



IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

ON APPEAL FROM THE CROWN COURT AT WOOLWICH
(HIS HONOUR JUDGE GUMPERT KC) [T20227042]

Case No 2023/03447/A2

[2024] EWCA Crim 1031

Friday 16 August 2024

B e f o r e:

LORD JUSTICE WARBY

MR JUSTICE CAVANAGH

MR JUSTICE WALL

R E X

- v -

RUPERT EARL-OCRAN

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Mr R Ali appeared on behalf of the Appellant

J U D G M E N T

Friday 16 August 2024

LORD JUSTICE WARBY: I shall ask Mr Justice Wall to give the judgment of the court.

MR JUSTICE WALL:

1. This is an appeal against sentence brought with the leave of the single judge.
2. On 8 September 2023, in the Crown Court at Woolwich, the appellant (then aged 29) was sentenced to an eight year extended sentence comprising a custodial term of six years and an extension period of two years for an offence of possessing a prohibited firearm, contrary to section 5(1)(aba) of the Firearms Act 1968 (count 2). He was also sentenced to a concurrent determinate sentence of five years' imprisonment for possessing a firearm with intent to cause fear of violence, contrary to section 16A of the 1968 Act (count 3).
3. The incident out of which these charges arose occurred on 5 February 2022, outside Wedgewood House, Lambeth Walk, London. In the early hours of the morning the appellant fired three shots from a handgun from the third floor balcony of Wedgewood House into the street below. He fired the first two shots in quick succession. They resulted in a man in the street running away.
4. There was then a short gap in time during which the appellant moved to a different point along the balcony, before he discharged the third shot. That final shot resulted in a second man running away down the street. Those men have never been traced.
5. It was the appellant who dialled 999. He did so anonymously. He told the police that he thought that he had heard gunshots in the area. He used his landline to make the emergency call, which enabled the police to trace that call back to the appellant's flat at 114 Wedgewood

House.

6. The police executed a search warrant at the flat on 9 February 2022. They recovered a converted 9mm Retay blank-firing self-loading pistol, wrapped in a scarf, from inside a shoulder bag underneath a reclining sofa. The barrel of the pistol had been unblocked and the chamber enlarged to render it a working firearm.

7. The appellant made no comment in his subsequent interviews.

8. The appellant had eight previous convictions for 13 offences. They included three offences of robbery and one of possession of an offensive weapon on school premises as a juvenile, and, as an adult, possession of a controlled drug of Class A with intent to supply, affray, possession of a bladed article and assaulting a constable.

9. A pre-sentence report revealed the appellant to be a man with a significant cannabis dependency. His explanation to the author of the report for possessing the firearm was that he was looking after it for someone else whom he would not name, and had been doing so for approximately two months. He said that he was in the habit of taking the firearm out onto the balcony whilst smoking his cannabis. On the day in question he said that he formed the view that the men in the street were out to get him, and he fired shots in order to scare them off.

10. The author of the report had access to a psychiatric report from Dr Hothi, which we have read. Dr Hothi was of the opinion that the appellant exhibited signs of having a paranoid, antisocial and emotionally unstable personality disorder, which was most likely due to harmful cannabinoid misuse. The doctor thought that it was possible that he had schizophrenia brought on by drug abuse, but had insufficient evidence to make a formal diagnosis to that effect.

11. The sentencing judge had character references from people who knew the appellant and spoke of a positive side to his character. There was also a letter from the appellant himself, expressing remorse and a determination to use his time in custody in a positive way.

12. When passing sentence, the judge took as the lead offence the count of possession of a prohibited firearm. He used the applicable guideline for that offence. He correctly determined that the weapon was a type one firearm, as it was capable of killing two or more people in rapid succession. It was a high culpability offence, as the gun was discharged to scare people and was thus used for a criminal purpose.

13. The judge expressly found that it was not the intention of the appellant to kill or to injure anyone. The type of weapon and the culpability level led the judge to place the offending into culpability category A. It was level 3 harm, because there was no physical harm and no evidence of anything more than minimal alarm and distress caused. This was a count which attracted a minimum sentence of five years' imprisonment, pursuant to section 311 of the Sentencing Act 2020. The judge correctly identified the starting point for an A3 offence, where the minimum sentence provisions apply, as being six years' imprisonment. He increased that sentence by 12 months to reflect the appellant's previous criminal history, reduced it by four months to reflect the limited mitigation, and then applied an appropriate ten per cent reduction for a late guilty plea. This resulted in a final custodial term of six years.

14. He found the appellant to be dangerous. He relied upon the facts of this offence, the appellant's criminal history and the contents of the pre-sentence report in order to do so. He then passed the eight year extended sentence, comprising a custodial term of six years and an

extension period of two years. He passed a concurrent determinate term of five years on the other count (count 2), without setting out his mathematical workings.

15. There was initial confusion as to the count on which the judge imposed the extended sentence, but it is now clear that the judge intended that it should attach to the count of possession of a prohibited firearm, rather than the count of possessing a firearm with intent to cause fear of violence.

16. The grounds of appeal challenge the judge's finding that the appellant is a dangerous offender and assert that the custodial period of six years was manifestly excessive, as too much weight was given by the judge to the aggravating feature of the appellant's criminal history, and insufficient weight to the mitigation.

17. In oral submissions today, Mr Ali reminded us that the last of those previous convictions was in 2018. He also relied on the support the appellant's family had shown him in attending court for the sentencing hearing, which suggested that he would have further support from his family on release.

18. We reject these grounds of appeal. It was open to the judge to find the appellant to be dangerous. He was in possession of a loaded firearm for two months. He used it to fire in the general direction of two people in the street. He had possessed weapons in the past and had previously committed acts of violence, albeit not serious violence. He was a cannabinoid abuser and had an underlying paranoid, antisocial and emotionally unstable personality disorder. The risk to the public into the future is obvious. It cannot be said that there was insufficient evidence to enable the judge to reach the conclusion he did.

19. Further, it is for the sentencing judge to weigh up the aggravating features and mitigating

factors in any case. That is not an exact science, but rather a task which requires an exercise of judgment. We are a court of review. It is not our job to substitute our view for that of the sentencing judge, unless that judge has made an error in identifying the factors relevant to sentence, or has reached a conclusion on the available evidence that was not properly open to him. Here the judge has done neither. The appellant's previous convictions were obviously relevant and justified an upwards movement from the starting point. The mitigation was limited and required no more than a small downwards adjustment. The judge reached a figure of six years, which we do not find to be manifestly excessive. It must be remembered that, absent exceptional circumstances, the appellant would have been subject to the five year minimum term for possession of the weapon without more. Here, he had discharged that weapon in the general direction of two people, with the intention of frightening them. A custodial term of six years in those circumstances cannot be regarded as excessive.

20. We move on from the grounds of appeal as advanced to an error highlighted by the Registrar of Criminal Appeals. Each of the appellant's offences is one to which the minimum term provisions in section 311 of the Sentencing Act 2020 apply. However, the dangerousness provisions apply only to the offence of possession of a firearm with intent to cause fear of violence. That is because the dangerousness provisions apply only to specified offences. Possession of a firearm with intent to cause fear of violence is a specified offence listed in Schedule 18 to the Sentencing Act 2020, whereas the simple possession offence is not so listed. Therefore, it was not open to the judge to pass an extended sentence on the count of possession. He could, however, have passed such a sentence on the other count.

21. Given our conclusion that the overall length of the custodial term was appropriate, and that this was a proper case in which to find the appellant to be dangerous and to pass an extended sentence, it is open to us to re-sentence the appellant in a way which reflects those conclusions and is lawful, as long as it does not result in the appellant being "more severely

dealt with" than he was at first instance: see section 11(3) of the Criminal Appeal Act 1968.

22. This we can achieve by quashing the sentences passed in the Crown Court and substituting for them the following sentences. For the count of possessing a prohibited firearm (count 2), a sentence of five years' imprisonment; and for the count of possessing a firearm with intent to cause fear of violence (count 3), an extended sentence of eight years, comprising a custodial term of six years and an extension period of two years.

23. This change renders lawful the sentence which was hitherto unlawful, but makes no difference to the periods to be served by the appellant in custody and on licence.

24. According, and to this extent only, is the appeal allowed.

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

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