

IN THE COURT OF APPEAL
CRIMINAL DIVISION



Case No: 2023/01648/A5

[2023] EWCA Crim 1494

Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 2nd November 2023

B e f o r e:

LORD JUSTICE SINGH

MRS JUSTICE McGOWAN DBE

MRS JUSTICE HILL DBE

R E X

- v -

PAUL ANTHONY GLYNN

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Mr R Bloomfield appeared on behalf of the Appellant

Mr R Woodcock KC appeared on behalf of the Crown

J U D G M E N T

Thursday 2nd November 2023

LORD JUSTICE SINGH: I shall ask Mrs Justice McGowan to give the judgment of the court.

MRS JUSTICE McGOWAN:

1. Paul Anthony Glynn (now aged 53 years) appeals against sentence by leave of the single judge.

The Background

2. On 21st December 2022, in the Crown Court at Durham, the appellant pleaded guilty to a number of serious firearms offences.
3. On 21st April 2023, he was sentenced by His Honour Judge Adkin to a total of 19 years' imprisonment. The sentence was made up as follows: on counts 1, 3 and 15 of the indictment, each of which was a count of possessing a prohibited firearm, contrary to section 5(1)(aba) of the Firearms Act 1968, ("the Act"), he was sentenced to three consecutive terms of six years and four months' imprisonment. That combination made up the total of 19 years. In addition, on counts 2, 6, 7, 9 and 18 (possession of ammunition without a firearm certificate, contrary to section 1(1)(b) of the Act, he was sentenced to concurrent terms of three years and two months' imprisonment, which were ordered to run concurrently with the sentences on counts 1, 3 and 15. On count 4 (possession of a prohibited firearm, contrary to section 5(1)(aba) of the Act), he was sentenced to a term of six years and four months' imprisonment, which was ordered to run concurrently with the other sentences. On counts 5, 8 and 14 (possession of a firearm whilst being a prohibited person, contrary to section 21(1) of the Act), he was sentenced to concurrent terms of three years and two months' imprisonment. On counts 10 and 13 (possession of a shotgun without a firearm certificate, contrary to section 2(1) of the Act), he was sentenced to concurrent terms of three years and two months' imprisonment. On counts 11 and 12 (possession of a firearm without a firearm certificate), contrary to section 1(1)(a) of the Act, he was sentenced to concurrent terms of three years and two months' imprisonment. On counts 16, 17 and 19 (possession of a prohibited firearm, contrary to section 5(1)(aba) of the Act), he was sentenced to three concurrent terms of six years and four months' imprisonment. Those terms were also ordered to run concurrently with the sentences on counts 1, 3 and 15. As we have set out, that led to a total term of 19 years' imprisonment on three counts on an indictment which appears to contain six counts of possession of a prohibited firearm.
4. Orders were made for the forfeiture and destruction of the weapons and ammunition

were made; and a statutory victim surcharge was imposed.

The Facts

5. The facts are important but can be set out succinctly. On 9th November 2022 police officers executed a search warrant at the appellant's home address in Durham where he lived with his partner and three children. Firearms and ammunition were found throughout the property. We have had, as did the judge, the benefit of seeing a plan of the property. On the ground floor there is a kitchen, bathroom and lounge. Two sheds are external to the property. On the first floor there are two bedrooms. The plan sets out where, in the various points around the house, items that appear on the indictment were found during the course of the search. It appears that nothing was found in the lounge, but otherwise the items were randomly scattered throughout all the other rooms, including the external sheds.
6. The property had previously been searched on 5th October 2022. On that occasion the police had not gone to look for weapons. Rather, they were searching for electronic equipment. We have seen, as did the judge, a witness statement from a police officer who was involved in this earlier search. He said that on that occasion the officers who went to the property were looking for electronic devices and did not conduct an "intrusive search". Nonetheless, a number of police officers conducted a search of the property.
7. Of significance was the fact that of the weapons found on 9th November, at least one of them was loaded, and there was evidence that ammunition had been discharged within the property.
8. The prosecution opened the case on the basis that the appellant had pleaded guilty at the "first opportunity". He had tendered a basis of plea in which he said he was merely a custodian, that was rejected by the prosecution. It was not thought necessary to hold a hearing to decide that issue.
9. The appellant had previous convictions ranging back over a number of years, but in particular for being involved in the possession of weapons. On 2nd July 1987, when he was aged 17, he was sentenced by the magistrates to serve 36 hours' attendance at an Attendance Centre for the possession of a shotgun without a certificate. On 29th September 1988, when he was aged 18, in the Crown Court at Durham, he was sentenced to a term of nine months' youth custody for the possession of a firearm without a certificate. When he was aged 20, he was again sentenced by the Crown Court at Durham to a term of 12 months' detention in a young offender institution for a series of offences, included amongst which were three for possession of a firearm, being a prohibited person. He has a lengthy record which stretches back, as we have

observed, from when he was 17, to 2011, when he would have been in his early 40's.

The Guns and Ammunition

10. In summary, count 1 related to a long-barrelled revolver. Count 2 related to three live rounds of .55 ammunition, which were found within the revolving chamber of that weapon, one of which was a discharged round. Count 3 related to a .38 Smith & Wesson revolver found in a fabric storage container on the floor of a bedroom between a chest of drawers and a bed. Count 4 related to the frame and component parts of a long-barrelled revolver found in the same bedroom. Count 5 related to an antique 7 millimetre pin-fire revolver found in a kitchen cupboard. Ammunition for that weapon was obsolete, but the weapon could have been made viable for a small amount of money to restore it, and would be viable if ammunition became available. Counts 6 and 7 related to three rounds of .45 and .455 calibre ammunition found with three empty cases in a drawer next to a double bed. Count 8 related to three rounds of discharged .55 calibre ammunition fired by the weapon which was the subject of count 1. Count 9 related to 35 rounds of .32 ammunition. No equivalent weapon of that calibre was found at the property. Count 10 related to a single-barrelled shotgun found under a double bed in the first bedroom. Count 11 related to a 12 bore calibre Browning semi-automatic shotgun found under a double bed. Count 12 related to a 12 bore double-barrelled shotgun located under a double bed. That was the weapon from which the DNA of the appellant's son was recovered. Count 13 related to a double-barrelled, side-by-side shotgun. Count 14 related to the contents of a rucksack which contained a number of different gauge shotgun cartridges. That bag was found in the second bedroom. Counts 15, 16 and 17 were all offences of possession of prohibited firearms. Each of those counts in fact related to the component parts, namely a self-loading pistol frame, a .45 self-loading pistol slide, and a .45 pistol barrel. Count 18 related to ten rounds of .45 ammunition which were found inside a Nike bag in the small bedroom. In the same bedroom was found a Tesco bag which held a .38 calibre Smith & Wesson revolver frame (count 19).

The Sentence

11. The learned judge sentenced both the appellant and his son on the same occasion. The sentencing remarks are very brief. Those parts which deal with the appellant run to little more than a page and a half of typed transcript.

12. The judge took the correct approach of looking to the guidelines relating to firearms offences. He had been invited by the Crown to find that the appellant was an armourer, rather than a simple custodian. On the evidence before him, he was entitled to reach that conclusion. Indeed, it was not one that was challenged by either evidence or submissions at the hearing. Accordingly, the judge was right to identify the appropriate category as being high culpability A and category 1 harm.

13. High culpability A arises on the facts of this case because the appellant intended that

the firearms or ammunition would be used for a criminal purpose, or was reckless as to whether they would be so used. Harm category 1 was clearly the appropriate category. These were weapons and ammunition which created a high risk of death or serious physical harm. Accordingly, applying the guideline, as the judge did, the case fell into culpability A and harm category 1. That gave the judge a starting point of eight years' custody.

14. Despite identifying what amounted to aggravating features, the judge did not increase that level of sentence. He took a sentence of eight years' imprisonment on each of the offences, as we have outlined, before affording credit for the plea of guilty, which, he found, was the only mitigation available to the appellant.
15. In passing sentence, having referred to the two aggravating features, the judge then turned to the mitigation provided by the guilty plea. He said in terms that he would give credit of 20 per cent for the guilty plea. It is accepted before us today – and indeed Mr Woodcock KC opened this in terms in the court below – that the appellant had offered his guilty plea at the first available opportunity and was entitled to maximum credit.

Ground of Appeal

16. We turn to the grounds of appeal, which Mr Bloomfield has amplified before us today in oral argument. The first ground relates to the imposition of consecutive sentences. It is submitted by him in writing that the judge was wrong to impose consecutive sentences for the firearms offences, when all the items were found in the same place and on the same occasion. In support of that submission he relies upon two authorities to which we shall return in a moment.
17. In his second ground, Mr Bloomfield submits that the judge wrongly determined that the applicant was entitled to credit of only 20 per cent. It appears that some considerable time and effort has gone into the investigation of whether or not the guilty plea was indicated at the first available opportunity. That, with respect, was not the problem in this case. The plea was entered at the first opportunity. The prosecution opened the case on that basis. The transcript shows that the judge intended to afford the maximum credit available for a guilty plea, but understood that he could not give more than 20 per cent credit because these were offences for which there is a minimum term set by statute.
18. Mr Bloomfield submits that the judge was in error, in setting the credit at only 20 per cent, seemingly believing that to be the maximum credit permitted in the circumstances of this case. The error seems to have arisen from the fact that a statutory minimum term applied.

19. In his broader submission as to whether or not the sentences should have been ordered to run concurrently, Mr Bloomfield raises an issue which has troubled the courts in previous cases, namely, where the court has to deal with one act which in certain circumstances may cause a number of different consequences. The example which is often cited is where one act of dangerous driving might result in a number of deaths. In those circumstances an offender is to be sentenced for the driving, and should not receive separate sentences because more than one death arises out of that single act. The position is the same in respect of the possession of firearms. Indeed, that was said in terms in *Attorney General's Reference No 57 of 2009 (R v Ralphs)* [2009] EWCA Crim 2555, where a number of guns come into the possession of an accused on a single occasion.
20. Mr Bloomfield submits that a proper consideration of the evidence in this case leads only to the conclusion that the guns and ammunition must have arrived in the appellant's property on a single occasion. He points out that there was an absence of any evidence to the contrary. There were no text messages arranging for delivery, or similar. He argues that in the absence of any other evidence it was not open to the judge to infer that the material had been deposited in the house on more than one occasion. He does, however, concede that there might in this case have been scope to impose consecutive sentences on each offence of possession of a firearm because the appellant was a prohibited person at the time.
21. In response to Mr Bloomfield's submissions, Mr Woodcock KC accepts that if it cannot be established that the guns were not received on the same occasion, then concurrent sentences ought to have been imposed. He submits before us today, as he did in his opening to the court below, that common sense dictates that it is permissible to infer from the different locations around the property at the very least, that these items were received on different occasions. He also relies upon the involvement of the appellant's son on an occasion, which he submits cannot have been the same occasion upon which the weapon was discharged, and therefore there is material from which the judge could, and properly did, infer that these items were received on separate occasions. Understandably, he is not able to identify to us how many particular occasions he says that the items must have been deposited in the house.
22. The essential question in this appeal is the conclusion, to the criminal standard of proof, that led the judge to find three separate acts of receipt of these weapons. Was it a proper and indeed irresistible inference that they arrived on more than one occasion?

Discussion

Ground 1

23. We have considered the authorities to which the court has been referred. In giving the judgment of the court in *Ralphs*, the Lord Chief Justice said at [23]: "... *The offender fell to be sentenced on the basis that he was the minder...*". That is not the position in this case.

24. At [24] the Lord Chief Justice said: "... *Concurrent sentences were appropriate to reflect the criminality involved in the possession of weapons by the offender in a single box.*". That is factually a very far cry from the position in this case. At [26] the court said:

"In short, therefore, the effect of statute in the vast majority of cases of possession of a firearm and ammunition is that the range of sentence available to the judge is very limited. Subject to possible consecutive sentences (which we shall address shortly) the range is between 5 years and 10 years' imprisonment, and in the event of a guilty plea to an appropriately reduced discount from the maximum of 10 years' imprisonment. This leaves remarkably little room for case-specific flexibility. ..."

At [27] the court observed:

"Two long-standing general principles are engaged. The first principle is totality. The aggregate of the sentences must be appropriate to the offender's criminality in the context of the available mitigation. Second, consecutive terms should not normally be imposed for offences which arise out of the same incident or transaction. ..."

25. That is a clear statement of principle which relates not simply to firearms but to offending generally. It is set out in specific terms in the sentencing guideline on totality, to which it appears that the judge's attention was not drawn. At [28] in *Ralphs*, the court went on to say:

"Examples abound of occasions when consecutive sentences are justifiably imposed. Obvious examples include a robbery committed with the use of a firearm, or violent resistance of arrest, or offences committed on bail: in all these examples however distinct offences are committed in circumstances where the offences, although distinct, can properly be said to increase the relevant criminality. ..."

25.. Mr Bloomfield also invited the court's attention to *R v Asif* [2018] EWCA Crim 2297, in which the Court of Appeal again dealt with the same problems as had arisen in

Ralphs. In giving the judgment of the court in *Asif*, Holroyde LJ said at [21]:

"We must, however, consider the decision of this court in Attorney General's Reference No 57 of 2009 (R v Ralphs) ... and later cases including R v Lewis [2015] 1 Cr App R(S) 38. In Ralphs a constitution of this court (Lord Judge CJ, Rafferty and Henriques JJ) drew attention to the limited range of sentencing which is available when an offender is in possession of prohibited firearms and is convicted of offences which carry a minimum sentence of five years' imprisonment (in the absence of exceptional circumstances), but a maximum sentence of only ten years. Where guilty pleas are entered, there is little room for case specific flexibility. ..."

Again, the court referred back to *Ralphs*. Dealing with the question raised in *Ralphs*, the court said:

"In answering that question, the court noted that two well-established general principles of sentencing were engaged: first, the principle of totality; secondly, the principle that consecutive terms should not generally be imposed for offences which arose out of the same incident."

The court went on:

"23. It should be noted that the principle in Ralphs was expressed with reference to a case in which all the relevant firearms and ammunition were found in the same place and had been received by the offender at the same time. For that reason, the decision in Ralphs has not been followed in cases where there was the important factual distinction that firearms had been acquired at different times or stored in different locations: see, for example, R v Gribben [2014] 2 Cr App R(S) 28 and R v Ullah [2017] EWCA Crim 584. But where the principle in Ralphs applies on the facts, there is, as we see it, no justification for departing from it.

24. We note also that in the Sentencing Council's Definitive Guideline on Totality (at page 7) there is a statement of general principle that consecutive sentences will ordinarily be appropriate where one or more offences qualifies for a statutory minimum sentence and concurrent sentencing would improperly undermine that minimum. The statement is, however, immediately qualified by a note that it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty. Ralphs is cited as authority for that

proposition.

25. In the present case, all of the firearms and ammunition were stored in the boot of the Skoda. There is no evidence that the appellant had come into possession of any of them at a different time. The solitary cartridge which was found at the house is not the subject of a separate charge. In those circumstances it is, in our view, clear that the principle in Ralphs does cover the circumstances of this offending. It may well be that the learned judge below was not addressed in detail about the implications of the decision in Ralphs and did not have the opportunity which we have had to give full consideration to it. Be that as it may, the combination of consecutive and concurrent sentences which he imposed totalling ten years and four months' imprisonment for the firearms offences exceeded the statutory maximum of ten years and offended against that principle."

26. In those paragraphs the court dealt with the fact that the statutory maximum term of ten years' imprisonment creates a relatively limited range for a judge who has to find the appropriate sentence within the statutory minimum (the term of five years' imprisonment) and the statutory maximum (the term of ten years' imprisonment). But the court goes on to say that it is not for the court to impose consecutive sentences in order to avoid the maximum term for one particular offence. That is the principle.
27. We have to look at the fact specific circumstances, as enjoined by the court in the earlier authorities. That does not seem to be an exercise which the sentencing judge was invited to conduct in any great detail.
28. We have attempted to identify the salient facts. We take them, we hope, in the correct chronological order:
- (1) Nothing was seen or seized by searching police officers on 5th October 2022.
 - (2) Guns, parts of guns and ammunition were distributed around the appellant's house.
 - (3) The appellant was an armourer, not just a custodian.
 - (4) The judge was, on the facts available to him, entitled to find that the guns and ammunition had not all been brought to the house on the same occasion.
29. We recognise the pressure of time on courts in the current climate, but, nonetheless, these were extremely brief sentencing remarks. We cannot find a rationale – and nor has Mr Woodcock been able to assist us today – as to why the imposition of three

consecutive sentences was the right approach. As we have observed, we accept entirely that the judge was entitled to find that there was more than one deposit of items within the appellant's property. It does not seem to us to be correct either on the evidence, or any inference to be properly drawn from the evidence, to go further than that.

Ground 2

30. A defendant is entitled to a significant reduction in sentence if a guilty plea is entered or indicated at the first opportunity. *S.73 Sentencing Act 2020*. The Sentencing Council definitive guideline, Reduction in Sentence for a Guilty Plea, sets that reduction at one-third of what would be the appropriate sentence after trial.

31. However, in cases where there is a statutory minimum term, the term imposed, even after credit for an early guilty plea cannot be below the statutory minimum term, in this case of five years. *S 311 Sentencing Act 2020*.

s. 311 Minimum sentence for certain offences involving firearms that are prohibited weapons

(1) This section applies where—

(a) a person is convicted of an offence listed in Schedule 20 (certain offences involving firearms that are prohibited weapons), and

(b) the offender was aged 16 or over when the offence was committed.

(2) The court must impose an appropriate custodial sentence for a term of at least the required minimum term unless.....—

(3) In this section “appropriate custodial sentence” means—

(c) in the case of a person who is aged 21 or over when convicted, a sentence of imprisonment.

(4) In this section “the required minimum term” means—

(b) in the case of an offender who was aged 18 or over when the offence was committed, 5 years.

32. *S 73 Sentencing Act 2020* makes specific provision for cases in which there is a guilty plea and a statutory minimum sentence applies.

(1) This section applies where a court is determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that or another court.

(2) The court must take into account the following matters—

(a) the stage in the proceedings for the offence at which the offender indicated the intention to plead guilty, and

(b) the circumstances in which the indication was given.

(3) If—

(a) a mandatory sentence requirement applies in relation to the offence (see section 399) by virtue of a provision mentioned in subsection (4), and

(b) the offender is aged 18 or over when convicted,

the mandatory sentence requirement does not prevent the court, after taking into account any matter referred to in subsection (2), from imposing any sentence which is not less than 80 per cent of the sentence which would otherwise be required by that requirement.

(4) The provisions referred to in subsection (3)(a) are—

(d) section 315 (minimum sentence for repeat offence involving weapon or bladed article).

33. The statutory range of sentence available on each of the possession of firearms counts was between five and 10 years. The effect of S.73 is that an offender who pleads guilty cannot receive a sentence which is less than 80% of the statutory minimum term. It does not mean that a guilty plea can only ever attract 20% credit in such a case, irrespective of the time at which the plea was entered and the length of the term under consideration.
34. Turning to the offence specific guideline for firearms to determine the appropriate sentence for one offence after trial. These were type 1 weapons. The appellant intended or was reckless as to their use for a criminal purpose. His culpability was high. The harm risked was of death, serious physical or psychological harm.
35. We think that it is necessary to look at the sentencing exercise afresh. We take count 1 first. On count 1, the judge rightly observed that the starting point was one of eight years' imprisonment, within the limited range available to him of seven to ten years. There were important aggravating factors which were not reflected in the term imposed on that count. They relate in particular to the appellant's previous convictions, although we observe that they were reflected in the counts which charged him with being in possession of weapons when he was a prohibited person. But, nonetheless, he is a man with a significant record of previous offending and had been sentenced on three previous occasions for firearms offences. In addition, some of the firearms were in places which were easily accessible to the children who lived in the property. Those are significant aggravating features and in the view of this court would have justified the sentencing judge to increase the sentence from the starting point of eight years, to one of nine years. Nine years' imprisonment would not have been a manifestly excessive sentence on any one of these individual counts.
36. We accept, as we have said, that the judge was right to find that not all the items were brought on the same occasion. He was clearly entitled to find that there were at least two occasions on which the items were brought to the house, that was an inference which was available to be drawn by the judge. There is no basis for a finding of fact that there were more than two occasions, and certainly no specific basis for saying

that each of the weapons arrived on a separate occasion, or indeed that each of the weapons and the ammunition arrived on a separate occasion.

37. Accordingly, applying the principles in the sentencing guideline and the totality guideline, and following the guidance given in the earlier authorities, we have come to the conclusion that the appropriate sentences are as follows: on count 1, nine years' imprisonment; and on count 3, nine years' imprisonment. Those terms will run consecutively to each other, making a total of 18 years' imprisonment. All other terms will run concurrently. Applying credit of one-third for the guilty plea, which the Crown accepted was offered at the first available opportunity, the total sentence is one of 12 years' imprisonment.
38. We accept entirely that the sentence might have been composed differently, depending on different findings of fact. But in the absence of detail about any findings of fact reached by the sentencing judge, we have had to deconstruct and reconstruct the sentence to be imposed on the appellant.
39. In reaching what this court believes to be a just and proportionate total, we do not find it necessary to alter the sentences imposed on all of the other counts, which in any event were ordered to run concurrently.
40. Accordingly, the sentences in respect of the specific firearms offences are now: on count 1, six years' imprisonment (that is, nine reduced to six to allow for the guilty plea); a consecutive term of six years' imprisonment on count 3; and concurrent terms of six years' imprisonment on counts 4, 15, 16, 17 and 19. All the other sentences remain unaffected. That is a total of 12 years' imprisonment.
41. The appeal against sentence is allowed to that extent.
42. We add as a postscript to this case but of general importance that the Sentencing Council has designed a method by which a proposed sentence can be checked. There is a tile labelled ACE (avoiding common errors) in the column on the left hand side of every guideline. Simply putting the brief details of an offence and an offender into the boxes will provide guidance by which the lawfulness of a proposed sentence can be checked, it will calculate credit and raise any possible ancillary orders that could or should be imposed.

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

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