

Neutral Citation Number: [2019] EWCA Crim 1454

No: 201900303/A4

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 25 July 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE JULIAN KNOWLES

HIS HONOUR JUDGE MICHAEL CHAMBERS QC
(Sitting as a Judge of the CACD)

R E G I N A

v

ELYACE HAMCHAoui

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Mr J Scobie QC appeared on behalf of the **Applicant**

J U D G M E N T
(As approved)

1. HIS HONOUR JUDGE MICHAEL CHAMBERS: The applicant, now aged 23, but 20 at the time of the offence, renews his application for an extension of time (125 days) in which to apply for leave to appeal against sentence, the application having been refused by the single judge.
2. On 3 July 2018, in the Crown Court at Blackfriars before His Honour Judge Radford the applicant was convicted of the offences on indictment T20177153, namely count 7, conspiracy to possess a firearm with intent to endanger life and count 8, conspiracy to possess ammunition with intent to endanger life. In relation to those two offences he was sentenced on 17 August 2018 to periods of 14 years' imprisonment concurrent on each count.
3. Previously, on 17 July 2018, in the Crown Court at Wood Green, the applicant pleaded guilty to count 2 on another indictment, T20170785, an offence of possessing a controlled drug of Class B, to which he was sentenced also on the 17 August to 2 months' imprisonment concurrent.
4. The essence of this case is that the applicant was part of a conspiracy to transfer firearms of the utmost seriousness. On 10 April 2017 the co-defendant, Hamza Ahmed, acting as a courier, met an unidentified male in a residential street and took possession of a black holdall. A few minutes later the taxi in which he was travelling was stopped by armed police officers. The holdall was examined and found to contain an Israeli IMI 9 mm Parabellum calibre sub-machine gun, a sound moderator for use with the sub-machine gun, 13 9mm Parabellum calibre cartridges capable of use with the sub-machine gun and also a loaded HAFDASA Ballester-Malina .45 automatic self-loading pistol and five .45 automatic calibre cartridges capable of use with the pistol all found within the magazine of the gun.
5. The transfer of the weapons was to be through the co-defendant, Aron Thomas. The applicant acted as an intermediary between Thomas and Ahmed; he was in telephone communication with both of them. Communications were made using a variety of "dirty" mobile telephone numbers. Although not present at the transfer itself, the evidence showed that the applicant was deeply involved in organising the transfer.
6. The co-defendant, Thomas, was also involved in another linked offence and his case was aggravated by the fact that he was on licence for offences of possessing and using a loaded firearm to cause serious injury, for which he received 11 years' imprisonment in 2010.
7. The learned judge in sentencing the applicant underlined that the defences were of the utmost seriousness. The judge acknowledged that the firearms had not been used albeit that was because of the intervention of the armed police officers. He considered dangerousness but determined that the criteria did not apply in relation to the applicant.
8. The grounds of appeal are that the sentence of 14 years' imprisonment was manifestly excessive firstly, because of what is suggested was the range indicated for intermediaries

as set out in Attorney-General's Reference Nos 128 - 141 and 8 - 10 of 2016 (R v Stephenson & Ors) [2016] EWCA Crim 54. It is submitted that that case indicated that there should be a range for intermediaries of between 8 to 12 years' imprisonment. The second reason is that the applicant was 20 years at the time and of previous good character.

9. The written grounds have been amplified in the forceful and helpful submissions of Mr Scobie QC who appears for the applicant. In essence, it is submitted that the sentence is excessive. It is accepted that the applicant played a pivotal role but it is argued that he should not be regarded as being at the top end of the scale because he was not present at the transfer. Secondly, it is submitted that insufficient weight was attached to his personal mitigation.
10. It is right to observe that the applicant was of previous good character, he had a number of positive references and also had expressed remorse in the pre-sentence report.
11. We have had given careful consideration to the case of Attorney-General's Reference Nos 128 - 141 and 8 - 10 of 2016. That was a case which concerned the provision of firearms in the Birmingham area, notably handguns. That case stressed, as indeed do we, what was said by the Court of Appeal in R v Wilkinson [2009] EWCA Crim 1925, by the then Lord Chief Justice (Lord Judge) who stated:

"The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals want them: that is why they use them: and that is why they organise their importation and manufacture, supply and distribution. Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community."

12. In the Attorney-General's Reference to which we refer Lord Thomas considered the role played by intermediaries and at paragraph 7(iii) stated as follows:

"The role played by those who assisted in these transactions varied, but as Parliament has stipulated a minimum sentence of 5 years for those in possession of a gun, we consider that it was inappropriate to pass sentences with a starting point of less than 8 years for those who assisted in putting guns into circulation. Their criminality lay in assisting in putting guns and lethal ammunition into the hands of a purchaser. Sentences materially greater were required in cases where the assistance was significant; in the present case the sentences should have ranged from 12 to 8 years, depending on the role they played and any previous association with guns."

13. The indications given in that case are clearly of general assistance, but in our judgment some caution should be adopted because they relate primarily to the tariff in the particular circumstances of that case. Mr Scobie QC has helpfully referred us to the example of the case of Mentore, summarised at paragraph 52 of the judgment, in which the total revised

sentence was one of 14 years' imprisonment. He makes the point that the previous convictions were extensive. In our judgment, that particular example, as in the case of Smith also cited, are not entirely helpful given that they concern single guns with different overall circumstances. We suggest, with respect, that perhaps of more assistance are the cases of Miah and Abdin, summarised at paragraphs 45 and 46 respectively, in particular in relation to Abdin, who received a sentence of 12 years' imprisonment notwithstanding that he played a junior role.

14. Turning to the present case, in our judgment, the central and most aggravating factor was the nature of these two lethal weapons of the utmost seriousness, one a sub-machine gun, loaded with cartridges and secondly, a handgun also with loaded ammunition.
15. In considering weight to be attached to the applicant's good character, we are mindful of the positive points that can be made in relation to the applicant, not least of which that it is surprising that there has been such a significant change in his life from hitherto good character to criminality of this level. But that has to be balanced against the severity of the crime and public condemnation of those involved in serious gun crime. This was, on any view, a conspiracy involving the transfer of the most serious of weapons. A point is made that the applicant was not present at the transfer but, in our judgment, that is only one of the factors to be considered; on the evidence the applicant clearly played a close and pivotal role in organising and orchestrating what occurred.
16. In conclusion, therefore, in considering the applications for extension of time and also for leave to appeal against sentence, we are persuaded that the grounds are arguable in all the circumstances and we do grant leave. But for the reasons which we have already outlined, I am afraid we are of the view that although this was a severe sentence, it cannot be said that it is manifestly excessive and so the appeal is dismissed.

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