IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202300239/A3

Neutral Citation Number: [2023] EWCA Crim 1295

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 27 October 2023

Before:

LORD JUSTICE SINGH

MR JUSTICE GOSS

COMMON SERJEANT OF LONDON
(HIS HONOUR JUDGE MARKS KC)
(Sitting as a Judge of the CACD)

REX

V

JAMIE WILDER

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MR F McGRATH appeared on behalf of the Appellant.
MR D SULLIVAN appeared on behalf of the Crown.

J U D G M E N T
(Approval)

LORD JUSTICE SINGH:

Introduction

1. This is an appeal against sentence brought with the leave of the single judge. On 16 June 2022, in the Crown Court at Lewes, the appellant pleaded guilty to counts 1 to 3 and counts 5 and 6. He also changed his plea to guilty on count 4 on indictment T20220546. Count 7 was ordered to lie on the file against him in the usual terms. That concerned an offence of possessing criminal property.

2. On 8 August 2022, having pleaded guilty before the Brighton Magistrates' Court, the appellant was committed for sentence pursuant to section 14 of the Sentencing Act 2020 ("the Sentencing Code"), in respect of the offence of possessing with intent to supply a controlled drug of Class B. On 23 December 2022 the appellant was sentenced as follows by HHJ Gold KC. On each of counts 1, 2 and 3, which were offences of conspiracy to commit criminal damage, there was a sentence of 18 months' imprisonment, all made concurrent. On count 4, which was an offence of conspiracy to commit arson, there was a sentence of imprisonment for life. On count 5, which was being concerned in supplying a controlled drug of Class A to another, there was a sentence of 7 years' imprisonment made consecutive. On count 6, which was an offence of being concerned in supplying a controlled drug of Class B to another, there was a sentence of 12 months' imprisonment made concurrent. On the matter which had been committed for sentence of possessing with intent to supply a controlled drug of Class B, there was also a sentence of 12 months' imprisonment again made concurrent. The total sentence therefore consisted of a determinate sentence of 7 years' imprisonment, made

consecutive to the other matters in respect of the drugs offences, and an imprisonment for life pursuant to section 285 of the Sentencing Code. The minimum term was, as is clear from clarification given after the sentencing hearing, to be one of 3 years and 208 days. Other appropriate orders were made, and we understand that proceedings under the Proceeds of Crime Act 2002 are still pending.

The Facts

3. "Operation Appendix" was a Sussex police investigation into a series of harassment and criminal damage incidents against Social Services' workers. The incidents primarily consisted of criminal damage attacks in which windows of home addresses and vehicles of social workers were smashed during the hours of darkness and, in one case, a vehicle was set alight. Two attacks, one by fire, were targeted at Natasha Cox's address but in fact they were mistakenly perpetrated at the wrong address which belonged to an elderly couple, Mr and Mrs Mandville. Their car was set alight on their drive at night and their home also sustained fire and other damage in the two mistaken attacks. The appellant used the services of a private investigator to obtain the addresses and other data belonging to social workers. The incidents were orchestrated by the appellant but were in part carried out by the co-defendant, Finley Kudjo, and at least two other people.
4. The motivation for the attacks was the appellant's animosity towards Hastings Social Services arising from their involvement with three children that he was connected to. Social Services had been involved with the appellant since the birth of his daughter, due to concerns of domestic violence and the appellant's involvement in drug dealing. Initial efforts by Social Services to support the appellant failed and, when he was then linked to further offending, he was denied access to his child. In response, the appellant started

proceedings to gain access. The appellant's partner at the material time, with whom he had been involved since the summer of 2021, had also been the subject of attention from Social Services for involvement in drugs and allegations of domestic violence. She had been denied access to her children.

5. The appellant focused on three social workers, the complainants, Natasha Cox (this was the subject of count 1), Darren Hall (the subject of count 2) and Kerry Fry (the subject of count 3).
6. The appellant and his partner had spent a significant amount of time living in Turkey. They made frequent trips back to the United Kingdom to an address in St Leonard's. The appellant arrived in the UK on 11 January 2022 intending to fly back to Turkey on 16 January. He was ultimately arrested on 16 January in relation to the investigation, whilst at the airport about to catch a flight.
7. His personal possessions including his mobile phone were seized. He was in possession of £10,690 in cash and two Gucci bags worth about £2,000. The co-defendant, Kudjo, was also arrested on 16 January and his mobile phone was seized.
8. The most serious incident was the subject of count 4. On 5 November 2021 there was criminal damage to the windows of an address in Augustus Way and to a vehicle parked on the driveway. It was believed that Natasha and Ashley Cox were the intended targets of that offence and the subsequent arson attack on that date. By this time the Coxes had moved to a new address, but that it appeared the appellant and his associates were unaware of this. The occupants of the address were Mr and Mrs Mandville, aged 77 and 79.
9. At around 1.00 am on 5 November, unknown attackers smashed the windows at the front of their house and their car, which was similar in appearance to the Coxes car that had

previously been targeted. Later on the same date, just before midnight, the Mandvilles' car was set on fire. Their Ring doorbell CCTV captured footage of the attack. It showed two males with hoods up. One appeared to be pouring petrol over the car from a can, whilst a second male stood by holding a mobile phone and probably videoing the attack. The male with the phone then lit the petrol and set the car on fire. Both males ran away. The fire also caused damage to the front of the Mandvilles' property and the Fire Services were needed to put the fire out.

10. Turning briefly to counts 5 and 6, which are not the subject of the present appeal, the volumes of cocaine telephone data showed, for example, that reference was made to 4 kilograms with a value range of £134,000 to £160,000. There was reference to other large amounts of cocaine and very large values. That was the subject of count 5. Count 6 related to cannabis being distributed in quantities of £250 per ounce, and the committal for sentence offence concerned possession of cannabis which was found by the police on 26 January 2021.

The Sentencing Process

11. The appellant was born on 15 November 1992, and so was aged 30 at the date of sentence. He had ten convictions for 22 offences spanning the period from 2010 to 2022. His earlier offences included criminal damage, battery, theft and disorderly and threatening behaviour. In 2013 he received a suspended sentence for possessing Class B drugs with intent to supply, simple possession of Class A drugs and possessing a prohibited weapon. His most recent sentences were in 2015, when he was sentenced to 16 months' imprisonment for violent disorder consecutive to a sentence of 3 years and 4 months' imprisonment for possessing Class A and Class B drugs with intent to supply,

possessing a bladed article and using threatening behaviour. The sentencing court had, as we have, victim personal statements from the complainants to whom we have referred. They make clear the impact, in terms of distress on the victims, in particular that some at least felt compelled to move home, indeed twice. There is evidence, contrary to what has been submitted on behalf of the appellant, that in at least one case, treatment did have to be received for post-traumatic stress disorder.

12. The judge had a lengthy and detailed pre-sentence report which we have also read. The author of the report assessed the appellant as posing a high risk of reoffending due to the circumstances of the index offence and all the concerns noted in the report. The author disagreed with the risk of serious recidivism or RSR score which had been said to be medium. The author assessed that the appellant posed a high risk because there are concerns around the circumstances of the index offence, and thinking attitudes and behaviour, and there is no clear evidence of positive change to this. The report also assessed the appellant as a high risk of serious harm towards agency staff, not only Social Services but also Police, Probation and Prison staff and also to members of the public and known adults who he is in conflict with, such as railway staff and Transport Police. The report also made reference to potential risks in respect of the appellant's daughter and her mother.

The Legal Framework

13. The judge referred to the decision of this Court in R v Burinskas (Attorney-General's Reference No 27 of 2013) [2014] EWCA Crim 334; [2014] 1 WLR 4209. That decision considered the effect of changes made to the Criminal Justice Act 2003 by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, in particular the abolition of the

sentence for indefinite public protection (IPP) which had been created by the 2003 Act. The judgment of this Court was given by Lord Thomas CJ.

14. As Lord Thomas explained at paragraph 3, in the years prior to the 2003 Act, there were three kinds of indeterminate sentence. First, the mandatory life sentence for murder. Secondly, the automatic life sentence, under the Crime (Sentences) Act re-enacted as section 109 in the consolidation in the Powers of Criminal Court (Sentencing) Act 2000. Thirdly, there was the discretionary life sentence. As he noted at paragraph 4, the dangerous offender provisions of the 2003 Act enacted a new form of indeterminate sentence for IPP. The conditions for the imposition of an IPP were modified in 2008. At paragraph 14, Lord Thomas quoted what this Court had said in R v Kehoe [2008] 1 Cr App R(S) 41, at paragraph 17. In particular, it was noted there that there was no longer any need to protect the public by passing a sentence of life imprisonment, because the public were now properly protected by the imposition of a sentence of IPP. In such cases therefore, cases decided before the 2003 Act came into effect, no longer offered guidance on when a life sentence should be imposed. Lord Thomas then considered the impact of the changes made by Parliament in 2012 and concluded that the Court could no longer interpret the provisions in relation to dangerous offenders as though the sentence of IPP continues to exist (see paragraphs 16 and 17).

15. Before turning to the critical paragraphs in his judgment, which we will cite in full, it is also important to note paragraph 20, where Lord Thomas referred to a pre-2003 Act decision of this Court, R v Whittaker [1996] 1 Cr App R(S) 261. There, Lord Bingham of Cornhill CJ said that there were two conditions which had to be satisfied before a discretionary life sentence could be passed. First, the offender should have been convicted of a very serious offence. Second, there should be good grounds for believing

that the offender may be a serious danger to the public "for a period which cannot reliably be estimated at the date of sentence".

16. On behalf of the appellant, particular emphasis has been placed on the following sentence, at the end of paragraph 20 in the judgment of Lord Thomas:

> "Lord Bingham observed that a discretionary life sentence should be passed only in the most exceptional circumstances."

17. At paragraphs 22 to 23 of Burinskas, Lord Thomas said:

> "22. In our judgment, taking into account the law prior to the coming into force of the CJA 2003 and the whole of the new statutory provisions, the question in s.225(2)(b) as to whether the seriousness of the offence (or of the offence and one or more offences associated with it) is such as to justify a life sentence requires consideration of:-
>
> i) The seriousness of the offence itself, on its own or with other offences associated with it in accordance with the provisions of s.143(1). This is always a matter for the judgment of the court.
>
> ii) The defendant's previous convictions (in accordance with s.143(2)).
>
> iii) The level of danger to the public posed by the defendant and whether there is a reliable estimate of the length of time he will remain a danger.
>
> iv) The available alternative sentences.
>
> 23. It is inevitable that the application of s.225 in its current form will lead to the imposition of life sentences in circumstances where previously the sentence would have been one of IPP. It is what Parliament intended and also ensures (as Parliament also intended), so far as is possible, the effective protection of the public."

18. Those principles continue to apply, although the statutory provisions have been largely codified and their numbering has changed in the Sentencing Code, to which we now turn.

19. Section 63 of the Sentencing Code provides that:

> "Where a court is considering the seriousness of any offence, it must consider—
>
> (a) the offender's culpability in committing the offence, and
>
> (b) any harm which the offence—
>
> (i) caused
>
> (ii) was intended to cause, or
>
> (iii) might foreseeably have caused."

20. We note on the facts of the present case that, although count 4 on the indictment charged arson and not, for example, arson with intent to endanger life, nevertheless one of the factors which goes to the seriousness of an offence is the harm which might foreseeably be caused. We also note that although there was a car which was set alight in the present case, as things transpired, there was also some fire damage to the Mandvilles' house.

21. Section 285 of the Sentencing Code applies:

> "... where a court is dealing with an offender for an offence where—
>
> (a) the offender is aged 21 or over at the time of conviction
>
> (b) the offence is a Schedule 19 offence (see section 307)
>
> (c) the offence was committed on or after 4 April 2005, and
>
> (d) the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further specified offences (see sections 306(1) and 308)."

22. Subsection (3) provides:

> "If the court considers that the seriousness of—
>
> (a) the offence, or
>
> (b) the offence and one or more offences associated with it, is such as to justify the imposition of a sentence of imprisonment for life, the court must impose a sentence of imprisonment for life."

23. Accordingly, this is strictly speaking, not the same as a discretionary life sentence because there is a duty to impose such a sentence if the court has formed the evaluative judgment that the circumstances set out in section 285 do exist.

24. In making the assessment of dangerousness section 308(2) provides that:

> "... the court—
> (a) must take into account all the information that is available to it about the nature and circumstances of the offence
> (b) may take into account all the information that is available to it about the nature and circumstances of any other offences of which the offender has been convicted by a court anywhere in the world
> (c) may take into account any information which is before it about any pattern of behaviour of which any of the offences mentioned in paragraph (a) or (b) forms part, and
> (d) may take into account any information about the offender which is before it."

The Sentencing Remarks

25. In passing sentence, the judge addressed first, counts 1 to 4 and then the drugs offences of counts 5 to 6 and the separate matter which was committed for sentence. In relation to counts 1 to 4, the judge noted that count 4 is a schedule 19 offence and so he had to consider the question of dangerousness. He had careful regard to the judgment of this Court in Burinskas. He went through each of the four criteria set out in the judgment of Lord Thomas at paragraph 22. On the first matter, he concluded the offences were extremely serious. On the second matter, he considered that the appellant has a bad record for violence. On the third matter, he concluded that having regard in particular to the pre-sentence report, the appellant posed a high risk of harm towards Social Services, Police, Probation and Prison staff as well as the public in general. The judge said that the difficulty he faced was that there appeared to be no reliable way of assessing the

length of time that the appellant would remain a danger to others at this moment in time.

26. On the fourth matter, the judge considered the available alternative sentences, either a determinate sentence or an extended sentence, but again said the difficulties he faced was the unpredictability of assessing whether and to what extent the appellant might be able to change and become less dangerous to the public in the future. The judge quoted what was said by Lord Thomas at paragraph 23 of Burinskas and repeated in his sentencing remarks what Lord Thomas had said as to the intention of Parliament that there will be life sentences now imposed in circumstances where previously the sentence would have been one of IPP. The judge concluded that the only appropriate sentence on count 4 was a life sentence pursuant to section 285 of the Sentencing Code.

27. Turning to the minimum term he should then impose, the judge said that he would have taken as a starting point for determinate sentences on all of those counts, a total of 12 years (6 years on count 4, 2 years consecutive on each of the others). He would then have reduced that sentence by 25 per cent to reflect the guilty pleas, making 9 years. The judge thought that half of that term would have been served before release on licence, which is why he arrived at the minimum term to be served under the life sentence of 4½ years less time spent on remand.

28. As we have said, in comments made on the DCS subsequently on 28 December, the judge made clear that the minimum term was to be 3 years and 208 days. As we have said, the judge imposed a sentence of 18 months on each counts 1, 2 and 3 but made those concurrent to the life sentence. He imposed a sentence of 7 years' imprisonment on count 5 to be consecutive to the sentence on count 4. He also imposed a sentence of 12 months on count 6 and 12 months for the committal for sentence, making those concurrent.

29. The judge explained the effect of his sentence. He said that the appellant must serve the minimum term and also half of the consecutive term on count 5 (the transcript actually says count 6 but that was clearly a typographical error), making a total period of 8 years less time spent on remand.

30. An issue has been raised by the Registrar as to whether the judge was correct in his understanding of what the notional determinate sentence would have been, which led him to arrive at a minimum term of 4½ years. It may be that any notional determinate sentence would in fact have led to the appellant serving two-thirds rather than half in custody.

31. We have received helpful written submissions from both the appellant and the respondent. It is unnecessary to go through this matter in detail because the parties are agreed, and we endorse their agreement that there is nothing unlawful in the sentence which the judge passed. The critical point is that however the judge arrived at the minimum term of 4½ years, that is the term which he imposed. It was his clear intention that the appellant should serve a minimum of 8 years minus time spent on remand before he would be eligible for consideration by the Parole Board for release on licence. There is no basis on an appeal such as this for this Court to increase the minimum term.

Grounds of Appeal

32. The appellant advances two grounds of appeal which relate only to the sentence passed on count 4. First, the judge erred in concluding that the appellant was dangerous within the meaning of section 308 of the Sentencing Code. Second, the judge erred in concluding that count 4, when taken into account alongside counts 1 to 3, was serious enough to justify a sentence of imprisonment for life.

33. On behalf of the appellant, Mr McGrath submits that count 4 related to a conspiracy to commit, as he puts it, simple arson. This related to targeting property only. This was not an offence of conspiracy where the contemplated offence involved an intention to endanger life. The purpose of the conspiracy appears to have been to cause loss of property and distress, both of which it did. There was no basis for concluding that physical harm was intended. Further, the circumstances were clearly linked to a particular situation that is highly contentious litigation with a Social Services Department and therefore, submits Mr McGrath, any future risk was not significant.

34. At the hearing before this Court, Mr McGrath has submitted that the particular circumstances which caused this particular offending were a "unique catalyst" related to a time specific situation. He submits that there was therefore a theoretical possibility of similar offending in the future. Mr McGrath submits that it was not open to the judge to conclude that the appellant was dangerous within the meaning of section 308 of the Sentencing Code.

35. Turning to ground 2, Mr McGrath submits, by reference to the decision in Burinskas, that the judge placed undue weight on the fact that he could not arrive at a reliable estimate as to the period of time that the appellant would remain a danger to the public but, submits Mr McGrath, this is only one of four considerations listed in Burinskas and they have to be considered cumulatively.

36. Mr McGrath submits that this factor should not have led to a conclusion that the seriousness of the case justified a sentence of imprisonment for life, where the offence itself was not sufficiently serious to justify that sentence. As we have said, he reminds this Court of what was said by Lord Thomas in Burinskas at paragraph 20, quoting Lord Bingham in Whittaker, to the effect that a discretionary life sentence should be

passed only in the most exceptional circumstances. It was also said in Burinskas that a life sentence should be a sentence of last resort.

Respondent's Notice

37. We have been assisted by a respondent's notice filed by Mr Sullivan. We did not need to call upon him. We are grateful to him for his submissions. Mr Sullivan submits that it was permissible for the judge to conclude that the appellant was dangerous within the meaning of section 308 of the Sentencing Code, and that his offending was serious enough to justify a sentence of imprisonment for life on count 4. He submits that the judge properly assessed the required considerations when assessing dangerousness and the most appropriate type of sentence to impose. Further, the judge was assisted by a detailed pre-sentence report that provided a detailed assessment of risk.

Our Assessment

38. We do not accept the submissions made by Mr McGrath on behalf of the appellant. On ground 1, the question of dangerousness, we have come to the conclusion that there was ample material before the judge to justify his finding that the appellant is dangerous. Indeed, we consider that conclusion to have been inevitable in this case having regard not only to the circumstances of the index offences but to the thorough and careful pre-sentence report in this case.
39. Turning to ground 2, the imposition of a life sentence was justified, indeed required in the circumstances which were present in the opinion of the judge. This is because of the effect of section 285(3) of the Sentencing Code. In particular, even before the 2003 Act was enacted, we note what Lord Bingham had said about the conditions necessary for

imposition of a discretionary life sentence (see Whittaker in the passage we have cited earlier). As we have noted above, the sentence required by section 285(3) of the Sentencing Code is not, strictly speaking, a discretionary life sentence, it is mandatory in the circumstances which exist in the opinion of the sentencing court. Suffice it to say, that we have concluded that, in the circumstances of this case, the judge was perfectly entitled to conclude that such a sentence was justified, in particular, because of the unreliability of any prediction of when the appellant would cease to be a danger to the public.

40. ***Conclusion***

41. For the reasons we have given, this appeal against sentence is dismissed.

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