

Regina v Neron Quartey

No. 2018/03926/A3

Court of Appeal Criminal Division

[2019] EWCA Crim 374

Before: The Lord Chief Justice of England and Wales (The Lord Burnett of Maldon)
Mr Justice William Davis and Mrs Justice Farby DBE

Thursday 28th February 2019

Representation

Miss J Khan QC (via video link) appeared on behalf of the Appellant.
Mr S Mayo QC appeared on behalf of the Crown.

Judgment

Thursday 28th February 2019 The Lord Chief Justice:

1 This is an appeal against sentence brought with the leave of the single judge.

2 Following a trial at the Central Criminal Court before Her Honour Judge Molyneux and a jury the appellant was convicted of murder. On 16th August 2018 he was sentenced by the trial judge to life imprisonment, with a minimum term of 26 years (less 186 days which the appellant had spent in custody on remand). His victim was Kwabena Nelson.

3 The appellant was 21 years old at the time of sentence, but was still 20 when he committed the murder on 3rd February 2018 in circumstances to which we will return.

4 Miss Khan QC, who appears this morning on behalf of the appellant, advances two grounds of appeal. First, it is said that the learned judge treated as an aggravating feature the fact that the appellant intended to kill Mr Nelson. It is uncontroversial that an intention to kill is taken into account in arriving at the starting point for the purposes of Schedule 21 to the Criminal Justice Act 2003 . Secondly, it is said that, whilst recognising that the age and youth of the appellant was a mitigating factor in accordance with the decision of this court in *R v Peters* [2005] EWCA Crim 605, [2005] 2 Cr App R(S) 101 , the judge failed to reflect that factor adequately in arriving at the minimum term.

5 In giving leave, the single judge concluded that the second of these grounds was arguable, albeit that he did not exclude the first ground about which he

expressed some scepticism. He noted that if the second ground were successful, any reduction in the sentence would be modest.

6 The sentencing judge had the benefit of written and oral submissions before she sentenced the appellant. She reduced her sentencing remarks to writing. They contained a brief summary of the facts and dealt with all the material issues in just under three pages of transcript. That is to be applauded. They achieved with clarity the purpose of sentencing remarks, namely to explain in short order to the appellant, and all with an interest in the sentence, the result, together with a clear resolution of any disputed matters and a short explanation of the essential reasoning. The facts were summarised in the sentencing remarks as follows:

"On 2nd February you were 20 years of age. You spent the day in regular telephone communication with two of your friends, both of whom were drug dealers. The last contact between your phones was at 23:50 and the last time any of the three phones was used was just after midnight. After that, the phones were left switched on in the Wood Green area. None of them was used again until 02:20. You did not remain in Wood Green. Shortly before 1:30am you were driving a car along Kemble Road N17. At least three others, perhaps as many as four or five, were in the car with you. One of those in the car was one of the drug dealers with whom you had been in contact earlier that day. It is more likely than not that your front passenger was the second of the drug dealers with whom you had been in contact.

You drove north along Kemble Road as a car being driven by Mr Nelson turned into the road to drive south. You deliberately turned your car to the right and caused a collision with Mr Nelson. The impact was substantial. Mr Nelson could not drive on. You stopped your car. You all got out, at least two of you armed with knives. The evidence of one of the eyewitnesses was that you all seemed to be holding some sort of bar or metal in your hands. You yourself were seen by one witness to have in your right hand by your side something which went beyond the end of your hands. It was said to look like a baseball bat but a slightly different shape, not cylindrical all the way.

You came out of your car and for a couple of seconds stood around it, chanting aggressively.

Then you went as a group to Kemble Road. You stopped at Mr Nelson's car. You all encircled his car, shouting and banging down [on] the bonnet. You all hit the car with the weapons which you had in your hands.

The passenger door was opened and the attack on Mr Nelson began whilst he was still inside the car. He was dragged out and he tried to run away. He had no chance. He fell to the ground and was surrounded. He

screamed and he cried for help. You all swung down towards him, using whatever you had in your hands. An eyewitness described the violence as inhumane, savage, and animalistic. You showed no humanity. Mr Nelson curled into a ball and put his hands up to save himself. He could not. His last scream was chilling and then you stopped and ran away."

7 The incident lasted for perhaps between 45 seconds and a minute. Mr Nelson suffered fourteen incised wounds, six of which were stab wounds. He also sustained extensive bruising and defensive injuries. In spite of being severely injured, Mr Nelson managed to knock on the door of a nearby house whose occupants called the emergency services. He also managed to make a telephone call to a member of his family. The emergency services arrived, as did members of his family. Despite extensive efforts to try to save his life, tragically he died.

8 It was common ground that the starting point for the minimum term for the purposes of Schedule 21 was 25 years, because knives were taken to the scene. The judge noted the devastation suffered by Mr Nelson's family. She summarised the impact of the murder, which was vividly and movingly set out in his mother's victim personal statement.

9 In the course of her sentencing remarks, the judge said:

"There will be no double-counting but the court notes the following features which increase the seriousness of the offence substantially beyond the 25 years starting point."

She noted that the attack was planned, that Mr Nelson was known to the appellant and that he (the appellant) had left his mobile phone behind to avoid detection. The collision was deliberate. As the judge said, this was an ambush. It was a group attack upon an individual in which the appellant played a leading role, not least because he was the driver of the car that caused the collision.

10 The judge recognised and recorded that there was no evidence that the appellant had dealt the fatal blow; but it was a brutal attack by a group, all of whom had weapons. On any view, the appellant knew that others in his group had and were using knives. He was an enthusiastic participant in the attack. The judge noted that the appellant had ignored Mr Nelson's screams for help. The terrible reality of this case is that, having attacked him, the group simply left him to die in the street.

11 It was at this point in her sentencing remarks that the judge recorded:

"The court is sure that you intended that he should die."

The judge continued by noting the age of the appellant. She added:

"The court is mindful of the need for consideration of age and maturity when applying the guidelines and when assessing culpability. This factor does serve to reduce the minimum term. The cases of *Peters* and *Matthew* have been considered."

(*R v Matthew* [2006] EWCA Crim 2399, [2006] 1 Cr App R(S) 88 concerned an 18 year old who was convicted of murder. This court applied the approach to sentencing articulated in *Peters* .

12 A little later in her sentencing remarks, the judge said that the appellant was not unintelligent. He had passed some GCSEs and had acquired an IT qualification. He proceeded to college, where he completed Level 2 in accounting, but failed Level 3. She added that he then began to associate with "those who had a negative influence upon [him]". That association coincided with his beginning to offend when he was 18 years old – in fact, a short time before his nineteenth birthday. He committed various relatively minor offences; they began with the possession of cannabis, assaulting a police constable and, in due course, criminal damage and another assault. But in January 2016, the appellant was convicted of possession of a knife in a public place. On 13th January 2016, a black hunting-style knife in a sheath was found concealed in the appellant's right trouser leg. The blade of the knife was 11.5 centimetres long and was serrated. The appellant received a suspended sentence of detention for this offence. That sentence was later activated when he re-offended.

13 We are unpersuaded that the judge treated as an aggravating feature the fact that the appellant intended to kill Mr Nelson. That would suggest a lack of familiarity with the basic structure of Schedule 21 , which is inconceivable in a judge at the Central Criminal Court whose regular diet includes homicide cases.

14 Miss Khan is, of course, correct in her submission that the 25 year starting point identified in Schedule 21 is arrived at on the premise that there was an intention to kill. If the facts demonstrate an intention to cause really serious harm, rather than to kill, the starting point would be adjusted downward. To our minds, the argument is, in truth, a semantic one. Had the observation relating to intention to kill been located at the beginning of a separate paragraph, rather than tagged on to the end of the paragraph to which our attention was drawn, the argument would not run. But, in our judgment, it is clear that the judge was doing no more than recording her finding of fact in respect of a matter that had been pressed on behalf of the appellant, both in written and oral argument. The judge said in terms that she would not double count, and it is only a few sentences later that we find her conclusion on the question of intent.

15 Like the single judge, we conclude that this ground provides no assistance to

the appellant.

16 The principle articulated in *Peters* is well known. It is sufficient to quote [11] of the judgment of this court, which reads:

"It has long been understood that considerations of age and maturity are usually relevant to the culpability of an offender and the seriousness of the offence. Schedule 21 underlines this principle. Although the passage of an eighteenth or twenty-first birthday represents a significant moment in the life of each individual, it does not necessarily tell us very much about the individual's true level of maturity, insight and understanding. These levels are not postponed until nor suddenly accelerated by an eighteenth or twenty-first birthday. Therefore although the normal starting point is governed by the defendant's age, when assessing his culpability, the sentencing judge should reflect on and make allowances, as appropriate upwards or downwards, for the level of the offender's maturity. In two of these appeals, the offender was aged 19 $\frac{1}{2}$; when the offences were committed. In the third, the offender was 18 years and 2 months. If the murder which culminated in the death of someone precious to the third offender had happened in the course of a dispute three months earlier, she would not quite have reached 18 years. A rigid application of the starting point in Schedule 21 would mean that the three months difference in age should be reflected by a difference of three years in the sentence. Sentencing decisions cannot be prescribed by such accidents of time. We can illustrate this problem a little further by taking the all too familiar case of a group of youths convicted of murder following an attack on a passer-by in the street late at night. They may be 17, 19 and 21 years old. Normally the 21 year old would be likely to be the most mature. But there are cases where the 17 year old, although the youngest, is in truth the leader of the group, and the most violent of the three, and the most culpable, who triggered off the attack and indeed inflicted the fatal blow. It may produce an unjust result if on the basis of his age alone, the minimum term in his case were lower than the sentence on his co-defendants. Therefore, in relation to offenders aged up to 21 or even 22 years, the determination of the minimum term in accordance with the legislative framework in Schedule 21 needs to be approached with an acute sense of how inevitably imprecise the statutory criteria may sometimes be to issues of culpability, and ultimately to 'seriousness' as envisaged in section 269 itself."

17 The point made in *Matthew* , echoed repeatedly elsewhere, was that there should be no sudden postponement or acceleration of sentence levels due to age. There are, in short, no cliff edges. The point was again made recently in this court in *R v Clarke* [2018] EWCA Crim 185 , where this was said at [5]:

"Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in *R v Peters* ...is an example of its application: See paras [10]-[12]. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. The Age of Adolescence: thelancet.com/child-adolescent; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday. ..."

18 Mr Mayo QC, who appears this morning for the prosecution, reminds us that the judge was in a good position to assess the maturity of the appellant, having heard him give evidence in the course of his trial and observed his demeanour. That, of course, is correct.

19 There was no pre-sentence report dealing with the question of maturity and explaining further the circumstances in which the appellant, conviction free as he was until he was almost 19, appears to have gone off the rails. However, the seeds are revealed in the judge's sentencing remarks. All appeared to be well until the appellant took his GCSEs. Rather than take A-levels, he pursued alternative further education. It seems that an exam failure disrupted the path along which the appellant was travelling. As the judge noted, he fell under the influence of malign individuals who had a negative impact upon him. There is a clear indication of that influence having led him into the world of drugs and violence. That is an all too familiar pattern. It is indicative of immaturity and a lack of strength to resist peer pressure. It represents a difference between the fully mature adult and the developing, but still immature, late adolescent moving into adulthood.

20 We are persuaded that, despite the undoubted aggravating features of this despicable killing, a greater margin is appropriate to reflect the appellant's age and immaturity. For that reason, reduce the minimum term from 26 years to 24 years and give the same credit for time spent in custody on remand. It is as well to make clear that this means that the appellant will be aged 45 before the Parole Board can sanction his release, if persuaded that the risk allows it. That is a very long sentence indeed for a 21 year old man.

21 Accordingly, we allow the appeal. We quash the minimum term imposed and substitute a minimum term of 24 years, with the appropriate credit as before.