[2019] EWCA Crim 1197

No: 201901295/A4

IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

, 21 June 2019

Before:

Mr Justice Edis
RECORDER OF NORTHAMPTON
(HIS HONOUR JUDGE Mayo)
(Sitting as a Judge of the CACD)

Regina
and
Ashley James Youngman

Mr A Oliver appeared on behalf of the **Appellant**

Mr Justice Edis

Ashley Youngman, who is now 27 years old, pleaded guilty to two offences in the Crown Court at Norwich. Those pleas were entered at a late stage in the proceedings and the credit which he received was properly restricted to 15%. That was the discount for which counsel on his behalf contended and no criticism is made of it on this appeal. He was sentenced to a total sentence of 2 years' imprisonment at a hearing on 29 March 2019.

The offences on the indictment were first, an allegation of possessing criminal property, contrary to section 329(1) of the Proceeds of Crime Act 2002 (money laundering). Secondly, count 2, alleged possession of a firearm when prohibited, by reason of an earlier prison sentence, contrary to section 21(2)(c) of the Firearms Act 1968. Twenty-three months' imprisonment was imposed in respect of the money laundering offence and 1 month consecutive in respect of the firearms offence.

The Facts

On 8 September 2017 the appellant was arrested for an unrelated matter. On arrest he was found to have £1,575 in cash which caused the police to search his home. They there found a safe which contained £4,000 in cash. A BB gun was found in a box under the safe but no ammunition was found with it. Further enquiries revealed that there were, over a significant period of time, substantial unexplained deposits of cash into his bank account.

The basis of plea which was tendered on behalf of the appellant was accepted by the prosecution and, more significantly, by the judge. It said, in relation to the money laundering offence, that he pleaded guilty on a basis of a total sum of money of £15,000. That was the £5,575 which had been recovered in cash and a further £10,000 which had passed through his bank account which he could not and did not account for. The basis of plea said that he had been a motor trader for the past 4 years and that he did not have any accounts or documents to show his income or outgoings.

In relation to the firearm, the basis of plea said that his brother had bought it and brought it to the home as a present for the appellant's young son. The appellant said, in his basis of plea, that he had not been happy with that and that he had therefore taken possession of the gun and hidden it in a box, in a bedside cabinet, by his bed. He said that once he had taken possession of the gun, it did not come out of the box, did not leave his home and that he had had no intention that it ever would. It will be noted therefore that, although he pleaded guilty and provided some explanation of the transactions which led to the money laundering offence, he did not say what crimes had been committed to generate that money or by whom those crimes had been committed and therefore was cautious and reserved as opposed to entirely candid so far as what he said to the police and the court is concerned. This money had accumulated over a total period of about 12 months and had involved a significant number of transactions. It was suggested on his behalf that he had "traded in cars that he had not paid tax on". It is not entirely clear exactly what this means and the commission of money laundering offences by failing to pay tax on legitimate business transactions is not without complexity. The judge concluded, and was entitled to conclude for sentencing purposes, that there was no material before the court which satisfactorily identified the criminal source of the £15,000.

In sentencing the appellant on that basis, the judge first assessed the firearms offence, asking himself the question posed by the decision of this court in R v Avis [1998] 2 Cr App R(S) 178. He observed that the weapon was a BB gun and therefore, as firearms go, relatively harmless. He observed that no use had ever been made of it and that the appellant possessed it, on his own account, to prevent any harm being caused by it. However, he was prohibited from having firearms because of a previous 4-year sentence of imprisonment in respect of other criminality. It had never been fired and no harm was done by it.

In respect of the offence of money laundering, there is a guideline. The judge assessed this case as involving high culpability, because it involved criminal activity of some unexplained kind, conducted over a sustained period. The judge observed that there is a difference in terms of sentencing between someone who conducts one or two transactions and somebody who pursues a sustained course of conduct, as was the case in this appellant's case. The harm caused by money laundering offences is assessed by reference principally to the amount of money or the value of the property concerned. This case, involving as it does £15,000, falls at the lower end of the category range of £10,000 to £100,000. The starting point for that range is 3 years and the range is 18 months to 4 years. That starting point is based on a sum of money or value of property involved of £50,000 which is substantially in excess of this case and the starting point needed to be adjusted to give effect to that fact.

On this basis, and on these unusual facts, so far as the firearm is concerned, it would be the money laundering offence which constituted the principal factor in determining the overall sentence.

In determining where in the range it should fall the judge had regard to the significant criminal record of the appellant, including convictions for serious offences of violence and robbery, including, as we have said, a term of imprisonment of 4 years. The offending had continued long after that sentence of imprisonment but the most recent conviction prior to this one was in 2017. The judge noted that the present offending extended over a substantial period of time and that for most of that period of time this appellant was subject to a community order, which had expired in February 2017. There was mitigation which was set out in the pre-sentence report, which arose from apparently genuine efforts by the appellant at reform and which involved compliance with previous orders. Of course, that level of compliance is moderated by the fact that the offending in this case coincided in time with it.

There was also personal mitigation arising out of the fact that his partner is ill, and they have a young child and are expecting another. There had also been a personal family tragedy which has caused him difficulty in controlling his temper. These offences of course do not involve temper in any way — they were calculated and entirely deliberate offences.

Having concluded that a prison sentence was inevitable in this case, the judge averted to the guideline on the imposition of community and custodial sentences and the factors in favour and against the suspending of the prison sentence and decided that it should not be suspended. The judge identified the bottom of the relevant range as the starting point before considering aggravating and mitigating factors and arrived at 18 months for count 1. Having regard though to the aggravating and mitigating factors to which we have referred, he decided that the sentence should be increased by 50% to 27 months. He applied his 15% discount to produce a sentence in respect of that count of 23 months.

Although the firearms offence was committed in the unusual circumstances and for the unusual reasons which are set out in the basis of plea, it was nevertheless the case that he was prohibited, by reason of his serious criminal convictions, from possessing firearms and he knew it. The weapon could have been destroyed or handed into the police but he decided instead to keep it. The judge concluded that a consecutive term of imprisonment was required and imposed a sentence of 1 month in relation to the firearm, making up the 2 years in total which we have already mentioned.

It is submitted on his behalf by Mr Oliver, who has advanced helpful written submissions and has supplemented those orally in argument concisely but forcefully before us this morning, that the judge in sentencing failed to apply the guidelines properly in relation to the money laundering sentence and failed to reflect adequately the significant mitigating factors to which we have referred.

Discussion

For the reasons given by the judge, we agree that it would not have been right to suspend the inevitable sentence of imprisonment which had to follow from the commission of these serious criminal offences by this appellant who has a significant criminal history. However, we are unable to agree with the judge that the starting point of 18 months required an increase of 50% in relation to the money laundering count.

The only aggravating features identified in the guideline were the previous convictions and the failure to comply with current court orders.

There were no substantial mitigating features in respect of the money laundering offence as identified in the guideline, but in the 18 months since his arrest and before sentence he had not offended and he had been earning a legitimate income to support his family. There were, as we have said, other mitigating factors which are material to the case which are not identified in the guideline but nevertheless apply.

The aggravating and mitigating features here are in a sense opposite sides of the same coin. They reflect a history of significant criminal offending which aggravates the position, but they also demonstrate a cessation of that conduct for a significant period of time and a level, albeit rather compromised, of compliance with the court orders which have resulted.

Taken overall we consider that it was reasonable to make some increase to reflect the aggravating factors in the case, notwithstanding the mitigating features but we consider that an increase from 18 months to 21 months would have sufficed. That requires a discount in the region of 15% to produce a sentence of 17 months' imprisonment.

On the rather extraordinarily and at first blush implausible explanation of the possession of the firearm, which the judge accepted and by which he was bound, it was appropriate to reduce very substantially the sentence of imprisonment which would ordinarily be imposed on a man with a serious criminal record for violence who was found in possession of what was, in the end, a significant weapon. The judge did that. In the ordinary run of events possession of a firearm in ordinary circumstances by a man with this history would result in a very significant sentence of imprisonment. The judge moderated it to one of 1 month which he imposed consecutively to the sentence for money laundering. We consider that that approach was entirely right and did appropriate justice in the case and had regard to the basis of plea to the fullest extent possible. We therefore do not interfere with that sentence, but it will now run consecutively to the sentence of 17 months in respect of the money laundering offence, making a total sentence of imprisonment in this case now of 18 months. We quash the sentence on count 1, substitute a sentence of 17 months for it but otherwise the appeal is unsuccessful. To that extent, it succeeds.