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IN THE COURT OF APPEAL
CRIMINAL DIVISION



No. 202201504 A3

NCN: [2022] EWCA Crim 1586
Royal Courts of Justice

Tuesday, 8 November 2022

Before:

LADY JUSTICE WHIPPLE
MR JUSTICE JAY
HER HONOUR JUDGE KARU, RECORDER OF SOUTHWARK

REX
V
EUGERT MERIZAJ

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J U D G M E N T

LADY JUSTICE WHIPPLE:

- 1 On 8 April 2022, following a trial at Teesside Crown Court before Lavender J, the applicant (who was then 31) was convicted of murder.
- 2 On 4 May 2022 Lavender J sentenced him to imprisonment for life. The period of 32 years was specified as the minimum term under s.322 of the Sentencing Act 2020, less 238 days that were spent on remand, comprising 175 days in this country and 63 days in a foreign jurisdiction.
- 3 The applicant now renews his application. He applies for leave to appeal against sentence and for a representation order, having been refused on the papers by the single judge.
- 4 The facts are set out in the Criminal Appeal Office summary and there is no need for us to repeat them here. We record simply that on 14 September 2019 a man named Hemawand Ali Hussein was brutally murdered at Charterhouse Street in Hartlepool and this was the murder for which the applicant was convicted.
- 5 In passing sentence, the judge noted that the applicant had brought grief and misery to the deceased's partner and their two sons, who were eight and ten when their father was killed. The judge said he was obliged to impose sentence of life imprisonment and the starting point for the minimum term was 30 years.
- 6 The aggravating factors which the judge identified included the following. There were seven people involved in a meticulously planned killing. It was carried out in order to protect or advance the group's illegal trade in prohibited drugs. In addition to a shotgun, other weapons were acquired. An axe purchased by the applicant and a number of stays were left in the house. Steps were taken after the event to dispose of evidence, with his colleague setting fire to one car and having another cleaned and then disposed of.

The applicant had been engaged in the production and supply of cannabis and this provided

the reason that the applicant and his colleagues wanted to attack the complainant. The applicant intended the complainant be killed; the applicant's purchase of the axe made that clear. The applicant played a full part in the planning of the murder and was nearby ready to help as required.

7 There were mitigating factors identified by the judge. They included that the applicant was 31 years old and had no previous convictions, that the court could not be sure that the applicant knew a gun would be used and the applicant did not pull the trigger and was not in the house when the deceased was shot.

8 By grounds of appeal, the applicant argues that the minimum term of 32 years' imprisonment was manifestly excessive. Further, he argues that the judge double counted by increasing the minimum term from the starting point of 30 years due to an "intention to kill" and failed to make proper allowance for the mitigating features that existed in the case.

9 The prosecution lodged a Respondent's Notice and grounds of opposition in which they submit that the judge was entitled to conclude that a minimum term of 32 years was appropriate for the facts of the case and the role the applicant played. The sentence was not manifestly excessive. The judge did not double count an intention to kill. That intention to kill was not identified as an aggravating factor.

10 The single judge considered this application and dismissed it as unarguable.

11 We have given careful consideration to this application, but, like the single judge, we can find no arguable basis for granting permission to appeal against sentence. With respect, we agree with the reasons that the single judge has already given. Specifically, the start point of 30 years was correct. There is no challenge to this and nor could there be. We then go on to consider the aggravating features. There were significant aggravating features, as listed by the judge, and plainly an upwards adjustment to the 30 year starting point was required.

The factors which we have found most striking of the many are, first, that this was

a meticulously prepared and planned offence. That is clear from the number of people involved, the variety of weapons taken to the scene and the chilling details of that evening with the deceased being lured to the house in Charterhouse Street where he was executed, while vehicles waited to enable the participants to get away. Secondly, after the murder was committed, efforts were made to destroy the evidence and so evade detection, actions which could have been charged separately as perverting the course of justice. Those features, together with others identified by the judge, required a substantial uplift from the 30 year starting point.

- 12 We do not see any evidence of the double counting of factors relied upon as aggravation. An intention to kill was not listed by the judge as an aggravating factor. The judge gave the applicant such reduction as he could to account for mitigation, but in a case like this personal mitigation is unlikely to weigh heavily in the balance. Accordingly, having considered the matter carefully, we conclude that this application must be dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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