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IN THE COURT OF APPEAL

CRIMINAL DIVISION



CASE NO 202300589/A4

[2023] EWCA Crim 862

Royal Courts of Justice

Strand

London

WC2A 2LL

Thursday 13 July 2023

Before:

LADY JUSTICE WHIPPLE DBE

MRS JUSTICE CUTTS DBE

THE RECORDER OF SHEFFIELD

HIS HONOUR JUDGE JEREMY RICHARDSON KC

(Sitting as a Judge of the CACD)

REX

V

ALEXANDER SCUTT

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MR C PRIOR appeared on behalf of the Appellant

J U D G M E N T
(APPROVED)

THE RECORDER OF SHEFFIELD:

Introduction

1. This is an appeal against sentence brought with the leave of the single judge. The appellant is Alexander Scutt. He is aged 56 years. He was sentenced to six years' imprisonment by His Honour Judge Gold KC in the Crown Court at Lewes on 3 March 2023 in respect of firearms offences. There were three counts in an indictment and two charges which were the subject of committal for sentence. The appellant either pleaded guilty or indicated a guilty plea at the first opportunity. He was entitled to full credit subject to the minimum term provisions governing firearms offences.
2. The crimes for which he fell to be sentenced were three counts of possession of a prohibited weapon, contrary to section 5(1)(aba) and schedule 6 of the Firearms Act 1968. These counts relate to a starting pistol and two self-loading Mauser pistols (counts 1, 2 and 3). There was also a committal for sentence for two charges of possession of a shotgun without a certificate, contrary to section 2(1) of the Firearms Act 1968. These related to a Belgian single-barrelled folding shotgun and a German 12-bore shotgun.
3. On counts 1, 2 and 3 in the indictment the appellant was sentenced to concurrent terms of six years' imprisonment. On the two charges which were the subject of committal for sentence concurrent terms of one month's imprisonment were imposed. All other appropriate orders were made by the judge.
4. The appellant was convicted of an offence listed in schedule 20 of the Sentencing Act 2020, namely possession of a prohibited weapon. In accordance with section 311 of the Sentencing Act 2020 the judge was obliged to impose a required minimum sentence of five years unless the court was of the opinion that there were exceptional circumstances which related to the offence or the offender that justified not doing so. There is no power to reduce the required minimum period to reflect a reduction for guilty plea (see R v Jordan, Alleyne and Redfern [2004] EWCA Crim 3291).

The Facts

5. The appellant is the owner of a toy shop at Worthing in West Sussex. He has an interest in restoring firearms for historical re-enactments and charitable events. He participated in charitable good works in the area in which he lived. He was described in the pre-sentence report as a "good-natured individual" who had become somewhat complacent in his handling of weapons. This, the author of the report suggested, may be due to the fact that he cannot read and write. There was not a shred of evidence to suggest the appellant is involved in crime or even on the fringes of it.
6. These crimes came to light in the following way. On 23 October 2021 at approximately 2.00 pm a member of the public was walking down Rowlands Road in Worthing with his wife and child. He saw a grey hatchback motorcar and noticed two males stood to the

rear of the car which had the boot open. The member of the public walked past and as he did so saw one of the males holding what he thought to be a small black handgun. He overheard one of the males saying: "If you're clever with this". He did not remember what the rest of the conversation was and continued to walk. The member of the public was concerned by what he had seen and called the police. Firearms officers were deployed at the scene and arrived shortly afterwards. When they arrived the two males were no longer present but a female was sat in the front passenger seat. As officers were engaging with her, the appellant appeared from the nearby toy shop. He matched the description of one of the males that was given by the member of the public. A search of the vehicle was conducted. The appellant said there were toy guns in the back of the vehicle as he owned the toy shop from which he had just emerged.

7. During a search of the car officers found a box containing toy guns but also in the box were two self-loading pistols. The officer saw they appeared to still have the firing pins intact.
8. The toy shop was searched and nothing of interest was found. Officers then attended the appellant's address but nothing was found in the house. However, when searching multiple buildings in the rear garden, officers located a significant number of long-barrelled and short-barrelled firearms within a shed. It appeared that a large number of them were historical military rifles that bore deactivation marks. However some of the items did not have those marks. One of the shotguns was a single barrel breach loaded shotgun and one of the others was a bolt action shotgun. There were two self-loading Mauser semi-automatic pistols. One of the pistols was found to fire standard 7.65mm cartridges and was found to operate normally as a firearm. The other was subjected to testing with the same calibre of cartridge but repeatedly mis-fired due to a fault in the firing mechanism.
9. The appellant was interviewed twice. In the first interview he stated that he knew the guns located in the boot of the vehicle were real and confirmed the female in the car had no knowledge of them. In his second interview when asked about the weapons located at his home address, the appellant denied having any viable firearms or any illegal weapons.
10. The appellant had no relevant previous convictions. There was an offence of theft in 1989, driving with excess alcohol in 2006, and being drunk and disorderly in 2009.

The Hearing in the Crown Court

11. The judge had the advantage of reading a number of important documents before passing sentence. There was a very positive pre-sentence report which revealed the appellant had been remorseful and harboured no intention to harm anyone with the weapons. It also indicated there was no involvement with criminals, and the guns were kept as props for exhibitions and charitable events. There was no suggestion the appellant was a dangerous offender.

12. The judge also had the advantage of reading several character references from individuals who knew the appellant and wrote in very favourable terms about him. This included local residents and a Member of Parliament. This was acknowledged by the judge who observed that the appellant was "really the last sort of person who should be sent to prison."
13. The judge rejected the submission that the case amounted to exceptional circumstances and thus he could not disapply the minimum term provisions. The judge expressed the view that a sentence following a trial would have been nine years' imprisonment. He allowed full credit and reduced that to six years' imprisonment.
14. It is unclear to us where the judge reflected the mitigating features of the case in his analysis and eventual sentence. The judge certainly made reference to them. He appears only to have reduced the sentence by one-third by reason of the guilty pleas and the stage at which they were entered.

Submissions on behalf of the Appellant

15. The appellant has been given leave to appeal on two basic grounds. First, there were exceptional circumstances in this case which would have allowed the court to derogate from the minimum term provisions; and second, a sentence of nine years following a trial before reducing that sentence for a guilty plea produced a manifestly excessive sentence in any event.
16. Mr Christopher Prior on behalf of the appellant has submitted this morning by way of amplification of his grounds of appeal that the judge below failed adequately to reflect the following key components of mitigation:
 - (1) The appellant has no relevant previous criminal convictions.
 - (2) There was a positive and helpful pre-sentence report which revealed the appellant had changed his behaviour.
 - (3) The appellant had no criminal contacts and was a man with a small toy shop as his only source of income. This would inevitably collapse by reason of a long prison sentence.
 - (4) He had excellent references.
 - (5) He had an elderly mother who relied upon him for help and support.
17. We should add for the sake of completeness there is no criticism levelled at the sentences which were the subject of the committal for sentence.

Discussion

18. The commencement of the search for the correct level of sentence in a case of this kind, where there is a definitive guideline, is that guideline and a need to follow the familiar stepped approach. That is particularly so where there is a minimum term provision to be considered, as well as the critical issue of totality.
19. The relevant definitive guideline is that issued by the Sentencing Council on Firearms Offences which became effective on 1 January 2021. We also remind ourselves that the statutory maximum for each of these three offences on the indictment is 10 years' imprisonment. At step 1 the court is required to consider culpability and harm. In this appeal there is no issue at step 1 that the type of weapon was within type 1 and there was lower culpability, as the appellant had no intention to use the weapon nor did he use any of them for an illegal purpose. Consequently by reference to the amalgam of those two features the culpability category was B. With regard to harm or risk of harm the case falls firmly into Category 3 as there was minimal distress and no risk of death or physical harm or disorder by what the appellant did.
20. At step 2 the case falls firmly into Category B3 which produces a starting point of five years and six months and a range of five to seven years. This is a case where the minimum term provisions obtain and where the range open to the court is therefore limited. There are no statutory or other aggravating features. However this was a case where the lead sentence had to reflect multiple offending which is a factor that would increase seriousness. On the other hand there are significant factors reducing seriousness and reflecting personal mitigation which may be listed in summary form and has been amplified this morning in the submissions by Mr Prior. We repeat: no relevant convictions, positive features of the appellant's character, genuine remorse, the fact that he has a dependent relative and his criminality may in part stem from his inability to read and write which led to a level of complacency with regard to adherence to the law relating to firearms. Mr Prior has added that there is a high unlikelihood of further criminal activity by the appellant. All the other weapons the appellant possessed were replicas and props. The weapons were basically cosmetic items for displays and events as we have explained. The offending, he argued, stemmed from ignorance and he emphasised, in essence, the appellant is kind-natured man.

Exceptional circumstances

21. The exceptional circumstances advanced in this case by Mr Prior are as follows:
 - (1) The appellant is essentially a hobbyist who did not realise what he had as being a weapon that he should not have had.
 - (2) The items were for charitable and other events of that kind.
 - (3) These weapons were not purely for the enjoyment of himself but were for display purposes, again in the way that we have described.
 - (4) He emphasises the features of mitigation.

22. He argues that an amalgamation of those various features warrants a court determining there are exceptional circumstances in this case.
23. Mr Prior was right to acknowledge at the outset of his submissions on this subject that he understood fully the reasons and rationale for the minimum term provisions, not least the issue of deterrence.
24. The guideline at step 3 covering minimum terms and exceptional circumstances reads as follows:

"Step 3 – Minimum term and exceptional circumstances

Minimum term

1. Where the minimum term provisions under section 311 and Schedule 20 of the Sentencing Code apply, a court must impose a sentence of at least five years' custody irrespective of plea unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.

Applicability

2. The minimum term provisions apply when sentencing an offence under the Firearms Act 1968, section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a) committed on or after 22 January 2004 and to an offence under section 5(1)(ag) or (ba) of that Act committed on or after 6 April 2022. Note: the minimum term provisions do not apply to offences charged as conspiracies.
3. The minimum term applies to all such offences including the first offence. Where it applies the sentence cannot be reduced below the minimum term for a guilty plea (see step 5 – Reduction for guilty pleas).
4. The minimum term of five years applies to offenders aged 18 or over when the offence was committed. See below for guidance when sentencing offenders aged under 18 when the offence was committed.
5. Where the minimum term applies, this should be stated expressly.

Exceptional circumstances

6. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:

- the particular circumstances of the offence and
- the particular circumstances of the offender

Either of which may give rise to exceptional circumstances

7. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see Criminal Practice Directions 9.3.3 Sentencing.
8. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

9. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
10. The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.
11. The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.
12. The mere presence of one or more of the following should not in itself be regarded as exceptional:
 - One or more lower culpability factors
 - The type of weapon or ammunition falling under type 2 or 3
 - One or more mitigating factors
 - A plea of guilty

Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence. Note: a guilty plea reduction applies in the normal way if the minimum term is not imposed (see step 5 – Reduction for guilty pleas).
14. The court may find it useful to refer to the range of sentences under

culpability A of Table 2 (Offences not subject to the statutory minimum sentence) in step 2 above. The court should impose a sentence that is appropriate to the individual case."

25. We wish to emphasise that consideration of this aspect of the case is often a considerable challenge for a court. The issue has to be approached with immense care, primarily because Parliament has laid down an explicit minimum term for a crime. The will of Parliament must be respected. Furthermore, the criminality here involves firearms and any crime connected to a firearm is by definition a serious matter. The expression adopted by Parliament to permit derogation from the minimum term is "exceptional" and that may relate to either the particular circumstances of the offence and or the particular circumstances of the offender. We particularly reiterate the principles for assessing that situation at paragraphs 9 to 12 of the definitive guideline.
26. The appellant in this case had potent mitigation. He was not leading a life replete with criminality, he was not associated with local villains or hovering on the edge of criminal activity. He was a somewhat inadequate man who ran a very small business. He refurbished firearms for use in historical exhibitions and charitable events. The important features of mitigation furnished the appellant with much that serves to reduce the sentence.
27. We have considered two cases: **R v Cook** [2017] EWCA Crim 1200 and **R v Bartell** [2020] EWCA Crim. 625. The latter was a Reference by the Attorney General. We need only refer to the latter judgment which was given by Simon LJ (Simon LJ, McGowan J and His Honour Judge Bate). That case had a number of similarities to this appeal. It was decided before the advent of the current guideline. However, the guideline covers much of which was contained in judgments of this court, in particular **R v Nancarrow** [2019] EWCA Crim 470. It is right to say that in the **Bartell** case there was a previous firearms offence. There were also four firearms and the offender had converted them for use. There was also associated ammunition. We have considered what was stated by Simon LJ in **Bartell** at paragraph 27:

"Ultimately the test would be whether the imposition of the minimum sentence would lead to a sentence that is arbitrary or disproportionate. However, the answer to that question must be considered in the light of the clear statutory intent that the offences to which section 51A apply must be met with strong deterrent sentences. This will mean that in some cases the sentence will be a harsh sentence and may appear particularly so where the offender has pleaded guilty."

28. We agree with that observation and it has plain resonance in the context of the current definitive guideline.
29. We appreciate there are differences in this appeal to the cases to which we have referred. This appeal is arguably not as serious. However, this court is not permitted to strain the

clear language Parliament has employed simply because the result may seem harsh. We reiterate that each case is different and each case is distinctly fact-specific. We also reiterate the term "exceptional circumstances" does not merely mean the offender has potent mitigation. The definitive guideline at step 3 makes the position clear.

30. The appellant is not a hardened criminal and his offending is not curated criminality. We focus on the circumstances of the offending and the offender. We find him to be a man who cannot read or write, who has offered much to his local community and in respect of whom several people (including an MP) were prepared to speak well of him. The offending was unusual in that it arose due to his complacency and not any desire to deliberately flout the law in a covert manner. However, we must acknowledge the need for deterrence. There is a need for a sentence of some substance. We are unable to say that an amalgam of the circumstances of the offending and the offender make the minimum term sentence in this case one which may be properly characterised as arbitrary and disproportionate. It is not.
31. In the circumstances of this appeal we are unable to say the important features of mitigation which have been identified may be characterised as exceptional in the way demanded by Parliament and the helpful guidance of the Sentencing Council. Accordingly, we agree with the judge that exceptional circumstances do not apply to this case.

The Length of Sentence and Totality

32. It is important that steps 4 to 9 in the guideline are not overlooked.
33. One feature of this case which does not appear to have been at the front and centre of consideration is the principle of totality which features at step 6 of the guideline. There is a requirement to pass a sentence which is just, proportionate and reflective of overall criminality by reference to the over-arching guideline of the Sentencing Council on Totality. We are unpersuaded this feature of the case was as central to the analysis of the circumstances of this sentencing exercise as it should have been. It is our view to increase the sentence to nine years before taking account of the guilty plea and mitigation was manifestly excessive in the circumstances of this case.
34. It is our judgment that each one of the counts in the indictment, had they stood alone, would have warranted a sentence of five years following a trial before consideration of any mitigating features. They each fall at the lowest end within the framework of the guideline. There are three of them and, in addition, the two shotgun offences. That would have served to increase the notional sentence to seven years, absent any mitigation. It must be remembered these crimes all occurred at effectively the same time in the same circumstances. Then there is the potent mitigation to which we have referred. This would serve to reduce the sentence to six years before consideration of plea. The appellant pleaded guilty or indicated a guilty plea at the first opportunity. This provides a further reduction from six years to four years. However, in the absence of exceptional circumstances the court is not permitted to reduce the level of sentence

below the statutory minimum. In these circumstances the lowest level of sentence has to be five years' imprisonment.

Conclusion

35. We propose to achieve that result by reducing the sentences on the three counts in the indictment from six years to five years concurrent on each. The other concurrent sentences will remain undisturbed. The total sentence is five years' imprisonment.

36. To that extent this appeal is allowed.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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