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2018/02408/A1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 15th January 2019

B e f o r e:

LORD JUSTICE GROSS

MRS JUSTICE ELISABETH LAING DBE

and

MRS JUSTICE CHEEMA-GRUBB DBE

R E G I N A

- v -

KEITH WAYNE NELSON

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Mr J Bennathan QC appeared on behalf of the Applicant

J U D G M E N T
(Approved)

Tuesday 15th January 2019

LORD JUSTICE GROSS:

1. On 29th November 2017, in the Central Criminal Court, the applicant (now aged 52) pleaded guilty to unlawful wounding, contrary to section 20 of the Offences against the Person Act 1861 (count 3).

2. On 3rd May 2018, in the Central Criminal Court, before Her Honour Judge Poulet QC and a jury, the applicant was convicted of murder (count 1).

3. On 4th May 2018, he was sentenced by Her Honour Judge Poulet to life imprisonment in respect of the murder, with a minimum term of 23 years (less 307 days spent in custody on remand), and to a concurrent term of eighteen months' imprisonment for the unlawful wounding. Thus, the total sentence was life imprisonment, with a minimum term of 23 years (less 307 days spent on remand).

4. The applicant renews his application for leave to appeal against sentence, following refusal by the single judge.

5. The facts are these. On 26th June 2017, at around 8.10pm, in White Horse Road, East Ham, London, the victim, Alfred Purcell, who was 34 years old, was stabbed to death by the applicant. The applicant and Mr Purcell were known to one another. There had been some animosity between them previously. They were both in the habit of drinking alcohol in a local park. Some minutes before the fatal attack, there had been a confrontation between them and Mr Purcell had punched the applicant to the head. Thereafter, the applicant returned to his home address where he armed himself with two knives and then went back out again to look for Mr Purcell. He saw

Mr Purcell walking along White Horse Road and approached him with his knives. Having seen that the applicant was armed with knives, Mr Purcell retrieved from his trouser pocket a knife that he had been carrying. The applicant rushed at Mr Purcell and stabbed him once with a large kitchen knife. He forcefully plunged the knife into Mr Purcell's chest, fatally piercing his heart.

6. Connie Purcell (Alfred Purcell's sister) attempted to intervene. The applicant aimed a forceful blow at her chest with the same knife, but only succeeded in causing a superficial wound (count 3, unlawful wounding).

7. The applicant subsequently walked away. Mr Purcell collapsed in the middle of the road. The emergency services were summoned. Connie Purcell picked up the knife that Alfred Purcell had been carrying and threw it towards some houses.

8. The emergency services arrived and Alfred Purcell was conveyed to hospital. The ambulance arrived at the hospital at 8.47pm, where the Trauma Team took over from the ambulance crew. It was discovered that there was no cardiac activity and that any further treatment would be futile. Mr Purcell was pronounced deceased at 8.53pm.

9. CCTV had recorded the fatal incident and the movements of the applicant thereafter. He was arrested on 28th June 2018 on the Isle of Dogs. He indicated to police officers that he knew why he had been stopped and stated that Alfred Purcell "had a knife". The applicant stated that he had been planning to hand himself in. In interview he answered "no comment".

10. There were moving Victim Personal Statements before the court.

11. In passing sentence, the judge remarked that the applicant had gone to a local park. He told

the court that he had not been affected by drink or cannabis. The applicant and the deceased had known one another, but only to a limited extent. There had been an argument a few days before. The deceased had a bad criminal record, but at 34 years of age had left Ireland with the intention of making a new life. The CCTV was unusually clear. It demonstrated that this had not been an act of self-defence. There was no avoiding the fact that the applicant had gone home to fetch two knives and that this had been an act of revenge. There had to be a 25 year starting point. The judge said that he would take account of the aggravating and mitigating circumstances. She did not conclude that there had been a significant degree of planning, although the offence had been briefly premeditated, but that was not to be seen as an aggravating factor. The judge, furthermore, did not regard the victim as particularly vulnerable, but did consider that the offending had been aggravated by the applicant taking two knives to the scene.

12. The applicant had also wounded Connie Purcell, who had been trying to protect her brother which could be an aggravating feature.

13. The applicant's previous convictions were not regarded as aggravating.

14. In mitigation, the wild nature of the lunge suggested that there had ben a loss of temper and so the judge accepted that the applicant had been feeling provoked. In the judge's view, and in agreement with the jury, that fell short of the three-point test for the statutory defence of a loss of control. The judge found an intention to kill, although there had been some provocation.

15. The single written ground of appeal was that the sentencing judge failed to attach significant weight to the agreed and significant provocation, falling short of loss of control, that the applicant suffered in the immediate lead-up to the fatal stabbing, and thereafter set a minimum mandatory term that was manifestly excessive.

16. There is a Respondent's Notice resisting the application for leave to appeal. It was not agreed by the Crown that there had been significant provocation. Rather it had been the Crown's position that the applicant acted in a premeditated, considered desire for revenge. The defence of loss of control had been left to the jury and it, along with other defences of accident, self-defence and a lack of intention to kill or cause really serious harm had been rejected by the jury. Furthermore, had the judge not reduced the minimum term as a consequence of the limited provocation which he found, the minimum term would have exceeded 25 years' imprisonment. Accordingly, the prosecution submitted that the sentence passed was well within the appropriate and reasonable range of sentences open to the judge and could not on any view be characterised as manifestly excessive.

17. Developing his argument today, Mr Bennathan QC, who appears for the applicant, submitted that there was undisputed provocation, extending to a time not very long at all before the fatal incident. On any view, the applicant had been punched on a number of occasions by the deceased. Furthermore, Mr Bennathan reminded us of the evidence from an impartial member of the public who had seen the aggressive behaviour by the deceased before the incident.

18. Mr Bennathan's essential submission today went to whether the courts should permit a gulf between sentences for manslaughter by reason of provocation and murder. Mr Bennathan's submission was that, at least arguably, this case disclosed too great a gulf and that the court was not constrained by legislation from reducing that gulf. If the correct sentence for manslaughter by provocation in the present case would be something like less than half the minimum term imposed by the judge in respect of murder, then Mr Bennathan submitted that there was good reason for reducing the sentence even half way to bridging that gulf - reflecting the fact that

there was some provocation, though insufficient to make good the defence.

Discussion

19. As always, the matter has been attractively canvassed by Mr Bennathan. With respect, however, we are not persuaded that the minimum term was, even arguably, manifestly excessive. The ground of appeal focuses directly on whether the judge gave sufficient weight to the "agreed and significant provocation". Some care is needed in this regard, bearing in mind the contentions in the Respondent's Notice that such provocation as there was, was neither agreed nor significant. We accept that, as the judge said, there was some provocation and we approach the matter on that basis. However, in considering the applicant's submissions, we keep well in mind that the defences of self-defence and loss of control were both rejected by the jury. Viewed in this light, we are simply unable to accept that the minimum term set by the judge was, even arguably, manifestly excessive. She had the considerable benefit of trying the case and hearing all the evidence. The starting point of 25 years was necessarily undisputed. The aggravating factors would have pushed the minimum term above 25 years – certainly a little above 25 years – but she properly made a reduction for the mitigation present, bringing the minimum term imposed below – and not insignificantly below – 25 years.

20. Ultimately, the salient feature of this case was that the applicant went home and returned armed with two knives, and with one of them he killed the deceased.

21. We have not overlooked Mr Bennathan's broader submission as to the gulf between sentences for manslaughter and those for murder. While accepting that the line between manslaughter as a result of provocation and murder may in some cases be thin, the difference in sentencing in no small measure flows from legislative policy covering both the mandatory life sentence for murder and the starting point set by Parliament. On any view, in our judgment, this

case is not the vehicle through which to launch some wholesale challenge to sentencing policy and levels. We are not persuaded otherwise by the approach to age adopted in *R v Peters* [2005] EWCA Crim 605; [2005] 2 Cr App R(S) 101, to which Mr Bennathan referred and upon which he relied.

22. In the circumstances, this renewed application for leave to appeal against sentence must be refused.
