NEUTRAL CITATION NO: [2024] EWCA Crim 1617

ROYAL COURTS OF JUSTICE
THE STRAND
LONDON
WC2A 2LL

IN THE COURT OF APPEAL
CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT NEWCASTLE UPON TYNE
(HIS HONOUR JUDGE ADAMS) [11EE390423]

Case No 2023/04427/A1

Wednesday 18 December 2024

B e f o r e:

LORD JUSTICE LEWIS

MR JUSTICE GARNHAM

MR JUSTICE MARTIN SPENCER

R EX

- v -

LEWIS ARMSTRONG

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Miss P Hall appeared on behalf of the Applicant

J U D G M E N T

Wednesday 18 December 2024

LORD JUSTICE LEWIS: I shall ask Mr Justice Martin Spencer to give the judgment of the court.

MR JUSTICE MARTIN SPENCER:

1. The applicant, Lewis Armstrong, whose date of birth is 22 October 2005, renews his application for leave to appeal against sentence, leave having been refused by the single judge.

2. On 20 October 2023, following a trial in the Crown Court at Newcastle Upon Tyne before His Honour Judge Adams and a jury, the applicant was convicted of attempting to cause grievous bodily harm with intent (count 1) and murder (count 3). It will be noted that this conviction was two days before the applicant's 18th birthday. Sentence was adjourned until 17 November 2023, when he was sentenced to 30 months' detention on count 1, and to detention at His Majesty's pleasure for life, with a minimum term of 23 years and 188 days on count 3.

3. The facts of count 1 were as follows. On 30 April 2023, at around 5.40 pm, the applicant and Harvey Hughes had been driving around in a van in Shotton Colliery, County Durham. The van pulled over and passers-by were asked where they were staying. One of those passers-by, Steven Daley, said that he was staying in a nearby hotel and Harvey Hughes suggested that Steven Daley was a paedophile or a sex offender, which he was not. Harvey Hughes subsequently got out of the vehicle, armed himself with what appeared to be a metal pole and struck Stephen Daley twice with it. Stephen Daley advanced towards Harvey Hughes and Harvey Hughes struck Stephen Daley once more before falling over and dropping the pole. The applicant then got out of the van and went to assist Harvey Hughes

by striking Stephen Daley twice with his fists which caused Stephen Daley to fall to the ground. Harvey Hughes then struck Stephen Daley twice more whilst he was on the ground. Thereafter, the applicant and Harvey Hughes returned to the van and drove off. The offending was not reported straightaway, but was reported once Stephen Daley became aware of the offending which constituted count 3.

4. Stephen Daley's injuries included a moderately displaced fracture in the left hand, a chip of his collar bone and a minimally displaced fracture of the left elbow, as well as abrasions and bruising to an arm, hand and knee.

5. The facts of count 3 were as follows. The applicant's mother, Alison Parks, had been arguing with a cousin, Ross Connolly on Facebook over the evening of 30 April 2023. That argument had become heated and shortly afterwards Alison Parks spoke to her son on the phone. Just after midnight the applicant rang Harvey Hughes and within a relatively short period of time they met up at Peterlee Bus Station in separate vehicles. There followed a further conversation between the applicant and his mother. Having picked up another individual, the applicant and the others made their way to Ross Connolly's address, where they forced entry. Ross Connolly had been alcohol dependent and his mobility was poor. It required him to use a wheeled commode to get around. Repeated blows, in excess of 40, were subsequently rained down on the victim who could be heard through the audio facility on a nearby CCTV camera crying out in pain. The attackers then left in a hurry. The applicant's blood was found at the scene next to where Ross Connolly had been attacked.

6. Ross Connolly suffered severe injuries and died from them shortly after the attack. His injuries included: severe bruising to his head and face; an abrasion to his nose; 13 fractures to his ribs on his right side; eight fractures of bones to his spine; two fractures to his right ulna; a fracture to his right thigh bone; a fracture to his right fibula; and a fracture to his right ankle

which he had injured previously. The rib fractures had torn the lining of the chest cavity and his right lung had collapsed. He would have suffered significant internal and external bleeding. He was found dead the following morning by his landlord, lying in the bed where he had been attacked.

7. The applicant and the others went on the run, but the applicant handed himself in at Peterlee Police Station on 21 May 2023. In three interviews the appellant declined to answer questions asked by the police in relation to the index offending.

8. In sentencing the applicant, the learned judge placed the offence of attempting to cause grievous bodily harm with intent into category B2 for the purposes of the sentencing guideline, with a starting point of five years' custody and a range of four to seven years. Having referred to the aggravating and mitigating factors, the judge said:

> "Having regard to the aggravating and mitigating features, had the [applicant] been over 18 at the time of the offence, the sentence would have been reduced from the starting point of five years to one of three years and four months' detention in a young offender institution. The [applicant] was aged just over 17 years and six months at the time of the offences and so not far off 18. The appropriate discount is, in my judgment, one quarter reducing the sentence to two years and six months' detention in a young offender institution."

9. This sentence was ordered to be served concurrently with the sentence for the murder. No complaint is made of this sentence. However, in case it is not clear, we would amend the record to reflect that this is a sentence of detention imposed pursuant to section 250 of the Sentencing Code, the applicant having been under 18 at the time of his conviction.

10. In relation to the sentence for murder, the learned judge referred appropriately to paragraph 4 of the Sentencing Act 2020, which would have provided a starting point of 25

years to be served, had the applicant been an adult when the offence was committed. He then went on to say:

> "This is a conviction after 28 June 2022 and so paragraph 5A applies as inserted by section 127 of the [2022 Act]. For a 17 year old the 25 year starting point is reduced to 23 years. However, for children starting points are not to be applied mechanistically without regard to age and maturity. An individualistic approach must be adopted and the court has to assess the extent to which [the applicant] has the necessary maturity to appreciate fully the consequences of his conduct, the extent to which the child or young person has been acting on an impulse basis and whether his conduct has been affected by inexperience, emotional volatility or negative influences."

11. Having again referred to the aggravating and mitigating factors, the judge then said:

> "Having regard to the aggravating and mitigating features there has to be an increase in your case also from the starting point. I take into account that you would have served a shorter period in custody in respect of count 1 than Hughes and so the increase for that is less but I cannot ignore the fact that you must have brought Hughes into this enterprise, accepting, of course, that significant responsibility also rests with another family member whose feud this was.
>
> I fix the minimum term at 24 years. From this will be deducted 177 days which you have already spent on remand in custody so that the minimum term that you will serve will be 23 years and 188 days."

12. In support of this renewed application, Miss Hall, for whose written and oral submissions today we are very grateful, argues that the judge did not take sufficient account of the personal mitigation available to the applicant, specifically the level of immaturity in a young boy aged 17, when determining the minimum term. In her written submissions she says:

> "The applicant had clearly had a difficult, disrupted childhood which involved his father being in prison for a significant proportion of that. In addition to that, the youth offending worker who had prepared the pre-sentence report had expressed the view that there may be undiagnosed needs and observed

> that the applicant's level of reading and writing was low.
>
> It is known to the courts that boys tend to reach full maturity in their early twenties. In this case, not only was the court dealing with a defendant who was 17 years of age chronologically, he was also a young man with a difficult background and a number of communication and potentially other needs.
>
> Had the applicant been older or more mature, he may not have allowed himself to become involved in an issue that was between his mother and her cousin. Whether it was intentional or not, it seems the views and/or reaction of his mother to this, affected the way he acted that night.
>
> Even allowing for the addition of eight months for the attempted GBH, it does not seem necessary to have increased the starting point of 23 years. The aggravating factors and other mitigating factors (not including age and maturity) appeared to balance each other out. Then allowing for the level of immaturity and personal mitigation, in my view, a downward adjustment ought to have been allowed."

13. In her oral submissions, Miss Hall has repeated what she said in her written submissions. She has referred in terms to the intermediary's report which was prepared in advance of the trial to assist the court in ensuring that, in particular when he gave evidence, the applicant could do so to the best of his ability. In the event, he did not give evidence on his own behalf.

14. Miss Hall has also referred in terms to the reference in the pre-sentence report to the applicant's immaturity. She has argued that, in the light of that evidence in particular, the learned judge had insufficient regard to the applicant's level of maturity and that this should have resulted in a further reduction, irrespective of its effect on the applicant's culpability.

15. However, we reject the suggestion that immaturity and culpability should not be linked or associated with each other. In our view, it is clear that the references to immaturity, both in previous authorities such as *R v SK*, which was cited by Miss Hall, and in other authorities make it clear that the impact of immaturity is directly related to culpability.

16. In refusing leave to appeal, the single judge made the following observations to the applicant

> "… you rightly accept that the judge took the correct statutory starting point of 23 years, for a person of your age committing a murder with a weapon taken to the scene. In addition, in assessing the minimum term, the judge had to reflect the second assault for which you were convicted (the attempt to commit grievous bodily harm with intent). You say that the judge failed properly to balance the aggravating and mitigating factors in your case; but he set out the several seriously aggravating factors (e.g. vulnerability of the targeted victim, forced entry into his home, sustained attack involving over 40 blows, your recruitment of your co-defendant into the joint enterprise, and the fact that the incident took place only six hours after another incident of group violence involving a similar weapon against another man) – and, on the evidence, the judge was entitled to conclude that, although there was evidence of communications weakness on your part in the Intermediary's Report, there was no significant evidence of any immaturity over and above your chronological age. The judge also concluded (as he was entitled to do) that, despite the Intermediary's Report, there was no evidence of any mental disorder, developmental disorder or neurological impairment that would significantly reduce your culpability.
>
> The judge took patent care in sentencing you. He properly took into account all the mitigation put forward on your behalf. It is not arguable that he erred, or that the minimum term is either manifestly excessive or otherwise wrong in law."

17. Despite Miss Hall's eloquent and helpful submissions, nothing she has said has caused us to disagree with those observations of the single judge. We associate ourselves with them. In particular, we consider that the sentencing remarks were carefully considered. The learned judge took into account all the relevant factors, and, in our judgment, it is not reasonably arguable that he erred in his approach in any way. The minimum term imposed was not excessive, never mind manifestly excessive.

18. Accordingly, this renewed application for leave to appeal against sentence is refused.

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

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