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No: 2018 05284 A2

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Tuesday 21st May 2019

**B e f o r e:**

**LADY JUSTICE RAFFERTY DBE**

**MR JUSTICE ANDREW BAKER**

**THE RECORDER OF NOTTINGHAM**  
**HIS HONOUR JUDGE DICKINSON QC**

(Sitting as a Judge of the CACD)

**R E G I N A**

v

**JIMMY MUKENDI**

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd Lower Ground, 18-22 Furnival Street, London EC4A 1JS Tel No: 020 7404 1400 Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

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**Mr J Harrison** appeared on behalf of the **Applicant**

**J U D G M E N T**  
(Approved)

MR JUSTICE ANDREW BAKER:

1. The applicant, Jimmy Mukendi, who is 23, renews before the full court his application for permission to appeal against a sentence of 7 years' imprisonment imposed by HHJ Samantha Leigh in the Crown Court at Basildon. That sentence followed the applicant's pleas of guilty to two counts of possessing Class A drugs (crack cocaine and heroin) with intent to supply; two counts of having a bladed article (two sheathed hunting knives); and two counts of firearms offences, one of those being possession of a prohibited, smoothbore Remington shotgun which was in the applicant's possession together with six live shells. For the prohibited firearm offence a minimum sentence of 5 years had to be imposed unless there were exceptional circumstances relating to the offence or to Mr Mukendi that justified not doing so; and if that exception did not apply, so that the statutory minimum did apply, then it was a strict minimum – no credit for guilty plea could reduce sentence below 5 years.
2. To the extent relevant, the applicant was entitled to credit of 25% for his guilty pleas, having entered them at the PTPH. The substance of the sentence imposed therefore is that the 5-year minimum term for the prohibited firearm taken on its own was increased by 32 months before plea, 24 months after plea, taking account of the drugs and knives. HHJ Leigh articulated sentence as one of 7 years for the prohibited firearm with concurrent terms for all the other offences, namely concurrent terms of 40 months for each of the drugs offences, 12 months for each of the hunting knives and 2 years for the other firearms offence.
3. Somewhat confusingly, given that she identified correctly that the proper credit for plea,

where relevant, was 25%, HHJ Leigh suggested that after a trial the sentence would have been "in excess of 10 years", in which case the credit for plea which in fact applied was in excess of 30%.

4. By the date of his guilty pleas and subsequent sentencing hearing for these matters in September and November 2018 respectively, the applicant (then still 22) had already amassed eight convictions for ten offences, including robbery, witness intimidation and possession of Class A drugs with intent.
5. The applicant was stopped and searched in the vicinity of an address occupied by one Keanu Hill, who had been arrested in possession of items associated with the supply of drugs. The applicant had on his person the wraps of crack cocaine and heroin that formed the basis of the drugs offences charged. His car was searched and found to contain a black holdall containing the smoothbore shotgun wrapped in a cloth, the six live shells, a set of electronic scales, the two hunting knives and two mobile phones. At his home address, which was then identified and searched, the police found scales with remnants of drugs on them, £15,000 in cash concealed under loft insulation and £1,000 cash in a baby bag.
6. The applicant and Mr Hill were sentenced together, but on the basis that there was no link between them except that they happened to be arrested on the same evening in the circumstances we have just described.
7. The applicant made no comment in interview but in due course, as we have mentioned, pleaded guilty at the PTPH. No basis of plea was entered at that hearing but it was indicated that there would be one and/or a psychologist's report, with a view to an argument that were exceptional circumstances so that the minimum term for the

prohibited firearm could be avoided. A basis of plea was in due course submitted in the following terms:

"I, Jimmy Mukendi have entered guilty pleas to counts 2 - 7 on the indictment I face. I wish to be sentenced on the following basis:

- a) I was being directed by and acting on behalf of a person/persons who I do not wish to name.
- b) I was told to attend the address that I was arrested at and clear the address of a number of items and bags.
- c) I was told that I needed to do this as soon as possible.
- d) I knew from the people who asked that I would be handling illegal items.
- e) Although I did not know, nor was I told specifically what these items were, I believed them to be drugs and possibly weapons.
- f) I did not know that one of the things in the bags was a firearm.
- g) Although I was not explicitly threatened in respect of this task, I did not feel it was something that was optional or that I could refuse without repercussions to either myself or my family.
- h) There was no question of me receiving any sort of payment or reward for carrying out the instructions I was given. I was simply told what to do."

8. HHJ Leigh said of this, "I do not find it to be a basis of plea but a mitigation document." It is not clear to us, with respect, what the judge meant by that, but it matters not as she sentenced the applicant on the basis of it.
9. There was also a psychological report on the applicant, finding him to be of very low intelligence and high suggestibility. His intellectual ability was assessed to be in the bottom 1% for individuals of his age. The report suggested that such a low level of cognitive function could have contributed to the applicant's involvement in crime generally

and would certainly lead to flawed decision making. The applicant told the psychologist of a broken home, leading to an emotional dependence on older gang members to whom he felt he owed debts of loyalty and respect.

10. Mr John Harrison represented the applicant in the Crown Court and has also appeared before us this morning. In this court he has acted *pro bono* and we thank him very much for his assistance. He says there were two broad submissions. Firstly, given the basis of plea and the applicant's lack of actual knowledge that what he had was a gun, the judge could have found exceptional circumstances so as to impose a shorter sentence than 5 years for the prohibited firearm, although in his oral submissions this morning he has indicated that that submission would not be pressed on the appeal independently of the second submission. Secondly, given the applicant's limited role in removing and holding for others all the items together, there should have been concurrent sentences on all as being part of a single course of conduct, with either no or only very modest uplift to the statutory minimum of 5 years.
11. Mr Harrison says he misunderstood an observation by the judge, when indicating during argument that she was against the first submission as to exceptional circumstances, to mean that there was going to be a sentence of 5 years overall, but, as he accepts, no injustice has resulted from that in itself; the judge plainly took account of all relevant considerations. The question for an appeal, then, would be whether 7 years overall, however structured, is manifestly excessive.
12. In our judgment it is not arguable that it is.
13. This is temporary possession as custodian of a prohibited firearm connected with the supply of Class A drugs, appreciating that the items the applicant was being asked to clear and look

after might include weapons, by an admittedly suggestible and inadequate individual but one who had already acquired a significant record of previous offending. It is, sadly, all too common a story, and not a case of exceptional circumstances.

14. The possession also of crack cocaine and heroin, plainly intended for street supply whether or not the applicant was himself the street dealer, and of the hunting knives, required to be separately marked in the sentence imposed. This is a classic case, as described by the sentencing guideline on totality, where concurrent sentences, if at or only little above the statutory minimum, would undermine the imposition of that statutory minimum for the prohibited firearm.
15. We can perhaps see some room for debate, on the applicant's basis of plea, whether the judge was right to categorise him as having played a significant role for the purposes of the sentencing guideline in relation to the drugs offences. But even if his was only a lesser role, there would be a guideline range of 2 to 4½ years, with a starting pointed of 3 years, for each drugs count prior to credit for plea. With two drugs counts, the hunting knives as well, and the applicant's record, the contention that 32 months prior to plea was an excessive addition to the statutory minimum for the prohibited firearm is, to our mind, just unrealistic.
16. In refusing permission to appeal on the papers, the single judge said he could see no viable argument that the total sentence of 7 years was excessive, gave reasons for that view, and concluded that:

"With 25% credit for plea a sentence of 7 years' imprisonment may perhaps have been on the severe side. But in my view it is not arguably manifestly excessive."

We agree that there is no viable argument for saying that the 7-year sentence here was excessive. For our part, indeed, we do not regard it as on the severe side except in the sentence that it is severe as intended and required by Parliament given the involvement of a prohibited firearm.

17. This renewed application is therefore refused.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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