Neutral Citation Number: [2022] EWCA Crim 1065

Case No: 202103750 A4

**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**
**ON APPEAL FROM THE CROWN COURT AT SHEFFIELD**
**His Honour Judge Richardson QC**
**T20217025**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28 July 2022

**Before :**

**Lady Justice Whipple**
**Mr Justice Spencer**
and
**Her Honour Judge Taylor, the Honorary Recorder of Westminster**

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**Between :**

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| **Taylor Meanley** | **Appellant** |
| **- and -** | |
| **Regina** | **Respondent** |

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**Adam Kane QC and Ayaz Qazi** instructed on behalf of the **Appellant**
**Stephen Wood QC and Abigail Langford** instructed on behalf of the **Respondent**

Hearing date: 13 July 2022

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# Approved Judgment

**Whipple LJ:**

**The complainant under count 4 remains subject to a life-long order protecting his identity pursuant to s 45A Youth Justice and Criminal Evidence Act 1999 and we shall refer to him in this judgment as C1. There are no reporting restrictions in place in relation to the appellant or any of the co-accused named in this judgment.**

## Background

1. On 6 September 2021, the appellant pleaded guilty to Counts 3 and 4 on the Indictment. Count 3 was an allegation of damaging property. Count 4 was an allegation of assault occasioning actual bodily harm.

2. On 15 October 2021, following a trial presided over by His Honour Judge Richardson QC, the Recorder of Sheffield, the appellant was convicted of Counts 1 and 2 on the indictment. Count 1 was an allegation of murder committed on 11 January 2021. Count 2 was an allegation of possessing a firearm with intent to endanger life, contrary to section 16 of the Firearms Act 1968. He was found not guilty by the jury at the judge's direction of Count 5, the lesser offence of possession of a firearm with intent to cause fear of violence.

3. The appellant was born on 11 July 2004. He was 16 ½ at the date of commission of these offences, and 17 at the date of his conviction and sentence.

4. On 29 October 2021, the appellant was sentenced by the trial judge. On Count 1 he was ordered to be detained at Her Majesty's Pleasure, with a minimum term to be served of 27 years less 287 days served on remand, with a concurrent sentence on Count 2 of 13 years' detention under s.250 Sentencing Act 2020. No separate penalty was imposed for Counts 3 and 4.

5. The appellant appeals with the leave of the full Court against his sentence, on grounds that the length of the minimum term imposed for count 1 (murder) was manifestly excessive.

6. At the conclusion of the appeal hearing on 13 July 2022, we allowed the appeal and announced that the sentence would be varied to one of detention at Her Majesty's Pleasure with a minimum term of 22 years, with credit for the 287 days served on remand. We did not disturb any other aspects of the sentence (namely the disposals on Counts 2, 3 and 4). We said that our reasons would follow; these are our reasons.

## Co-Accused

7. Jack Parkes was 20 at the date of these offences. He was convicted of Counts 1 and 2. He was aged 21 by the date of sentence. He was sentenced to life imprisonment with a minimum term of 27 years, less 272 days' time on remand. He pleaded guilty to Count 3 for which no separate penalty was imposed.

8. Arlind Nika was 15 at the date of these events. He was acquitted of murder but convicted of manslaughter in the alternative on Count 1 and convicted of Count 2. He was sentenced to concurrent terms of 12 years' detention in a young offender institution. He pleaded guilty to Count 3 for which no separate penalty was imposed.

9. Joe Paul Anderton was 17 at the date of these events. He was acquitted of murder but convicted of manslaughter in the alternative on Count 1 and convicted of Count 2. He was sentenced to concurrent terms of 12 years' detention in a young offender institution. He pleaded guilty to Count 4 for which no separate penalty was imposed. He was acquitted of Count 3.

10. Laken Meanley was 17 at the date of these events. He was found not guilty of Count 5 by the jury at the judge's direction. He pleaded guilty to Count 4 and was conditionally discharged for 2 years.

11. Ryan Nisbet was acquitted of Counts 1 to 3.

## Facts

12. The offences were the product of gang-related rivalry in the Doncaster and Mexborough areas of South Yorkshire. The appellant and co-defendant Jack Parkes had been aware of attacks upon the addresses of their mothers. They believed the attacks had been carried out by a gang called the Pitsmoor Shotta Boys (or "the PSB gang"). The deceased, Lewis Williams, was associated with that gang. In December 2020 and early January 2021, the appellant sent several text messages to his girlfriend which indicated that he had possession of firearms and an intention or readiness to discharge those firearms at others.

13. On 10 January 2021, the appellant uploaded to social media a photograph of two black gloves, a black balaclava, a black unused shotgun cartridge and a "slam gun". A slam gun is a homemade or improvised firearm. It is made up of two pipes of unequal diameter, one fitting inside the other. One pipe acts as a barrel and the other contains a firing pin. Handles are fixed to the side so that the user can take a firm hold. Shotgun cartridges are the usual form of ammunition deployed from these devices. The appellant had obtained the weapon, along with cartridges, from the friend of a friend in November 2020. The message thread included the appellant commenting, "PSB gang Ha ha ha ha ha" and "We all need to be together and get rid." A friend of the appellant asked him, "Where's your shooters?" To which the appellant replied, "In front of me. Not lying. Ha ha ha ha ha." 25 seconds later, the appellant commented, "Just about to go out with it now", followed by four hush emojis.

### *Count 4*

14. At around 9:49am on 11th January 2021, a black Audi driven by the co-defendant Arlind Nika pulled up to the address of the appellant's brother and co-defendant, Laken Meanley. The co-defendant Joe Anderton was a back seat passenger in the car. Laken Meanley got into the Audi and it set off. At some point, they collected the appellant. The 16 year-old male complainant, C1, was an associate of Lewis Williams, the deceased. There had been prior telephone calls between C1 and the appellant. The appellant believed C1 had been cheeky, "chatting shit" and generally goading the appellant over the attack upon his mother's house. At about 11:27am, C1 was walking along a street in Mexborough. The black Audi, now being driven by the appellant, drove past C1 before turning round, mounting the pavement and driving directly at C1. C1 took evasive action and ended up being trapped between a refuse bin and the vehicle. The appellant told his brother Laken Meanley to "grab him." Laken Meanley then got out of the car and started to punch C1. The appellant did not get out of the vehicle but

shouted from the car, "I'm gonna end you." CCTV footage captured the assault and also showed the Audi returning Laken Meanley to his home address. After the assault, C1 went to find the deceased and tell him what had happened.

***Count 3***

15. Afterwards, the appellant was driven to a location where he bought a white Audi. Very soon after purchasing that vehicle, it was rammed by another vehicle. The appellant held a male called Lewis Merritt responsible for this attack and went to collect his slam gun. In the meantime, the co-defendant Arlind Nika had purchased a blue Jaguar car. There was a series of phone calls and messages between the appellant and Arlind Nika in which the appellant said "Arlind bro, hurry up." Joe Anderton sent Arlind Nika a message at 3:20pm saying, "You coming or not, because I'm a go out in a minute G you're taking time?" At 3:43pm, the Jaguar being driven by Arlind Nika, pulled up at a service station. The appellant, Jack Parkes, Joe Anderton and Ryan Nisbet all got into the vehicle. The Jaguar drove to 54 Clayfield View, the address of Paul Merritt, who is the father of Lewis Merritt. The appellant and Jack Parkes got out of the Jaguar and threw bricks at the property and vehicles, causing damage. The incident was captured on CCTV. The appellant and Jack Parkes took steps to conceal their identity by pulling up their hoods.

***Counts 1 and 2***

16. After being assaulted by Laken Meanley, C1 had stayed in the company of the deceased. The deceased told C1 not to worry and that, "We'll get them back. Jumping on you, you're just a kid." C1 heard the deceased make a telephone call and heard him say, "TT's back." TT is the nickname of the appellant. CCTV footage showed the Jaguar being driven in a street in Mexborough, with the deceased chasing the vehicle. Some sort of missile was thrown at the car. The car then drove dangerously at speed on the wrong side of the road, overtaking a line of cars waiting at traffic lights. Once through the junction, the Jaguar pulled into a car park before setting off back down the road, with the front passenger window wound down. CCTV footage showed the Jaguar approaching the group containing the deceased and C1, who were standing on the near side pavement. When they were a few yards away, the car slowed down and the appellant fired a single shot from the slam gun, hitting the deceased at close range.

17. C1 ran to a nearby store to summon assistance and people on the street tried to help. There were wounds to the deceased's neck and chest. Bystanders attempted CPR, which was taken over by a paramedic but the deceased was pronounced dead at the scene. A post-mortem examination confirmed that death was caused by a shotgun wound to the neck and chest. Over 120 pellets had struck the deceased, over a large area of his body. Pellets had penetrated his skin and caused extensive damage to internal vital structures in his head, neck, airway and lung tissue. The deceased had sustained massive internal haemorrhaging into his chest cavity and there was extensive bleeding into the soft tissues of the neck.

18. After the shooting the Jaguar sped off. CCTV footage from 4:30pm showed the Jaguar being parked adjacent to some garages in a back street and five males exiting the car and making off. Further footage at 6:00pm showed two males in balaclavas approaching the Jaguar and setting it alight.

19. The appellant was arrested. In interview, he denied that he was involved in any way with the shooting and said that he had no access to firearms. Following the arrest of the appellant, a used shotgun cartridge was recovered from his home address. An expert identified it as a fired 12-gauge cartridge which had the characteristics of being fired by a slam gun. It was the same brand of cartridge as the one used in the shooting and the same brand as the cartridges depicted in the photograph uploaded to social media by the appellant on 10 January 2020.

**Sentence**

20. In passing sentence, the Recorder started with some overarching observations. He noted the complexity of the sentencing exercise because of the young ages of the defendants and the fact that their ages meant they were covered by "widely differing sentencing regimes". He had well in mind the ages of each defendant and the role played by each individual. He also had at the forefront of his analysis their intellectual functioning and various disadvantages in life. If the defendant had been older and others in the group had been adults, each would have received a much longer minimum term, but he was compelled to reduce the minimum terms to account for age and, more importantly, their individual development ages.

21. He emphasised the "pernicious consequences" of gangland crime, the fact that gangs tend to attract disaffected and inadequate youths who lack education or prospects in life, the dreadful state of affairs that allowed a 16 year-old to acquire and use an improvised weapon like a slam gun, and the significant community impact of this sort of gang crime, that society would benefit from putting these gangs and their members out of existence, noting the evidence before him of the detrimental community impact, and that those who indulge in this exceptionally serious violence must expect very substantial sentences of imprisonment.

22. He said that each of the defendants knew what they were doing:

> "They may each be very poorly educated, but I am entirely satisfied they harbour an innate cunning and predisposition to crime and violence. Each has come from a very baleful upbringing."

23. Turning to the sentences to be imposed, he said that:

> "The normal considerations when passing sentence upon youths for other types of crime, whilst not unimportant, do not resonate or have the same importance in a case of this kind. I shall make appropriate allowance for the immaturity and disadvantages of each defendant, but substantial minimum terms and sentences must be imposed in a case of this seriousness."

24. He stated that if these crimes had been perpetrated by adults in identical circumstances, he would have been looking at a minimum term for those convicted of murder of at least 33 years.

25. He went on to consider the aggravating factors which he identified as:

a. The use of a firearm to execute the murder and the manslaughter.

b. The crimes were all part of a gangland rivalry and retribution. These were revenge attacks.

c. The killing was in a public place with many members of the public around and about. Those members of the public were placed at risk and had to watch a youth being gunned down.

d. The firearm was carried to inflict injury on rival gang members and was used for that purpose.

26. So far as the appellant was concerned, he concluded that:

a. The appellant harboured a desire for retribution from the day before the killing. He circulated a photograph of the gun. This was planned violence, to find a PSB member and visit violence upon that person.

b. The appellant possessed an intention to kill: *"To fire a gun out of a moving car at a youth at close quarters … does not admit of any other intention".*

c. Although drugs formed part of the backdrop, drugs had no direct relevance to these offences. The appellant and the others knew what they were doing.

27. His purpose in passing sentence had public protection at the forefront. The life sentences to be passed on the appellant and Parkes would serve to protect the public.

28. Dealing with the appellant's mitigation, he recognised that the appellant had no previous convictions, that the weapon had no automatic function and was rudimentary in design, capable of firing only one shot at a time. In the appellant's case there was evidence of immaturity and low developmental age, by reference to the speech and language therapy report of Ms Wood (as to which, see further below).

29. He referred to Schedule 21 of the Sentencing Act 2020, which provided a starting point of 12 years for those who were under 18 at the time of the offending, as the appellant was. This contrasted with a starting point of 30 years for an adult who used a firearm to commit murder, which was the appropriate starting point for the co-defendant Parkes. He said:

> "The problem I face in this case is that Meanley [the appellant] is subject to a starting point of 12 years and Parkes is subject to a starting point of 30 years. I am required to move from these starting points to a position where any discrepancy or disparity is removed in order to achieve a fair reflection of their ages and culpability."

30. He said that age was an imprecise guide to intellectual functioning and maturity. He referred to the Sentencing Council's Definitive Guideline on Sentencing Children and Young People (the "Guideline") and stressed the importance of assessing developmental age and maturity, as well as intellectual functioning. He was required to find some sort of parity between the appellant and Parkes to prevent a grave injustice.

31. Coming to his analysis and conclusions, he said that he had gained a very clear view of this case after hearing and seeing the evidence during a 6-week trial. He recognised the overlap between count 2, the firearms offence, and count 1, the homicide. For the firearms offence alone the starting point was 18 years under the relevant guideline. The appellant was more culpable than his co-defendants but they all knew what they were getting into when they got into the Jaguar. No separate penalty would be imposed for counts 3 and 4.

32. He again noted that the appellant had a baleful upbringing and had suffered educational disadvantages, he had an aimless life with little hope for the future except for indulging in crime. But despite his intellectual disadvantages, he harboured a reservoir of innate cunning and malevolence. If the appellant had been an adult the sentence would have been one of 33 years. But given his age and the circumstances of his life, his culpability was "*very modestly reduced*". He was justified in moving upwards from the 12 year starting point by a significant factor: the appellant had the gun for some time and was boastful about it. The judge regarded the appellant as a very dangerous individual, who might never be safe to release from custody.

33. He imposed a life sentence, by detention at Her Majesty's Pleasure with a minimum term of 27 years, with a concurrent sentence of 13 years for the firearms offence (which he said would have been 20 years if the appellant had been an adult). He imposed no separate penalty for the other offences.

34. He dealt next with Parkes, noting that the starting point in his case was 30 years. Parkes did not fire the gun but did shout "shoot him" just before the gun was fired. Given that the appellant was to receive 27 years, there was an argument for parity. If the appellant had been an adult, the judge would have imposed a term of 32 years on Parkes. But justice demanded a reduction which was "*arguably generous*", but was required to preserve parity, and imposed a minimum term of 27 years:

> "You are both separated by only a few years and justice demands that you be treated the same when the situation is justly analysed".

He imposed a concurrent sentence of 18 years for the firearms offence. There was no separate penalty for the other offences.

## Grounds of Appeal

35. Mr Kane QC and Mr Qazi, who represented the appellant at trial and on this appeal, advance a single ground of appeal, namely that the judge failed to have proper regard to the age and developmental maturity of the appellant when departing from the 12 year starting point, which resulted in an excessive finishing point of 27 years.

36. This ground is supported by a detailed advice and skeleton argument, in which the following broad submissions are advanced:

    a. There was evidence before the judge in the form of a speech and language therapist that the appellant's chronological age was greater than his developmental age in a number of measurable ways.

b. There was strong personal mitigation. The appellant's schooling had been very interrupted. He was removed from the mainstream sector at the age of 11. He had special educational needs throughout his school years. He had been diagnosed with moderate learning difficulty. He has significant difficulty with language skills.

c. The appellant had been the subject of a child protection plan dated 27 July 2020, under the category of neglect. A further referral was made in August 2020 when he was seen dragging his girlfriend off the train by her arm. There was concern that he was being targeted by organised crime groups. On 20 October 2020 there was a child protection conference in light of concerns for his safety and the safety of family members, because of the targeting by gang members and reports of windows being smashed at his home.

d. There was a reported history of the appellant and his father being picked on and targeted by the PSB gang.

e. The judge's sentence was out of line with authority which demonstrated that youth and life circumstances may very substantially reduce culpability. There was no case where a sentence of this length had been imposed on an offender aged 16½ at the date of offending.

f. The judge had been wrong not to order a PSR before sentencing, especially so because the Court had a great deal of evidence from the police about community impact of gangs, but none of it directed at the impact the local gang culture had on the appellant, who was being targeted, and his family who had suffered a number of attacks thought to be by the PSB gang.

37. In oral submissions before us, Mr Kane pressed the points in his written grounds of appeal. He drew to our attention the detailed information contained in the pre-appeal report obtained for this Court, the contents of which we shall shortly come to. He told us that the judge had declined his request for a pre-sentence report. There was important information contained in the pre-appeal-report which was not before the judge, particularly relating to the appellant's father's involvement in crime and the appellant's treatment of his father as a role model for his own life. Mr Kane submitted that two aspects of the judge's sentencing remarks in particular disclosed the judge's errors of approach: first, the notion that normal considerations when passing sentence upon youths do not resonate in a case of this kind; and secondly, the conclusion that culpability was only "very modestly reduced" on account of background factors and age. Further, he suggested that the judge had wrongly had in mind the notion of parity between the appellant and Parkes, given their differing ages; and that the judge had given undue weight to deterrence as a factor in this sentence. Mr Kane drew our attention to *R v DM and SC* [2019] EWCA Crim 1354; [2020] 1 Cr App R (S) 17, a case he had also cited to the judge, in which the Court (per Holroyde LJ) emphasised the importance of considering the defendant's developmental and emotional age. He also referred to *R v H* [2018] EWCA Crim 2868, to which this Court had drawn the parties' attention because it involved a young person who had murdered by use of a gun, where the Court (per Bean LJ) had reduced a minimum term imposed on a 15 year-old from 20 to 18 years, and *R v Aziz* [2019] EWCA Crim 1568 where the Court (per the Lord Chief Justice, Lord Burnett of Maldon) had upheld a minimum term of 19

years in the case of a 16 year old for the rape and murder by use of a weapon such as a hammer. Accepting that sentence appeals are of limited assistance because each one is fact-specific, Mr Kane submitted that these cases illustrate the sort of minimum term appropriate for this appellant.

38. By a Respondent's Notice, the prosecution resists this appeal, submitting that the judge, although arguably imposing a sentence that was severe, had not imposed a sentence that was manifestly excessive.

39. In oral submissions before us, Mr Wood QC, who also appeared for the prosecution at trial, drew our attention to the new provisions contained in s 127 of the Police, Crime, Sentencing and Courts Act 2022 which apply to convictions after 28 June 2022 and give a starting point of 20 years for a 16 year-old offender, rising to 27 years as a starting point for an offender aged 17. Mr Wood stressed the aggravation of counts 3 and 4 which had to be reflected in the overall term imposed, and whilst accepting that there could be no double counting, noted the seriousness of count 2, the firearms offence, and the particular features of this firearms offence, where a home-made gun was procured, kept at the appellant's home for some time, retrieved deliberately and then discharged in the middle of the day in a busy street with pedestrians and cars present, which specific features had to be reflected in the overall term. This was very serious offending: the appellant was the group leader, even though he was younger than others, he rallied the others and was the one they looked up to, he was streetwise despite his youth. There was a degree of sophistication about this offending, given the planning and the attempts afterwards to conceal evidence by burning the car.

40. Mr Wood did not accept Mr Kane's criticisms of the judge's approach. Specifically, he submitted that deterrence could be a legitimate aim of youth sentencing, even though it is not an aim specifically listed in section 37 of the Crime and Disorder Act 1998 or section 44 of the Children and Young Persons Act 1933 (both provisions referred to in section 58 of the Sentencing Act 2020 which deals with offenders under the age of 18).

41. We are grateful to all counsel and their legal teams for their very helpful submissions and the care and focus with which they have presented this appeal. We have been very greatly assisted.

## Evidence relating to the Appellant's age and development.

### *At Sentence*

42. The Court had a report of Kate Wood, speech and language employed by the Doncaster and Bassetlaw Hospitals NHS Trust, dated 9 August 2021. Ms Wood found that he was towards the very lowest centiles in a number of tests that she undertook. She reported that his education had been very interrupted, and that he had been identified as having special educational needs while at school because of a diagnosis of moderate learning difficulty. On one test of his knowledge and understanding of words, he achieved a score on the 5$^{th}$ percentile which equates with a chronological age of 9 years and 10 months. On another test of ability to follow instructions, he achieved a score in the second centile which equates with a chronological age of 7 years and 7 months. Ms Wood's view, in summary, was that the appellant suffered from significant difficulties with his language skills; he had Language Disorder. Many of those difficulties had not been noticed even though many professionals had been involved with him over time.

Ms Wood made a number of recommendations for future treatment and in relation to how professionals should seek to communicate with the appellant. Ms Wood's report ended with the following rider and in consequence was of limited utility to the judge:

> "N.B. If any age equivalent guides have been included in this report they are there as a guide for carers and professionals involved in supporting the Young Person, to help them understand the Young Persons level of functioning for their language and communication skills and for consideration when providing support and differentiating language levels. They relate only to their speech, language and communication skill development and not their cognitive, functioning and learning development as a whole. These age equivalent guides are given solely for the purposes of supporting the Young Person and not as an indicator when determining criminal responsibility."

43. The judge was also assisted by a sentencing note prepared by defence counsel. That note stressed the speech and language deficits outlined by Ms Wood in her report and the appellant's interrupted education. It alerted the judge to the fact that the appellant was made subject to a child protection plan on 27 July 2020 under the category of neglect. A further referral was made in August 2020 when the appellant was seen dragging his girlfriend off the train by her arm and that concerns were raised that he was being targeted by organised crime groups. This led to the child protection conference on 20 October 2020. There was reference to the difficulties which the appellant and his family had experienced by being harassed and targeted by the PSB gang over many years, with the police being aware of this. There had been a terrifying incident in November 2020 when a shotgun had been discharged through the window of the appellant's mother home, while his mother stood in the stairway, following which his mother had to move out. The note asserted that the appellant's father had a criminal lifestyle, but no further details were given (Mr Kane telling us that his instructions from the appellant limited what he was at liberty to say at that hearing about the appellant's father).

44. The judge declined Mr Kane's invitation to obtain a pre-sentence report.

***On Appeal***

45. In advance of the appeal, a pre-sentence report dated 5 July 2022 was prepared by Emma McInstrey, team leader for Doncaster Youth Offending Service. Ms McInstrey conducted two interviews specifically for the purpose of her report. She described the appellant's difficult childhood: the appellant's father was a repeat offender who had spent significant periods in prison, and the appellant's mother was subject to abuse by his father and has issues with her physical and mental health. The appellant is one of six children, the other five having a different biological father. There had been a long history of bullying of the appellant and his family by the PSB gang. Ms McInstrey thought that his background and family difficulties impacted on the appellant's behaviour at the time of the offence. The fact that he had no structure and little parental guidance meant he was able to lead a dysfunctional lifestyle and become involved in this kind of offending behaviour.

46. Ms McInstrey examined the relationship between the appellant and his father. She recorded what she was told by the appellant, that his father was a drug-dealer in the local area and that the appellant thought his own life had been taking the same direction as his father's life, prior to these events which put him in custody. Ms McInstrey's view was that the appellant looked up to his father who had been "the biggest influence" on the appellant's identity during his teenage years.

47. Ms McInstrey did not consider the appellant to be a neuro-typical mature sixteen year-old at the time of offending. She thought he was functioning at a much lower age. She noted:

> "Since Taylor has been remanded various assessments have been completed with him by a Psychiatrist, a Speech and Language Therapist and with Forensic Child and Adolescent Mental Health Services (FCAMHS). It has been identified that Taylor has an extremely low IQ and his mental age was estimated at 11 years and 10 months. Taylor also has significant communication difficulties identified in a report produced by Kate Wood, Speech and Language Therapist at Doncaster Youth Offending Service. This would have exacerbated his vulnerability to exploitation and affected his ability to make rational decisions."

48. She did not state the source of her statement that he has a mental age estimated at 11 years and 10 months but it appears to come from the psychiatrist or FCAMHS. Their reports have not been disclosed to this court.

49. We have been assisted by Ms McInstrey's report which provides a much richer picture of the appellant's background and developmental challenges than was available to the judge. The judge had in mind the appellant's "baleful" upbringing (as he called it). Ms McInstrey's report adds a range of evidence to support that comment; but she also introduces some material which was not known to the trial judge, including, importantly, the fact that the appellant's father was a local drug-dealer who had a strong influence on the appellant at the time of this offending, and evidence that the appellant's developmental age was significantly lower than his chronological age.

## Sentencing Children and Young People.

### *The Guideline*

50. The Sentencing Council's definitive guideline on Sentencing Children and Young People ("the Guideline") was published on 1 June 2017. When sentencing persons under 18 at the date of conviction, the court must have regard to the principal aim of the youth justice system which is to prevent offending by young people, and the welfare of the young person (see [1.1] and [1.10]). The seriousness of the offence is a starting point but the approach should be individualistic and focus on the particular young person and should take account of any factors contributing to the offending behaviour (see [1.2]). The primary purpose of the youth justice system is to promote re-integration rather than punish (see [1.4]). When considering a young person's age their emotional and development age is of at least equal importance to their chronological age (if not greater) (see [1.5]), and at [4.10].

51. In considering the seriousness of the offence, the court must consider culpability and harm ([1.9]) but there may be factors which diminish the culpability of a young person ([1.5]). In considering a child's welfare, the sentencing court must have regard to any learning difficulties and the effect on a young person of neglect or abuse (see [1.12]). The Court should always seek to ensure that it has access to information about how best to identify and respond to these factors ([1.14]).

52. The guideline suggests (as a rough guide) that a sentence broadly within the region of half to two thirds of the adult sentence should apply for those aged 15-17, but in determining the appropriate sentence, the emotional and developmental age and maturity of the young person is of at least equal importance as their chronological age (see [6.46]).

***Authorities***

53. The Court has long recognised that sentencing must take account of age and maturity, and that reaching 18 does not represent a sudden shift from the sentencing regime which applies to children, to the regime for adults. It was put in this way by the Court (Lord Chief Justice, Lord Burnett of Maldon) in *R v Clarke* [2018] EWCA Crim 185; [2018] 1 Cr App R (S) 52 at [5] (emphasis added):

> "**Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing**. So much has long been clear. The discussion in *R. v Peters [2005] EWCA Crim 605; [2005] 2 Cr. App. R. (S.) 101* (p.627) is an example of its application: see [10]–[12]. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. The Age of Adolescence: *thelancet.com/child-adolescent* ; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday."

54. In *DM and SC* the Court examined the relevance of the Guideline in cases of murder by children and young persons. In that case, two defendants were convicted of murder when they were aged 14. The Court (per Holroyde LJ) said this at [28]:

> "The Sentencing Council has published a Definitive Guideline which sets out Overarching Principles for Sentencing Children and Young People. Because the sentence for murder is fixed by law, the nature of the sentence is not affected by considerations of the welfare of the offender, or of the principal aim of the youth justice system which is to reduce offending by children and young persons. It nonetheless remains important when considering the appropriate minimum term to consider the developmental and emotional age of the offender and to consider, in accordance with paragraph 4.10 of the guideline, whether the young offender has:

> 'the necessary maturity to appreciate fully the consequences of their conduct, the extent to which the child or young person has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences.'"

55. *DM* was cited in *R v Kyries Davies* [2020] EWCA Crim 921, an appeal involving an appellant who was 16 years and 3 months at the time he committed murder by stabbing, 2 ½ years younger than his nearest co-accused and nearly 7 years younger than the oldest in the group. The Court (per the Lord Chief Justice, Lord Burnett of Maldon) offered guidance on the general approach to sentencing in murder cases, see in particular (with emphasis added):

> "15. Schedule 21 to the Criminal Justice Act 2003 applies to the determination of the minimum term. For adults (those 18 and over), the starting point for the minimum term is generally 15 years, but with a higher starting point in a range of circumstances. One of those circumstances is when a knife is used and taken to the scene of the murder. If that is established, the starting point for an adult is 25 years. The starting point applied by the judge in the cases of the three co-accused convicted of murder was that enhanced starting point.
>
> 16. By contrast, the starting point for offenders under the age of 18 is 12 years. There are no comparable higher starting points specified by the statute for young murderers who, if adults at the time of offending, would have been subject to enhanced minimum terms. The starting point for young offenders covers all those from the age of criminal responsibility to the eve of their eighteenth birthday. Much flexibility in the calculation of the minimum term is needed on that account alone, as well as to reflect the individual circumstances of the offence. **Put shortly, were two children together convicted of murder one aged 12 and the other aged 17, it would be wrong to suppose that the age-related reduction was entirely reflected in the statutory provisions**."

56. At [21] it held this, in a passage which has obvious relevance to this appeal (with emphasis added):

> "In chronological terms and in terms of maturity **there is a real difference between a defendant who has just passed his sixteenth birthday and one who is just shy of his nineteenth birthday**."

57. There is a contrast to be drawn between cases where there is a difference of some years between the offenders, and those where the offenders are close in age, but one is just over 18 and one is just under that age. In *AG's reference Nos 143 and 144 of 2006* [2007] EWCA Crim 1245 (the cases of *Brown and Carty*), the Court (per Lord Chief Justice, Lord Phillips of Worth Matravers) said this at [27] (with emphasis added):

> "… What is the appropriate approach where there are two co-defendants who have committed a murder jointly and where one is just over 18 years of age and the other just under? That question raises an acute problem

> for the sentencer where, as here, the murder falls into the particularly serious category that attracts a starting point for an offender who is over 18 of a 30 year minimum term. Is Mr Griffiths [for the appellant Brown] correct to submit that the court should determine the sentence of each offender independently of the position of the other? We do not consider that he is. Schedule 21 provides different starting points where the facts of the offence are common to both offenders only because of the disparity between their ages. **In such circumstances the sentencer should move from each starting point to a position where any disparity between the sentences is no more than a fair reflection of the age difference between the offenders.** This not only complies with the obvious requirements of justice, it accords with the guidance given by this court in *R v Peters* [2005] EWCA Crim 605, [2005] 2 Cr App R(S) 101…"

58. We were shown a number of sentencing appeals which were said to be comparable on their facts. As the parties accepted, there were of limited assistance given that each case is fact-specific; but for completeness, we record that we had regard to the following cases. In *Carty and Brown,* the Court did not disturb the minimum term of 21 years imposed on Carty, who was 18 years and 7 months at the time of committing murder by stabbing, but increased the minimum term from 17 to 20 years in the case of Brown, who was 17 years and 9 months when he committed that murder, saying that

> "28. … we do not consider that the small disparity in age between Carty and Brown could properly be reflected by more than one year's difference in the minimum terms imposed upon them".

59. We considered *R v Cornick* [2015] EWCA Crim 110, where the Court of Appeal (per Lord Thomas of Cwmgiedd, Lord Chief Justice) upheld a minimum term of 20 years on a late guilty plea in the case of a 15 year old who stabbed his school teacher. We have already mentioned *R v H* where the Court of Appeal (per Bean LJ) reduced the minimum term from 20 to 18 years in the case of a young man of 15 years and 11 months convicted of murder by use of a gun, and *R v Aziz* where the Court upheld a minimum term of 19 years on a 16 year old who had murdered by use of a weapon such a hammer. We note *Davies* where the Court reduced the minimum term from 21 to 16 years in the case of a 16 year-old who had murdered by stabbing.

**Discussion**

60. This was a difficult sentencing exercise and we commend this experienced judge for the care he took in identifying and weighing the various factors relevant to sentencing this group.

61. When he said that "normal considerations when passing sentence upon youths do not resonate in a case of this kind", we doubt that the judge was intending to signal an abandonment of the Guideline; far from it, he referred to the Guideline in several places and was self-evidently seeking to apply it in this exercise. We suspect that comment, which does rather jump off the page and was understandably highlighted by Mr Kane, was simply a recognition of the point made by the Court in *DM* that in a case like this, the sentence (of detention at Her Majesty's Pleasure) is fixed by law. Lest there be any doubt, the Guideline remains very much in point when fixing the minimum term, and we are sure the judge understood that.

62. There is, however, more substance in Mr Kane's criticism of the judge's conclusion that the appellant's culpability was only "very modestly reduced" on account of background factors and age, as those were evidenced before him. There are two main points to consider in this regard: the absence of a pre-sentence report and the correct reduction in this case for age and maturity.

63. We are troubled by the judge's refusal to obtain a pre-sentence report on the appellant (and indeed on the other offenders in the group). We accept that there was no statutory requirement in this case to obtain such a report. Nonetheless we consider that in cases involving young persons charged with very serious crimes, it is strongly advisable to obtain a such a report if none exists already. The Guideline says that where a child or young person is to be sentenced for any serious offending, the court should ensure that it has full information about them, and that information should cover the possibility of mental health issues, learning difficulties, the possibility of brain injury or traumatic life experience, speech and language difficulties and any communication issues, vulnerability to self-harm, and the effect of past loss, neglect or abuse (see [1.12] - [1.14]). Further, we note the view expressed by this Court (per the Lord Chief Justice, Lord Burnett of Maldon), in *R v PS and others* [2019] EWCA Crim 2286; [2020] 2 Cr App R (S) 9 at [20], which, although focussing on mental health issues, we consider to have wider application:

> "… where a serious offence has been committed by a young offender, both the court and those representing him must be alert to the possibility that mental health may be a relevant feature of the case. The younger the offender, and the more serious the offence, the more likely it is that the court will need the assistance of expert reports."

64. In the event, the report obtained by the Registrar in advance of this appeal is revealing. As we have noted, it provided a much fuller picture of the appellant. The appellant's involvement in serious crime is to be seen in the context of a complicated father-son relationship, the appellant's father being involved in serious criminal activity, and the appellant reported to look up to his father and to model his own future on the same path. That is not a surprising state of affairs for any 16 year-old boy; but it is particularly unsurprising to find it in a boy whose developmental age lags some years behind his chronological age, and who has learning difficulties, whose education has been lacking, and who has experienced a difficult and neglectful childhood. This information was directly relevant to the assessment of the appropriate minimum term. But it was unknown to the judge. If he had known of it, we are confident that he would have considered age and background factors to warrant more than a very modest reduction in the minimum term he would otherwise have imposed. In our view, the judge failed to give sufficient reduction to take account of those matters.

65. Before turning to our own assessment of the minimum term, we address Mr Kane's next criticism of the judge, namely his apparent desire to ensure exact parity between the appellant and Parkes. We accept that Parkes played a lesser role overall, but as the judge noted, it was only just lesser, because Parkes was alongside the appellant in the car and encouraged him to shoot. But the crucially important point is that nearly four years of age separated the two. This was a "real difference": see *Davies* [21], cited at paragraph 56 above. The touchstone for the judge was to ensure that any disparity between them was a "fair reflection" of their age difference, see *Brown and Carty* [27]

cited at paragraph 57 above. Given that difference in age, and in pursuit of a fair reflection of that difference of age, we see no difficulty in Parkes receiving a minimum term which was longer than the appellant's minimum term. We share Mr Kane's concern that the judge might have allowed his desire for parity to influence the number of years he imposed on the appellant. If so, he was in error.

66. Finally, Mr Kane suggested that deterrence was a factor to which the judge had attributed excessive weight in this sentencing exercise. Having reviewed the sentencing remarks with care, we are not persuaded that the point arises in this appeal: although the judge made a number of comments about the wider community impact of this offending and the pressing need for gangs and gang violence to stop, we do not understand him to have increased the minimum term to reflect the desirability of deterring others; to the extent that these offences were committed in public and terrified those who were present, those were features properly to be taken into account in assessing seriousness. We therefore simply note that, while "the reduction of crime (including its reduction by deterrence)" is one of the statutory purposes of adult sentencing within section 57(2)(b) of the Sentencing Act 2020, that provision does not apply to offenders under the age of 18 at the date of conviction, and section 58 does not refer to deterrence as one of the principles of youth sentencing. We further note, as a product of our own researches, the acceptance of deterrence as a factor in sentencing young people in *R v Karolia and Others* [2021] EWCA Crim 1839 per Macur LJ at [43].

67. In summary, we have accepted (i) that the judge took insufficient account of the appellant's age, both chronological and developmental, set against the background factors outlined in the pre-appeal report, and (ii) that there was good reason for the appellant and Parkes to be sentenced to different minimum terms given their difference in age. Against that backdrop, we turn to consider what minimum term would have been appropriate.

68. The facts of the offending are chilling: the appellant discharged a firearm, in daylight hours, in a street crowded with people and cars; the resulting death was intended; the appellant had purchased the gun and harboured it at home for some time, until he retrieved it to use it on this day; the gun was a home-made slam-gun, primed with a cartridge which ejected pellets and caused widespread injury; the victim had no opportunity to defend himself; the offending was orchestrated by the appellant, and involved others who were young and easily impressed; there was an attempt to conceal evidence by the destruction of the Jaguar, by persons disguised.

69. There was some mitigation in the form of the appellant's lack of previous offending and in the fuller explanation of the appellant's family and educational background, which mitigation in our judgment did carry some weight. The appellant's age was also a factor which required a material reduction in the minimum term. The Guideline (see [1.5]) frames youth as a factor going to culpability, which is why developmental age is just as important, if not more important, than chronological age. There is evidence before us, which was not before the judge, that that the appellant's developmental age at the time of sentence was young, perhaps as low as 11 years and 10 months.

70. In our judgment, from a starting point of 12 years under the statute, we are compelled to increase the term significantly in order to take proper account of the seriousness of this offending. The equivalent sentence for an adult offender would have started at 30

years under the statute, but there are aggravating factors which would have required an increase from that point. The judge considered that 33 years would be the appropriate minimum term had the appellant been an adult. We have no reason to disagree with that view. An increase to 22 years from the starting point of 12 years properly reflects the appellant's age, lack of developmental maturity and the background factors connected with family and education deficits; put another way, a reduction of 11 years from the notional adult sentence of 33 years is appropriate in these circumstances.

## Conclusion

71. In our judgment, the minimum term of 27 years was manifestly excessive. We therefore quash that minimum term and substitute in its place a minimum term of 22 years, less 287 days served on remand. We do not disturb other aspects of sentence: the appellant remains detained at Her Majesty's Pleasure, with a concurrent sentence on count 2 of 13 years' detention and no separate penalty on counts 3 and 4.