

IN THE COURT OF APPEAL
CRIMINAL DIVISION
[2023] EWCA Crim 212



No. 202201413 A4

Royal Courts of Justice

Tuesday, 7 February 2023

Before:

LORD JUSTICE POPPLEWELL
MR JUSTICE FRASER
HIS HONOUR JUDGE ALTHAM

REX
V
JOSHUA KERR

**ANONYMISATION AND REPORTING RESTRICTIONS APPLY:
s.45 Youth Justice and Criminal Justice Act 1999**

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MISS J DEMPSTER KC appeared on behalf of the Applicant.

THE CROWN were not represented.

J U D G M E N T

The provisions of s.45 Youth Justice and Criminal Evidence Act 1999 are engaged in this case because one of the co-defendants was below the age of 18 [See para.3.2 of the Practical Guide to Reporting Restrictions in CACD].

MR JUSTICE FRASER:

- 1 This is a renewed application for leave to appeal against sentence following the refusal by the single judge. The applicant has been represented before us today by Miss Dempster KC, who is appearing pro bono on his behalf. We are very grateful to her for her sensible and helpful submissions which have been of great assistance.
- 2 One of the co-defendants was below the age of 18, and so we confirm that reporting restrictions are in place in this case under Section 45 of the Youth Justice and Criminal Evidence Act 1999 which prohibits reporting of any matter that may identify that co-defendant until he reaches the age of 18. For that reason, we refer to that defendant using an initial to preserve anonymity but no disrespect is intended by doing so.
- 3 On 1 April 2022, at the end of a trial which had started on 9 March 2022, the applicant was convicted at the Central Criminal Court of a single count of murder, the victim being a 16-year old boy called Daniel Laskos. On 7 April 2022 the trial judge, Her Honour Judge Munro KC, sentenced the applicant to custody for life with a minimum term of 24 years, less time on remand. It is in respect of that minimum term that he seeks leave to appeal his sentence.
- 4 The murder took place on 7 May 2021 when the applicant was 18 years and three months of age. He was 19 years of age when he was both convicted and sentenced. The sentence was ordered to run consecutively to another sentence which the applicant was already, at the time of conviction, serving for another offence. That other offence was a conviction for causing grievous bodily harm with intent, contrary to Section 18 of the Offences against the Person Act 1861, an offence for which the applicant was already on bail at the time of the murder.
- 5 The applicant was convicted alongside three other co-defendants, all of whom were convicted of murder. Two of those other co-defendants, Callum Hands and Rakeem Green-Matthews, were also sentenced to custody for life. One of them, the fourth defendant (to whom we will refer as "B"), was sentenced, as it was expressed at the time, to detention at Her Majesty's pleasure as that co-defendant was under the age of 18. Both of those sentences, namely custody for life and detention at His Majesty's pleasure (as it is now called following the accession of King Charles III), are the equivalent sentences of life imprisonment for offenders between the ages of 18 and 21, and below the age of 18, respectively. Two others had also stood trial with these four but were acquitted of murder.
- 6 The facts of the murder are as follows. On the day in question, Friday 7 May 2021, Daniel Laskos, who was only 16, was stabbed in the neck by the applicant with a large "Rambo-style" knife. This happened in Romford. The victim suffered catastrophic blood loss and died very soon after. The applicant was then aged 18, Callum Hands was then aged 19, Rakeem Green-Matthews was aged 18 and the fourth defendant was then aged only 15. (For brevity we shall refer to each of the defendants other than the fourth defendant by their surnames only; again no disrespect is intended).
- 7 On 7 May the four defendants met in a park close to the scene of the attack that led to Daniel's murder. They were all armed. Green-Matthews and Hands had identical lock knives. The fourth defendant had an extendable ASP baton. The applicant had the murder weapon, what is called a "Rambo-style" knife with a 30-centimetre blade. Such knives are, in addition to their size (which, as here, is usually considerable) also will often have a saw tooth blade on one edge, and are also renowned for being very sharp. They take their name from a fictional character with a special forces background.

- 8 Before the offence occurred there had been a confrontation between Laskos and his friend and one or more of the defendants. During the conflict someone was said to "take a swing" at Laskos, the victim. He and his friend had left the park and headed towards a convenience store located nearby on a street in Romford called Church Road. En route, the two of them collected two knives that had already been concealed in some bushes. The evidence at the trial was that inside the shop Laskos and his friend were very concerned that they might be sought out by the group. All four of the defendants left the park and headed towards Church Road, three with their hoods up and all four having covered their faces. As the two emerged from the shop the group of four defendants saw them and one of them shouted, "That's them." The group then each produced their weapons and ran towards the two, the other young men, at speed. In response, the victim handed his friend one of the two knives that he had retrieved from the bush, and kept the other. The two of them momentarily stood their ground, then started to run once it became apparent they were outnumbered.
- 9 As these two tried to escape, the applicant caught the victim up and, as he did so, stabbed him in the neck with the "Rambo" knife, penetrating his jugular vein and his carotid artery. Defending himself, the victim cut the applicant in the arm with his knife. The fourth defendant went towards the other young man (the friend of the victim) with the baton but was fended off, and the fourth defendant sustained stab wounds to his chest. The defendants then ran away through the park.
- 10 The victim was given first-aid by a nurse who was inside the shop and other members of the public also went to his immediate aid. Paramedics arrived approximately 10 minutes later. Attempts to resuscitate him were unsuccessful and he was pronounced dead at the scene at a few minutes past 7 pm. As the judge expressed it in the sentencing remarks, he had suffered what she called "inevitable and almost immediate death" such was the catastrophic nature of the injury inflicted upon him by the applicant.
- 11 The fourth defendant threw his weapon away before himself collapsing in the park. He was taken to hospital and underwent surgery for his chest wound. Green-Matthews stayed with the fourth defendant briefly before heading home, also discarding his knife in the park. Hands also left his knife in the park. The applicant ran to Hands' mother's address where he changed his clothes and discarded his knife. Hands' mother took the applicant to hospital for treatment to his arm. The applicant gave a false account of how he had been injured. Hands went back to his mother's house and set fire to clothing belonging to himself and the applicant. The remainder of these clothes were later found in a bin by the police. All of the weapons left in the park were recovered. The "Rambo" knife, which was the murder weapon, was found in a bedroom at Hands' mother's house. All four defendants were arrested, and none gave any comment in their police interviews.
- 12 When sentencing, and in fixing the minimum term, the judge expressed regard to the provisions of Schedule 21 of the Sentencing Act to the Sentencing Code which fixes the starting point for the minimum term in cases where an offender has brought a knife to the scene as one of 25 years. Given that the applicant was 18 years old at the time of the murder, that starting point specifically applied to him. The fourth and youngest defendant had, by dint of his age at the time, a different and lower starting point for his minimum term. We refer to that matter only for completeness and it plays no part in this judgment on the application.
- 13 The judge had a victim personal statement from the victim's mother which she described as moving. We have also read this. In it, the impact of his murder was powerfully explained, including the family leaving their home because they could not bear to be there any more

without him. His mother explained that when she had been told that evening what had happened to her son, there was no way that she could believe it. His absence from their lives is sorely missed.

- 14 The judge referred to the aggravating factors that applied to all of the defendants, namely that this was a murder committed by a group of four offenders, that there was some, albeit short, premeditation, including that there were members of the public in the vicinity who were clearly shocked at what occurred.
- 15 Regarding aggravating factors that applied only to the applicant, she identified, firstly, that he had intended to kill the victim. We observe that as the trial judge she was ideally placed to come to that conclusion, having conducted the trial and seen all of the evidence. She also identified as relevant and significant his previous convictions for various offences, including violence such as holding a Stanley knife to someone's cheek when the applicant was only 12 years old, and threatening to cut that person's throat when he was assaulting him. Other assaults had also occurred in that same year, including possession of an imitation firearm, and an assault in 2016 when he kicked and punched someone whilst they were on the ground. In 2018, he was twice found in possession of a knife, and in 2019 again found in possession of a knife when in a group. On this occasion he threatened to kill two victims before assaulting them. Whilst in custody, on 14 March 2019, he caused grievous bodily harm with intent to another inmate by punching him to the floor and, with others, stamping on his head and body. That was the Section 18 offence for which he was on bail at the time of the murder. That is a highly significant aggravating factor in our judgment.
- 16 These features led to her concluding that in his case, an increase in the starting point was justified and required, and she said that this would increase the minimum term, as she put it, to at least 27 years.
- 17 The judge then turned to the mitigation available. She had identified both youth and lack of maturity as mitigation for all the defendants. Her sentencing remarks show that she correctly approached the matter individually and by reference to the relevant authorities, including *R v Peters* [2005] EWCA Crim 606 and *R v M* and *R v Clarke* [2018] 185. We quote from this part of her remarks verbatim:

"Firstly, where there is a disparity of ages resulting in different starting points, any disparity of sentence should reflect the different ages and the different maturity of the offenders. Second, the use of a knife and other weapon to kill should result in condign punishment. Third, the fact of taking a weapon to the scene which increases the starting point for 15 years to 25 years for an adult is highly relevant as an aggravating factor when considering those under 18. Fourth, the absence of an intent to kill does not automatically provide any or very much mitigation where a weapon is used. Fifth, an offender's chronological age may not represent their true level of maturity and I have been assisted by reports in the case of each of you in that regard. Sixth, the attainment of 18 does not represent a cliff edge resulting in automatic adult maturity."

- 18 Dealing with mitigation, the sentencing judge stated that the applicant's age, significant psychological issues which include both ADHD and ODD (Oppositional Defiant Disorder) and his personal background (he had been in care from the age of 12 onwards, and had had long periods in custody already), with the potential for an emerging adult personality disorder too, were available to him in mitigation. His potential for making a worthwhile contribution to society at some stage in the future was noted, as were his personal references. He had also recently become a father. Taking those matters into account, she arrived at a figure for the minimum term of 25 years and then reduced it yet further by one

year, because she was ordering it to run consecutively to the sentence which he was at that time serving for the Section 18 offence. That gave a period of a minimum term of 24 years, thereafter adjusted to take account of his time spent on remand.

19 The grounds of appeal are four in number and are as follows:

- (1) insufficient weight was given to the applicant's age and maturity in personal mitigation;
- (2) the learned judge erred in finding that only the applicant of the four defendants had an intention to kill and that she had found that the other three did not;
- (3) the learned judge erred in ordering his life sentence to run consecutively to the existing sentence that he had had imposed on him in September 2021; and
- (4) in all the circumstances the minimum term of 24 years was manifestly excessive.

20 The fourth ground is, in reality, the conclusion to the other three grounds and is the test that must be applied by this Court on any appeal against sentence, together with consideration of whether there has been any error of principle. At this stage, where leave is sought to appeal, the test for this court is whether any of these grounds are reasonably arguable.

21 Ground 2 can be disposed of readily. Having conducted a trial of four weeks' duration, the trial judge was ideally placed to make the finding that the applicant intended to kill. Further, we observe that the finding was entirely sensible and understandable given the behaviour and conduct of the applicant and of the other three co-defendants. It is difficult to see how it can be sensibly maintained that there was no intention to kill on the part of the applicant, given that the victim was running away and the applicant stabbed him with force in the side of his neck with a "Rambo" knife that had a 30-centimetre blade. These are fearsome weapons.

22 Miss Dempster KC during the hearing this morning has shown us the photograph of the injury site and the fact that it is in a place slightly on the jaw line of the victim, rather than directly on the side of his neck, but given the fact that the victim was attempting to escape and was stabbed as he was running away, those submissions take the applicant's case nowhere. We are of the view that the trial judge was ideally placed to make the finding on this point and there is no basis for this court disturbing it.

23 Ground 3, which relates to the sentence being ordered to run consecutively rather than being imposed immediately, is again not a point which is a sound one, and this was effectively accepted by Miss Dempster this morning. When one analyses the dates and the durations, the reduction of one year that the trial judge took into account when reducing the minimum sentence to 24 years is sufficient to take account of the fact that the amount of time that remained to be served in custody by the application for the Section 18 offence was about one year. In our judgment it is entirely sensible for the life sentence to be imposed to run on the expiry of the custodial term for the Section 18 offence and there is no error in principle by ordering the sentence to run as it did. Indeed, the reduction applied in effect was the same as though the minimum term had not been reduced at all, but ordered to run immediately. There is no difference in outcome at all, regardless of which approach is adopted.

24 We turn, therefore, to ground 1. This is the ground upon which Miss Dempster assisted us greatly with her oral submissions this morning. By her sentencing remarks, it is clear that the sentencing judge reduced the minimum term by two years to take account of the age of

the applicant and the personal mitigation available to him. Miss Dempster has sought to persuade us that that reduction was insufficient and that in the event this had led to a manifestly excessive minimum term. However, that reduction of two years cannot be seen in isolation from what could be suggested to have been only a modest uplift above the starting point of 25 years, to take account of the aggravating factors present in the offence itself. The judge expressed herself, when moving to the figure above the starting point, by saying that the aggravating factors led to "at least 27 years" for all of these aggravating factors, which we will now list. These are his considerable antecedents, the pattern of violent behaviour (including his numerous convictions relating to knives), the fact it was a group pursuit and that the attack took place in public with members of the public present. Further, the applicant was on bail at the time for another violent offence, namely the Section 18 to which we have referred.

- 25 Regardless of whether the uplift was sufficient to match with the discount in the same amount to return to the same starting point of 25 years, or whether in other sentencing exercises by other judges on the same facts, the uplift could have been greater and the discount would have been greater, the test for this court is whether the resulting sentence is manifestly excessive or wrong in principle. In our judgment, the resulting sentence with the minimum term of 25 years reduced to 24 years for the reasons we have explained cannot be said to be reasonably arguable or manifestly excessive.
- 26 We would finally add just this. We are aware that nothing this court says, and no sentence imposed can, in any event, bring this victim back or help to ease the impact of his loss. His life was brutally ended, and the lives of those who murdered him were also significantly changed, almost in an instant. We echo and fully endorse the views of the trial judge who said the following:
- "The facts of this case are all too familiar to those of us who work at this court. Yet again, the life of a young teenager has been snuffed out by the needless actions of young men who think it's okay to carry and use weapons to inflict fatal harm on others, for some trivial reason which it is impossible for mature adults to fathom."
- 27 We are unpersuaded that it is reasonably arguable that the resulting sentence with the minimum term as identified and imposed by the trial judge in her careful sentencing remarks is either manifestly excessive or wrong in principle even on an arguable basis.
- 28 It follows, therefore, that we refuse the renewed application which fails.
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