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NCN: [2021] EWCA Crim 1245

IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202100498/A3

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 3 August 2021

Before:

LADY JUSTICE CARR DBE
MR JUSTICE GOSS
MR JUSTICE KNOWLES

REGINA
V
LUKE SKINNER

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MR R FERM appeared on behalf of the Appellant

JUDGMENT

LADY JUSTICE CARR:

Introduction

This is an appeal against sentence by the appellant, a 24-year-old male of previous good character, who on 9 February 2021 in the Crown Court at Leeds was sentenced to a total of nine years' imprisonment. On 10 November 2020 the appellant had pleaded guilty to possession of a class A controlled drug with intent to supply, contrary to section 5(3) of the Misuse of Drugs Act 1971 (count 6). For that offence he received a sentence of four years' imprisonment. He was then convicted following trial on 22 January 2021 of conspiracy to possess a firearm with intent to cause fear of violence, contrary to section 1(1) of the Criminal Law Act 1977 (count 1), for which he received a sentence of five years' imprisonment, and of conspiracy to possess ammunition without a firearms certificate, contrary to section 1(1) of the Criminal Law Act 1977 (count 2) for which he received a sentence of 42 months' imprisonment. The sentences imposed on counts 1 and 2 were to run concurrently to each other. The sentence of four years' imprisonment imposed on count 6 was ordered to run consecutively to the sentence imposed on count 1.

The appellant's co-accused included Matthew King, also known as Matthew Daw ("Daw").

Daw pleaded guilty (after the commencement of trial) to counts 1 and 2 and also to possessing of a prohibited firearm (count 3). He was sentenced to a total of 11 years' imprisonment. Daw had three previous convictions for four offences and in 2013 had been sentenced to six years' imprisonment for possessing class A drugs with intent and conspiracy to supply class B drugs.

Another co-accused, Jake Rigby ("Rigby"), was convicted on counts 1, 2 and 3 and pleaded

guilty to count 4 (possessing ammunition) and count 5 (possessing class A drugs with intent). He was sentenced to a total of eight years and four months' imprisonment.

Two further co-accused Aiden Saville-Whitehead ("Whitehead") and Sengan Trinn ("Trinn") were acquitted of counts 1 and 2.

The facts

On 18 May 2020, in the midst of the first national lockdown, the appellant and Daw, along with Rigby, Whitehead and Trinn, set out from various addresses in Leeds to travel to a meeting point in Normanton before travelling on to Castleford. The journey had been arranged by Daw. Daw travelled to Normanton in a car driven by Whitehead. The appellant travelled to Normanton from his home address, after first collecting a handgun and ammunition from Rigby. Once in Normanton, Trinn got into the car being driven by Whitehead, which had taken Daw to their meeting point. Daw then got into the car being driven by the appellant. The two vehicles then set off travelling in convoy to Castleford.

In Castleford the police stopped and searched the car being driven by the appellant with Daw as passenger. The police found a bag containing the handgun and ammunition that the appellant had collected from Rigby. The firearm was a Grand Power semi-automatic handgun. It had a switch on it enabling it to fire either a single projectile or multiple projectiles automatically. The ammunition consisted of round-tipped and flat-nosed bullets. The police also found two encrypted mobile telephones in a bag being carried by Daw.

Subsequent examination of the handgun and ammunition, together with a similar further firearm subsequently found at Rigby's address, showed them all to be in working order and the ammunition capable of being used within them.

The car being driven by Whitehead with Trinn as passenger was stopped in Wakefield. All four men were arrested.

They had in fact been under detailed police surveillance for some two to three weeks previously. During this time they had been observed meeting up and travelling together in various vehicles. One of those vehicles was a red Skoda Citigo, which was a courtesy car loaned to the appellant by a repair centre that was working on his own car. This Skoda was the car being driven by the appellant on 18 May. The surveillance showed that Daw, the appellant, Whitehead and on one occasion Trinn, were all in close contact with each other in the days leading up to 18 May, with both the appellant and Whitehead acting as drivers for Daw.

As already indicated, when the police searched Rigby's home address they found another similar firearm and ammunition. At both Rigby's address and the appellant's address they also found quantities of controlled drugs and other associated items suggestive of the men being involved in the supply of controlled drugs. Specifically at the appellant's home the police found around two ounces of cocaine which the appellant said he was keeping on behalf of Daw to deliver at his direction. There was also found a knife in a bedroom drawer.

Messages on the appellant's mobile telephone from late November 2019 onwards showed him to

be working for Daw in relation to the ongoing supply of class A drugs. The appellant also appeared to have been aware of the existence of a couple of firearms. Daw was clearly running a drugs business including the supply of cannabis, amphetamine and cocaine on a significant scale. The appellant was a willing assistant, ready to drive, to collect money, drugs and samples and to deliver them around the country as well as locally.

Sentence

On count 1 the sentencing judge found Daw's role to be significant. He had organised the activity, he had played a leading role and was of higher culpability. The appellant and Rigby on the other hand were assessed as having medium culpability. The sentencing judge said that he was not sure that either of them actually recognised the real purpose of the enterprise. The appellant had made little or no effort to hide his identity. The car he was in could be tracked back to him. It had been taken out in his own name. It was clear, said the sentencing judge, from the evidence that Daw had treated the appellant as "a muppet". Both the appellant and Rigby knew that there was an intention to cause fear. So much was clear from the jury's verdict. They both knew that there was a gun and ammunition and that something involving planning was going on, but they were not part themselves of the planning and were limited to their own roles, in the case of the appellant being to transport to firearm and then to transport Daw.

This was, in the sentencing judge's view, a Category 2 case for the purpose of the Sentencing Council Guideline on Firearms Offences ("the Firearms Guideline"). If such a weapon and ammunition were actually taken to some form of confrontation there was an obvious risk of serious disorder and of death or severe harm. Possession of such items by

criminals was very serious and although the weapon was not used the courts treat such offending as being of the utmost gravity.

The sentencing judge took into account the fact that the appellant was 24 and of good character, together with the character evidence placed before the court, including that the appellant's previous employers were prepared to employ him again. He was aware of the threats received by the appellant's family and he bore in mind in particular the positive approach demonstrated by the appellant in prison and the progress that he had made there. He was regarded by Daw as a muppet and used by him but, nevertheless, he was used to taking the risks and delivering and collecting class A drugs and money. The appellant acted for Daw willingly and as a trusted lieutenant. The amounts involved were significant, although the sentencing judge said that he accepted that the amounts of drugs involved were not as large as had been suggested by the police; equally, the money personally handled by the appellant was in the thousands, not up to tens of thousands of pounds as had been suggested by the police.

In relation to the drug offending, the appellant had played a significant role travelling around the country to collect and deliver quantities of drugs often in wholesale amounts, rather than small street-dealing amounts. He had known what was going on and was happy to act for Daw and was trusted by him. He had ended up storing the cocaine that he accepted having possessed with intent to supply. The messages heard by the sentencing judge made it clear that the appellant was always instructed what to do. Not only did Daw trust him, but he also had been trusted to collect the gun and ammunition found in the Skoda from Rigby and to take it to Daw before driving him on.

The sentencing judge fully recognised that in many ways the appellant was somebody with a good future ahead of him. He was a qualified engineer with good work references. But he had immersed himself in the world of drugs. He had also been using cannabis heavily and spending a lot of time with other drug users. The sentencing judge said on more than one occasion that he bore totality in mind.

As regards count 1, the appellant's role was to fetch and transport the gun. The sentencing judge doubted that the appellant was there to act as backup in any violence, but this was serious offending as the appellant knew. He placed the offending at Category 2 Culpability B and sentenced the appellant to five years' imprisonment on count 1 with a concurrent sentence on the ammunition count. As to that, there were live rounds of two types and again the quantities were not small. It was a type one higher culpability case. The appellant had known the ammunition was to be used for a criminal purpose given that he had taken it with the weapon and there was a high risk of disorder. In this sense it was a Category 1 case but the appellant was simply trusted as a courier. The sentence would be slightly lower than that imposed on Daw, but there was no credit for guilty plea. Accordingly, the appellant was sentenced on count 2 to 42 months' imprisonment.

Turning to the question of the drug offending, the appellant's role was significant, he was a lieutenant in the organisation, the amounts were large and he did it for financial gain. This was top end Category 3 offending or perhaps even at the lower end of Category 2 offending for the purpose of the Sentencing Council Guideline on Drug Offences ("the Drugs Guideline"). The starting point, said the sentencing judge, would normally be about 78 months (or six years and six months) but he had to bear in mind totality. It

would not be appropriate to make that sentence concurrent. Considering totality, the term before credit for guilty plea would be five years and six months. After around 20 per cent credit for plea, the sentence was one of four years' imprisonment to run consecutively to the sentence on count 1. Thus the total sentence of nine years' imprisonment was constituted.

Ground of appeal

Mr Ferm for the appellant submits that the component parts of the sentence were individually too long, that the overall sentence was too long and that, standing back, totality was not taken properly into account. There was disparity between the sentences imposed on the appellant and those imposed on Daw, in particular with regard to the sentence on count 1. Given the appellant's limited role, the differential with the sentence imposed on Daw (of six years' imprisonment) was far too low. Unlike Rigby and Daw, the appellant was involved in possession of only one firearm. The sentencing judge had accepted that he did not know why Daw had required the gun and would not have been involved in any incident. Mr Ferm points to the fact further that Mr Daw, for reasons unexplained, was never charged with any drug offending.

It is submitted that the sentencing judge failed to take into account adequately or at all the appellant's personal mitigation, in particular his previous good character. Inadequate reduction for totality was made. This would be the first time that the appellant would be in prison. There had been threats to his family and himself, and of course the effect of the pandemic on prison conditions had to be taken into account.

Discussion and analysis

The sentencing judge proceeded to sentence the appellant without a pre-sentence report and we agree that one was not necessary. We note at the outset that the sentencing judge was well-placed to assess the seriousness of the appellant's offending and the cumulative effect of the evidence as a whole, having presided over the appellant's trial on counts 1 and 2. It is clear from his sentencing remarks that he used that advantage to full effect.

As for the submissions based on parity, there is a tension in the authorities. Cases such as R v Fawcett [1983] 5 Cr.App.R (S) 158 suggest that, where there is nothing to differentiate between the two co-defendants, disparity would be unfair and a reduction in sentence may be appropriate. Others, however, tell that lenience to one defendant ought not to result in a reduction in sentence to a co-defendant, see for example R v Tate [2006] EWCA Crim 2373, R v O'Brien and others v Independent Assessor [2007] 2 AC 312 at [26] and, more recently, in R v R v Anandarajah (Jabinthan) [2012] EWCA Crim 1689 at [16].

In our judgment it cannot be said that the positions of Daw and the appellant are identical or indeed very similar. We see the question for us on this appeal as centring not so much on the question of potential disparity, but rather on the question of whether or not the sentences imposed on the appellant are otherwise sound.

As for count 1, because this was a conspiracy, although the firearm in question was prohibited, the minimum term provisions under section 311 and schedule 20 of the Sentencing Code did not apply. This was a Category 2B case with a starting point of four years and a range of three to six years under the Firearms Guideline. Addressing the questions under R v Avis [1998] 1 Cr.App.R 420 at 424, this was a genuine, functional firearm which had no

lawful use; there was no evidence of any use; the intention of the appellant in possessing the firearm was to give it to Daw in the knowledge that Daw would use it in relation to his drug-related activities and with an intention for it to cause fear; the appellant had no record of previous violence.

We consider that the sentencing judge was entitled to take into account by way of context the fact that the minimum term for a direct offence of this nature would have been one of five years. There was also the general background of drug offending to consider. Further, and materially, the sentencing judge chose to pass concurrent sentences on counts 1 and 2. In our judgment it cannot be said that a term of five years on count 1 in those circumstances was manifestly excessive for the firearm and ammunition offending as a whole.

As for count 6, this was Category 3 offending with a significant role for the purpose of the Drugs Guideline. Less than 150 grams of the class A drug was found, but the WhatsApp messages clearly revealed a wider involvement on the part of the appellant. On that basis, the starting point was one of four years six months' imprisonment with a range of three-and-a-half years to seven years. The sentencing judge placed the offending at the top of this category, or even perhaps at the bottom of the next category upwards, which carries a starting point of eight years. There was then the aggravating feature of the presence of a knife in the bedroom drawers at the appellant's address.

The sentencing judge arrived at a term of six years and six months' imprisonment before adjustment for totality. He then did go on to make a reduction of one year to reflect

totality. A further reduction for guilty plea produced the ultimate sentence of four years. There can be no complaint that the sentence on count 6 was to run consecutively to the firearms offences.

In our judgment, the sentencing judge fully recognised the significant mitigation available to the appellant. He was a first-time offender, he was young, he had some excellent references, there had been the threats, a positive engagement in prison and the effect of Covid. However, whilst Mr Ferm laid heavy emphasis on the fact that the appellant was a first-time offender, but this clearly was not one-off offending; it was serious firearms offending in the context of serious drug offending.

In our judgment the overall sentence of nine years' imprisonment can be said to be severe.

However, we are not persuaded that it was manifestly excessive. The sentences all fell within the relevant ranges in the relevant Sentencing Council Guidelines. The sentence judge considered the appellant's mitigation. He made express adjustment for totality.

Where there is, as here, a combination of firearms and drug offending, such offenders can expect nothing other than significant custodial sentences. Standing back, looking in the round, we are therefore not persuaded that the sentence overall of nine years' imprisonment was manifestly excessive. The appeal will be dismissed, but not without us expressing our thanks to Mr Ferm for his helpful submissions.

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

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