kingdom. Inevitably he submits that in any importation case there will be the crossing of a national boundary but there was in this case importation from only one other country. He does accept that there was evidence of a close connection between the organiser of the conspiracy (Memet) and a Organised Criminal Group, namely the Tottenham Turks. Nevertheless, he reminds this Court that the guideline makes it clear that where there are characteristics present which fall under different levels of harm the court should balance these characteristics to reach a fair assessment of that harm. He submits that that is exactly what the judge did in the present case. Since it is common ground that the second respondent's culpability was B, the guideline was applied by the judge when he said that the starting point was 10 years' custody. That is the starting point recommended in the guideline for a category 2B case, with a suggested range of 8 to 14 years. Mr Paynter submits that there was only one aggravating factor, that is use of a legitimate business as a cover, but this was correctly factored into the exercise by the sentencing judge. He also submits that there were mitigating factors, not only good character but also the offender's mother died in the spring of 2020 and he was not able to attend her funeral in Turkey. There was also the inevitable impact, both financial and in terms of contact with his children. Further, Mr Paynter invites this Court to have regard to the custody progress report commissioned by this Court in which it is said that the author has met Karabulut once and found him to be polite, mature and respectful. In those circumstances Mr Paynter invites us not to exercise our discretion to alter the sentence, even if we conclude that it was unduly lenient given the offender's clear compliance with the court and prison process, so that view could be taken that the sentence is already of a sufficient length to serve its purposes.

### ***Conclusions***

26. On any view this was a very serious case. The offences called for lengthy sentences of imprisonment for both these offenders. We bear in mind that the question for this Court

- is not whether other judges would have or indeed have in fact imposed longer sentences but whether the sentences imposed were outside the range that was reasonably open to the judge so as to be unduly lenient.
27. We also bear in mind that the sentencing judge was very well placed to make an assessment of the degree of harm in this case, especially as he had presided over a long trial lasting 6 weeks. He therefore had a fuller understanding of the entirety of the evidence than this Court can possibly have. We also emphasise again that other cases of which we have been given some information are not before this Court. We do not have any details about those other cases.
  28. In our view, the judge did not fall into error in his approach to whether these offences should be placed in category 1 or category 2. Ultimately the question was whether this was a large-scale commercial and/or highly sophisticated operation. A number of indicators are set out in the guideline in order to assist the sentencing court to answer that important question.
  29. We have come to the firm view that when the sentencing remarks are read fairly and as a whole, the judge did not adopt a single criterion to answer that question, namely the number of weapons imported. He also had in mind all the circumstances of the case. He noted, for example, that the weapons were not automatic ones. Further, we consider that the judge carefully explained how he had arrived at the sentences he eventually imposed having regard to the mitigation that was, as is common ground, available to both offenders. We have reached the conclusion that the sentences in these two cases were not so far below the range reasonably open to the sentencing court as to be unduly lenient.
  30. Accordingly, we refuse this application for permission to refer the sentences on behalf of the Attorney General.

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

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