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IN THE COURT OF APPEAL

CRIMINAL DIVISION

CASE NO 202202108/A1

NCN:[2023] EWCA Crim 91

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 26 January 2023

Before:

LORD JUSTICE EDIS
MR JUSTICE CAVANAGH
HIS HONOUR JUDGE THOMAS KC
(Sitting as a Judge of the CACD)

REX
V
JOHN PAUL EMEH

Computer Aided Transcript of Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London EC4A 1JS
Tel No: 020 7404 1400; Email: rcj@epiqglobal.co.uk (Official Shorthand Writers to the Court)

MR C SHERRARD KC appeared on behalf of the Applicant

J U D G M E N T

1. MR JUSTICE CAVANAGH: This is a renewed application for leave to appeal against sentence and for an extension of time of 1,096 days to make this application, leave having been refused by the single judge. The applicant was represented before us by leading counsel, Mr Charles Sherrard KC.
2. On 20 March 2019 the applicant was convicted after a trial at the Central Criminal Court of one count of wounding with intent, contrary to section 18 of the Offences Against the Person Act 1861 and one count of possessing a firearm with intent to endanger life. He was acquitted of attempted murder and a count of possessing ammunition without a firearms licence was ordered to lie on the file on the usual terms.
3. The applicant was sentenced at Blackfriars Crown Court on 6 June 2019. For the offence of possessing a firearm with intent to endanger life the applicant was given an extended sentence of 21 years, comprising a custodial term of 16 years and an extended period of licence of five years. For the offence of wounding with intent the applicant was given a sentence of 15 years' imprisonment to be served concurrently.
4. The applicant made an in-time application for leave to appeal against conviction. This application was considered and refused by the single judge on 4 September 2019. The application was renewed on 30 September 2019 and was refused by the full court on 3 July 2020.
5. The facts of the case are briefly as follows. The applicant became involved in a disagreement with the complainant, Mr Hassan Hadi regarding the ownership of a Range Rover motor vehicle that Mr Hadi had bought in 2016. A few months after Mr Hadi had bought the Range Rover, the applicant and some of his associates confronted Mr Hadi stating that the car belonged to the applicant and that Mr Hadi should return it. The applicant made threats against Mr Hadi. The matter initially remained unresolved.

Threats were made to Mr Hadi by mutual acquaintances of the two men.

6. Around 18 months passed by and the applicant decided to confront Mr Hadi once more. The applicant found out where Mr Hadi worked and on 22 July 2018 the applicant drove to Mr Hadi's place of work in Park Royal, London, a shisha bar, on a moped which had the licence plate removed.

7. The applicant arrived around 2.30 am. The applicant was armed with a handgun and ammunition. CCTV showed the applicant loitering in the area until around 4.30 am when Mr Hadi emerged from his place of work. The applicant confronted Mr Hadi who was driving the Range Rover vehicle that the applicant was attempting to recover. An argument ensued which some of Mr Hadi's friends witnessed. Mr Hadi told the applicant to stop threatening him and his friends and decided to call the police. The applicant appeared to make off and Mr Hadi tried to take hold of the applicant. The applicant then produced a gun from his right pocket and shot Mr Hadi in the leg. The applicant subsequently threatened Mr Hadi's friends by pointing a gun at them. The applicant then went back to Mr Hadi who was on the ground and pointed the gun at him and attempted to shoot him once more. However the gun jammed and the applicant could not fire another shot. The applicant thereafter ran to his moped and made his escape from the scene.

8. Mr Hadi suffered a gunshot wound to his right thigh. The judge rejected the defence's contention that only the victim's leg had been targeted. Some of the incident was captured on mobile phone footage and it was clear from the footage that this was not so.

9. The applicant was arrested and interviewed by the police on 28 September 2018. In interview, the applicant confirmed his name but thereafter refused to answer any questions asked by the police. At trial he denied that he was the gunman.

10. The applicant was born on 13 December 1983 and was aged 35 at sentence. He had seven convictions for 13 offences spanning from 30 May 2001 to 1 November 2013. His convictions included one for the offence of having an article with a blade or sharp point in a public place for which he had been sentenced to three months' imprisonment suspended for 12 months on 5 May 2005 at Thames Magistrates' Court.

11. We will deal first with the merits of the grounds of appeal and then with the merits of the application for leave to appeal out of time. The applicant has two grounds of appeal. These are that the custodial element of the sentence was manifestly excessive and that the judge's finding of dangerousness and the consequential extended sentence were unsupported and were manifestly excessive.

12. As for the first ground, the offence was premeditated. The applicant had travelled to the complainant's place of work in the middle of the night to exact revenge against him for a grievance. The offence was obviously planned as he had removed the licence plate from his moped. He carried a handgun. He lay in wait for his victim. He discharged the weapon. He shot his victim once and would have done so again whilst his victim was lying on the ground if the weapon had not jammed. The shooting took place in public in front of others who were exposed to danger. Further signs of planning were that the applicant took steps to avoid cell site evidence by leaving his mobile phone at home and disposed of the gun.

13. Mr Hadi's physical injuries were not as serious as they might have been but this was down to good fortune rather than anything else since the applicant had shot him in the upper thigh and had attempted to shoot him further up the body. Mr Hadi required surgery under general anaesthetic to remove the bullet and to close the wound. He now

walks with a limp. The victim impact statement showed that Mr Hadi had suffered some long-lasting psychological effects, although the judge discounted some of the psychological effects asserted by him.

14. In his careful and thorough sentencing remarks the judge took account of all relevant aggravating and mitigating factors. The applicant had very limited mitigation. He was the father of a young son, had a sick mother whom he cared for some of the time, and had only limited previous convictions and none of a comparable seriousness. The judge was aware that the applicant had previously been tried and acquitted for murder but expressly took no account of this when determining the appropriate custodial element of the sentence. The judge also made clear that he did not sentence the applicant on the basis that he had tried to kill Mr Hadi or had intended to do so. As the sentencing judge pointed out, in some instances it is appropriate for the offence of possessing a firearm with intent to endanger life to attract a longer sentence than for attempted murder: see R v Sheen [2011] EWCA Crim 2461. Also, as the judge observed, given the gravity of gun crime, deterrent sentences are appropriate for offences such as these.

15. The grounds of appeal refer to the current sentencing guidelines but they did not apply to this sentencing exercise because they were not in force at the relevant time. In any event, the sentence that was imposed was within the relevant range under the current guidelines, namely Category A2, high culpability and serious harm. The top of the range for this category is 17 years. In light of this offending it would have been appropriate, if the judge was sentencing in accordance with the current guidelines, for the custodial element to be near the top of the guideline.

16. In light of these matters it is not arguable that the custodial element of the sentence amounting to 16 years was manifestly excessive.

17. As for the contention that the judge was wrong to make a finding of dangerousness and/or was wrong to impose an extended period of five years, this also is not arguable. The judge directed himself correctly on the law relating to dangerousness and addressed the right considerations in his sentencing remarks. He was fully entitled to come to the conclusion that the applicant was dangerous. It is not necessary for a defendant to have a long history of violent offences to justify the making of a finding of dangerousness. The circumstances of this single offence, which we have already described, were enough in themselves to merit a finding of dangerousness. In particular, the applicant planned the attack carefully and attempted to shoot his victim more than once, including after he had been wounded and was lying on the ground. The applicant behaved very coolly whilst the incident took place. The judge was not obliged to follow the advice of the writer of the pre-sentence report, especially as the report contained no very detailed consideration of dangerousness.

18. The judge was fully entitled when considering dangerousness to take into account the circumstances of the incident which had led to the applicant being tried for murder on a previous occasion some 10 years previously, even though that matter was stayed for abuse of process after the jury was discharged at the conclusion of that trial.

19. The applicant had admitted in evidence at that trial to bringing a ceremonial or Samurai sword to a public place which was used to kill a man, but the applicant had said that he had acted in self-defence. This was part of the information about the offender which was before the court and so was material that the court was entitled to take into account: see R v Considine [2007] EWCA Crim 1166. In any event, the judge made clear that his finding of dangerousness would have been the same even if he had not taken the

circumstances of this incident into account and in our judgment that plainly would have been the right finding to make.

20. As for the duration of the extended period (five years), although this is the maximum for violent offences such as this, it was not arguably excessive given the circumstances of the offence for which the applicant was convicted.

21. As the applicant's appeal is not arguable we do not grant an extension of time. Even if his appeal had been arguable we would have had to consider carefully whether an extension of time should be granted. As this court has recently made clear in R v Paterson [2022] EWCA Crim 456, the mere fact that an appeal is arguable is not a trump card which means than an extension of time should automatically be granted. Even in such cases the court will only grant an extension if it is in the interests of justice to do so. The applicant was able to appeal in time, as was demonstrated by the fact that his appeal against conviction was lodged in time and the appeal is well over two years out of time. The court has not been provided with full good reasons for this delay. The existence of the Covid pandemic of itself is not sufficient, especially given that the applicant was able to lodge an appeal against conviction. Nevertheless, if there had been merit in the appeal we would have been minded to extend time. However, as our decision is that the appeal is not arguable, this means that an extension of time should not be granted.

22. For these reasons the application for leave to appeal is refused and the application for an extension of time for appealing is also refused.

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

Lower Ground, 18-22 Furnival Street, London EC4A 1JS

Tel No: 020 7404 1400

Email: rcj@epiqglobal.co.uk