Neutral Citation Number: [2024] EWCA Crim 190

Case No: 202302624 A3

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM LIVERPOOL CROWN COURT
MR JUSTICE GOOSE
T20237007

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/02/2024

Before:

THE LADY CARR OF WALTON-ON-THE-HILL
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
MRS JUSTICE MAY DBE
and
MR JUSTICE FOXTON

- -

Between:

Connor William Chapman	**Appellant**
- and -	
Rex	**Respondent**

- -
- -

Mr Mark Rhind KC & Mr Daniel Travers (instructed by **Gibbons Law Ltd**) for the **Appellant**
Mr Nigel Power KC & Ms Katy Appleton (instructed by **The Crown Prosecution Service**) for **The Crown/Respondent**

Hearing date: 29 February 2024

- -

Approved Judgment

This judgment was handed down *ex tempore* on 29 February 2024 in Court 4.

.....

The Lady Carr of Walton-on-the-Hill, LCJ:

1. This is a case in which reporting restriction orders have been made, both in the court below and in this court, under section 46 of the Youth Justice and Criminal Evidence Act 1999 and section 4(2) of the Contempt of Court Act 1981. All orders are in place for the purpose of these proceedings, with the exception of three named persons in respect of whom reporting restrictions have been lifted. The reporting restriction orders do not prevent the public reporting of our judgment.

Introduction

2. On 6 July 2023, following a trial in the Crown Court at Liverpool before Goose J and a jury, the applicant, Connor Chapman (aged 23 years) was convicted of the murder of Elle Edwards, the attempted murder of Kieran Salkeld and Jake Duffy, two counts of wounding with intent contrary to section 18 of the Offences against the Person Act 1861 and one count of assault contrary to section 47 of the Offences against the Person Act 1861, and of the unlawful possession of a firearm and ammunition. He had pleaded guilty before trial to handling stolen goods, namely a stolen Mercedes A Class car used in the murder.

3. On 7 July 2023, the Judge sentenced the applicant to a mandatory sentence of imprisonment for life for the murder, with a minimum term of 48 years (less 176 days served on remand). This sentence was imposed on the basis that it reflected the totality of the applicant's offending. Thus, the Judge imposed concurrent custodial sentences on the remaining offences as follows: imprisonment for life, with a minimum term of 22 years on each of the two counts of attempted murder (counts 2 and 3); seven years' imprisonment for each of the section 18 offences (counts 4 and 5); 18 months' imprisonment for the section 47 offence (count 6); 15 years' imprisonment for each of the firearms offences (counts 7 and 8); and three years' imprisonment for the offence of handling stolen goods (count 9).

4. The applicant seeks leave to appeal, and his application has been referred by the Single Judge to the full court. In summary, it is contended that his sentence is manifestly excessive for two reasons: first, that in reaching the minimum term of 48 years, the Judge failed properly to assess the overall seriousness of this case, as against other exceptionally serious cases; and secondly, that the Judge failed sufficiently to reflect the applicant's age.

The Facts in Summary

5. The background to the shocking events for which the applicant fell to be sentenced is the violent criminal rivalry between gangs connected to the Woodchurch and Ford

Estates on the Wirral. The applicant was a very active member of the Woodchurch gang. Jake Duffy and Kieran Salkeld were leading members of the Ford gang. The rivalry between the two gangs manifested itself in a number of shootings in 2021 and 2022, which were a source of substantial anxiety for the people of Merseyside.

6. On 23 December 2022, one of the applicant's gang associates was attacked by Duffy and Salkeld in the street. Upon learning of this attack, the applicant decided to seek revenge through the murder of Duffy and Salkeld.

7. On the evening of Christmas Eve 2022, word reached the applicant that Duffy and Salkeld would be drinking at the Lighthouse public house in Wallasey village that evening. The applicant decided to drive to Wallasey to murder them there. He put false registration plates on a stolen Mercedes A Class car (which he also used for drug dealing), disguised himself with dark clothing, a mask, a hood and gloves, and sourced a Skorpion sub-machine gun with a loaded magazine carrying 12 bullets. Thus equipped, he set off from his home on the Woodchurch Estate, taking care to avoid security cameras on the way.

8. When he reached Wallasey, the applicant reconnoitred the area. He drove to six different places until he reached the car park close to the front door of the Lighthouse pub. He then hid in the car and waited for the opportune moment to carry out his attack. As midnight approached, the Lighthouse pub was busy, with revellers enjoying the festive season and looking forward to Christmas Day. At one point a number of individuals were standing outside the pub, including Duffy and Salkeld, and also Elle Edwards (aged 26 years), Harry Loughran, Liam Carr and Nicholas Speed. At some point the applicant moved from the Mercedes to a hiding place at the side of the building. At 11.52 pm he jumped out and emerged a few metres in front of the group outside the pub. He fired the sub-machine gun indiscriminately at the group, pulling the trigger 12 times in quick succession and in three separate bursts, emptying the magazine. The incident was captured on various CCTV footage, a compilation of which we have viewed. He fired his last few shots as he ran back to the Mercedes. In his obsession for revenge against Duffy and Salkeld, he was utterly indifferent to who else might be or would be killed or injured in the process.

9. Two bullets struck Elle Edwards in the back of her head, and she was killed instantly. Duffy and Salkeld sustained very serious injuries. Duffy sustained through and through injuries to both thighs. He was operated on and discharged from hospital on 27 December 2022. Salkeld was in an unstable condition on arrival at hospital and, following surgery, went into intensive care. He was discharged from hospital on 7 January 2023. Harry Loughran and Liam Carr were both wounded – Harry Loughran in the left forearm, and Liam Carr in the left shin. Nicholas Speed was also injured; he sustained a mark on his calf. Each of the other five could easily have been killed.

10. The applicant drove straight from the shooting to the home of his friend and co-defendant, Thomas Waring, to hide the stolen Mercedes car, the sub-machine gun. He left at least one of the gloves worn by him in the shooting (later found by the police). He then spent days after the attack attempting to remove or destroy evidence which would identify him as the gunman. This included washing the clothes worn by him during the attack, disposing of the clothing and his shoes, and destroying his mobile telephone.

11. On 30 December 2022, one of his friends had booked tickets for the two of them to travel to Spain.

12. The Mercedes car had been hidden close to where the applicant lived. Six days after the attack the applicant and Waring picked it up. The car was driven to a remote place in convoy with another Mercedes owned by another of the applicant's friends. The applicant and Waring set fire to the Mercedes to destroy. Waring and the other friend then returned in another Mercedes.

13. On 31 December 2022, a woman booked accommodation in Wales and hired a car for the applicant. The applicant drove that car to Wales, where he was arrested. A search of his house revealed clothing worn in the attack still in the washing machine.

14. The applicant provided a prepared statement in which he claimed to have been at home with his girlfriend at the time of the attack and declined to answer questions in interview. He pleaded not guilty. At his trial, he gave evidence over the course of three days.

The Sentence

15. The Judge had before him not only all of the evidence adduced at trial, but additional material, including a community impact statement from Detective Inspector Mullen. That witness statement revealed, amongst other things, the following information relevant to deterrence: five firearm discharges in the Wirral in 2021, reducing to 9 in 2022, the index event being the last of those occasions. Since the applicant's arrest in 2023, there had been no firearms discharges in the Wirral. So far as the wider Merseyside area is concerned, in 2022 there had been 49 firearm discharges, five of which were fatal, and three of which were committed with Skorpion sub-machine guns. That figure had reduced in 2023 to 23, the lowest figure for firearm discharges in Merseyside for the past 20 years.

16. In sentencing, the Judge observed that the murder of Elle Edwards had caused profound and permanent grief to her family and indeed a great shock to the entire community. He referred to the exceptionally moving statements from Elle Edwards' family – from her father, her brother and her grandmother – which statements we have also read.

17. The Judge recorded that the sentence for murder is imprisonment for life, but that he had to decide whether the applicant should serve a whole life sentence or a minimum term. He indicated that he had considered carefully whether the applicant's offending was so exceptionally serious in the context of the gravest of murder offences that he should serve the whole of his life in custody. The Judge determined that the offending was on the borderline between a whole life order and a very long minimum term, and in those circumstances felt unable to conclude that a whole life term, as a sentence of last resort for the very gravest of murders, should be imposed.

18. Addressing the statutory starting points for murder set out in Schedule 21 to the Sentencing Act 2020, the Judge identified the starting point for the minimum term which the applicant would have to serve in custody before seeking release as being 30 years. The case fell within paragraph 3 of Schedule 21, because the murder involved the use of a firearm. The Judge then noted that that starting point had to be adjusted for two sets of factors. First, were the factors increasing the seriousness of the murder. In

this category the Judge identified the choice of weapon, which was exceptionally dangerous; the very public location of the offence, with many people present; the background of criminal gang violence; the "substantial" preparation and premeditation; the removal or destruction of important evidence; the fact that the applicant was the subject of criminal gang injunctions; and the dealing in Class A drugs. He noted that the only mitigating factor was the applicant's age (22 at the time of the offences and 23 at the time of sentence). He noted that whilst young age can be significant, in the circumstances of this offending it had very limited weight as a mitigating factor.

19. Taking these factors into account, the Judge stated that the minimum term would need to be increased to 36 years, before consideration was given to the other offences. We refer to this element of the increase from the 30-year starting point as "the initial uplift".

20. The Judge then turned to the two offences of attempted murder, the two offences of wounding with intent to cause grievous bodily harm, the section 47 assault, the two firearms offences, and the handling convictions. He stated that he would pass concurrent sentences for these offences, but that the seriousness of all of the offending had to be reflected in the minimum term imposed for the murder offence. On that basis he increased the minimum term to one of 48 years' custody. We describe this final uplift as "the further uplift".

21. The concurrent sentences imposed for the other offences were as follows: for the offences of attempted murder, the Judge concluded that the applicant was a dangerous offender and that discretionary sentences of imprisonment for life were appropriate under section 285 of the Sentencing Act 2020. The Judge held that these offences fell into category A2 for the purpose of the Sentencing Council Guidelines on Attempted Murder, with a starting point of 30 years' custody for a single victim. The Judge raised the starting point to 33 years for aggravating features. The minimum term for the discretionary life sentences was accordingly set at two-thirds of that figure (22 years). The Judge held that the offences of section 18 wounding with intent fell within category A3 of the relevant Sentencing Council guideline, with high culpability and category 3 harm. Adjusting a starting point of five years' custody, he arrived at a sentence of seven years' imprisonment on each. He found that the section 47 assault fell within category A3 offending of the relevant Sentencing Council guideline, and he imposed a concurrent sentence of 18 months' imprisonment. The offences of the possession of the firearm and the possession of ammunition were found to be both category 1A offences of the relevant Sentencing Council guideline. Concurrent sentences of 15 years' imprisonment were imposed. Finally, the Judge imposed a concurrent term of three years' imprisonment for the handling offence, based on category 2A offending within the relevant Sentencing Council guideline.

22. In support of the overarching submission that the sentence was manifestly excessive, two grounds of appeal are advanced on the applicant's behalf by Mr Rhind KC. First, it is said that the Judge had failed properly to assess the overall seriousness of this case, as compared with other exceptionally serious cases, when determining the appropriate minimum term. The question for the Judge was, or should have been: where on the scale did the applicant's offending lie? Mr Rhind submits that, as bad as this offending was, there will always be more serious cases. The sentence imposed by the Judge in this case leaves no room for manoeuvre.

23. Secondly, it is said that the Judge failed sufficiently to reflect the applicant's age when determining the appropriate minimum term. It is emphasised that the applicant had no relevant previous convictions for violence. The applicant was only 22 at the time of offending; the ability of young people to analyse and understand the potential consequences of their actions does not mature fully until the age of 24 to 25. The applicant's age afforded a small, but nevertheless material, degree of mitigation which needed to be reflected in some way in the sentencing exercise.

24. Additionally, it is submitted:

> (1) That some of the factors relied upon in making the initial uplift, such as the removal and destruction of evidence, and the fact that the applicant was subject to a gang injunction, did not justify a significant adjustment to the minimum term and became almost insignificant in the context of the starting point of 30 years.
>
> (2) That there had been double counting, both in making the initial and further uplifts. The gang-related background of the offending and the breach of the interim gang injunction reflected essentially the same culpable conduct. The additional culpability in the use of the sub-machine gun and the firing of 12 separate shots was already reflected in the location and the timing of the offence and the fact that six people had been shot.

25. Expanding on the submission that the sentence here did not fit in with an approach based on a scale of offending, Mr Rhind took us to various previous appeals considered by this court, including *R v Stewart and Others* [2022] EWCA Crim 1063 (*Stewart*). He suggests that the minimum terms there deemed appropriate indicate that the 48 year minimum term here was too high. Reliance was placed, for example, on the minimum term of 48 years imposed on Monaghan following convictions for three murders and two attempted murders.

26. In addition, in terms of planning and premeditation, Mr Rhind emphasised that this was a single incident upon which the applicant must have decided to embark only hours before he committed the offence. The Judge was wrong to conclude that this offending involved a "substantial" degree of premeditation or planning within the meaning of Schedule 21 to the Sentencing Act 2020. Mr Rhind drew a contrast between the degree of planning said to arise here with, for example, the planning by Monaghan. Monaghan had poisoned one of the victims over the course of a week. It was held that that did not amount to “substantial” premeditation or planning.

27. Mr Power KC for the respondent opened his submissions by emphasising that this court should be slow to interfere with the Judge's careful assessment of the facts, having heard all the evidence at trial. He also emphasises the element of deterrence as emphasised in the witness statement of Detective Inspector Mullen. As for age, Mr Power accepts that age is not irrelevant, but that fundamentally it is maturity that matters. The applicant gave evidence over three days and the Judge was well placed to assess his maturity. The minimum terms in Schedule 21 are themselves adapted for age. Further, the applicant's age has to be seen in the context of his criminal offending overall, which went well beyond his previous antecedents.

28. As for planning, Mr Power submits that there was clearly substantial planning and premeditation here, particularly when seen in the context of the applicant's overall

criminal lifestyle, the background and build up to the precise offending in question, and the fact that the applicant was able, immediately upon hearing of his intended victims' location, to act in the manner in which he did.

29. Finally, as for the scale of offending, Mr Power says that the appropriate approach is to look at the facts of each case and to deal with the correct sentence on that basis, and that basis alone. In any event, Mr Power suggests that this sentence does leave sufficient room for more serious offending, and submits that whole life sentences are no longer the rare beast that they were once thought to be.

The Legal Framework

30. Section 321 of the Sentencing Act 2020 sets out the circumstances in which a whole life order must be imposed. Schedule 21 to the Act (Schedule 21), which has effect by reason of section 322(3), provides for the circumstances in which the starting point is a whole life order (see paragraph 2): namely, that the court considers that the seriousness of the offence or the combination of the offence and associated offences, is "exceptionally high", and the offender was aged 21 or over when the offence was committed.

31. The relevant principles to be applied when determining whether or not to impose a whole life order were summarised in *Stewart* at [19]. Amongst other things, it was recognised (at [19(iii)]) that the facts of some cases will leave the judge in no doubt that the offender must be kept in prison for the rest of their life. If there is doubt, that may be an indication that a finite minimum term which "leaves open the possibility that the offender may be released for the final years of their life is the appropriate disposal" (citing *R v Jones* [2005] EWCA Crim 3115 at [10]).

32. If the judge concludes that a whole life order is not necessary, they are obliged to set a minimum term: see section 321(2) of the Sentencing Act 2020. By section 322, the minimum term must take into account the seriousness of the offence and any period spent on remand in custody. In considering the seriousness of the offence, the court must have regard both to the Schedule 21 and any sentencing guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21: see section 322(3). The starting points identified in Schedule 21 are not to be applied mechanistically, but in a flexible way so as to achieve a just and proportionate result.

33. Paragraph 3 of Schedule 21 provides for the circumstances in which the starting point is a minimum term of 30 years; that is to say that the court considers the seriousness of the offence, or the combination of the offence and associated offences, to be "particularly high" and the offender was aged 18 or over at the time of the offending. Paragraph 3(3) identifies that a murder involving the use of a firearm will normally fall within paragraph 3.

34. Paragraphs 7 to 11 of Schedule 21 make provision for aggravating and mitigating factors. It is important not to double count by way of aggravation those features of the murder which give rise to a higher starting point, such as the use of a firearm, and features already inherent in the crime: see *R v Stanciu* [2022] EWCA Crim 1117 at [27] and [30].

35. As to the approach to be adopted when sentencing for associated offences at the same time as imposing a mandatory life sentence, it is appropriate to reflect each of the offences for which sentence is being passed: see *Attorney General's Reference (No 126 of 2010)* [2011] EWCA Crim 725 at [47] and *R v Thillainathan: Setting of Minimum Terms* [2007] EWHC 1323 QB at [18].

36. However, considerations of totality mean that the minimum term will not be the arithmetic total of that which would have been imposed for the offence of murder on a stand-alone basis. What is required is an exercise of judgment, applying the statutory criteria that the minimum term must reflect the seriousness of the criminality taken as a whole: see *R v Soj* [2022] EWCA Crim 1730 at [49].

Discussion

37. The Judge here concluded that this was not a case in which a whole life order was necessary. It was "on the cusp between a whole life and a very long minimum term". Thus, he was obliged to set a minimum term. There is no suggestion that the Judge erred in taking the 30 year minimum term in paragraph 3 of Schedule 21 as his starting point. The focus of the proposed appeal is the extent of the uplifts from that starting point.

38. We have considered the arguments advanced by reference to both the initial uplift and the further uplift although, of course, ultimately what matters is whether the minimum term of 48 years was manifestly excessive.

39. We note at the outset that there is no significant assistance to be gained from an examination of the outcomes in other cases, such as those in *Stewart*. We were also referred to *R v Cashman* [2023] EWCA Crim 1349 for general context. As the court observed in *Stewart* at [18(vi)] and *Cashman* at [23], comparisons with other cases are unlikely to be helpful.

40. Nor do we consider it helpful to consider whether the minimum term of 48 years is manifestly excessive by reference to a spectrum of possible alternative hypothetical offending, which may be more serious than the index offending. The structure of Schedule 21 itself identifies categories of seriousness. What is required is an assessment of whether or not a sentence is manifestly excessive by reference to what is a just and proportionate sentence reflecting the seriousness of the offending overall on the facts of each specific case.

41. We also note at the outset that this sentence was imposed by a highly experienced Judge who had presided over a lengthy trial. His crisp sentencing remarks reveal no error of principle. As for the facts, he was very well placed to assess the overall seriousness of the offending, including the applicant’s maturity and culpability.

42. The Judge was fully entitled to find that there were a number of serious aggravating factors in the murder of Elle Edwards which merited a significant increase in the starting point of 30 years for a murder with a firearm. First, there was the background to the offending in the form of criminal gang violence, including the breach of an anti-gang injunction and Class A drug dealing.

43. Secondly, there was premeditation and planning. The Judge, as we have indicated, had the full background to what was a substantial body of evidence relating to the build-up and criminal activity in the months leading up to and including December 2022. Further, it is important in this context to distinguish between two aspects. The applicant's planning on the night could only begin once he had been appraised of Duffy and Salkeld's movements that evening and the degree of planning and premeditation which was then brought to bear is obvious from the facts that we have outlined above. However, that does not mean that the applicant's intention to kill Duffy and Salkeld was only formed, as well as acted upon, that evening. The prosecution case was that, following the attack carried out by Duffy and Salkeld on 23 December 2022, itself the culmination of a long dispute between rival gangs, the applicant and Waring were in regular telephone contact. As we have noted, the applicant was then ready to act immediately upon learning of Duffy and Salkeld's location on Christmas Eve, with equipment and the firearm ready to go. Having heard all of the evidence in the case, the Judge observed on repeated occasions during the course of his sentencing remarks that this offending involved premeditated and carefully planned activity on the part of the applicant. We see no proper basis for interfering with that assessment.

44. Thirdly, there is the manner in which the murder was carried out. Even with the serious feature of a murder using a firearm, the use of a sub-machine gun represented an aggravating factor. The rapid and indiscriminate fire of which such weapons are capable generates an enhanced risk of death or serious injury, not simply to the intended victim, but to anyone in the vicinity. That risk was significantly enhanced here because of the location and timing of the attack: a public house on Christmas Eve in which it was clear that many bystanders were present celebrating the holiday season, alongside Duff and Salkeld.

45. Fourthly, there were concerted steps taken, in which the applicant involved a number of others, to conceal and destroy evidence which would have linked the applicant to the attack.

46. As to mitigation by reason of the applicant's age, the Judge considered this carefully. He concluded that it did have some, albeit very limited, effect in this case. We remind ourselves that the Judge had heard the applicant give evidence at trial. He was therefore well placed to assess maturity and therefore culpability. It was not suggested to him that a pre-sentence report was necessary, and we agree that one was not required. On the evidence, the applicant had a deeply embedded criminal lifestyle. He had acted on his own initiative, rather than under the direction or influence of anyone else in planning and implementing the attack, and then in attempting to cover it up. By the time of the murder the applicant had already accumulated 20 convictions for 45 offences over a period of six years. In addition, there was the evidence from the applicant himself of his embedded criminal lifestyle in the months before the murder.

47. Had the murder of Elle Edwards been the only offence for which the applicant fell to be sentenced, we would not have been persuaded that a minimum term of 36 years for a murder committed in these circumstances could be said to be manifestly excessive.

48. We turn to the further uplift made (from 36 years to 48 years) to reflect the other offences for which the applicant was to be sentenced. This is really the heart of the application.

49. We accept that it was important in this context to avoid double counting with the aggravating features of the murder offence. For example, the use of a firearm was reflected in the 30-year starting point already. The indiscriminate and highly dangerous nature of the weapon and the procuring of the weapon as part of the planning for the offence were all relied upon for the purpose of the initial uplift. We also accept that the features of the attack reflected in the matters set out above for the initial uplift - the nature of the weapon used with its inherent potential to cause indiscriminate injury, and the enhancement of those risks by the time and place of the location - can at some level be said to have manifested themselves in the other offences committed and the injuries caused to the other victims.

50. However, there are key elements of those additional offences which will not have been reflected in the initial uplift.

51. First, and most importantly, there is the fact that the applicant went to the Lighthouse pub and used the sub-machine gun with the intention of killing two people, albeit, as events turned out, he killed one person who was not his intended target. Secondly, in addition, whilst the circumstances of the murder were aggravated by the risks inherent in its means, location and timing, those risks materialised in the form of further criminal offences committed in each case with the necessary intent and each of which inflicted physical harm of varying degrees, but including, in some cases to a very serious degree, on additional victims. Those are matters which the Judge was required to reflect in the overall sentence.

52. The issue which arises in these circumstances is whether the further uplift of 12 years to reflect these factors and the totality of the offending can be said to be manifestly excessive, and, more fundamentally, whether that can be said of the minimum term of 48 years as a whole. As set out above, whilst it is not an arithmetical exercise and there must be no double counting, the additional associated offences merited very significant custodial sentences by themselves, with a minimum term of 22 years for each of the attempted murders alone.

53. Nevertheless, we consider it to be arguable that a minimum term of 48 years for a 22 year old with no relevant previous convictions, and where the factors justifying the starting point of 30 years and the uplift to 36 and then 48 years overlap to some extent, was manifestly excessive.

54. However, we remind ourselves that, as this Court recognised in *Stewart*, there are borderline cases in which the seriousness of the offending does not require a whole life order, but is nevertheless sufficiently serious to justify a finite minimum term, which leaves open the possibility that the offender may be released only for the final years of their life. The applicant here killed one person with murderous intent, and intended to kill two more. This was a case in which, in his obsessive determination to take those two lives, the applicant was willing to kill more and could so easily have done so. The additional offences merited very significant custodial sentences on their own.

55. It is important, in our judgment, that the Judge's assessment was that this was a case that fell on the cusp of offending which merited a whole life order. He gave the applicant the benefit of the doubt in imposing a finite minimum term. We are not persuaded that the Judge was wrong to conclude that this was a case where the applicant

should not be considered eligible for release by the Parole Board until his 70th birthday, with the possibility of release only for the final years of his life.

56. The further uplift, which resulted in an overall minimum term of 48 years, was in our judgment severe but not manifestly excessive. This was violent gang offending which involved a firearm and multiple victims, one of whom died. Many more could well have done so.

Conclusion

57. For these reasons we grant leave, but the appeal against sentence is dismissed. We confirm that the minimum term remains 48 years (less 176 days spent on remand), or 47 years and 189 days.
