



JUDICIARY OF
ENGLAND AND WALES

Reference by Her Majesty's Attorney General pursuant to section 36 of Criminal Justice Act 1988

Henry Long, Albert Bowers and Jessie Cole – and – The Queen

[2020] EWCA Crim 1729

16 December 2020

SUMMARY

Judges: Dame Victoria Sharp P, Lord Justice Holroyde, Mr Justice William Davis

Introduction

1 On 24 July 2020, after a 5 week trial at the Central Criminal Court, Albert Bowers and Jessie Cole were convicted of the (unlawful act) manslaughter of P.C Andrew Harper. Henry Long had earlier pleaded guilty to that offence. The three men were acquitted on the same occasion of P.C Harper's murder. Long, Bowers and Cole had pleaded guilty prior to the trial to conspiracy to steal. At the time of these offences, Long was 18 years old and Bowers and Cole were 17 years old.

2. The facts relating to these offences and to the dreadful circumstances of P.C Harper's death are set out at [8] to [20] of the Court's judgment.

3. On 31 July 2020:

(i) For the manslaughter of P.C Harper, Long was sentenced to an extended determinate sentence pursuant to Section 226A of the Criminal Justice Act 2003 comprising a period of detention of 16 years and an extended licence period of 3 years; and Bowers and Cole were sentenced to 13 years' detention in a Young Offender Institution.

(ii) For the offences of conspiracy to steal, each man received a sentence that was concurrent to the sentences imposed upon them for manslaughter. Long was sentenced to 32 months detention in a Young Offender Institution and Bower and Cole were sentenced 38 months' detention in a Young Offender Institution.

(iv) Ancillary orders were made including the imposition of periods of disqualification for holding or obtaining a driving licence.

See [6] of the Court's judgment.

The judge's sentencing remarks

4. Part of what the judge said was this:

“Nothing which I can do, or could have done if there had been a conviction for murder, can restore Andrew Harper to his loving wife and family, or to the public he served so well. His devastating loss, in these terrible circumstances, will follow his family forever and they have the profound sympathy of the court and the whole nation in their loss. The victim personal statements are deeply moving and I have read them with care and listened intently to what was said in this courtroom. I heard the trial, and the facts I set out below are those of which I am sure, having heard the evidence. The jury were not sure that Henry Long knew that, as he was driving from Admoor Lane to Ufton Lane, the car he was driving was dragging a human body. That is what the prosecution had to prove before anyone could be convicted of murder, and they did not succeed in doing so. These young men therefore fall to be sentenced for manslaughter. Cases of manslaughter range greatly in seriousness. Sometimes death may be caused by an act of gross carelessness. Sometimes a case of manslaughter may be very close to a case of murder in its seriousness. That is so here. This is a very serious case of manslaughter.”

See [46] to [54] of the Court's judgment. A full transcript of the judge's sentencing remarks can be found at:

<https://www.judiciary.uk/wp-content/uploads/2020/07/LONG-BOWERS-COLE-AND-KING-sentencing-remarks-FINAL-1.pdf>

The applications before the Court

5. There are three applications before the Court:

- (i) Her Majesty's Attorney General applies for leave, pursuant to section 36 of Criminal Justice Act 1988, to refer the sentences of Long, Bowers and Cole for manslaughter as unduly lenient;
- (ii) Long, Bowers and Cole apply for leave to appeal against their sentences for manslaughter. Long applies for leave to appeal against the sentence imposed for conspiracy to steal;
- (iii) Bowers and Cole apply for leave to appeal against their conviction for manslaughter.

Sentence: manslaughter

6. In relation to Long, Her Majesty's Attorney General submits that the judge should have imposed a life sentence, not an extended determinate sentence. Long's age was not a reason not to impose a life sentence. In any event, the custodial sentences for all three men were too short. The judge should have reached a provisional sentence, before making deductions for Long's age and guilty plea, outside the top of the range set by the Sentencing Council, for unlawful act manslaughter. If Long's custodial term was too short, so too were the custodial terms of Bowers and Cole. Although the judge was correct to consider the relevance to culpability of their young ages and learning difficulties, he made excessive reductions on those grounds.

7. The Court refuses the application by Her Majesty's Attorney General for leave to refer the sentences of Long, Bowers and Cole as unduly lenient. The Court also rejects as wholly unarguable, the submission made by Long, Bower and Cole that their sentences for manslaughter were manifestly excessive or wrong in principle.

8. The judge had to sentence three young offenders for manslaughter, not for murder. Mere disagreement with his decisions as to the nature and length of the appropriate sentences provides neither a ground for finding the sentencing to have been unduly lenient nor a ground for finding a sentence to have been wrong in principle or manifestly excessive. The essential issue in each of the applications is whether the judge passed a sentence which was outside the range properly open to him in all the circumstances.

9. The Court does not accept that the risk posed by Long could not be met by anything other than a life sentence, or that an extended determinate sentence was insufficient and that the judge wrongly relied on age alone as a reason for not imposing a life sentence. When considering the risk posed by a young offender who has been found dangerous, a judge is entitled to take into account the prospect of maturation (with consequent reduction in risk), and must also have regard to the availability of alternative sentences, in particular in this case, a lengthy extended determinate sentence. See *Attorney General's Reference no 27 of 2013, R v Burinskas* [2014] EWCA Crim 334, [2014] 1 WLR 4209 and *Clarke* [2018] 1 Cr App R (S) 52 at [5].

10. The availability of an extended determinate sentence, and the judge's decision as to the appropriate custodial term, meant that Long would be in custody for over a decade and would be subject to licence conditions for the remainder of the 16 year custodial term and for a further 3 years after that. The judge was, unarguably, entitled to conclude that an extended sentence of such length would provide sufficient protection for the public.

11. The Sentencing Council guideline for unlawful act manslaughter came into effect in November 2018 after widespread public consultation. It has a wide sentencing range. It specifically caters for cases of very high culpability and those in which a police officer is killed whilst acting in the execution of his duty. The aggravating features relied on by the Attorney General were all taken into account by the judge either as part of his assessment of culpability or as an additional aggravating factor.

12. The Attorney General's argument does not make good the submission that it was not properly open to the judge to impose custodial terms of a length within the guideline offence range or that the judge made excessive reductions from his provisional sentence for Bowers and Cole on grounds of their age and learning difficulties. The reductions made by reason of their ages were in accordance with the principles stated in the Children and Young People guideline, and no basis has been shown for the implicit contention that the judge should not have followed that guideline.

13. In respect of the applications for leave to appeal against sentence, the judge was plainly entitled, for the reasons which he gave, to find Long to be dangerous. The Court sees no merit in the submission made by Long that the finding was wrong. The judge was correct to find the offence to be a very serious example of manslaughter by an unlawful act and one which was close to murder in its seriousness. The challenges made to some of the findings of fact which led the judge to that conclusion are rejected, as is the submission that there was unfair disparity of sentencing as between the offenders: the judge was plainly entitled to treat Long, the oldest of the three and the leader and the driver, differently from Bowers and Cole.

See [58] to [94] of the Court's judgment.

Sentence: conspiracy to steal

14. The offence of conspiracy to steal was clearly a serious offence of its kind, for the reasons which the judge gave, and he was entitled to impose the sentence he did on Long. Because Bowers and Cole were still 17 when they were convicted of the conspiracy to steal, a sentence of detention in a Young Offender Institution could not be imposed for that offence: such a sentence is only available for those aged 18-20 when convicted. The only custodial sentence available for that offence in their cases was a detention and training order. The maximum term of such an order is 24 months. There was no proper

ground for withholding credit for their guilty pleas, which (because of the statutory provisions governing the length of such sentences) would reduce their sentences to 18 months. The sentences imposed must accordingly be corrected. This does not affect the sentences for manslaughter and, because the sentences were concurrent, it does not affect the overall length of the sentences. See [95] to [96] of the Court's judgment.

Ancillary orders: disqualification

15. No applicant has advanced any ground of appeal in relation to disqualification, but for the reasons identified in the judgment, the record relating to Bowers and Cole must be corrected. The correct periods of disqualification are: in Long's case, 13 years 8 months and until he takes and passes an extended driving test; in each of the cases of Bowers and Cole, 8 years 6 months and until he takes and passes an extended driving test. See [97] to [101] of the Court's judgment.

Conviction: the applications by Bowers and Cole

16. The judge left unlawful act manslaughter to the jury on the basis that an agreement to behave in a dangerous way in furtherance of a crime of theft is a dangerous and unlawful act for the purposes of unlawful act manslaughter. The Court concludes he was right to do so. The applications for leave to appeal against conviction on this and other grounds, are refused as wholly unarguable. See [21] to [44] of the Court's judgment.

Disposal

17. The Attorney General's applications for leave to refer is refused. The sentences for manslaughter passed on Long, Bowers and Cole remain in place.

Bowers and Cole are granted leave to appeal against sentence and their appeals are allowed only to the very limited extents identified at [14] and [15] above. Their sentences of 38 months detention in a Young Offender Institution for conspiracy to steal are quashed, and Detention and Training Orders for 18 months are substituted in each case. Those sentences will run concurrently with the sentences of detention imposed for the offence of manslaughter, and so do not alter the overall sentence imposed by the judge. The orders for disqualification are quashed and substituted in each case an order that he be disqualified from driving for 8 years 6 months (comprising a discretionary period of 2 years and an extension period of 6 years 6 months) and until he takes and passes an extended driving test.

Long's application for leave to appeal against sentence is refused.

The applications for leave to appeal against conviction, made by Bowers and Cole only, are refused.

See [102] of the Court's judgment.

NOTE: This summary is provided to assist in understanding the Court of Appeal, Criminal Division's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are publicly available. *A copy of the judgment in final form as handed down can be made available after 10.30am on 16 December 2020.*