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IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2024] EWCA Crim 546



No. 202300882 A3

Royal Courts of Justice

Friday, 26 April 2024

Before:

**LORD JUSTICE DAVIS
MR JUSTICE CHOUDHURY
HER HONOUR JUDGE KARU
(Recorder of Southwark)**

REX

- v -

EDWARD WINSTON PINK

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MS C GUILOFF (instructed by Kalber Struckley & Co) appeared on behalf of the Appellant.

J U D G M E N T

MR JUSTICE CHOUDHURY:

- 1 The applicant seeks to renew his application for leave to appeal against a sentence of 12 years imprisonment for two counts of conspiracy to possess firearms (Count 1) and ammunition, (Count 2), with intent to endanger life, such leave having been refused by the single judge.
- 2 The applicant and his brother, Caiden Pink, (“CP”), conspired to bring firearms and ammunition into the United Kingdom from the United States. The firearms were a Taurus G2C, a Glock 17 Gen-5 pistol, and two Glock 19 Gen-5 pistols. All were brand new. There were also 59 rounds of ammunition contained in three magazines that corresponded to each firearm. The weapons and ammunition had been concealed behind the bottom panel of a microwave and put in a parcel addressed to a Latisha Montrose, in Green Street, London. On 30 June 2022, the parcel was intercepted by United States Custom and Border Protection officers, and the weapons and ammunition were substituted with shrink-wrapped packages containing harmless material.
- 3 On 12 July 2022, an undercover police officer pretending to be a Parcelforce employee made a controlled drop to the target address. It was an office address registered to a company called Edward Work Limited, of which the applicant was the registered director. The applicant took delivery of the package from the undercover officer, confirming that it was for Montrose and that she would be collecting it from the premises later.
- 4 CP left his home address in Addlestone and drove his wife and two young children 90 minutes to collect the package before returning home. He was joined shortly afterwards by the applicant who had travelled there separately. When armed officers entered CP’s flat, they found the microwave had been split apart and the shrink-wrapped packages were opened. CP had taken photographs to send to his contact, Mark Daniels, in America to

show that they had not been sent the expected items. The applicant tried to move incriminating items onto the balcony before being arrested.

5 Voice notes exchanged between CP and Mark Daniels showed that they were in direct contact with the shippers and had been tracking the parcel on a daily basis. There was no evidence that the applicant had had direct dealings with those in America, but messages sent between the applicant and CP on 11 and 12 July showed that they were planning for the arrival of the firearms. The street value of the Glock pistols was between £5,000 and £7,000, and the street value of the Taurus pistol was around £5,000.

6 The applicant and his brother were convicted at the conclusion of a 13-day trial. In sentencing the pair, the judge, HHJ Gower KC, acknowledged that the applicant had not had any direct dealings with those in America, but found, given the contact between him and his brother, that he knew what was meant to be in the package before he took delivery of it at his business address.

7 The judge noted that the applicant had a conviction for possessing a prohibited weapon, namely a stun gun, in 2007, which led to an eight-week suspended sentence. More recently, in March 2020, he received a 12-month sentence suspended for 18 months for an offence of wounding. However, given the age and nature of these previous convictions, they were not considered by the judge to be aggravating factors.

8 The judge had regard to the guidelines in respect of offences under s.16 of the Firearms Act 1968, even though these were not directly applicable to the offences of conspiracy which were before him. Culpability was found to be high, given the degree of planning involved, the efforts to conceal the firearms from the authorities and the removal of serial numbers in an attempt to stop them being traced.

- 9 CP was found to have had a leading role in the conspiracy giving rise to high culpability (A), given his direct contact with the American supplier and his tracking of the parcel. Harm was assessed as falling into Category 2. A Category 2A offence has a starting point of 14 years and a range of 11 to 17 years in custody.
- 10 The applicant's role, on the other hand, was found to be "at the very least" a significant one, indicating medium culpability (B), as demonstrated by the number of messages between him and his brother on 11 and 12 July 2022, the use of his work address for the delivery, his presence when the microwave was prised open and his attempts to hide incriminating evidence when the police raided CP's flat. A Category 2B offence has a starting point of 10 years' custody and a range of 8 to 12 years.
- 11 Aggravating factors included the fact that the firearms and the ammunition would, if the plan had worked, added to the pool of such items already in criminal circulation and the fact that the pair stood to benefit financially from the conspiracy. The judge took account of the mitigating factors, which included the fact that they were highly regarded by associates and work colleagues and much loved by their families. The judge expressly noted that the applicant had a prosthetic leg, which would make his time in prison particularly difficult, both in terms of the chronic and increasing pain he would suffer, which would not be as well treated in prison as outside, and because of his inability to work. Having regard to all these factors, the judge sentenced CP to 14 years and the applicant to 12 years.
- 12 Ms Guiloff appears for the applicant as she did below. She appears today before us *pro bono* and we are grateful to her for her clear and helpful submissions. Ms Guiloff contends that the sentence was manifestly excessive in the applicant's case in that it failed adequately to reflect the applicant's lesser culpability and his significant and unusual personal mitigation. Particular emphasis is placed on the shorter period of the applicant's involvement in the conspiracy – two days as opposed to his brother's several weeks – and to

the fact of his prosthetic leg, which will make prison significantly harder for him to bear. In the course of her submissions this morning, Ms Guilloff referred us to correspondence from the prison which highlights the difficulties which the applicant is undergoing as a result of his condition.

13 In refusing leave, the single judge said as follows:

“I have considered the papers in your case and your grounds of appeal. The offences were appropriately considered by the trial judge to be medium culpability Category 2 offences under the Definitive Guideline, had they not been charged as conspiracies. Your role was significant, being involved in the planning of the arrival and taking delivery of the four firearms, spare parts and ammunition at your business address with your brother. When the police were involved, you did your best to move incriminating evidence. You stood to gain a substantial financial advantage from the offences. The judge regarded the intended addition of four firearms with spare parts and ammunition to the pool of such items in criminal circulation as a significant aggravating feature. It was. You have a previous conviction for possession of a stun gun in 2007 and wounding/inflicting grievous bodily harm in March 2020; he did not regard them as a significantly aggravating factor. The judge specifically took your disability and the difficulty and pain you do and will suffer in prison into account. It is not arguable that the sentence of 12 years’ custody after a trial was manifestly excessive, given the seriousness of the offences.”

14 We agree entirely with the views of the single judge. This was very serious offending. The lesser but still highly significant role played by the applicant, aggravated by the factors mentioned, warranted a sentence at the top end of the Category 2B range or bottom of the 2A range. Furthermore, that lesser role as compared to CP and the applicant’s personal circumstances were adequately reflected in the fact that his sentence was shorter by some two years than that of CP. We note from the authorities which were cited this morning that it requires an exceptional case before the medical condition of the defendant warrants a reduction of a sentence.

15 In this case, it is clear from the sentencing remarks that a significant reduction was applied by the judge. It is unarguable in our circumstances that the sentence of 12 years

imprisonment was, in these circumstances, manifestly excessive. Leave to appeal is refused.

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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This transcript is approved by the Judge