

Neutral Citation Number: [2019] EWCA Crim 47

No: 201801443 A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Friday, 18 January 2018

B e f o r e:

LORD JUSTICE DAVIS

MR JUSTICE SWEENEY

SIR WYN WILLIAMS

R E G I N A

v

PAUL ROGER EDMUNDS

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Mr D Nathan QC appeared on behalf of the **Applicant**

J U D G M E N T

(Approved)

1. MR JUSTICE SWEENEY: This is a renewed application for leave to appeal against sentence and for a representation order after refusal by the single judge, who nevertheless granted an extension of time.
2. The relevant proceedings in this case all took place in the Crown Court at Birmingham.
3. On 20 April 2016, the applicant, who is now aged 67 and had no relevant previous convictions, pleaded guilty to the possession of prohibited weapons, namely stun guns (Count 3).
4. On 13 April 2017, at the conclusion of a trial, the applicant was convicted of transferring prohibited weapons, namely three Thompson Contenders (Count 2); and of doing an act tending and intended to pervert of course of justice, namely falsifying firearms registers (Count 6).
5. On 3 October 2017, the applicant pleaded guilty to the fraudulent evasion of a prohibition or restriction in relation to exporting guns to France (Count 8).
6. On 14 November 2017, at the conclusion of a retrial, the applicant was convicted of conspiracy to transfer prohibited weapons and ammunition (Count 1); possession of a prohibited firearm, namely a Brocock revolver (Count 4); doing an act tending and intended to pervert the court of justice, namely tampering with primer tools (Count 5); and fraudulent evasion of a prohibition or restriction in relation to importing Colt handguns (Count 7).
7. On 21 December 2017, His Honour Judge Richard Bond, who had presided over both trials, made clear that the principal offence for the purpose of sentence was the conspiracy to transfer prohibited weapons and ammunition in Count 1; that he would thus impose a sentence on that offence that reflected all the applicant's offending; and that he would impose concurrent sentences on all the remaining counts.
8. Against that background, the judge imposed a sentence of 30 years' imprisonment on Count 1 and concurrent terms ranging from 2 to 15 years' imprisonment on the other Counts. The total sentence imposed on the applicant was thus one of 30 years' imprisonment.
9. Confiscation proceedings against the applicant were subsequently completed.
10. No complaint is, or indeed could be, made as to the overall length of the sentence imposed in itself. The sole proposed ground of appeal is that there is an unfair disparity with the sentence subsequently imposed on the applicant's co-accused on Count 1, Mohinder Surdhar (now aged 59) who pleaded guilty in circumstances attracting full credit on 9 March 2016 and who was sentenced to 14 years' imprisonment on 31 January 2018.
11. The facts can be shortly summarised. The applicant was a registered firearms dealer based at his home in Gloucester. He was authorised to deal in both section 1 and section 5 weapons. The judge found that over a period of nearly 7 years, from early

2009 until late 2015, the applicant had been the linchpin of the conspiracy to transfer prohibited weapons and ammunition reflected in Count 1. Indeed, the judge concluded that without the applicant that conspiracy would not have worked. Indeed, the judge concluded that the applicant's culpability was the highest of all those who were involved in that conspiracy.

12. The appellant had, the judge said, been at the top of a chain of supply of hundreds of handguns and thousands of rounds of ammunition to criminal gangs in the United Kingdom. During the course of the conspiracy he had variously been involved in illegally importing hundreds of weapons; in acquiring factory-made ammunition, both current and antique; in himself making ammunition for obsolete calibre weapons; and in then selling hundreds of weapons and thousands of rounds of ammunition, both factory made and homemade, to Surdhar (who was a section 1 firearm licence holder and in the judge's view the fulcrum of the conspiracy - whose culpability was not much less than that of the applicant) in the knowledge that they would be transferred on to criminal gangs unlawfully.
13. The principal purchaser from Surdhar was a man called Stephenson, who was a leading member of the Burger Bar organised crime group in Birmingham, via his armourer, a man called Nazran. It was that organised crime group that sold the guns and ammunition on to the wider criminal fraternity in the United Kingdom.
14. Ultimately, following pleas of guilty to a conspiracy to supply handguns and ammunition between only March 2014 and January 2015, attracting discounts of 10 per cent and 25 per cent respectively, and after a reference by the Attorney General (see [2016] EWCA Crim 54), Stephenson was sentenced to 22 years' imprisonment and Nazran to 17 years and 3 months' imprisonment. All that took place before either the applicant or Surdhar were sentenced.
15. By way of example as to the consequences of the conspiracy in Count 1, in the period between August 2011 and August 2017 a police operation had investigated some 107 firearms events. During their course, three people had been murdered, 11 other people had been shot and on 28 other occasions shots had been discharged. The three people who had been murdered were all found to have been shot with ammunition that the applicant had made. 31 of the events also involved ammunition that the applicant had undoubtedly made. In a large number of other events the police recovered ammunition of a type which was consistent with having been made by the applicant. Over the years the police also recovered 19 weapons that the applicant had imported and sold on.
16. When the applicant was arrested in 2015, a search of his home revealed 161 firearms or component parts thereof - but records, albeit themselves with anomalies, for only 21 of them. Thousands of rounds of ammunition, many of them made by the applicant, were also recovered.
17. The wider picture revealed by the evidence in relation to Surdhar showed that he obtained both obsolete calibre and modern weapons from various sources (including the applicant) and also acquired obsolete calibre ammunition and other ammunition from

the applicant. A complete armoury was found at his address when he too was arrested in 2015 – by which time he had disposed of anything incriminating.

18. It is not necessary to set out the facts of the applicant's offences in Counts 2 to 8, for which only he fell to be sentenced. It suffices to record that each was a serious offence of its type, or a very serious offence of its type, in its own right.
19. Disparity is a difficult ground upon which to succeed. The more so when, as in the applicant's case, the sentence imposed is accepted, in itself, to be unappealable.
20. As this court made clear in R v Martin & Ors [2012] EWCA Crim 1908, apparent leniency to one offender is no ground for reducing a proper sentence on another. Likewise, in R v Saliuka [2014] EWCA Crim 1907, this court made clear that one sentencing error is not cured by making another.
21. Nevertheless, Mr David Nathan QC, on behalf of the applicant, submits that right-thinking members of the public would consider that something had gone wrong with the administration of justice such that the applicant's sentence should be reduced in the light of the significantly lesser sentence imposed upon Surdhar.
22. Mr Nathan argues, in support of that submission, that if the two men had been sentenced at the same time, standing side by side, it would have been wrong not to have made some adjustment to the applicant's sentence in order to produce appropriate proportionality with the lesser sentence that was imposed upon Surdhar, which was ultimately less than half that imposed upon the applicant. However, Mr Nathan accepts that the appropriate comparison is between 30 years in the applicant's case and a notional sentence after trial of 21 years in Surdhar's case. There must, Mr Nathan submits, be a limit to how much so significantly less a sentence can be imposed on one co-accused without there being at least some reduction in the otherwise appropriate sentence to be imposed on another accused.
23. In the particular circumstances of this case, and against the background of the sentences imposed on Stephenson and Nazran (to which we have already referred) Mr Nathan recognises that it would be inappropriate to seek to persuade the court that a reduction of the applicant's sentence below 25 years would be appropriate. Nevertheless, he submits that there should surely be some reduction in order to properly reflect, and to fairly and proportionately reflect, the different sentence imposed in Surdhar's case.
24. In refusing permission to appeal, the single judge said this:

"... The circumstances of the two offenders are very different. The sentence of 30 years imposed on the applicant was intended to reflect the entirety of the offending - not simply the conspiracy offence - and the other offences were made concurrent rather than consecutive. Further, the co-conspirator had pleaded guilty and his sentence was reduced by 1/3. The applicant had not pleaded guilty and was not entitled to a reduction. Their personal mitigation was different. Even in relation to the single conspiracy offence, the culpability of the applicant was higher.

Taking all those factors into account, there is no unjustified or unexplained disparity of sentence between the applicant, in his particular circumstances, and the co-conspirator in his particular circumstances. For those reasons, the ground of appeal is unarguable."

25. Mr Nathan submits that whilst only the applicant fell to be sentenced on Counts 2 to 8, there were some parallels as between his position and that of Surdhar - at least to the extent that Surdhar had also perverted the course of justice by seeking to cover his tracks before his arrest.
26. Taking all those various matters into consideration, applying, in particular, the authorities to which we have already made reference, and notwithstanding the attractive way in which the renewed application has been advanced by Mr Nathan, in our view it is not arguable that the applicant's sentence should be reduced.
27. Accordingly, this renewed application is refused.

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