Neutral Citation No. [2022] EWCA Crim 1685

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202104039/A4

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 13 December 2022

Before:

LORD JUSTICE DINGEMANS
MRS JUSTICE CUTTS DBE
HIS HONOUR JUDGE PICTON
(Sitting as a Judge of the CACD)

REX
V
OSITA ALAGBAOSO

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Lower Ground, 18-22 Furnival Street, London EC4A 1JS
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MR N MOHINDRU KC appeared on behalf of the Appellant
MR R BARRACLOUGH KC appeared on behalf of the Crown

J U D G M E N T

LORD JUSTICE DINGEMANS:

Introduction

1. This is the hearing of an appeal against sentence with the leave of the full court. The appellant, who had before these matters no previous convictions, is now a 20-year-old man having been born on 10 December 2002.
2. The appellant pleaded guilty to an offence committed on 25 January 2020 of wounding Kaseem Ibrahim with intent contrary to section 18 of the Offences Against the Person Act. The time at which the plea was entered meant that the appellant was entitled to a discount of 10 per cent for the plea. The appellant was convicted on 28 April 2021, after a trial in the Crown Court at Maidstone, of the offence of murder of Jamie McFarlane committed on 14 March 2020. On 23 November 2021 the appellant was sentenced to detention at Her Majesty's Pleasure with a minimum term of 20 years, less time spent on remand on count 2 (which was the murder) and a concurrent term of 54 months' detention on count 1.
3. Two co-defendants were convicted of perverting the course of justice and sentenced for those offences. The grounds of appeal are first, that in determining the minimum term the judge erred in concluding that the offence was pre-planned and that the appellant formed an intention to kill, and that insufficient weight was given to the provocation that the appellant had been subjected to. The second ground of appeal is that the sentence of 54 months for count 1, which was the wounding with intent, was not in accordance with the guidelines for the offence of wounding with intent and the principles to be applied when sentencing children and young people. The third ground is that in considering totality a minimum term of 20 years was manifestly excessive.
4. The full court identified that they were interested in the point about the 54-month

sentence and its relationship with the final sentence of 20 years, but granted leave on all grounds.

Factual circumstances

5. The offending related to gang rivalry on the streets of Ashford in Kent. The appellant, then aged 17 years, having had his 17th birthday on 10 December 2019, and Joseph Matimba were part of a gang called the "No Plan B" (NPB) and the deceased was a member of another gang called the "K Block". All three had previously been friends but there had been a falling out over some fake bank notes which were used in a transaction.
6. On 25 January 2020 the deceased sent a message threatening the appellant and in return the appellant taunted the deceased. The exchange of threats and taunts included the deceased threatening to kill the appellant.
7. Later on 25 January 2020, Kaseem Ibrahim was sitting on a bench in Ashford Town Centre when he was approached by the appellant who had part of his face covered. The appellant said, "Where's the money?" and produced a knife. It was not recovered but was described as being about 14 inches in length. He stabbed at Mr Ibrahim, but Mr Ibrahim tried to run. As he did so the appellant stabbed him in the thigh and attempted to stab again. Mr Ibrahim managed to run off and the appellant gave chase.
8. Mr Ibrahim attended hospital where he was treated for a stab wound to the back of his right upper thigh. The wound was washed and stitched and he was discharged. This was the wounding with intent to which the appellant pleaded guilty.
9. Between the stabbing of Mr Ibrahim on 25 January and the murder of the deceased on 14 March 2020, there were a number of incidents between the two rival gangs during which both gangs instigated trouble. It included threats of violence being made and on one occasion members of the K Block chased Mr Matimba with machetes through a shopping

centre in the town. One of the deceased's associates called Bright was particularly threatened in messages sent by the appellant and in one message he says: "I'm slicing you. See that shit stain on your face [a reference to a birth mark]. You'll have another one to the other side when my Rambo on move."

10. Shortly after midday on 14 March 2020 the deceased was murdered on Arlington Road in Ashford. Telephone messages later recovered indicated that both the deceased and the appellant were engaged in separate drug dealing around the time. The appellant, who was armed with a kitchen knife and a Rambo-style knife, spotted the deceased and he ran towards him. The appellant pushed the deceased causing him to fall and then stabbed him twice with the kitchen knife. The knife broke. The deceased managed to run off but the appellant pursued him to a residential car park where there were other persons around. The appellant pulled out the Rambo knife but then turned around and walked away. The deceased collapsed and died at the scene. He had suffered two stab wounds to the back. The fatal wound went through the chest cavity, cut the edge of the spine and a rib before entering the left lung. The stab track measured some 17cm. The force used to inflict the fatal wound was described by the pathologist as moderate to severe. This was the offence of murder.
11. After the killing the appellant met up with his co-accused Mr Matimba who lived in the area and they walked towards the town centre. On their way they hid two knives, one a Rambo knife and after belonging to Mr Matimba, under a railway bridge. In the town centre they went to a disabled toilet where the appellant changed his tracksuit bottoms. Outside KFC they met with the second co-accused, Mr Tejan. He drove both the appellant and Mr Matimba to an address in Canterbury. Later the appellant sent a message saying: "NPB to da world and back", along with an image of the deceased lying

dead. That image had been uploaded to social media.

Sentencing Remarks

12. So far as count 1 was concerned, the judge said he had regard to the guideline for wounding with intent. He considered that it was Category 3 harm, albeit towards the high end of the lowest category, because it was not life-threatening (Category 1) or grave (Category 2) and that there was culpability A with the use of a weapon. That gave for an adult a starting point of five years with a range of four to seven years. The judge noted that as the appellant was just 17 at the time of the offence the sentence would require modification under the Definitive Guideline for Sentencing Children and Young Persons. The judge then went on to say that the sentence was five years, reduced by 10 per cent which equated to six months to give the sentence of 54 months for count 1. The judge said that he treated count 1 as an aggravating factor for the sentence for murder and made the sentence of 54 months concurrent.

13. The sentencing guidelines for children and young persons suggest a sentence of between half and two-thirds of that imposed on an adult would be appropriate where the offender is aged between 15 and 17 years, although any reduction is not to be undertaken as a mechanistic exercise. It is established that developmental age is as important as chronological age and we note that the appellant suffers from a speech and language disorder and had the benefit of an intermediary through the trial. Dr Conning, a clinical psychologist, had assessed the appellant as having significant ongoing difficulties and said that his overall level of cognitive function was in the borderline range. The judge, who saw and heard the appellant give evidence, said that if Dr Conning had seen the appellant give evidence she would have had to modify her opinion. The judge did not consider that the appellant's mental impairment reduced his culpability significantly.

The decision

14. So far as the first ground of appeal is concerned and the issue of whether the judge was right to say that this was planned and that there was an intention to kill, in our judgment the judge, who had heard a long trial, was best-placed to determine the circumstances in which the murder took place and was entitled to conclude that this was a premeditated and unprovoked attack. It is right to point out, as Mr Mohindru has done in his helpful submissions, that parts of the sentencing remarks refer to defensive and attacking mode, but what is plain is that the judge found that there was planning. So far as the attack is concerned, once the deceased had been seen and the chase initiated, the force used to inflict the stab wounds, breaking the blade of the kitchen knife and subsequent chase with the Rambo knife, was capable of evidencing an intention to kill and the judge was entitled to make that finding.

15. It is the second and third grounds of appeal that have caused the most difficulty because the judge was entitled to uplift the minimum term on count 2, treating count 1 as an aggravating factor and imposing a concurrent sentence on count 1 to reflect the principle of totality. The difficulty is that we do not know what sentence the judge thought was appropriate in relation to the murder alone.

16. The judge thought that the appropriate sentence for the wounding with intent was five years before discount for plea. In our judgment, the judge was entitled for an adult to increase the starting point of five years because it was to the high end of the lowest category, as he had already identified, and reflect both aggravating features, and there were many aggravating features and mitigating factors (including age) before coming to a final sentence of five years before then discounting for plea. It is apparent that the judge did not add on the whole of the sentence for wounding with intent to the appropriate

sentence for murder because that would inevitably have led to a sentence which would have exceeded the 20 years.

17. Whichever way one approaches the sentences, the task we have to do is to step back and consider whether or not the judge's approach disclosed either an error of law or a sentence which was manifestly excessive. So far as error of law is concerned, we consider that the judge's approach was permissible under the guidelines in the manner that we have set out. So far as the issue of manifestly excessive is concerned, we have considered the matter with particular care. This was a trial judge who had heard the trial, who had seen all of the criminality that was proved. This was immensely serious offending which caused serious harm and, as the prosecution put it, there was extreme violence. It was plainly right for the judge to add on a part of the sentence for wounding with intent and that was because there was separate criminality and separate harm against a separate individual. If this court deconstructs the judge's sentence, doing the best we can, into sentences of 18 years plus two years in addition for the wounding with intent, one is still left with the sentence of 20 years. We consider that the sentence was severe but we are unable to say that it was manifestly excessive. We are very grateful to Mr Mohindru and Mr Barraclough for their helpful submissions.

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