

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

This Transcript is Crown Copyright. It may not be reproduced in whole or in part other than in accordance with relevant licence or with the express consent of the Authority. All rights are reserved.

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2023/00605/A5, 2023/00648/A5
Neutral Citation Number:
[2023] EWCA Crim 1516



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 -

RICHARD THOMAS WATKINS
CHRISTOPHER GERMAN

Computer Aided Transcription of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiglobal.co.uk (Official Shorthand Writers to the Court)

The Applicant Richard Thomas Watkins was unrepresented

Mr D Nolan appeared on behalf of the Applicant Christopher German

J U D G M E N T
(Approved)

Thursday 2nd November 2023

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

MRS JUSTICE HILL:

Introduction

1. These are two renewed applications for leave to appeal against sentence, leave having been refused by the single judge on 10th July 2023.

2. On 12th October 2021, in the Crown Court at Preston before Her Honour Judge Lloyd, Richard Watkins pleaded guilty to two counts of conspiracy to possess a firearm with intent to endanger life, contrary to section 1(1) of the Criminal Law Act 1977 (counts 1 and 2 on the indictment); two counts of possessing a prohibited weapon for sale or transfer, contrary to section 5(2A)(c) and Schedule 6 to the Firearms Act 1968 (counts 4 and 5); and two counts of possessing prohibited ammunition for sale or transfer, contrary to the same provisions (counts 6 and 7).

3. On 7th December 2022, in the same court, following a trial before His Honour Judge Parry and a jury, Christopher German was convicted of one count of conspiracy to possess a firearm with intent to endanger life (count 2) and two counts of conspiracy to possess ammunition with intent to endanger life (counts 4 and 6).

4. On 3rd February 2023, His Honour Judge Parry sentenced Mr Watkins to an extended sentence of 22 years pursuant to section 279 of the Sentencing Act 2020, comprising a custodial term of 19 years and an extended licence period of three years, on count 1. The judge sentenced him to 11 years four months' imprisonment on count 2, and to 12 years' imprisonment on each of counts 4 to 7, all of which sentences were to run concurrently with

that on count 1.

5. On the same day the judge sentenced Mr German to an extended sentence of 16 years, comprising a custodial term of 13 years and an extended licence period of three years, on count 1, with the same sentence imposed on counts 4 and 6, to run concurrently.

6. Mr Watkins has not been represented by counsel before us but we have considered the grounds drafted by his previous counsel, Simon Perkins, and the other material relevant to the application taken from the Digital Case System.

7. Mr German's grounds of appeal have been amplified by oral submissions this morning by Mr Nolan of counsel. We have been greatly assisted by his submissions and by the grounds drafted by previous counsel, Thomas Lord.

The Facts

8. The applicants, together with Mark Watkins (Mr Watkins' father), Ryan Poole and John Lewis were involved in a conspiracy to possess a firearm (a Howa 308 rifle) with intent to endanger life. The applicants, Ryan Poole and John Lewis were also involved in a conspiracy to possess compatible ammunition for that rifle (31 Prvi Partizan bulletted cartridges and eight Norma 308 Winchester bulletted cartridges) with intent to endanger life. Mr Watkins additionally fell to be sentenced for two offences of possessing a prohibited weapon (a Sig Sauer 9 mm handgun and a revolver) for sale or transfer, and two offences of possessing prohibited ammunition (11 .44 Smith & Wesson bulletted cartridges, six of which were loaded in the revolver, and 14 MKE 9 mm parabellum bulletted cartridges for use in the Sig handgun) for sale or transfer. A further co-defendant, Lois Carter, was due to be sentenced for an offence of participating in the criminal activities of an organised crime group at a later date.

9. At approximately 3.40 pm on 14th July 2021 armed police executed an enforced stop of a Ford Focus motor vehicle. Mr Lewis, Mr Poole, Ms Carter and her infant son were inside. The car had travelled from Manchester to Preston earlier that day and was on its way back. Police had tracked the vehicle from Manchester to the address of Mr Watkins and his father on the outskirts of Preston. The purpose of the trip was to collect a firearm and ammunition from Mr Watkins. From the boot of the vehicle officers recovered the Howa rifle, with a magnified telescopic sight and attached sound moderator, along with 39 rounds of 308 calibre ammunition.

10. The conspiracy began on 5th July 2021. The prosecution case was that Mr Watkins was the supplier, Mr German the arranger, and Mr Poole the recipient. From that date there was extensive telephone communications between the applicants and Mr Poole. The applicants were good friends. Mr Poole was employed by Mr German. All three had met while serving custodial sentences some years earlier.

11. On 6th July 2021 the applicants met at Rivington Services on the M61 to discuss the transfer of the firearm and ammunition to Mr Poole. The men continued to communicate over the following days. Mr Lewis agreed to act as Mr Poole's driver and Miss Carter and her infant accompanied them to give the journey the appearance of respectability.

12. By 10.30 am on 14th July 2021 both Mr German and Mr Poole had attempted to contact Mr Watkins. At midday there was a long telephone conversation between the applicants, followed by Mr German calling Mr Poole. Both the Howa rifle and the ammunition were buried in wasteland at the bottom of the home of Mark Watkins, at 24 Merrick Avenue. CCTV footage showed Mr Watkins junior start to dig up the items at around 1.00 pm. However, due to an injury to his leg he then enlisted the help of his father. Together they dug

for a further 20 minutes until they retrieved the items. The firearm and ammunition were taken to an outbuilding at the rear of the garden and cleaned, before being collected an hour later. Mr Watkins senior moved his own vehicle from the driveway to allow Mr Lewis to reverse onto it. Mr Poole then entered the garage and collected the weapon and ammunition before the group began to make their way back to Manchester. Mr Poole and Mr German continued to be in telephone contact during the return.

13. After the vehicle was stopped by police there was a flurry of telephone calls between the applicants and Mark Watkins. Mr Watkins left the property and was later arrested on the outskirts of Preston. Mark Watkins drove out to find his son and saw where he had been arrested. Mark Watkins went back to his house and was arrested there soon after. Police searched 24 Merrick Avenue and recovered CCTV footage from all areas of the house which showed the actions of Mr Watkins and his father in the garden and the transaction with the group from Manchester.

14. Police continued to search the area of ground where the Howa rifle was buried. In an area of soil at the rear of a neighbour's garden they found a package containing two handguns, namely a revolver loaded with rounds of viable ammunition and a 9mm Sig Saur pistol with a loaded magazine. There were also 9 mm bullets in the package. These items were reflected in counts 4 to 7 on the indictment relating to Mr Watkins alone.

The Relevant Sentencing Council guideline

15. The relevant Sentencing Council guideline was that relating to Firearms – possession with intent to endanger life. This provides the following relevant categories of culpability:

"A – High culpability:

- Sophisticated nature of offence/significant planning

- Leading role where offending is part of a group activity
- Distribution or supply of firearms on a significant scale
- Firearm discharged
- Prolonged incident

B – Medium culpability:

- Significant role where offending is part of a group activity
- Some degree of planning
- Firearm loaded or held with compatible ammunition but not discharged
- Other cases falling between culpability A and C because:

Factors are present in A and C which balance each other out and/or

The offender's culpability falls between the factors as described in A and C."

The guideline also provides for the following categories of harm:

"Category 1

- Severe physical harm caused
- Severe psychological harm caused

Category 2

- Serious physical harm
- Serious psychological harm
- High risk of death or severe physical or psychological harm
- High risk of serious disorder

Category 3

- Alarm/distress caused

- All other cases not falling into 1 or 2."

Mr Watkins

16. Mr Watkins was 29 years old at the date of sentence. He had 24 previous convictions for 57 offences, including for possession of an offensive weapon in 2011, causing grievous bodily harm with intent in 2015 (for which he had been sentenced to three years and nine months' imprisonment) and assault occasioning actual bodily harm in 2017 (for which he had been sentenced to 14 months' imprisonment). The 2015 offence involved Mr Watkins slashing with a knife a man with whom he had had a dispute on a night out. The 2017 offence involved him striking a stranger to the head with a bottle.

17. The judge considered two character references for Mr Watkins: one from a drain jetting company for which he had worked from 2020-2021 and one from the father of his partner.

18. Mr Watkins had written a letter of remorse to the judge.

19. A pre-sentence report assessed Mr Watkins as posing a high risk of causing serious harm to members of the public; noted that he had offended while on licence; and concluded that he was considered by the Probation Service to be immersed in a lifestyle which involved connections with organised crime.

20. The judge decided to afford Mr Watkins 12.5 % credit in relation to counts 1 and 2 because while he had initially pleaded guilty, he had then made an application to vacate his plea. This had been dismissed two weeks before the trial was due to begin. It was agreed that he should receive 25 per cent credit for his guilty pleas to counts 4 to 7.

21. The judge assessed that all six offences Mr Watkins faced fell within category A for culpability and category 3 for harm within the guideline. Mr Watkins' proposed grounds of appeal rightly do not take issue with the judge's categorisation of the offences as falling within category A3.

22. The judge determined that he would have imposed sentences after trial, in respect of counts 1 and 2 alone, of 13 years' imprisonment. With credit of 12.5 %, that amounted to notional sentences of 11 years and four months' imprisonment on each of these counts.

23. In respect of counts 4 to 7, the starting point under the guidelines would be ten years' imprisonment for a single offence. The judge observed that these counts involved two handguns and two lots of compatible ammunition. Further, the revolver was loaded. For these reasons the judge indicated that he would have imposed a sentence after trial of 16 years' imprisonment on these offences, or 12 years when allowance of 25 per cent credit was made.

24. The judge then specifically considered totality, and aggregated all Mr Watkins' criminality on to count 1. That approach led to the judge to elevate the sentence on count 1 to 19 years' imprisonment.

25. Mr Watkins' first and second proposed grounds of appeal contend that the judge unjustifiably imposed sentences above the range stated in the guideline and lost sight of totality. We do not consider that either of these points is reasonably arguable.

26. For counts 1 and 2, as we have said, the starting point for a single category A3 offence was ten years' imprisonment, with a category range of eight to 12 years. It is not reasonably arguable that a notional post-trial sentence for counts 1 and 2 alone of 13 years' imprisonment

was unjustified given that the judge had to consider two counts, and had to reflect the aggravating feature of the presence of 39 rounds of compatible ammunition, as well as a silencer and telescopic sight, in addition to the aggravating factor of Mr Watkins' relevant previous convictions.

27. For counts 4, 5, 6 and 7, as we have said, the sentence range for a category A3 offence was eight to 14 years' imprisonment. However, as the judge emphasised, that is the range for a single offence, whereas his determination that the notional post-trial sentence for these offences (taken alone) should be 16 years' imprisonment reflected the appropriate sentence for four offences involving two handguns and two lots of compatible ammunition (including a loaded revolver).

28. The judge specifically referred to the totality principle: see page 15C of the transcript of the sentencing remarks. The judge applied it both in determining the notional post-trial sentences, and again when assessing the extent to which the sentences for counts 1 and 2 should be increased to reflect the offending in counts 4, 5, 6 and 7, and ultimately aggregated all of the offending on to count 1.

29. Accordingly we do not consider that either of the first two grounds of appeal are arguable.

30. The third ground of appeal argues that there was inappropriate double-counting by the judge, in that factors taken into account in the culpability categorisation were then counted again as aggravating features. No specific features which are asserted to have been counted twice are identified in the grounds. We cannot discern any.

31. The final ground of appeal contends that the sentence imposed on Mr Watkins was disproportionate when viewed alongside that of Mr German. It is argued that Mr German

was "inferentially the initiating conspirator, if not the end user of the weapon at issue in counts 1 and 2". Reliance is also placed on his two previous convictions for robbery, one of which involved a firearm.

32. The prosecution's note on sentence provided to the judge drew no distinction between Mr Watkins and Mr German in terms of their culpability. It was contended that the appropriate category for them both was A. The characterisation of Mr German's role as the "initiating" conspirator does not chime with the basis on which the judge sentenced him, as we will shortly explain. We therefore do not consider this ground to be reasonably arguable either.

33. The single judge's view was that "stepping back, it is not reasonably arguable ... that the overall sentence is manifestly excessive". We agree.

Mr German

34. Mr German was aged 38. He had 15 previous convictions for 38 offences.

35. In 2002 he had been convicted of possessing an offensive weapon. In 2007 he was sentenced to nine years and one month's imprisonment for robbery and having an imitation firearm with intent to commit an indictable offence. Mr German had been one of three offenders who, wearing balaclavas, had held up a Securicor ATM delivery while in possession of what witnesses described as a "sawn off shotgun". There was a threat to "kneecap" one of the victims and a threat to members of the public that one of the victims in the ATM bunker would be shot if the public did not back off.

36. In 2013 he had been sentenced to an extended sentence of imprisonment comprising a custodial element of six years and an extended licence period of two and a half years, because

he was then found to be dangerous. This was as a result of an organised robbery of a jewellers in which masks were worn and machetes and knives were brandished at the owner and other members of staff. Mr German and his co-defendants threatened to chop off the hands of the members of staff if they did not hand over the Rolex watches that they were wearing. Ultimately the robbery yielded 47 Rolex watches that were on display as well as those worn by the staff, valued in total at £377,000.

37. The pre-sentence report assessed Mr German as posing a high risk of causing serious harm to members of the public.

38. Mr German's father had written a letter to the judge, as has Mr German. He continued to maintain his innocence.

39. In written submissions on Mr German's behalf, Mr Lord contended that the judge should conclude that his case fell within culpability category B within the guideline. It was submitted that the appropriate harm category was 3. The judge disagreed in respect of the first of these issues, and found that the correct culpability category for both Mr Watkins and Mr German was A.

40. The written grounds advance a sole ground of appeal which takes issue with this aspect of the judge's approach. It is contended that the judge erred in placing Mr German within culpability category A, rather than B, within the guideline; and that consequently the judge adopted too high a starting point such that the sentence imposed was manifestly excessive.

41. Mr Nolan developed his submissions orally before us this morning in relation to this ground. He argued that the category should have been B, i.e. medium culpability, because the evidence showed that Mr German had played a “significant role” when part of a group

activity, rather than a “leading role” (the wording used in category A). Mr Nolan relied in particular on the fact that Mr German was not the sole conduit; that he was involved for a limited number of days; and that Mr German's involvement was not particularly sophisticated.

42. We do not consider this ground reasonably arguable. The judge had heard Mr German give evidence. This had included Mr German's explanations for his contact with Mr Watkins and Mr Poole up to and including 14th July 2021. The judge concluded that Mr German's explanations "lacked credibility". He found that Mr German was "heavily involved in this conspiracy" and had "brought together the customer for delivery and the supplier". Further, the judge observed that Mr German was "at ease" doing this because of his background in and experience of serious organised crime: see pages 10F-H of the transcript of the sentencing remarks.

43. Having heard Mr German give evidence, the judge was particularly well placed to assess his level of culpability. The judge said the following about him:

"You were the key facilitator in this conspiracy and you brought together somebody who wanted to sell a weapon with somebody who wanted to buy one. Being a middleman does not mean that you are not a leading man. You were a leading man. By your actions you ensured the transfer of a deadly weapon and compatible ammunition made its way from Preston to Manchester smoothly; I am sure in your case there was significant planning over nine days." (See page 16D-E of the transcript.)

44. It is therefore clear from those words that the judge found two elements of the high culpability category present, namely: a “leading role when offending as part of a group activity”; and “significant planning”. The judge was entitled to accept the contention of the prosecution that culpability properly fell within category A for the reasons that he gave.

There was a clear evidential basis for these findings. We do not, therefore, consider it reasonably arguable that the judge had erred in this regard.

45. The starting point for a single category A3 offence is ten years' imprisonment, and the range is eight to 12 years.

46. Mr Nolan sought to advance a new, second ground, in relation to the way in which the judge conducted the sentencing exercise, having selected the starting point. Although not the subject of a written notice to amend the grounds, as should have taken place, we have considered this new argument. The argument was to the effect that, having selected the starting point he did, to elevate it further by 40 per cent was manifestly excessive. By this argument Mr Nolan is referring to the fact that the judge elevated the ten year starting point to a 14 year starting point, before considering mitigation. Mr Nolan contended that the judge had done this because of the applicant's previous convictions.

47. However, in our judgment, when the sentencing remarks are looked at in full, it is clear that the matter is more complex than that. We refer in particular to page 16F-G of the remarks, where the judge made clear that he did take into account the aggravating factor of Mr German's similar, serious previous convictions, but also referred to the fact that he was still subject to an extended sentence for robbery at the time of these offences. It was also relevant that the judge had to consider three counts and to reflect the aggravating feature of the presence of compatible ammunition, as well as the silencer and telescopic sight within counts 4 to 6. It was for those reasons that the starting point was elevated. We do not consider it reasonably arguable that the judge erred in this regard.

48. The judge then took into account the mitigation available to Mr German, principally the fact that he had been working at the material time; and that he had broadly complied well

with his licence conditions. The judge accepted Mr German's counsel's submissions that while awaiting sentence, he had acted within the prison estate in a commendable way, assisting a prison officer who was in trouble. These mitigating factors led the judge to reduce the custodial term to 13 years. No complaint is made about this aspect of the sentencing exercise.

Conclusion

49. Accordingly, for these reasons we refuse Mr Watkins' renewed application for leave. We also refuse Mr German's renewed application for leave, both on the basis of the written ground advanced and the proposed second ground argued orally this morning by Mr Nolan.

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