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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO 202201926/A1

[2022] EWCA Crim 1156

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 27 July 2022

Before:
LADY JUSTICE CARR DBE
MR JUSTICE WALL
THE RECORDER OF LEEDS
HIS HONOUR JUDGE KEARL QC
(Sitting as a Judge of the CACD)

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

REGINA
V
HAROON IQBAL

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)

MR B HOLT appeared on behalf of the Attorney General
MR N BERRY appeared on behalf of the Offender

J U D G M E N T

LADY JUSTICE CARR:

Introduction

1. We have before us an application by Her Majesty's Attorney General for leave to refer a sentence on the ground that it is unduly lenient. We grant leave.
2. The offender, now 32 years of age, is Haroon Iqbal ("Iqbal"). Upon his earlier guilty plea His Honour Judge Hurst ("the judge") sitting in the Crown Court at Birmingham sentenced Iqbal on 26 May 2022 on a single count of attempting to possess a prohibited firearm, contrary to section 1(1) of the Criminal Attempts Act 1981, to 27 months' imprisonment. Forfeiture and destruction orders were made, alongside a victim surcharge order.
3. In summary, Iqbal had arranged for the barrel of a Glock 17 firearm to be shipped into the UK from the USA. The prosecution case was that this activity reflected a wider attempt by Iqbal to obtain a fully functioning firearm.
4. The sentence of 27 months' imprisonment is said to be unduly lenient primarily because the judge was overly generous in the reduction that he applied to reflect the fact that this was an inchoate offence only.

The facts

5. The USA Department of Homeland Security, in conjunction with other agencies, initiated a joint investigation into a suspected supplier and re-shipper of illicit contraband within and outside the borders of the USA. As a result, search warrants were executed on 19 January 2022. The target of the activity was an individual referred to as T1. T1's mobile telephone was seized and analysed. It was found to contain an application called "Signal", an encrypted messaging application.
6. There was communication in the "Signal" messaging between T1 and an individual calling himself "Jay Shetty". Jay Shetty was a username attributed to Iqbal. The content referenced the illegal export of firearm components from the USA to the UK, with T1 selling the parts to Jay Shetty.
7. T1 agreed to cooperate with the USA authorities and admitted being in contact with Jay Shetty on the Signal application. He accepted, as the messages showed, that he had in fact already posted firearm components to Iqbal on 13 January 2022. T1 allowed the USA law enforcement agents to assume his online identity and thereby commence communications with Iqbal.

Communications regarding and completion of the first order of gun parts

8. The "Signal" conversation between T1 and Iqbal had commenced on 26 November 2021. The messages showed Iqbal to have been knowledgeable about guns, the sourcing of their components and the measures that could be taken to minimise the risk of interception of shipments by the authorities. They showed initial discussions on 28 November 2021 between Iqbal and T1 in relation to an order. There was discussion about cost and

potential further orders. The discussions demonstrated Iqbal's previous involvement in importations. T1 would ask Iqbal for guidance as to how to disguise the package, how to make payment and in relation to Connecticut gun laws. A long relationship between T1 and Iqbal was envisaged. Iqbal also provided his view on the UK gun market and how much money could be made. In early December he was advising T1 about packaging and there was then further discussion again about the potential for a long and fruitful working relationship between them. Iqbal advised T1 how to conceal the decoy package, how much it would cost to post and package. He also suggested that T1 should include a Christmas card in the package.

9. In January 2022 there was discussion about the potential supply of cocaine. That proposal did not progress. But after further detailed instructions on how to send and pay for delivery, Iqbal provided T1 with a postal address leading to the first shipment of gun parts.
10. The first shipment was posted on 13 January 2022, as T1 confirmed to Iqbal in "Signal" messages on that day. The package was intercepted at a Birmingham sorting office and found to contain internal parts of a Glock 17 semi-automatic pistol disguised with an electronics kit, as Iqbal had instructed. The parts themselves were legal to possess. They were forensically marked by National Crime Agency Officers. The package was resealed and then delivered to an address at 66 Victoria Road on 24 January 2022. A male occupant accepted it. Iqbal later collected it and took it to his own home address. T1 messaged Iqbal that day to ask if the delivery had arrived. Two days later Iqbal confirmed that the package had arrived, although he complained about the quality of the packaging.

Communications regarding and completion of the second order of gun parts

11. On 26 January 2022 the Glock 17 barrel the subject of the indictment was ordered by Iqbal from T1. By this stage of course T1's "Signal" account was being operated by USA law enforcement agents. Iqbal instructed T1 to buy a barrel for a Glock 17 semi-automatic pistol, along with two rail kits, other parts and ammunition primers for an AR/15 semi-automatic rifle. He provided links to the specific pages on websites from which these items could be purchased. The USA authorities purchased the barrel specified by Iqbal. A photograph of the purchased barrel was examined by a suitable expert who confirmed the barrel to be a "relevant component part", the acquisition, purchase or possession of which was subject to prohibition under section 5(1)(aba) of the Firearms Act 1968. The expert also confirmed that the two rail kits appeared to be designed for use in 3D printed Glock 17 style pistol frames, but the possession of the frames and the printer were not in themselves prohibited.
12. Once Iqbal had been told that the barrel and parts had been purchased, as before, he gave very detailed instructions as to the concealing of the items in a decoy tool kit, to avoid attracting suspicion or interception. Again Iqbal criticised aspects of the packaging and labelling. Once he had approved the packaging and the labelling, the USA law enforcement officers put the tool kit decoy into the packaging and posted it. They did not include the Glock barrel itself, since that would have constituted an offence under USA

law.

13. On 21 February 2022 the package was intercepted by UK Border Force Officers, who examined it and attached recording equipment before allowing it to travel on. On 28 February 2022 the package was duly delivered to an address in Cherrywood Road where it was accepted by Arshad Ali, a builder working there. Mr Ali contacted the homeowner, Khalid Hussain. Iqbal was seen at the address later on the same day. Hussain attended. Hussain took the parcel to Unit 3 Norwood Road, the same address to which Iqbal had driven on 24 January to collect the first package. Hussain gave the package to his son, Ibrar Khalid.
14. Iqbal was arrested at his home address on 28 February 2022. The package that had been delivered to Unit 3 Norwood Road was found and seized. Iqbal's business address in Birmingham was also searched and the following items seized: a 3D printer, firearm parts from the first order and an ammunition press.

Iqbal's circumstances

15. Iqbal was of previous good character. He told the author of the pre-sentence report that he had committed the offence in an attempt to impress a new group of friends. He had decided to assist them in importing a firearm. He had obtained information about how this could be done and felt under pressure. Veiled threats were made and he had had second thoughts but he felt there was no way out of the situation. As Mr Holt for the Attorney General points out, however, there was no basis of plea tendered by Iqbal at the time of pleading guilty.
16. Iqbal described coming from a close family with joint parental responsibility with his wife for their two-year-old son. He also said that he had suffered from anxiety following the death of his grandfather. He was assessed as posing a medium risk of serious harm to the public. There were character references from Iqbal's sister, wife and a friend, alongside a letter from a company indicating that there was an offer of employment available for him upon completion of a mentoring course.

The sentence

17. The judge said that, as for culpability, the offence fell within type one of the Sentencing Council Guideline on Firearms Offences ("the Guideline"). The prohibited weapon was a firearm as defined within section 5(1)(aba) of the Firearms Act 1968. Other culpability for the purpose of the Guideline was high. Such culpability is high where an offender intends the firearm to be used for a criminal purpose or is reckless as to whether it would be so used. Thus culpability fell within Category A.
18. As for harm, the judge identified that the Guideline referred to harm as being assessed by reference to the risk of harm or disorder occurring and/or actual alarm or distress caused. The judge placed harm in Category 2 on the basis that there was a risk of death or serious injury, although of course it was an entirely contingent risk on the facts of this case.
19. The judge used Table 1 of the Guideline, indicating that he would then apply a discount to

reflect the inchoate nature of the offence. On that basis the starting point was seven years' custody with a range of six to eight years. The judge identified the aggravating factors as being the steps taken to disguise the firearm and the fact that the offending was committed as part of a group. By way of mitigation, Iqbal had no previous convictions, he had been educated and there had been a recent business failure, he had got in with the wrong crowd and was seeking to impress. He also had anxiety issues after the death of his grandfather. There was evidence of shame and remorse and the judge also took into account the prison conditions in the pandemic. The judge said he was "particularly impressed" by the submission for Iqbal that the attempt was a long way from having in Iqbal's hand a fully functioning firearm.

20. The judge arrived at a term of three years' imprisonment before applying credit for guilty plea. He did so first by reducing the starting point of seven years' custody to six years, in order to take account the aggravating and mitigating factors, and then applied a discount of 50% in order to reflect the fact that this was only an attempt. Thus a term of six years' custody was halved to one of three years' custody. After credit of 25% for guilty plea, the final term of two years and three months' imprisonment was reached.

Submissions

21. For the Attorney General, Mr Holt accepts that the judge placed the offence within the correct category. Nor was there any challenge to the starting point being a custodial sentence of seven years with a range of six to eight. Mr Holt also accepts that the judge correctly identified relevant aggravating features: the sophistication of the use of the 3D printer, the fact that there was an ammunition press ready in order to help Iqbal start preparing the ammunition to go with the weapon, the sophisticated disguise that was applied in order to have the items imported into this country, and the fact that Iqbal was clearly operating as a member of a group. The judge identified in terms of mitigation Iqbal's hitherto good character, circumstances as set out above, and his shame and remorse. Mr Holt points, however, to the fact that the contents of the pre-sentence report suggest that there was at least an element of Iqbal minimising his culpability.
22. The core submissions made by Mr Holt for the Attorney General are, first, that it was generous for the judge to reduce the starting point of seven years to six months at the outset. The aggravating and mitigating features in reality balanced each other out and there was no basis for a reduction of that magnitude. Secondly, and centrally, the reduction of 50% that the judge then applied to reflect the fact that this was an attempt was unduly generous. This was serious, determined offending with an international element. It amounted to a concerted effort by Iqbal to acquire component parts of a lethal firearm. The only conclusion to be drawn from the evidence was that Iqbal failed in his ultimate aim only due to the diligence of law enforcement agencies here and abroad. Had T1 not been apprehended in the USA, there is nothing to suggest that Iqbal would not have been in possession in due course of a fully functioning lethal firearm. Such a conclusion is supported by the other material identified, in the form of the press and related items. In all the circumstances only a small reduction should have been made. A reduction of 50% was excessive.

23. For Iqbal, Mr Berry concedes that the overall sentence of 27 months' imprisonment was lenient, but submits that it was not unduly so. The judge recorded that he was particularly impressed by the fact that this attempt was a long way from Iqbal having in his hand a fully functioning firearm. There was no frame, slide or magazine found. The 3D printer was still boxed and in its packaging. Additional equipment would have been required to undertake successful reloading or home loading operations. Thus the attempt, it is said, did not fail at a late stage; it was not close to completion.
24. Collectively and in addition there was very significant mitigation available to Iqbal. He was of positive good character with multiple references. He came from a close family with a young son and there was evidence to demonstrate his assistance and good work in the community. There was the prospect of full-time employment, evidence of a proactive approach by Iqbal in custody, strong contrition expressed in a letter to the court. Mr Berry emphasises that Iqbal had not been in custody before. There were also prison conditions in the pandemic to take into account. Overall, submits Mr Berry, this was a careful and comprehensive sentencing exercise. The judge applied his mind to all of the relevant issues. Had he adopted Table 2 and made upward adjustment to reflect the fact that, if completed, the offence would have been subject to a minimum term, the ultimate sentence would have been materially the same as that which was actually imposed.

Discussion

25. References under section 36 of the Criminal Justice Act 1988 are made for the purpose of the avoidance of gross error, the allaying of widespread public concern at what may appear to be an unduly lenient sentence, and the preservation of public confidence in cases where a judge appears to have departed to a substantial extent from the norms of sentencing generally applied by the courts in cases of a particular type. The threshold is high and we remind ourselves that, in order for appellate interference to be justified, a sentence must be not only lenient, but unduly so.
26. We also remind ourselves that the courts have always taken offences linked to firearms seriously. In Wilkinson and others [2009] EWCA Crim 1925, the Lord Chief Justice said (at [2]):
- "The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals want them; that is why they use them; and that is why they organise their importation and manufacture, supply and distribution. Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried; too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community ... as a matter of sentencing reality, whenever a gun is made available for use as well as when a gun is used public protection is the paramount consideration. Deterrent and punitive sentences are required and should be imposed."
27. As we have set out above, no issue is taken with the judge's categorisation of this Type 1 offending at Category 2A with a starting point of seven years' imprisonment and a range of six to eight years. Issue can be taken with the judge's initial reduction from seven to

six years, balancing out aggravating and mitigating factors. That was at least arguably generous to the appellant. But it seems to us that the assessment fell within the proper bounds of the judge's discretion, for the reasons emphasised. Not only was Iqbal of previous good character, he was also, amongst other things, the father of a young child and fell to be confined in prison conditions for the first time and in lockdown conditions.

28. However, the reduction of 50% to take account of the fact that this was only an attempt raises different considerations. Attempted offences usually carry a lesser sentence than that imposed for the commission of the full offence. The harm caused, whatever the intent, is likely to be less. The amount of discount depends on all the circumstances, including the stage at which the attempt failed and the reason for non-completion. Thus, for example, the inchoate nature of the offence may not be a potent factor because it was only the determination of the victim that prevented the offence from being completed: see Joseph [2001] EWCA Crim 204. The extent of downward movement will thus always depend on the facts. Where an offender is only prevented from carrying out the offence at a late stage or when, absent interception, the offender would have carried out the offence, a small reduction within the category range will usually be appropriate: see Crisp [2021] EWCA Crim 572.
29. This was an attempt to possess a very destructive semi-automatic pistol using encrypted messages and going outside the jurisdiction to do so. It was a persistent attempt with an element of sophistication involving the disguising of the packaging using decoys and multiple telephones, the use of a safe address to avoid detection, thereby enlisting others and operating as a group. It was a prolonged attempt to source an illegal weapon from abroad, thus increasing the stock available to criminals in this country - a significantly aggravating feature. Further, Iqbal knew that, once obtained, the firearm would be used for illegal activities. And fundamentally, the attempt only failed to become the completed offence because of interruption by the authorities here and in the USA, and it was not a short-lived attempt. But for interruption, Iqbal would undoubtedly have gone on to obtain the outstanding necessary parts.
30. In these circumstances, and even taking into account the fact that the precise level of reduction was a matter of judgment for the judge, we conclude that a 50% reduction was indeed excessive, and manifestly so. In our judgment a discount of no more than one-sixth, or a year, was warranted. After applying 25% credit for guilty plea, a term of three years and nine months' imprisonment is reached. We consider that even that sentence could be seen as lenient, given the initial reduction from seven to six years.
31. Set against a term of three years and nine months' custody, the sentence of two years and three months' custody imposed by the judge can readily be seen to be not only lenient, but unduly so. The reduction of 50% to reflect the inchoate nature of the offence was, put simply, far too great. Instead of the sentence being one of just over two years' imprisonment, it should have been one of just under four years' imprisonment.

Conclusion

32. For these reasons we allow the reference. The sentence of two years and three months'

imprisonment will be quashed and replaced by a sentence of three years and nine months' imprisonment. All other elements of the sentence remain undisturbed.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400
Email: rcj@epiqglobal.co.uk