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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Thursday, 18 July 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE PHILLIPS

HER HONOUR JUDGE MOLYNEUX MBE
(Sitting as a Judge of the CACD)

R E G I N A
v
"DM"
"SC"

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Mr P Mendelle QC & Ms A Piercy appeared on behalf of the **Appellant DM**
Mr H Godrey QC appeared on behalf of the **Appellant SC**
Mr N Corsellis QC appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: Saif Abdul-Magid, who had recently celebrated his 18th birthday, was stabbed to death on 6 October 2017.

2. These appellants (to whom we shall refer as "DM" and "SC") were convicted of his murder. They are even younger than their victim. Each was aged just 14 at the time of the murder and they are now 16.

3. They were sentenced, as the law required them to be, to detention at Her Majesty's Pleasure which is the form of life sentence applicable to persons of their age. The trial judge, His Honour Judge Moss QC, sitting at the Central Criminal Court, specified minimum terms of 14 years 6 months in the case of DM and 14 years in the case of SC. They now appeal against those minimum terms by leave of the full court.

4. In the court below an order was made pursuant to section 45 of the Youth Justice and Criminal Evidence Act 1999. We think it right, for the avoidance of any possible doubt, to make a similar order. We accordingly direct that whilst each appellant is under the age of 18, no matter shall be included in any publication if it is likely to lead members of the public to identify him as a person concerned in these proceedings. In particular there must be no publication of their names, their addresses, the identity of any school or any other educational establishment attended by them, the identity of any place of work or any still or moving picture of them.

5. For the purposes of this appeal, we can summarise the relevant facts quite briefly. It seems that there was some history of antagonism between SC and the deceased. On the night of 5 October 2017 the appellants and a friend encountered the deceased in Neasden. SC and Saif Abdul-Magid began first to argue and then to fight. Saif Abdul-Magid went into a shop and came out armed with a bottle. DM became involved and the appellants pushed Saif Abdul-Magid to the ground where he was kicked repeatedly. They and their friend then left the scene.

6. That incident gave rise to a charge of violent disorder against the appellants and their friend. DM was convicted of that offence, the other two were acquitted. Because violent disorder requires the use or threat of violence by three or more persons, the judge ultimately treated DM as having been convicted of the lesser offence of affray. Nothing turns on that point.

7. On the following afternoon, 6 October, the appellants and their friend returned to the scene of the incident. So too did Saif Abdul-Magid and three of his friends. The appellants and Saif Abdul-Magid were armed with knives. After a short exchange of words they walked around a corner to a parking area in the front of a housing estate which, as we understand it, was not covered by CCTV cameras as the place where they first met was. There a violent confrontation took place. It was of short duration, but in the course of it Saif Abdul-Magid was stabbed seven times. At least one of the stab wounds was inflicted whilst the deceased was on the ground. One of the wounds (a stabbing to the neck which penetrated to a depth of 11 centimetres) quickly proved fatal. Paramedics attended but

nothing could be done to save his life.

8. In that way a young life was abruptly ended and the lives of Saif Abdul-Magid's family and friends were blighted. It will be understood that we must decide this appeal in accordance with the law, but in doing so we are acutely conscious of the human realities of the case.

9. The appellants and their friend had meanwhile left the scene. SC had sustained a wound inflicted by the deceased but it was not serious. After leaving the scene, DM disposed of his knife which has not been recovered. SC surrendered himself to the police on 9 October. DM was arrested the following day.

10. At their trial, as we have indicated, both were convicted of murder. Their friend also stood trial on that charge but the jury were unable to reach a verdict in his case. It is unnecessary for us to refer to him further.

11. DM, who was 14 years 5 months old at the time of the murder, had one previous conviction for an offence of theft in October 2016. He had also received a juvenile caution for an offence of possessing an offensive weapon in school premises in November 2016. SC, who was 14 years 3 months at the time of the murder, had no previous convictions, cautions or reprimands. Pre-sentence reports were regarded as unnecessary.

12. In his sentencing remarks the judge indicated that he was satisfied that the appellants had not only been armed but had expected that they would encounter Saif Abdul-Magid and that there would be violence. He thought it likely that DM had inflicted the fatal stab wound to the neck, but he could not be sure of that. He was not sure that either appellant had intended to kill, but the jury had been sure that they both intended at least to cause really serious injury and the jury had rejected any suggestion of self-defence or defence of another.

13. The judge identified the following aggravating factors: the appellants had brought knives to the scene; the attack on the deceased was deliberate and probably pre-planned; it took place in full view of the public, including children; and it was a sustained attack which included stabbing the deceased when he was on the ground. In DM's case the judge also identified the affray conviction as a factor which he took into account in assessing the minimum term for murder.

14. The judge identified as mitigating factors the fact that the appellants had only been aged 14 at the time of the murder and the absence of an intention to kill. In SC's case he also took into account the appellant's previous good character. He indicated that DM's previous history did not affect the sentencing decision. The judge specified the minimum terms to which we have referred. He imposed no separate penalty for DM's offence of affray.

15. Each of the appellants now submits that his minimum term is manifestly excessive in length.

16. On behalf of DM it is submitted by Mr Mendelle QC that the judge did not give sufficient credit to his young age and that the judge gave disproportionate weight to the affray conviction, which Mr Mendelle suggests was a comparatively minor offence, in setting the minimum term 6 months longer than in the case of SC.

17. On behalf of SC, Mr Godfrey QC similarly submits that the judge failed sufficiently to reflect the appellant's young age and further submits that the judge did not give sufficient weight to the appellant's previous good character.

18. In a respondent's notice, to which Mr Corsellis QC has added in brief oral submissions this morning, it is submitted on behalf of the respondent that the sentences were neither wrong in principle nor manifestly excessive.

19. We are grateful to all counsel for their helpful and focused written and oral submissions.

20. Pre-appeal reports had been prepared in respect of each appellant and a psychological report has been prepared in respect of DM. These various reports are largely concerned with an assessment of the risk of further offending which, as we shall shortly explain, is not a matter with which are concerned in this appeal. We therefore refer to them only briefly.

21. In DM's case the reports reveal at best a mixed picture in terms of conduct and attitude since conviction but they show that DM is bright and able, is capable of applying himself to work and to study and can be a positive role model to his peers. DM's parents separated when he was 9 and there has been no father figure or positive male role model in his life, which is thought likely to have impacted on his emotional development as a child. We agree with the author of the pre-appeal report that it is an encouraging sign that DM remains positive regarding his future and is working towards achieving qualifications.

22. A similarly mixed picture in relation to post-conviction conduct and attitude emerges from the report in relation to SC. In his case it is noted that he has in the past been assessed as having significant learning difficulties and to be functioning academically below the level expected of his age range. Mr Godfrey submits however that that historical record does not reflect the current position and he does not submit that SC presently suffers from significant learning difficulties. Again, there are encouraging signs that SC is capable of working well and of being motivated to improve his behaviour.

23. As we have indicated, this appeal relates to the length of the minimum term which each appellant must serve. When a life sentence is imposed, the minimum term is the term which the court considers appropriate, taking into account the seriousness of the offence or, as in DM's case, the serious offence and of another offence associated with it. We must emphasise that it is indeed a minimum term. The appellant must serve the whole of the specified period before he can even be considered for release on licence. He will not be released until the Parole Board is satisfied that he can be released without danger to the public. If and when he is released the appellant will remain subject, for the rest of his life, to the restrictions imposed by his licence and may at any time be recalled to custody to

continue serving his life sentence. So it is that we are concerned in this appeal with the length of the minimum term which each appellant must serve by way of punishment, and it will be for the Parole Board to consider at some future date whether the appellant can safely be released.

24. Schedule 21 to the Criminal Justice Act 2003 prescribes different starting points for the minimum term in different situations. Paragraph 7 of that schedule states that if an offender was aged under 18 when he committed the murder, the appropriate starting point in determining the minimum term is 12 years. In the case of an adult offender the starting point is generally 15 years; but higher starting points are specified in certain circumstances and in particular, paragraph 5A prescribes a starting point of 25 years for an adult offender who murders with a knife or other weapon, which he has taken to the scene intending to commit an offence or to have it available to use as a weapon.

25. Having chosen the appropriate starting point the sentencer is required to take into account any aggravating or mitigating factors, some of which are identified in non-exhaustive lists in paragraphs 10 and 11. Paragraphs 11(a) and (g) identify an intention to cause serious bodily harm rather than to kill, and the age of the offender, as mitigating factors. Whatever starting point has been taken, consideration of the aggravating and mitigating factors may result in a minimum term of any length.

26. As counsel have rightly pointed out in their submissions to us, the paragraph 7 starting point of 12 years applies to all offenders aged under 18. The court must nonetheless consider age and maturity. The starting point of 12 years is not to be applied mechanistically without regard to those important considerations. However, given that the paragraph 7 starting point is lower than the adult starting point, and much lower when, as in this case, the murder has been committed with a knife taken to the scene for use as a weapon, it must be borne in mind that the youth of a young offender has already been taken into account to a significant degree by the terms of schedule 21 - see Attorney-General's Reference No 25 of 2012 (Ochaine Williams) [2013] 1 Cr App R(S) 124 at [30] and R v Dania [2019] EWCA Crim 796 at [55].

27. The extent to which any further reduction can and should be made on grounds of the offender's particularly young age will depend on all the circumstances of an individual case and cannot be determined by seeking to apply an arithmetical discount to the 12-year starting point.

28. The Sentencing Council has published a Definitive Guideline which sets out Overarching Principles for Sentencing Children and Young People. Because the sentence for murder is fixed by law, the nature of the sentence is not affected by considerations of the welfare of the offender, or of the principal aim of the youth justice system which is to reduce offending by children and young persons. It nonetheless remains important when considering the appropriate minimum term to consider the developmental and emotional age of the offender and to consider, in accordance with paragraph 4.10 of the guideline, whether the young offender has:

> "the necessary maturity to appreciate fully the consequences of their conduct, the extent to which the child or young person has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences."

29. In this case, it is not suggested that either appellant was unusually or particularly immature for his age. Although a report indicates, as we have said, that SC has in the past been assessed as suffering from learning difficulties, it does not appear to us, and Mr Godfrey does not submit, that they impacted to any significant degree on his culpability for the murder. We therefore approach the case on the basis that the appellants were subject to the levels of immaturity, emotionally volatility and impulsivity to be expected of their peers growing up in the circumstances of these appellants. The principal issue in this appeal, in our view, is whether the judge made sufficient allowance for those factors in setting the minimum terms.

30. The judge was faced with a difficult sentencing process. He was conscious, as this court is conscious, of the length of sentence viewed from the perspective of one as young as these appellants. It is convenient to consider first the case of SC, who was of previous good character and fell to be sentenced for the murder but for no other offence. We accept that his youth and consequent immaturity require a reduction below the starting point which would have been applicable even if he had been up to 3 years older. We recognise the element of peer pressure and desire not to lose face to which he and his co-accused were no doubt subject. His previous good character was also an important factor in his favour, for which a further reduction had to be made. But to be set against that was the seriousness of the crime, with the aggravating features which the judge rightly identified. In particular, the sentence had to reflect the fact that he had gone out on the day of the murder, armed with a knife and expecting to confront Saif Abdul-Magid. Young though he was, and notwithstanding any learning difficulties he may have suffered, he surely understood the seriousness of that action and the dangers of carrying a knife into an expected conflict.

31. We are unable to accept a submission made to us that mitigation is to be found in the suggestion that knives were carried with a view to self-defence against a young man who was himself expected to be armed. There is no escape from the fact that on the jury's verdict the appellants deliberately used knives, not acting in self-defence.

32. The judge fairly accepted that there was no intention to kill and we recognise that there may have been a failure on the part of a very young offender fully to think through the consequences of his actions. Nevertheless, SC deliberately chose to arm himself and deliberately used a knife with intent to cause really serious injury. Moreover, the fact that the knife attack took place in public, in the view of children as well as adults, was a serious aggravating feature.

33. Balancing these factors we are satisfied that the factors requiring an increase above the starting point significantly outweighed those militating in favour of the reduction below it. The judge was faced, as we have said, with a difficult sentencing decision which had to

balance the very young age of the offender against the seriousness of the offence. We conclude, after careful thought, that the judge imposed a minimum term which was within the range properly open to him and which cannot be said to be manifestly excessive.

34. Similar considerations apply in the case of DM. He did not have the advantage of previous good character and therefore could not expect any reduction in sentence on that ground, though his modest criminal record did not aggravate his position. In his case the sentence also had to reflect the commission of the offence on the previous night. We cannot accept the submission that it is appropriate to view the increase in the minimum term solely from the perspective of the sentence which would have been appropriate for a 14-year-old convicted of the affray alone. The affray was both a significant offence in itself, involving kicking on the ground, but also an aggravating feature of the murder of the same victim carried out less than 24 hours later.

35. We conclude that the distinction which the judge drew between DM and his co-accused, resulting in a minimum term which was 6 months longer, was justified in those circumstances. In his case also, and again after anxious reflection, we conclude that the minimum term was within the range properly open to the judge and cannot be said to be manifestly excessive.

36. For those reasons, grateful though we are to counsel for their admirable submissions, these appeals fail and must be dismissed.

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