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[2023] EWCA Crim 541

IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202202152/A3



Royal Courts of Justice  
Strand  
London  
WC2A 2LL

Wednesday 3 May 2023

Before:

LADY JUSTICE CARR DBE  
MRS JUSTICE MCGOWAN DBE  
THE RECORDER OF SOUTHWARK  
HER HONOUR JUDGE KARU  
(Sitting as a Judge of the CACD)

REX  
V  
SYD GOSS

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MR M TURNER KC appeared on behalf of the Applicant

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**J U D G M E N T**

LADY JUSTICE CARR:

Introduction

1. On 18 May 2022 the applicant, then 22 years old, was convicted following trial before His Honour Judge Leonard KC and a jury of the murder of Lee Baxter ("Mr Baxter"). He was sentenced on 10 June 2022 to imprisonment for life with a minimum term under section 322 of the Sentencing Act 2020 of 29 years less 595 days spent on remand.
2. Two of his co-accused were also convicted of the murder. Jermaine Forrester, then 25 years old, was sentenced to imprisonment for life with a minimum term of 29 years, less time spent on remand. Ryan Graham, then 27 years old, was sentenced to imprisonment for life with a minimum term of 27 years, less time spent on remand.
3. This is his renewed application for leave to appeal sentence, for which purpose he has had the benefit of pro bono representation by Mr Turner KC. The central basis of challenge is disparity. It is said that the judge erred in assessing the culpability of the applicant as equivalent to that of Forrester and greater than that of Graham, reaching a sentence that was manifestly excessive as a result.

The facts

4. In summary, the facts are as follows. On the evening of 9 October 2020, Mr Baxter, then 34 years old, and his brother drove to Pavilion Terrace in Ilford with the intention of purchasing a large quantity of cannabis. He had £5,000 in cash with him. The applicant, together with Forrester and Graham, were already at the scene, having been driven there by a woman named Demi Anderson. She stayed in her vehicle.
5. There was discussion amongst the group. Mr Baxter showed the men the cash. The cannabis, however, did not materialise. Mr Baxter and his brother began to leave, making their way down an alleyway, but followed by the applicant, Forrester and Graham.
6. Very quickly upon entering the alleyway, Forrester attacked Mr Baxter, placing him in a headlock. Graham joined in, helping to force Mr Baxter to the ground where Mr Baxter was then stabbed. The applicant produced a knife and chased Mr Baxter's brother, swinging the knife and only narrowly missing him. Mr Baxter's brother ran back to his car from where he witnessed the continuing attack on Mr Baxter. The applicant then joined in that attack which only stopped when Mr Baxter's brother returned towards them. The applicant, Forrester and Graham then fled.

7. Mr Baxter had been stabbed multiple times. There were 11 distinct incised wounds, two considered to be defensive, and nine stab wounds. The fatal wound passed through Mr Baxter's thigh through muscle causing damage to the femoral artery and vein. The total depth of this injury was 10 centimetres. It caused massive blood loss and, despite medical assistance, Mr Baxter tragically died at the scene.
8. Following the attack, Anderson drove the applicant, Forrester and Graham back to their respective addresses. The men then made efforts to cover up their involvement. One of the knives used was cleaned with bleach, communications on mobile telephones were deleted, and bloodstained clothes were disposed of or washed.

### The sentence

9. The judge concluded on the facts, amongst other things: (1) that all three went out ready to use knives against Baxter; (2) that the applicant used his knife to chase Mr Baxter's brother away, leaving Mr Baxter defenceless; (3) that Forrester was the first to stab Mr Baxter and was the principal stabber; (4) that the applicant had a knife with him but it could not be said with surety that he had stabbed Mr Baxter; (5) that it could not be said with surety that Graham was armed with a knife; (6) that the applicant was in general terms the ringleader due to his intelligence; (7) if the events had begun as a genuine agreement to sell cannabis, there came a time on the scene when the plan changed to one of robbery. The timing however made very little difference to the sentence; (8) that really serious harm, not death, was intended.

### Grounds of appeal

10. At the outset Mr Turner submits that the judge gave insufficient weight to two specific factors: first, the applicant's youth - he was only 22 at the time; and secondly, that the applicant did not stab Mr Baxter.
11. Separately and in any event, it is suggested that the minimum term of 29 years for the applicant was manifestly excessive when compared to the sentences on Forrester and Graham. In particular, Forrester was the principal and potentially only stabber who initiated the attack, and the applicant was to be treated as not having stabbed Mr Baxter at all. Secondly, the applicant was the youngest of the three men and not heavily convicted, especially when compared with Forrester who had previous convictions including for robbery and possession of a bladed article. Thirdly, if a common plan to rob Mr Baxter did arise, it did so on the spur of the moment. Fourthly, there was no safe basis on which to conclude that the applicant was aware in advance that Forrester would stab Mr Baxter.

12. Thus, it is suggested that the roles and culpability of the applicant and Forrester were not equivalent, and that Graham's culpability was no less than that of the applicant.

### Discussion

13. The judge sentenced the applicant without a pre-sentence report. We agree that one was not necessary and there has been no suggestion to the contrary.
14. It is usually difficult to establish that a sentence is manifestly excessive by reference to disparity alone. Disparity is rarely a successful ground of appeal: see *R v Wilson* [2017] EWCA Crim 1860, [2018] 1 Cr.App.R (S) 25 and *R v Anderson and Black* [2018] EWCA Crim 482. One sentencing error is not cured by making another. The sole statutory test on appeal is whether a sentence was wrong in principle or manifestly excessive.
15. It is rightly accepted that the judge correctly identified a minimum term of 30 years as the relevant starting point on the basis that this was a murder done for gain for the purpose of paragraph 3(2) of schedule 21 of the Sentencing Act 2020. He elevated it to take account of relevant aggravating factors, including the fact that this was a group attack, the background of drug dealing, and the efforts to dispose of clothing and knives. He then reduced it to accommodate the relevant mitigation, including the fact that the applicant had a young child and had ADHD.
16. He considered the applicant's age, in our judgment, with conspicuous care. He correctly focused on maturity and not age itself. Having heard the applicant give evidence and taking into account the applicant's background, he was entitled to conclude as he did, namely that the applicant was not "immature in any respect". The applicant was running a substantial drugs business and clearly capable of influencing what Forrester and Graham did.
17. There is in our judgment no arguable basis on which to impugn the resulting minimum term of 29 years as such.
18. Arguments by reference to disparity in such circumstances would not assist, for the reasons that we have already identified. In any event, the judge was well-placed after trial to assess the respective roles and culpability of those involved. This assessment was something to which he gave careful thought, as is clear from the face of his sentencing remarks. An exercise of detailed comparison between the various roles and circumstances of the three men proves unrewarding.
19. There were many matters of commonality. This was a joint enterprise, all three were ready to use knives against Mr Baxter from the moment they set out that evening. There

was at some stage before going to the alleyway a joint decision to rob Mr Baxter of £5,000. Each offender had a young child. There were also differences, sometimes nuanced, between the respective positions of the applicant and his co-defendants. By way of example only, although the applicant was the youngest of the three men, the judge found that he was the ringleader within the group, an intelligent and high-functioning individual. This was a central and primary consideration in sentencing terms for the applicant. Graham, who had many positive good character references, was assessed as having special educational needs at school and had no previous convictions. He was also a follower and not a leader. Forrester had dyslexia which had held him back educationally and had a troubled family background.

20. In short, there is no real prospect of appellate interference with the judge's overall evaluative assessments of the individual roles and culpability of those involved, or the resulting sentence on the applicant that he imposed.

### Conclusion

21. For these reasons, we refuse this renewed application. We conclude, nevertheless, by repeating our thanks to Mr Turner for his assistance.

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