Neutral Citation Number:[2019] EWCA Crim 608
No: 201206327/A2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 8 March 2019

B e f o r e:
LADY JUSTICE SHARP DBE
MR JUSTICE GOOSE

THE COMMON SERJEANT
HIS HONOUR JUDGE MARKS QC
(Sitting as a Judge of the CACD)

R E G I N A
v
DANIEL THOMAS ROGERS

Computer Aided Transcript of the Stenograph Notes 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)

WARNING: Reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Non-Counsel Application

J U D G M E N T
(Approved)

1. MR JUSTICE GOOSE: This is a renewed application for leave to appeal sentence, permission having been refused by the single judge, by Daniel Rogers, who is now aged 33. On 4 October 2012 in the Crown Court at Luton before His Honour Judge Foster, the applicant was convicted of murder. He was sentenced to imprisonment for life, with a minimum term of 25 years, less time served on remand. The applicant seeks an extension of time of five years and four months so that he may make this application.

2. The facts of this case can be summarised shortly. At the time of this offence the applicant was aged 27. After a disturbed night at home where his six-month-old daughter kept the applicant awake during the night, he went on a drinking binge, consuming numerous pints of lager and whisky at a number of pubs and clubs. By 5 o'clock in the morning on 22 January 2012 the applicant went to the offices of a taxi company to book a taxi. The deceased, who was aged 61, was the allocated driver for the applicant. He asked the applicant for payment in advance of the journey. He became abusive saying: "I have enough money to buy all you Paki's." The deceased tried to calm the applicant and was joined by a colleague who sought to explain why money was asked for in advance. The applicant repeated his racially abusive behaviour and followed the deceased into the taxi office. In the presence of others, the applicant assaulted the deceased by punching him and kicking him, including whilst he was on the floor. In a sustained and vicious attack, which was obviously racially aggravated, the applicant picked up a heavy office chair and brought it down onto the deceased before he ran off.

3. The applicant was arrested near to the scene. He spat at paramedics who had offered to help him and insulted the police officers. In later interview he admitted the assault and was subsequently brought before the Magistrates' Court and pleaded guilty to assault occasioning actual bodily harm. Unfortunately, the deceased's injuries were more serious than had been anticipated. Seven days later he died from the consequences of a head injury caused during the assault.

4. The applicant was convicted after a trial of murder. His defence had been on the contention that he was guilty of manslaughter alone.

5. In sentencing the applicant, the trial judge had adopted a starting point of 30 years for the minimum term because this was a racially aggravated murder within the terms of paragraph 5(2)(g) of Schedule 21 of the Criminal Justice Act 2003. There is no dispute that this was the correct starting point for the applicant. The judge discounted the minimum term from 30 years to 25 years to take into account the significant mitigating factors in this case. In particular, that the applicant intended to cause grievous bodily harm and not to kill; that the racial aggravation itself fell towards the bottom end of the spectrum; that the applicant suffered from Tourette's Syndrome and associated Obsessional Compulsive Disorder ("OCD") which, based on psychiatric evidence, caused the applicant considerable difficulties; that this offence was not premeditated and the applicant did not have a history of serious violence. The sentencing judge applied these significant mitigating factors to substantially reduce the minimum term by five years.

6. It is argued on behalf of the applicant that a greater reduction should have been applied to the minimum term and that the judge failed to give proper regard to the sentence approved by the Court of Appeal in R v Murphy [2009] EWCA Crim. 2859.

7. The single judge, in refusing permission to appeal, identified that the trial judge had taken into account the aggravating factors and all of the relevant mitigating factors to arrive at a minimum term of 25 years. The judge's reasoning and sentence could not be faulted. We have considered carefully the merits of this appeal and find ourselves in agreement with the single judge. Further, there is no merit in the argument that the sentencing judge failed to have proper regard to the decision of this court in R v Murphy. This court finds no assistance in seeking to draw a comparison between that case and this one. These two cases are factually different, principally because the court in R v Murphy was dealing with an 18-year-old offender, whilst the applicant was 27 when he committed this offence of murder.

8. Accordingly, we find no merit in this application for permission to appeal. Further, although we have read carefully the reasons offered by the applicant for the substantial delay in making this application, set out in his two letters received by the Court of Appeal office on 22 March 2018 and 7 January 2019, they do not provide sufficient or proper reason for a delay of five years and four months. Therefore, the application for an extension of time is refused, due to the lack of merit in the appeal and also in respect of the reason for delay.