

2018/03953/A1

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

The Strand

London

WC2A 2LL

4<sup>th</sup> July 2019

Before:

Lady Justice Rafferty DBE

Mr Justice Nicol

and

Mr Justice Freedman

**Regina**

**and**

**Khalid Mokadeh**

Mr N F A Worsley (via video-link) appeared on behalf of the Applicant

Thursday 4<sup>th</sup> July 2019

Lady Justice Rafferty

In the Crown Court at Sheffield Khalid Mokadeh (23) on 8<sup>th</sup> February, 28<sup>th</sup> February, 9<sup>th</sup> March and 20<sup>th</sup> August 2018 was variously convicted of or pleaded guilty to a number of indictments, and on 22<sup>nd</sup> August 2018, was sentenced as follows: on indictment number 2, count 1, having an article with a blade or point, contrary to s139(1) Criminal Justice Act 1988 (to which he pleaded guilty), two years' imprisonment; count 2, wounding with intent, contrary to s18 Offences against the Person Act 1861 (to which he pleaded guilty), seven and a half years' imprisonment; count 3, having an article with a blade or point (to which he pleaded guilty), two years' imprisonment; and on count 4, manslaughter by reason of loss of control (convicted), an extended sentence of 30 years, its custodial term 27 years, its extended period of licence three years. On indictment 3, for wounding with intent, (to which he pleaded guilty), three and a half years' imprisonment; and on count 3, having a bladed article (to which he pleaded guilty), two years' imprisonment. All those terms were ordered to run concurrently. The total was the extended sentence of 30 years. There were consequential orders.

After refusal by the Single Judge the Applicant renews his application for leave to challenge the length of his sentence. The Single Judge indicated that this Court should consider making a loss of time order were the application unsuccessful. There has been no justification provided by the Applicant for why the Court should not.

## **Indictment No 2**

On 24<sup>th</sup> May 2017 in the evening Mohammed Al-Saroori was on the Wensley Estate in Sheffield. There, different nationalities and ethnic groups would mix. They did not confide in the police and any who did were looked down upon. Al-Saroori came across the Applicant, as usual drinking from a bottle of Jack Daniels, arguing with another man. Al-Saroori came between the two, walked off and turned to see the Applicant who thrust a knife into Al-Saroori's chest and ran off. His associate ran after him. The more serious injury, to the small bowel, required emergency surgery. Other cuts were superficial.

Al-Saroori initially refused to make a complaint to police. His mother intervened and, following custom, visited the Applicant's family. The Applicant said what had happened was as a consequence of Al-Saroori belittling him. Once again, as customary, a mediator intervened and on this occasion achieved a note of apology, allegedly written by the Applicant, to the Al-Saroori family.

Further trouble occurred on 15<sup>th</sup> June 2017, when the Applicant was once again on the estate. He had been shot in the leg and another man had been stabbed. The police enjoyed very little co-operation. The Applicant claimed he had no problems with Mohammed Al-Saroori, but thought Mohammed's brother Sami had ordered his (the Applicant's) shooting. Their mother told her son Sami to be careful. The Applicant, no longer welcome in his family home, began to sleep rough.

### **Indictment No 3: Counts 1 and 2**

On 6<sup>th</sup> September 2017 at 11pm, Fathi Dahir (22) on the Wensley Estate came across the Applicant and friends. The Applicant was aggressive and said there were "too many snitches" in the area. As Dahir ran away, the Applicant lunged at him three times with a folding knife and chased him, shouting aggressively. Dahir had a stab wound to a buttock about 1cm into subcutaneous tissue. He eventually contacted the police after the events of 9<sup>th</sup> September 2017.

### **Indictment 2: Counts 3 and 4**

On 9<sup>th</sup> September 2017 Adam Morton and friends gathered at the home of Daniel Briggs for drinks. Morton wanted to go to a nightclub and, as he was making his plans, the Applicant appeared with a knife and went towards him, realised Morton was not whom he thought, and the situation calmed. Invited, the Applicant went into Daniel Briggs home for a drink, but spent a good deal of his time on his own and became more and more drunk.

A little before midnight the main group decided to go to a nightclub. Sami Al-Saroori was one and went into Daniel Briggs' home to fetch something. As he came out, a witness saw the Applicant make a move towards Al-Saroori's chest. The latter screamed and ran, chased by the Applicant who, carrying a knife got into a car.

Sami Al-Saroori died next day of a single stab wound to his chest, which would have required severe force to penetrate the thick bone of the sternum.

On 10<sup>th</sup> September 2017 the Applicant gave himself up to the police. Interviewed, he made no comment to almost all questions. In his third interview, he claimed he had previously been shot by Sami Al-Saroori and an associate. Outside the flat, he said, he feared he would be killed and therefore when grabbed when Sami Al-Saroori stabbed him, not intending to kill. Questioned about the earlier incidents on 24<sup>th</sup> May 2017 and 6<sup>th</sup> September 2017, he denied any offences.

The Court had Victim Personal Statements from Fathi Dahir, from Martina Dalton and from Sabrah Al-Saroori.

Sentencing him the Judge first rehearsed the facts. He then said that as to Mohammed Al-Saroori, the Applicant had been drunk and spoiling for violence. His was a remorseless attack on a defenceless man with the clearest intention to cause at least really serious harm. Dahir was the victim of another unprovoked and gratuitous knife attack. As to the manslaughter, loyal to the verdict the Judge would sentence on the basis of the Applicant's fear of further violence from Sami Al-Saroori. The jury had rejected self-defence, but he might have lost his self-control.

There was no credit for a guilty plea. The Applicant had sought from first to last to exculpate himself of all responsibility and expressed little or no remorse. Knife crime, said this experienced Judge, had reached epidemic proportion and the events in front of him required condign punishment. Were it otherwise, there would be justifiable public outrage.

The Judge had absorbed the content of the Victim Personal Statements and noted the devastating effects on victims and their families of these crimes. Knives had been used to attack three people on three occasions over a relatively brief period, which demonstrated that the Applicant was dangerous.

The Judge considered the Sentencing Guidelines in relation to manslaughter. In murder cases the minimum term was 25 years when a knife was taken to the scene, in this case the trigger event which — only just — cleared the threshold for the statutory partial defence. The shooting incident had caused a degree of post-traumatic stress and hyper-awareness.

Aggravating the matter were: the intoxication; the offence was at night, in a public place, in a residential cul-de-sac; the Applicant left the scene and disposed of the weapon. The case merited the highest level of sentence for offences of this kind. For manslaughter the term would have been sixteen years' imprisonment. *Per* the Guidelines, wounding Mohammed Al-Saroori was in Category 1. The Judge turned to totality and gave the Applicant minimal credit (six months) for his late guilty plea. The custodial term would therefore have been seven and a half years' imprisonment, reduced from twelve years.

The offence against Dahir was in Category 2. Totality reduced it by six months to acknowledge the late guilty plea. The custodial term would have been three and a half years, reduced from five and a half. All those would have been ordered to run consecutively, so the overall custodial term would have been 27 years.

A discretionary life sentence was not necessary, the public could adequately be protected by way of an extended sentence. A single sentence for the manslaughter would reflect the whole of the criminality, so the sentences for the other matters would be concurrent.

Aged 22 at sentence, born on 29<sup>th</sup> January 1994, the Applicant had one conviction for three unrelated offences.

A Psychiatric Report pointed out mental health difficulties which had arisen since the shooting on 15<sup>th</sup> June 2017. The Applicant had developed a depressive illness. Whether post-traumatic disorder were in play at the time of the killing was classically for the jury.

Grounds of Appeal complain that the Judge made errors of fact in his sentencing remarks; his starting point was too high; he paid insufficient regard to aggravating and to mitigating features; that he fell into error in his assessment of dangerousness; he gave no credit for the offer of guilty pleas during the murder trial; and effectively made sentences consecutive, offending against the principle of totality.

In Grounds of Opposition, which we summarise, the Crown suggests that the Judge's findings were entirely justified. He adopted the correct approach to sentencing for manslaughter and had appropriate regard to aggravating and mitigating features. Sixteen years after trial was unimpugnable. A finding that the Applicant was dangerous was inevitable. Finally, the Judge had been not simply entitled but right to withhold credit for plea. He had put his mind to totality and, consequently, the sentence albeit condign was not manifestly excessive. The Respondent's Notice composed by Mr Nicholas Campbell QC and Mr Richard Thyne dated 22<sup>nd</sup> October 2018 is annexed to this judgment.

Refusing leave, the Single Judge wrote:

“There is no merit in any of your grounds for the reasons set out in the Respondent's Notice.”

We agree. This renewed application is refused.

Having heard Mr Worsley on whether time should be deducted we make no order.

ANNEX