

IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 1173



No. 202203259 A3

Royal Courts of Justice

Thursday, 14 September 2023

Before:

LADY JUSTICE SIMLER
MRS JUSTICE MAY
MR JUSTICE CHAMBERLAIN

REX
V
NATHAN THOMAS SMITH

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MR J. DEIN KC appeared on behalf of the Appellant.

J U D G M E N T

LADY JUSTICE SIMLER:

Introduction

- 1 This is a renewed application for an extension of time of 49 days in which to apply for leave to appeal against sentence. The applicant was convicted of murder on 17 August 2022 at the Central Criminal Court before the Recorder of London and a jury. He was sentenced by the Recorder of London on 25 August 2022, when he was aged 28, to life imprisonment with a minimum term of 21 years, less 447 days spent on remand.
- 2 At trial he was represented by leading counsel, Mr Tetlow KC, and a junior, Mr Goold. He is now represented by Mr Dein KC, who has appeared on his behalf and to whom we are grateful for his succinct clear submissions. Mr Dein summarised his submissions in this way. Although the judge was corrected to identify a starting point of 15 years, he was wrong thereafter to increase the minimum term to 25 years and inadequately reduced it to reflect what was substantial mitigation in coming to the 21 year term. The result was an unjust and unjustifiable minimum term.

The facts

- 3 On 3 January 2020 Takieddine Boudhane was murdered by the applicant. He was then 30 years old. The two men did not previously know one another. Mr Boudhane was working as a delivery driver that evening and was riding a moped. The applicant was driving a white caddy van. Both were travelling along Stroud Green Lane before turning into Lennox Road. In evidence the applicant said that he had been talking to a woman he was due to meet on the telephone. He maneuvered the van in a way that annoyed Mr Boudhane. There was an altercation between the two, first in Lennox Road and then in Charteris Road. Another moped driver, Mr Cherfi, stopped in Lennox Road when he recognised Mr Boudhane.

4 Having driven into Charteris Road, the applicant stopped the van and both Mr Boudhane and Mr Cherfi parked their mopeds nearby. The applicant got out of the van. At that point he had a skeletool in his hand with the blade out and locked. Mr Boudhane had a screwdriver in his hand. Mr Cherfi got back on his moped. As Mr Boudhane went back towards his moped, the applicant ran at Mr Boudhane and stabbed him with the tool. CCTV showed the applicant swing the tool at Mr Boudhane at least five times, causing three separate incised wounds. The applicant then fled the scene in his van.

5 Despite emergency medical intervention, Mr Boudhane died at the scene at just before 8pm that evening. The cause of his death was blood loss and respiratory failure from a stab wound to his chest which penetrated his heart.

6 The applicant moved to Salzburg the next day using his brother's bank card and passport. The applicant's father called the applicant to inform him that the police were looking for him. The applicant contacted British authorities in Portugal some 17 months later and travelled back to the UK in June 2021.

Sentence

7 The applicant had six convictions for 12 offences spanning the period 13 April 2012 to 30 August 2017. They included a conviction for possessing a prohibited weapon in 2012 and possessing an imitation firearm in a public place, also in 2012.

8 There was a victim personal statement from Mr Boudhane's mother dated 24 August 2022, which we have read and was available to the judge. There was also a letter in which the applicant expressed his genuine remorse. There were character references available, including a letter from the reverend of the prison, Reverend Scott, which describes the applicant in particularly impressive terms.

9 As the judge explained in his admirably clear sentencing remarks, the sentence for murder was required to be a sentence of life imprisonment. The issue for the judge was to determine the minimum term to be served before the applicant's release by reference to schedule 21 of the Sentencing Act 2020. The first question for the judge was whether the case came within paragraph 4 or paragraph 5 of schedule 21. This depended on whether the applicant took a knife to the scene with the necessary intent. The judge said that he could not be satisfied that the applicant had the skeletool, intending to use it to commit an offence or to have it available to use as a weapon. The judge therefore took the lower starting point of 15 years. There were however, a number of aggravating features. First, there was the use of the skeletool. The judge said that the fact that the applicant took it out of the van and swung the blade at Mr Boudhane at least five times during the course of the incident, causing three separate wounds, was a serious aggravating factor. So too was the fact that the attack took place in public in front of members of the public, one of whom was in the immediate vicinity of the attack and was plainly alarmed by what unfolded. After the murder, the applicant took positive steps to dispose of evidence, clothing and the knife, which connected him to the incident in order to conceal his involvement. He then fled the jurisdiction and remained at large for 17 months, knowing throughout that period that there was a warrant issued for his arrest. Finally, the judge referred to the fact of the previous convictions.

10 Against that, there were mitigating factors identified by the judge as a lack of premeditation and as the judge accepted, an intention to cause serious bodily harm rather than to kill. While there were a number of swings with the blade, there was a single stab wound that led to death and the judge also accepted that there had been an element of provocation or acting in defence of himself because Mr Boudhane had accelerated up to the driver's side door of the applicant's vehicle and appeared to have initiated the encounter and played his part in the angry exchange that followed. The judge referred to the fact that Mr Boudhane and Mr Cherfi both stopped their mopeds and that Mr Boudhane himself was armed with

a screwdriver which he was brandishing towards the applicant. Notwithstanding that element of provocation or action in self-defence, the judge was satisfied that the applicant was aggressive throughout, as shown from his actions from the moment he got out of the van and, in particular, his actions towards the end of the incident. The judge referred, as we have just done, to the letter of remorse written by the applicant and also to the references that spoke about the many positive qualities displayed by him. Balancing all of those matters, the judge indicated that he would move up from the 15 year minimum term to one of 25 years, reflecting the aggravating factors he had identified, and then would reduce that to a minimum term of 21 years to reflect the mitigating features he had identified.

The application

- 11 Developing the grounds of appeal, Mr Dein KC made the following points. Having identified the 15 year minimum term correctly the judge was wrong to increase it by as much as ten years. He accepted, inevitably, that the experienced judge had heard the evidence in the case and was in the best position to reach a conclusion in relation to the facts, but submitted that the aggravating features were not sufficiently serious to justify such a significant increase. The use of the blade did not merit such a substantial uplift. It was a tool that the applicant had with him for the purposes of his work as a plumber. Furthermore, this was an unplanned and spontaneous attack that was out of character. Those points were not sufficiently focused on in the unjustifiable uplift to the minimum term identified by the judge.
- 12 The fact that the applicant left the jurisdiction was counterbalanced by the fact that he surrendered voluntarily and he was at large having done so.
- 13 The mitigating factors in his case were also very powerful and were inadequately identified and reflected in the term. There was a lack of premeditation; and an intention to cause really serious harm rather than to kill. There was the element of provocation, including

the production of a screwdriver, and the very positive qualities identified in the character references, together with the remorse and insight reflected in the applicant's letter. All of these matters, together with the impact on the applicant's young daughter, should have resulted in a much more substantial reduction from the notional minimum term reached by the judge after aggravation and should have resulted in a much lower minimum term.

14 We have reflected carefully on those submissions, which were admirably focused and clear. We have concluded that it is not arguable, however, that this experienced judge, who heard the evidence, sentenced this applicant on a wrong factual basis. It seems to us that the judge was amply entitled to conclude that he was the aggressor throughout, had become upset and angry at the outset and when he got out of his van, was holding the skeletool in his hand, with the blade out and locked in an open position and that it remained locked in an open position throughout the incident. The tool was not produced in response to any threat from Mr Boudhane. Once out of the van, the applicant advanced towards the victim with the blade in his hand. Whilst he had been working as a plumber that night, the judge was entitled to conclude, in the absence of any evidence to the contrary, that his possession of the tool as he got out of the van was neither lawful nor legitimate and he had no reason to advance towards Mr Boudhane with it. The judge was entitled to pay particular regard to the fact that the applicant swung at Mr Boudhan five times and that three incised wounds were caused by him.

15 The judge had clearly in mind the sequence of events and, in our judgment, the conclusions he reached were accurately and clearly analysed. He was entitled, as we have said, to conclude that the applicant was the aggressor, that his possession of the tool in the circumstances leading to the fatal incident had nothing to do with his work as a plumber and that he had no lawful or legitimate purpose to have that the blade out as he emerged from the van and towards the applicant. Moreover, the judge carefully analysed and correctly identified the aggravating features. He was entitled and right to conclude that

the use of the skeletool itself necessitated a substantial uplift and that there were the aggravating features to which we have referred. The combined effect of these features merited a substantial increase in the minimum term.

16 So far as the mitigating features are concerned, we have described the way in which the judge analysed those. He identified all of the features present and relied on by Mr Dein. Having done so, it seems to us that the judge was in the best position to evaluate the aggravation and mitigation in this case and to reflect it in the 21 year minimum term to which he came.

17 For all those reasons, which are similar to those given by the single judge, and notwithstanding the submissions made by Mr Dein on the applicant's behalf, we have concluded that this application is not arguable. Accordingly, we refuse the application and since we are doing so, no purpose would be served in extending time.

CERTIFICATE

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