

No: 2018 04026 A2

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

6th June 2019

Before:

Lady Justice Thirlwall DBE

Mr Justice Martin Spencer

THE RECORDER OF NORTHAMPTON

HIS HONOUR JUDGE Mayo

**Regina
and**

Matthew Lee Harwozinski

Mr Matthew Kirk appeared on behalf of the **Applicant**

The Recorder of Northampton

This is a renewed application for leave to appeal against a sentence of life imprisonment, with a minimum term of 11 years and 8 months, concurrent to determinate sentences totalling 21 years' imprisonment. Leave to appeal was refused by the single judge on 31st January 2019, and on behalf of the applicant the Court was notified on an intention to renew the application and to apply for an extension of time. Mr Kirk, who appeared for the applicant in the Crown Court, has submitted a skeleton argument and has made persuasive oral submissions before us today, and we are grateful for the work that he has done *pro bono*.

The applicant pleaded guilty to four offences at the Crown Court at Luton on 6th July 2019:

- Count 1: Evasion of the prohibition on the importation of firearms and ammunition contrary to 170(1)(a)(iii) of the Customs and Excise Management Act 1979;
- Count 2: Conspiracy to convert weapons contrary to section 1(1) of the Criminal Law Act 1977;
- Count 3: Conspiracy to manufacture ammunition specified in section 5(1) of the Firearms Act 1968 contrary to section 1(1) of the Criminal Law Act 1974;
- Count 4. Conspiracy to possess firearms with intent to enable others to endanger life.

On 24th August 2018 the applicant was sentenced by His Honour Judge Bright QC to life imprisonment, with a minimum term of 11 years and 8 months, less 209 days on remand on the fourth count. There were concurrent terms of 21 years on counts 1 and 3, and 5 years on count 2.

The applicant's co-accused was Ricky Garner. His role was as an armourer, and it was he who remodelled blank firing weapons and manufactured live ammunition from blank firing cases by insertion of the necessary explosive and a small metal dowel which became the projectile when the round was fired from a gun. He was sentenced alongside the applicant to a determinate term of 20 years and 3 months' imprisonment.

Between May 2017 and January 2018, the applicant purchased in excess of 80 blank firing handguns (at least 19 of which were fully automatic) and over 1,800 rounds of blank firing ammunition from the Czech Republic.

The applicant opened an email account especially for the purpose on 28th April 2017. Searches on a computer at Garner's address were made for *Zokari* handguns. In June 2017 a lathe was acquired for Garner to use, and in August further research was conducted into how to convert ammunition. There were also numerous searches conducted on blank firing pistols, conversions of such items and how to fire real ammunition in blank firing pistols.

Payments from the applicant's account to an arms supplier in the Czech Republic were made on several occasions, with the importations taking place from July 2017 to January 2018. The total identifiable importations were 19 fully automatic and 48 semiautomatic pistols, at a cost in excess of £4,750.

Analysis of payments made in May and June indicated that it was likely that at least a further 13 pistols and 250 rounds of ammunition were also purchased then. These weapons, together with suitable ammunition to fire them, were then supplied to the criminal underworld. Seven of the modified handguns, together with ammunition, had been recovered leading to a number of suspects being charged, and a separate seizure of ammunition had led to a further suspect being charged.

The modified weapons had been discharged in public on a number of occasions, endangering life. On one occasion their use caused injury in circumstances which amounted to attempted murder. On many occasions the modified weapons were recovered from premises or from individuals who had substantial quantities of Class A drugs.

The weapons have travelled into hands far away from Bedfordshire and Ilford, where Garner set up his workshop.

Seizure of weapons continued after the arrest of the applicant on 25th June 2018.

On 8th September 2017, at an address in Bedford, numerous wraps of cocaine, heroin and cannabis were recovered, together with cash and a Zokari 906 semiautomatic converted pistol.

On 3rd October 2017 in Marsh Farm, Luton, shots were fired from a scooter in an area located between two rival gangs. An unspent round matched those produced by Garner.

On 21st October 2017 two men with gang links in Romford were fired upon through the window of a flat. The assailant force entry and fired at a door, hitting one of the occupants in the leg.

Shots were fired on 19th December 2017 at separate locations in Luton.

A Zokari 914 fully automatic converted pistol and two rounds of ammunition were recovered on 8th January 2018 on the arrest of a man for theft. There were DNA links between the weapon and the applicant.

On arrest, the applicant's address was searched, revealing two semi-automatic converted weapons, twelve rounds of modified ammunition and one spent round.

The applicant supplied a brief prepared statement in interview limited to his domestic arrangements and then gave 'no comment' replies.

Further seizures were made in January, linking the applicant's work to Class A drugs.

On 27th January 2018, a man with gang connections was shot in the leg whilst driving in a car park at the Wood Green Shopping Centre, causing him injury and causing the vehicle to crash. In his car was a single round of ammunition converted by the defendants, together with crack cocaine and heroin.

On 27th March 2018 officers searched an address in Birmingham. They recovered over £2,000 in cash and two live bullets, one of which had been modified by the defendants.

On 8th June 2018 a search of an address in Nottingham revealed a Zokari 906 semiautomatic pistol in a plastic bag, together with four rounds of blank firing ammunition, each fitted with an improvised projectile. Also in the flat were over 4 kgs of cannabis and 6 grammes of crack cocaine.

Finally, on 18th June 2018 a council employee found a carrier bag containing a Bruni blank firing pistol and six rounds of ammunition hidden in undergrowth in Barnard Road in Luton. These showed distinguishing features in the manner of their conversion.

The initial PTPH was listed on 7th March 2018. The case did not proceed because the prosecution was not ready. The adjourned plea hearing was held on 3rd May. The applicant entered not guilty pleas, whilst his co-defendant admitted his guilt. Discussions between the parties then followed, and a guilty plea and tendered basis of plea was entered on 7th July 2018. This document amounted principally to mitigation, but it asserted that the applicant worked under instruction from another. In his sentencing remarks the judge observed that the Crown did not agree with it, but it had not precipitated the need for a Newton hearing. The judge settled upon a figure of 22.5% as a discount for plea because the initial indication at PTPH was a *not guilty* plea, although counsel had soon after clarified that there would not be a trial.

The applicant was 29 at the date of sentence. He had findings of guilt dating back to 2005, when he was aged 16, with regular appearances in the magistrates' court until 2010. He was sentenced to 30 months' imprisonment on 28th June 2010 at the Crown Court at Luton for a section 18 offence. This was an offence contained within Schedule 15B of the Criminal Justice Act 2003, as amended by Schedule 18 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Comprehensive sentencing notes were prepared for the judge from the prosecution, a full treatment of factors included, together with a suggested three-stage process in determining the type and length of sentence. The decision of this Court in *R v Wilkinson* [2009] EWCA Crim 1952 was supplied, and the Crown set out the well-known checklist contained in *R v Avis*.

In passing sentence, the judge quoted verbatim from the judgment of the Lord Chief Justice in *Wilkinson*. He then referred to sections 224A and 225 of the Criminal Justice Act 2003. He said:

“... 224A is relevant because you have committed a second listed offence ... which makes you liable to life imprisonment irrespective of any issues of dangerousness. But I want to focus on the issue of dangerousness, not because I don't think you qualify for a life sentence under section 224A, but because I regard ... dangerousness as essential to this particular case ...”

We pause at this point to interject that, in arguing the matter before us today, the applicant's counsel has not sought to dissuade us from a sentence based on *dangerousness*.

The judge then posed the question for himself whether the applicant met the criteria contained in section 225 and answered in the affirmative. We agree with that assessment, and the applicant's counsel, as we have indicated, has not sought seriously to challenge this today.

Having reached this conclusion, Judge Bright then formulated the minimum term to be served before any consideration for parole could be made in this way:

“In my view, the proper determinate sentence after trial would have been one of 30 years' imprisonment”.

He then applied the 22.5% discount, producing a nominal determinate sentence of 23 years and 4 months. This was then halved to produce the minimum term on Count 4.

Mr Kirk has supplied now a digest of cases from which he argues that the provisional sentence before reduction for guilty plea of 30 years selected by the sentencing judge was demonstrably too high.

We have listened to these submissions and considered the cases in advance of today's hearing. We remind ourselves of the test which we must apply, namely that a sentence must be manifestly excessive or wrong in

principle before this Court will interfere with it. Any enterprise in which firearms are made available to criminals to inflict fear, maim or kill will always be treated as being of the utmost seriousness. This applicant placed potentially 80 weapons and ample ammunition in the hands of dangerous people who are very likely to, and indeed did, use them.

We pause to consider the judgment of the Lord Chief Justice in the Attorney-General's References Nos 128–141 Of 2015 and 8–10 of 2016, all grouped under the heading of the title R v Stephenson [2016] 2 Cr App R (S) 12. Our attention was particularly drawn by the applicant's counsel to paragraph 7(i) of that judgment:

“7. If a life sentence is not passed, as was made clear in Wilkinson, courts must impose long determinate sentences commensurate with the role played in any activity in relation to the supply of guns. Sentences must reflect the hierarchy of the supply enterprise, the role played in individual transactions and any previous convictions in relation to guns. In the present case our conclusions can be summarised as follows:

i) for the leader of the enterprise which was in the business of supplying guns and lethal ammunition, a very long determinate sentence was required. It appears to have been assumed (because the minimum term imposed on Wilkinson, the head of the enterprise in the case determined in 2009 who received a life sentence, was 11 years) that the maximum determinate sentence was 22 years for a large scale enterprise engaged in the supply of guns. No such maximum was indicated by this court in that case. In the present case, we consider that the appropriate sentence for the leader was 25 years, prior to discount for his plea. However, in the light of the mistaken view taken of Wilkinson, we must make clear that courts should not take this as a maximum. For example, a materially greater sentence would be appropriate if there was any previous conviction for offences involving guns. Nor can it make any difference that the criminal enterprise here was engaged in converting or acquiring guns rather than importing them; the same level of sentence is appropriate, as the essence of the criminality is the organisation of a criminal enterprise to supply guns and lethal ammunition to customers, irrespective of the source of the guns and ammunition. Those engaged in the criminal enterprise under the leader should have received sentences reflecting the sentence for the leader (before any discount for plea), depending on the role they played”

We are persuaded, in view of the submissions made by Mr Kirk today and the help he has given us, that this is not a case where a provisional sentence, before deduction for guilty plea, of 30 years was appropriate. In our judgment the appropriate starting point would have been one of 25 years and the judge erred to this extent, despite his careful analysis of the facts of this case and of the authorities brought to his attention. That needs to be reduced by the 22.5% referred to by the learned sentencing judge at the time of sentence to represent credit for the applicant's guilty plea and then halved to reflect the fact that this was the minimum term as part of a life sentence. If our calculations are correct, that yields a minimum term of 9 years and 8 months before release can be considered.

That determination, which relates to count 4 of the indictment, would therefore have a knock-on effect on counts 1 and 3 because the decision of the sentencing judge that there should be determinate concurrent sentences of 21 years' imprisonment would mean that the time served actually by the applicant for those determinate sentences would be longer than the minimum term. Accordingly, we reduce those sentences to 18 years' imprisonment on count 1; on count 2, we leave it at 5 years; and on count 3, we reduce it to 18 years' imprisonment.

As we have already indicated, on count 4 the sentence remains a sentence of life imprisonment, but we substitute a minimum term of 9 years and 8 months, less 209 days spent on remand, before the applicant can be considered for parole.

In accordance with what we have decided, we therefore grant the extension of time of four days and grant leave to appeal. The appeal is allowed to the extent we have then indicated.

MR KIRK: I am grateful.

In the circumstances could I ask for a representation order for today?

Lady Justice Thirlwall

. Certainly. There will be a representation order for junior counsel.