CASE NO 202200388/B4
202200476/B4

Neutral Citation No. [2023] EWCA Crim 10
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London
WC2A 2LL

Date: 15.12.2022

Before:

LADY JUSTICE THIRLWALL
MRS JUSTICE CHEEMA-GRUBB
and
MR JUSTICE SWEETING

REGINA
V
JACOB PAUL COOKSON
LOGAN EATON

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MR S SWIFT appeared on behalf of the Appellant Cookson.
MR J SANDIFORD KC appeared on behalf of the Appellant Logan.
MR C HASSALL KC & MR L HUGHES appeared on behalf of the Crown.

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J U D G M E N T
(Approved)

LADY JUSTICE THIRLWALL:

1. This case is about what happens when a judge has imposed a life sentence with a minimum term, reduced for the number of days spent on remand in custody and it comes to light that the number of days has been miscalculated.
2. In the Crown Court at Manchester on 20 January 2022, after a trial, the appellants were each convicted of murder and on 28 January each was sentenced to detention at Her Majesty's Pleasure. The judge was informed that each had been on remand for 216 days. Before imposing the sentences the judge said,

   "In each case the 216 days that you have spent in custody will count towards your sentence. If my calculation is wrong, that may be corrected administratively."
3. In Cookson's case the judge set the minimum term at 19 years less 216 days, which he expressed as 18 years and 149 days. In Eaton's case the minimum term was 17 years less 216 days, which he expressed as 16 years and 149 days.
4. The figure of 216 days had been agreed by counsel after discussions and communicated to the judge. A dock officer from HM Young Offender Institution, Wetherby, where the two defendants were held, said in court that he thought the correct number was 213 days but he was unsure about the status of public holidays. In the light of agreement between counsel the judge used the figure of 216 days to reach his minimum terms.
5. By email, sent to the Court on 3 February, the resettlement officer from Wetherby said that staff there believed that the correct number of days spent on remand for both appellants was 213 and invited the Court staff to agree. The email was forwarded to the court clerk who had been present during the trial including at sentence. It does not appear that he brought the email to the attention of the judge. He informed Wetherby that the judge had said that the number of days could be adjusted administratively if the figure

was incorrect and he (the clerk) undertook to amend the record which he duly did. Thus the official sentencing record showed that in respect of each appellant the minimum term had been increased by three days.

6. The case came before this Court in November. On that occasion the Court considered renewed applications for leave to appeal against conviction and sentence from both applicants. The applications were dismissed save that we gave leave to appeal in respect of the way the court dealt with the error in respect of the number of days on remand.

The approach to Days on Remand.

7. The approach to the treatment of the calculation of days on remand when imposing a determinate sentence is different from the approach when imposing a mandatory life sentence (or its equivalent) with a minimum term. We were told that the practice in the former has influenced the practice in relation to the latter so that the form of words used by the judge in this case is routinely used when a life sentence with a minimum term is bring imposed. This form of words does not reflect the law, as we shall explain.
8. Where a judge passes a determinate sentence, the length of time to be served (but not the sentence) is reduced by the number of days spent on remand as well as any early release provisions. That is the effect of section 240ZA of the Criminal Justice Act 2003, as amended. It is automatic. It is an administrative matter. The release date under the early release provisions is calculated by the Prison Service. Sentencing judges, as part of their explanation of the effect of the sentence, usually refer to the number of days that will count towards the sentence and add that if the number given is incorrect the record will be adjusted. Where an administrative adjustment is made the time to be served is altered,

the sentence is unaffected. It remains as passed by the judge.

9. When sentencing for murder it is for the judge to impose a life sentence (in this case detention at His Majesty's Pleasure) and, if not imposing a whole life order, to identify and impose a minimum term to be served before the offender may be considered for parole. The effect of the minimum term order is that the Early Release Provisions contained in the Crime (Sentences) Act 1977 do not apply until the minimum term has been served (see section 321(4) of the Sentencing Act 2020). Having identified the minimum term in accordance with schedule 21 and other guidance the judge is then required, by section 322(1)(b) of the Sentencing Act 2020, to "take into account the effect that section 240ZA Criminal Justice Act 2003 would have if the court had sentenced the offender to a term of imprisonment". Taking account of the effect of section 240ZA means that the judge reduces the length of the minimum term by the number of days spent on remand.

10. There is no requirement that a judge, having been informed of the number of days served on remand, should carry out the arithmetical calculation. Most recently the appropriate procedure was set out by Treacy LJ in the case of R v Buckingham [2014] EWCA Crim 2007. At paragraph 23, he confirmed that the correct approach to comply with the statute was to express the minimum term as X years less Y months and Z days. In the later case of R v A [2014] EWCA Crim 2483, a different constitution of this Court said:
"In our view, it is not wrong in principle for a court to do the maths and to be precise and express the minimum term as a single end result... but the court should, if at all possible, specifically spell out the period on remand, which was taken into account, so that if there is a mistake in the period it can be identified and rectified."

11. It seems to us that it is a matter for the sentencing judge which approach he takes to the

arithmetic. Nothing turns on it in this case. The resulting minimum term is part of the sentence of the court. It is not subject to administrative review. It follows that the judge's reference to adjusting the number of days administratively was an error, as was the change to the Crown Court record, purporting to record an increase in the minimum terms.

12. This issue was considered in the decision of this Court in R v A. The same answer was given as that which we give today: administrative adjustment is not permissible. This is not a technical issue. Responsibility for sentencing lies, always, with the judge.

13. Where an error in the calculation of the number of days comes to light, it should be put before the judge to consider whether or not to list the case under the slip rule, pursuant to section 385 of the Sentencing Act 2020 which, like its predecessor provision, can in some circumstances be used to increase a sentence.

14. Where the number of days has been understated so that the minimum term imposed is longer than it should be, the sentencing judge will reduce the minimum term to reflect the additional days served and there will be no need for submissions or argument. The change to the minimum term must be announced in open court.

15. However, where it comes to light that the number of days has been overstated and the judge considers it may be in the interest of justice to adjust the minimum term upwards, the judge will consider whether he would be assisted by written submissions in the first instance and whether the case should be listed for argument in open court or in chambers. The appropriate procedures are set out in rule 28 of the Criminal Procedure Rules 2020 and CPD VII Sentencing S:VARIATION OF SENTENCE.

16. Any change in the sentence must be announced in open court, even if the argument takes place only in writing or in chambers. It is not always necessary for the parties to attend.

17. Had the matter been drawn to the attention of the judge in this case, given the number of days and the length of the minimum terms, we consider it overwhelmingly likely that the judge would not have been minded to change the minimum terms. A hearing would not have been necessary.
18. The sentences remain as announced by the judge. The Crown Court record should not have been changed. We have directed that it be corrected so as to record the sentences passed; that is, in respect of Cookson, Detention at HM Pleasure with a minimum term of 19 years less 216 days and Eaton, Detention at HM Pleasure with a minimum term of 17 years less 216 days.
19. The remaining ground of appeal falls away and is dismissed.

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