

201900031 B5

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

6 June 2019

Before:

Lord Justice Simon

Mr Justice Lavender

HIS HONOUR JUDGE Edmunds QC

**Regina  
and  
Claire Hazel Francis**

Ms S Hargreaves appeared on behalf of the **Appellant**

Edmunds

JUDGE On 6 November 2018, the appellant was convicted after a trial in the Crown Court at Manchester Minshull Street of possessing a prohibited firearm, a sawn-off double-barrelled shotgun, and on 4 December she was sentenced by the same judge to the minimum term of 5 years. The weapon was forfeited and the surcharge provisions applied.

She now appeals that sentence with leave of the single judge on the ground that the judge should have found exceptional circumstances justifying a sentence below the statutory minimum required by section 51A of the Firearms Act 1968.

The circumstances were that on 6 February 2017, officers from Greater Manchester Police searched a storage facility located in the Whitfield area of Manchester. They recovered a number of items, including the sawn-off double-barrelled shotgun. Analysis of the gun produced a mixed DNA profile from the fore-end grip. From that profile the DNA of the appellant was extracted, but at that time she was not a person known to the police. The appellant, however, was arrested on an unrelated allegation, as a result of which a sample was taken and that linked the weapon to the appellant.

The appellant attended voluntarily for interview on 22 August 2017. At that stage, she provided a prepared statement in which she denied possession of the firearm but admitted that she may have touched it when rummaging through a bag that had been left at her home by a man named Rico.

After seeking further legal advice the appellant answered police questions. She said that Rico was an associate of her partner, Mr Ahmad, and that he had come to her home unannounced one morning approximately 2 years earlier and that after Rico left the house the appellant discovered that he had left a bag under the stairs. She said that when she put her hand in the bag she touched the gun, although she did not see it in full, and she then telephoned Rico and he returned to collect the bag later that morning. She said she never saw Rico again. Subsequent analysis of her phone revealed a number of deleted messages from two separate numbers which were each signed off in the name Rico.

During the trial, the appellant said that she had telephoned Mr Ahmad, rather than Rico, on discovering the bag

and it was only when Rico returned to the address to collect the bag that she became suspicious. She said Rico had threatened to “blow her fucking head off” when he realised she had looked inside.

At trial, the appellant further asserted that she had not realised that the bag contained a firearm until she was arrested by Detective Constable McCorry. She said she had lied to the police in interview because she feared introducing Mr Ahmad's name in case her solicitor, who had previously represented Mr Ahmad, would cease to represent her. It is clear that that account was rejected by the jury.

In the period before sentencing, the parties had, as they are now required to do, uploaded their respective arguments on why there were or were not exceptional reasons.

In sentencing, the judge took note of the appellant's age of 34, that she was the mother of a then 8-year-old son, had worked hard all her life and was essentially a woman of good character. Having heard the trial, the judge passed sentence on the following basis. That the bag was left at the appellant's property by someone named Rico; that the appellant realised what was in the bag when she touched the firearm; that she telephoned Rico and demanded that he collect it, which he did shortly after; that this man had originally gone to the appellant's property uninvited and that she did not have any ulterior motive in relation to the weapon and was not connected to any serious crime. However, she knew what it was, and the gravamen of the offence was that the firearm had been allowed back into circulation. He sentenced on the basis that, albeit for a limited time, the appellant was knowingly in possession of a sawn-off shotgun which she allowed back into circulation.

The minimum sentence was therefore one of 5 years unless there were exceptional circumstances. The judge properly reviewed the questions posed in the case of *R v Avis*. Firstly, that type of weapon? It was nasty weapon: a sawn-off shotgun. Second, what, if any, use had been made of it? The judge declined to speculate but commented that it had been found along with a number of other firearms during the course of inquiries in relation to serious crime. Thirdly, what was the appellant's intention when she possessed it? She had wanted to get rid of it, but implicitly it was then going back into circulation. Fourth, what was the appellant's record? She was a woman of good character. The judge had read the pre-sentence report and had listened to the mitigation.

The judge considered a number of cases to assist in distilling the principles that should be applied when considering the question of exceptional circumstances, including the case of *R v Rehman and Wood* [2005] EWCA Crim 2056. The judge was mindful of not undermining the intention of Parliament by finding too easily exceptional circumstances. The dangers of gun crime were well known, and the purpose of the minimum sentence was to deter people from committing such offences, particularly those like the appellant, who had personal mitigation and vulnerabilities, from being used by others. The judge accepted that he had to approach the question holistically. Whatever sentence was passed, the judge doubted that the appellant would appear before the court again. Given the basis on which the judge passed sentence, he did not find that there were exceptional circumstances in this case notwithstanding the appellant's good character, mental health difficulties and the devastating impact that a lengthy custodial sentence would have on the appellant and her young son. The judge properly directed himself to *R v Petherick* [2012] EWCA Crim 2214, which offered guidance where the question of family rights were engaged. Not without “considerable hesitation” the judge imposed the mandatory minimum sentence of 5 years' imprisonment.

At the time the pre-sentence report was prepared the appellant did not accept knowledge that the gun had been at her home and placed the blame on her ex-partner for placing her in a precarious position. The appellant was assessed as a low risk of re-offending. The report described how she suffered from depression and anxiety, and expressed concerns about an increased risk of self-harm in a custodial environment. An addendum report had been prepared to propose a community-based sentence if the court found exceptional circumstances and she was assessed as being suitable for a rehabilitation activity requirement.

The essence of this appeal is that the judge was wrong not to find exceptional circumstances. Any such assessment has to be holistic, as the judge said, and therefore take account of all factors. The single judge was persuaded that this case should be examined by this court. The dangers of firearms being available to criminals are all too obvious. Those criminals, being aware of the penalties, seek to use others to hold or to transport weapons in order to reduce their own exposure. That those people place those that they use in a very difficult situation is by no means exceptional.

Parliament has chosen to mandate a minimum sentence in the absence of special circumstances and a key

element of that is the deterrent effect on those who may be induced by one means or other to play a role, whether harbouring or transporting a weapon. It is not the proper function of the sentencing court or of this court to strain to find exceptional circumstances which are not in fact uncommon.

We likewise have in mind the case of *R v Rehman* and the range of other cases, but ultimately each case will turn on its own facts. We have also had regard to the basis of sentence carefully set out by the judge, who had the advantage of presiding over the trial and there is no reason to depart from it. However, on that basis, the appellant was caught up unwillingly in a very difficult situation.

We agree with Ms Hargreaves' submissions that this was not a case where the gun was left by a person that she had chosen to associate with or bring into her life. The connection was more tenuous. The appellant's partner worked as a personal trainer and the man Rico was one of his clients. She did not volunteer to harbour an object; rather, she found that it had been left at her home without her knowledge. Once the nature of the item became clear, the appellant, in panic, immediately demanded its removal, which occurred, and thus she was in knowing possession for a brief period. On the other hand, the weapon itself was one that had no legitimate purpose and upon the jury's verdict the appellant can only have believed that she was returning it into the possession of a person for criminal purposes.

There was cogent, but not in itself exceptional, personal mitigation, most particularly as to her mental health and that she was the mother of a son who is now aged 9 and who in her absence is being cared for by his father. In addition, the appellant had suffered from depression predating the offence and, as the pre-sentence report set out, had gone through a number of traumatic events. Insofar as there was a delay in bringing the matter to a conclusion, the appellant cannot pray that in aid in the light of the necessary work to reveal the deleted messages on her phone and her decision to contest the case.

This was, as the judge recognised, a difficult case. But we have concluded that the circumstances were such that the judge should have found there to be exceptional circumstances. That said, this remained a serious offence, one in which an immediate sentence of imprisonment was necessary and where the appellant could claim no credit for plea having contested the matter throughout.

We therefore allow the appeal to the extent that we find exceptional circumstances. We quash the sentence of 5 years and impose in its place a sentence of 3 years' imprisonment.

To that extent, the appeal is allowed.