No: 201801365/C1 & 201801482/C1
IN THE COURT OF APPEAL
CRIMINAL DIVISION

[2019]EWCA Crim 701

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday 5 April 2019

B e f o r e:

LORD JUSTICE FLAUX

MRS JUSTICE SIMLER DBE

THE RECORDER OF GREENWICH
HIS HONOUR JUDGE KINCH QC
(Sitting as a Judge of the CACD)

R E G I N A
v
MOHAMMED KHALID
NEVILLE BOWEN

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Mr J Stone QC appeared on behalf of **Khalid**
Mr P Keleher QC appeared on behalf of **Bowen**
Miss S Whitehouse QC appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

LORD JUSTICE FLAUX:

1. On 8 March 2018 in the Crown Court in the Crown Court at Kingston-upon-Thames following a trial before His Honour Judge Dodgson and a jury, the appellants Mohammed Khalid, now aged 21, and Neville Bowen, now aged 25, were convicted of the murder of Kyle Bowen. On 12 March 2018 the judge sentenced Khalid to custody for life, with a minimum term under section 269(2) of the Criminal Justice Act 2003 of 21 years less 304 days spent on remand, and Bowen to imprisonment for life with a minimum term under section 269(2) of 27 years, less 304 days spent on remand. Count 2 of the indictment against Bowen of threatening another with an article with a blade or point was ordered to lie on the file on the usual terms.
2. Khalid appeals against sentence with the leave of the single judge in respect of all three of his grounds. Bowen appeals against sentence with the leave of the single judge limited to his grounds 2 and 3. The single judge refused leave on ground 1 which has not been renewed.
3. The facts are as follows. At 1 am on Saturday 6 May 2017, the London Ambulance Service received a 999 call. The caller was immensely distressed and told the emergency operator that his friend was bleeding to death. Medical staff and police were swiftly despatched to the address and there they found Kyle Bowen lying just inside the door of a flat at Waterloo Road, Hayes, Middlesex. He was bleeding heavily from stab wounds and despite all the efforts of the emergency services he later died in hospital. He was 23 years old. With no disrespect intended to him or his family, we will refer to him as Kyle to distinguish him from the appellant Bowen (to whom he was not related), thus avoiding any confusion.

4. At the time of his death, Kyle lived with his mother in Hayes. He was doing an engineering apprenticeship in Slough and attended Uxbridge College for two days a week. On the day of his death he had just heard that he had passed his engineering exams.
5. Khalid was 19 years old and was a university student living in a hall of residence in Hackney. For some time before the murder he had been importing and dealing in drugs. This activity had been escalating. Bowen was 24 years old and was a friend of Khalid.
6. Dedan McLaughlin was 23 years old and a good friend of Kyle. They often smoked cannabis together. They both knew Khalid and the relationship between them revolved around the supply and purchase of drugs. On 5 May 2017, during the day and into the evening, McLaughlin had been in contact with Khalid and an arrangement had been made to meet up later that night to buy cannabis for which Khalid had quoted a good price. The meeting was to take place at the premises in Waterloo Road where Kyle was later killed. McLaughlin and Kyle talked about splitting the cost of the drugs between them, but they then made a decision that, if Khalid came to the meeting on his own, they would if they could rob him of the cannabis and make off without paying for it.
7. Just before 11.15 that evening, Bowen left his home address with his girlfriend Bonnie McLeave in his Ford Focus to collect Khalid. Khalid had evidently asked Bowen to come with him to the drugs meeting. Bowen was armed with two knives and Khalid knew that Bowen had at least one knife. The knife or knives were taken because they were both anticipating potential violence during the course of the drug deal and that if necessary a knife would be used.
8. The car was driven from East London to Uxbridge and was seen on CCTV in Waterloo Road at about 12.50 pm. Khalid and McLaughlin had been in contact by phone and text.

At about that time, McLaughlin had met up with Kyle and they were at the premises in Waterloo Road waiting for Khalid. Kyle waited at the top of the stairs and McLaughlin at the bottom. Khalid came to the gates with Bowen. McLaughlin decided that the plan to rob Khalid had to be abandoned and walked back to where Kyle was waiting on the stairs.

9. Tragically, Kyle thought the robbery plan was still on and brushed past McLaughlin, hitting Khalid in the face and knocking him to the floor. Bowen moved forward and reached into the bag he was carrying. He pulled out a knife and stabbed Kyle repeatedly. Khalid then came up and started kicking and punching Kyle to the head. A few seconds later a security light came on lighting up the scene and Khalid and Bowen fled to the car.

10. Kyle made his way bleeding to the front door of flat 22. He knocked on the door, shouting that he was doing to die. The occupants opened the door and he fell into the hallway. The emergency services were called and, as we have said, the police and ambulance service arrived within minutes. He was taken to hospital but was pronounced dead at 3.05 am. He had six stab wounds. One of these in his right leg had penetrated the femoral vein which bled extensively and caused his death. One of the stab wounds appeared to have been inflicted with a different knife from the others.

11. The appellants were arrested and interviewed. Khalid answered no comment throughout. Bowen did not answer questions but provided a written statement in which he said he had acted as driver for Khalid but apart from getting out of the car had not taken any part in assaulting or stabbing Kyle.

12. Khalid was born on 1 September 1997, so was 20 at the time of sentence. He was of previous good character.

13. Bowen was born on 9 April 1993, so was 24 at the time of sentence. He had nine convictions for 15 offences between May 2007 and November 2017. Relevant convictions included robbery and attempted robbery, battery, use of disorderly behaviour or threatening abusive or insulting words or behaviour, two offences of possession of a knife or bladed article in a public place in 2011 and 2012, and convictions for an affray and section 20 wounding in 2012 which had also involved his use of the knife to stab someone.

14. The judge had a victim impact statement read by Kyle's mother and a copy of her eulogy at his funeral, which we have also read and which shows how much Kyle was loved by his family and friends and how much he is missed.

15. In sentencing the appellants, the judge said that he was quite satisfied that they had set off together that night armed with knives in case they encountered trouble. As far as Bowen was concerned, carrying knives was something that he did routinely. He had convictions for carrying knives on two occasions and a conviction for wounding and affray which also involved a knife. He had no convictions in the last five years before his arrest, but the speed with which he used the knives and his subsequent storage of the knife beneath his bed satisfied the judge that he had a familiarity with knives and their use. He was addicted to Xanax and was dealing in that drug and also cannabis. The day before the murder he sent messages to 145 recipients advising them he had a new stock of cannabis for sale. He clearly had an interest in the drugs transaction on the night of 5/6 May and he was there armed with knives and ready to use them.

16. The judge considered that in relation to Khalid, there was force in the prosecution's suggestion that his internet searches made in March 2017 as to how to stab someone without killing them, coupled with his searching for a folding knife on the Amazon

website two weeks before this offence were made in anticipation of the escalation of his drug dealing activities, an escalation which he acknowledged in his evidence. These internet enquiries showed that he was aware of the dangers he might encounter and the steps he was prepared to take to counter them. The judge said that he had no doubt that Bowen had taken knives to the scene and Khalid knew Bowen was armed with knives ready for use in pursuance of their joint drug deal. He could not be sure Khalid himself was in possession of a knife, but there was no doubt they were in joint possession of the knives being carried by Bowen.

17. He could not be certain that Bowen intended to kill Kyle but it was clear that he intended to cause very serious injury which carried the risk of his death. Khalid joined in knowing that Bowen was not only armed with a knife but was using it with great violence. He too must have known that that behaviour put Kyle at real risk of death. The attack upon Kyle was vicious and sustained. The stab wound was inflicted with such ferocity that it penetrated the sternum. At trial they each blamed the other.

18. The judge confirmed that he had taken account of the fact that Bowen was a young man of 24 when fixing the minimum term. The judge was sure that Bowen took a knife or knives to the scene of the murder, but could not be sure that he intended that Kyle should die and an intention to cause only serious harm may act as a mitigating factor. The judge cited a passage from paragraph 16 of the judgment of this court given by Judge LJ in R v Peters [2005] 2 Cr.App.R (S) 627:

> "It cannot be assumed that the absence of an intention to kill necessarily provides any or very much mitigation. It does not automatically do so. That said, in many cases, particularly in cases where the violence resulting in death has erupted suddenly and unexpectedly, it will probably do so and it is more likely to do so and the level of mitigation may be greater if the injuries causing death were not inflicted with a weapon."

19. The judge said that he accepted that the violence erupted suddenly but by the time Bowen was attacking Kyle there was no danger to him or to Khalid and he had attacked Kyle in a sustained and vicious manner, giving rise to an obvious risk of death so that in the judge's judgment there was very little mitigation available to Bowen in that respect. His part in the attack was more serious and must be reflected in the minimum term imposed. He had convictions that demonstrated a propensity to use knives and further a propensity to behave violently and that too was an aggravating factor. The judge accepted that he had mental health difficulties and had suffered from anxiety and depression. He had apparently sought help but stopped taking the medicine prescribed for him and then began to self-medicate using Xanax. It was also submitted that he had experienced a number of difficulties in his life, which may provide some mitigation and that they explained his behaviour. The judge did not regard these matters as providing any mitigation in respect of the sentence that must be passed. He could obtain no credit for any plea. In setting the minimum term the starting point for murder in this category is 25 years. Taking all the factors into consideration, the minimum term that should be served was 27 years' imprisonment.

20. The judge said that he could not be sure Khalid was carrying a knife but that he knew Bowen was in possession of a knife or knives and the agreement between them was that they would be available to be used as a weapon and they were used when the murder was committed. Khalid was 20 and of good character. The judge bore in mind the evidence from his deputy headmaster as to his qualities, but against that positive evidence there was no doubt that in the months before his arrest he was dealing in drugs on an escalating scale. Therefore the credit that he could enjoy from his good character was thereby reduced. He was clearly an intelligent young man who had made real progress during a

difficult background, but in this one night he had destroyed not only the life of Kyle but any hopes he had himself of a worthwhile career. As the judge had said, he could not be sure Khalid was carrying a knife or that he had personally stabbed Kyle, but there was no doubt he had joined in this attack knowing its vicious nature and its probable outcome. The judge bore in mind that he was only 19 at the time of the offence. The starting point for the minimum term for a murder in this category was 25 years, but because of the factors the judge had listed he believed it was appropriate to reduce the minimum term to 21 years.

21. The first ground of appeal advanced by Mr Paul Keleher QC on behalf of Bowen is that the absence of an intention to kill and of any premeditation are statutory mitigating factors under paragraph 11 of schedule 21 to the Criminal Justice Act 2003. Whilst it was accepted that the weight to be given to them was a matter for the discretion of the sentencing judge, his determination that the absence of premeditation constituted little or no mitigation and that an intention to cause serious bodily harm rather than to kill constituted little mitigation, was wrong in all the circumstances of this case. The judge had been entitled to determine that there was no question of excessive self-defence, but the violence that broke out was initiated by McLaughlin and Kyle. Thereafter the incident was brief and in the darkness. Mr Keleher submitted that there was no proper basis for the judge concluding that it was a "sustained" attack. The fact that it gave rise to an obvious risk of death, as the judge described, was implicit in the jury's verdict since this was an element of the offence of murder. However, an important feature of Bowen's intention, it was submitted, was revealed by the fact that the fatal would inflicted was in fact the wound to Kyle's leg.

22. The second ground of appeal advanced on behalf of Bowen is that having determined

that his mental health and personal problems did not constitute mitigation of the offence itself, it had been wrong and irrational of the judge to discount them as personal mitigation. Whilst Bowen's choice of associates was a matter over which he had control, the uncontested evidence at trial had been that he was subjected to bullying by people who were not his friends or associates and it was a recorded fact that he had since experienced real mental health problems causing him to seek treatment. No adequate reason had been given as to why those matters did not constitute personal mitigation.

23. In support of his submissions in writing, Mr Keleher also relied upon the disparity between the sentence passed on Bowen and that passed on Khalid. Although the judge was not sure that Khalid had wielded a knife, he was sure that he joined in the attack knowing its probable outcome, but he was younger and had no previous convictions. The judge's decision to move significantly up the range in the case of Bowen becomes harder to understand when viewed against the decision to reduce the minimum term significantly in Khalid's case. Mr Keleher submitted that if the judge had given proper weight to the mitigating factors identified in his two grounds of appeal there should have been a reduction in the minimum term to at or somewhere below the 25-year starting point.

24. On behalf of the prosecution, Ms Sarah Whitehouse QC submitted that there were a number of aggravating features which justified an increase from the starting point of 25 years, in particular (1) the drug dealing context and the fact that Bowen went along to assist Khalid, anticipating violence; (2) the offence being motivated by retaliation for the attack on Khalid rather than excessive self-defence; (3) the ferocity of the attack, one wound penetrating the sternum; (4) the presence of two knives; (5) the infliction of multiple injuries and (6) the timing and location of the offence. It was submitted that

these aggravating features required a more than minimal increase from the starting point.

25. She accepted that there were mitigating features, namely his age, his mental health and personal problems and the absence of an intention to kill. However, she submitted that these were of modest weight and called only for a modest reduction. In relation to the alleged failure to treat the mental health and personal problems as personal mitigation, she submitted that the extent to which these matters were regarded as mitigation was within the proper exercise of discretion by the judge and that in any event the question whether he ought to have made a reduction in sentence for these matters was secondary to whether the alleged error resulted in a sentence which was manifestly excessive.

26. In relation to a lack of intention to kill, she referred us to the passage from the judgment of this court in Peters which the judge cited and which we have already quoted above. She recognises that in later cases such as Bouhaddaou [2006] EWCA Crim 3190, [2007] 2 Cr.App.R (S) 23 and Miah [2009] EWCA Crim. 2368, this court has said that the absence of an intention to kill and the absence of premeditation are important mitigating factors which may result in a significant reduction in sentence. However, she submitted that this was entirely a matter for the judge's discretion and it could not be said that his exercise of discretion was wrong in principle. The sentence passed, it was submitted, was justified and not manifestly excessive.

27. We agree with Ms Whitehouse that there were a number of aggravating features in this case, specifically the context of the proposed drug deal in which, as the judge found, Bowen had an interest and set out to assist Khalid, anticipating violence and the fact that he was carrying two knives and that he took the leading role in a ferocious attack at night in a public street. Those aggravating features would have justified a notional upward increase in the sentence from the 25-year starting point to something like 28 or 29 years

before consideration of any mitigating factors in the case.

28. The critical question for this court is whether the sentence passed of 27 years, which on this hypothesis would be a reduction of one or two years, gives so little weight to the mitigating factors that it can be said to be wrong in principle or manifestly excessive.

29. Taking those factors in turn, we do not consider that the relative youth of Bowen (24 at the time of the offence) can amount to any particular mitigation in his case. It is not suggested that he lacked maturity, let alone that any lack of maturity contributed to the offence.

30. It is correct that lack of intention to kill and lack of premeditation are statutory mitigating factors under paragraph 11 of schedule 21, but whether they do amount to mitigation and what weight is to be given to them depends on the circumstances of the particular case, as Judge LJ made clear in Peters. In the present case, the judge, having conducted the trial, was best placed to assess the weight to be given to those matters. It is also correct that in cases decided after Peters this Court has indicated that lack of intention to kill and lack of premeditation may be important mitigating factors. In Bouhaddaou Lord Phillips giving the judgment of this court said at paragraph 20:

> "Chapter 5 does not include an intention to kill in the list of aggravating factors. It treats an intention to cause really serious injury rather than to kill as a mitigating factor. This suggests that, whatever the starting point, an intention to kill is assumed. We consider that the absence of an intention to kill is an important mitigating factor. This is likely to go hand-in-hand with the absence of premeditation. This is particularly the case with murder in the course of or for the furtherance of robbery or burglary. There is a significant difference in the culpability of a criminal who sets out to kill, if necessary, to achieve his ends and one who uses violence, with fatal results, when unexpectedly apprehended in the course of his crime. There is a significant difference between a criminal who sets out to use violence, although not intending to kill, to achieve his criminal end and the criminal who uses violence without setting out to do so, when unexpectedly caught in the act of the crime."

31. We do not read that passage in the judgment as prescribing that lack of intention to kill and lack of premeditation will always be an important mitigating factor. It will depend on the circumstances of the case. As the last sentence of the passage indicates, where someone sets out to use violence, although not intending to kill and a death occurs, the lack of intention to kill is likely to be of less significance as a mitigating factor than where someone uses violence without setting out to do so and a death occurs. A similar point emerges from what Hughes LJ said in Miah at paragraph 58:

> "There will be cases, particularly cases of individual single attacks and especially those committed on the spur of the moment, where the difference between an intent to kill and the intent to cause grievous bodily harm, may call for a very significant difference in sentence. As it seems to us, it is rather different where what one is dealing with is a planned episode of group violence with intent to do grievous bodily harm. That such a planned and orchestrated piece of violence may lead to a death in exactly the kind of the way that happened here is sadly only too common."

32. In the present case, as the judge found in his sentencing remarks, the appellants both set out for the drug deal meeting with Bowen armed with two knives (as Khalid knew) and prepared to use them to inflict violence should it be necessary to do so. Whilst it was not a case where they set out definitely to use violence, the case is closer to that situation than one of spontaneous unexpected violence, so that the lack of intention to kill is of less significance as a mitigating factor than it might otherwise be.

33. Equally, whilst the judge accepted that there was no planning or premeditation, Bowen set out that night with two knives prepared to inflict violence if necessary given the risks inherent in drug dealing of this kind at night. The judge also correctly concluded that the attack when it occurred was not in excessive self-defence but in retaliation for the attempt to rob Khalid of the drugs. He was also entitled to conclude that it was a sustained

attack in the sense that it involved the infliction of six knife wounds, one probably with another knife, inflicted with particular ferocity. That is the context in which the judge talked about "the obvious risk of death" for which he cannot be criticised, given the apparent indifference on the part of Bowen as to whether Kyle lived or died. In all the circumstances, we consider that the judge was entitled to conclude that there was indeed little or no mitigation available to Bowen from the lack of intention to kill and the lack of premeditation.

34. So far as concerns Bowen's mental problems and his unfortunate personal life, the judge was entitled to conclude that they did not mitigate the seriousness of the offence itself and Mr Keleher does not suggest otherwise. The judge did not ignore those matters completely but had them in mind and we consider that he was best placed, having seen Bowen at trial, to assess whether they provided any mitigation that should reduce the appropriate sentence. Given the utmost serious of the offence of murder, such personal circumstances of the offender would inevitably assume less significance than they would in relation to a less serious offence. We do not consider that it could be said that the judge has erred in the exercise of his discretion in his approach to those personal circumstances.

35. We were not impressed by any suggestion of disparity between the sentences. We consider that the difference between the two of six years, equivalent to more than 20 per cent, was sufficient reflection of the more serious role played by Bowen, a matter to which we will return in the context of the appeal by Khalid. Furthermore, whether or not the sentence on Khalid was too harsh or too lenient cannot provide Bowen with any legitimate ground for complaint if the sentence he received was otherwise appropriate.

36. Ultimately, the question for this court is whether the minimum term of 27 years is a

sentence which can be said to be wrong in principle or manifestly excessive. In our judgment, whilst it is severe, and perhaps at the top of the appropriate range for this murder, we cannot say it is wrong in principle or manifestly excessive. The appeal against sentence in respect of Bowen is dismissed.

37. Turning to the appeal by Khalid. The first ground of appeal advanced by Mr Joe Stone QC on his behalf is that the six year sentencing differential between Khalid and Bowen was insufficient to reflect the much lower criminal culpability of Khalid. In contrast with Bowen he was not personally responsible for taking a knife to the scene, he was not armed with a knife at the scene and there was no evidence that he used a knife.

38. In his written submissions, Mr Stone relied upon a passage from the judgment of this court given by Lord Judge, CJ in R v Kelly [2011] EWCA Crim 1462, [2012] 1 Cr.App.R (S) 56 at paragraph 16:

> "There will continue to be convictions for multi-handed murders where one or more of the defendants was not aware that a knife or knives were being taken to the scene but who, once violence erupted, were participating in it well aware that the knife would be or was being used with murderous intent. Although guilty of murder they were not party to the taking of the fatal weapon to the scene. For them, their offence is aggravated by the fact that they participated in a knife murder. Paragraph 5A would not provide the starting point in the sentencing decision. For those who did take part or were party to the taking of the knife to the scene, then it would, but care has to be taken not to double count the fact that they participated in a knife murder which has already been factored into the normal paragraph 5A starting point. The judge will therefore be required to make the necessary findings of fact to identify the appropriate starting point, and thereafter to reach the sentencing decision required by the justice of the case."

Mr Stone submitted that applying those principles the judge should have taken a much lower starting point than in the case of Bowen.

39. The second ground of appeal is that the judge made an excessive reduction for the credit

that Khalid should have for his previous good character to reflect the recent dealing in drugs. Mr Stone submitted the judge gave excessive weight to this limited bad character. Khalid had not engaged in substantial dealing and there was no evidence of an extravagant lifestyle. There was no history of violence or propensity for violence.

40. The third ground of appeal was that the judge gave an insufficient discount for a number of important mitigating factors:

    1. His age, only 19 at the time of the offence and 20 at the time of sentencing.
    2. That there were no statutory aggravating factors present.
    3. There was an intention to cause serious bodily harm rather than to kill in the context of a sudden eruption of violence.
    4. That Khalid only hit or punched Kyle for a matter of seconds, causing minimal violence.
    5. There was a lack of premeditation or planning.
    6. Khalid was himself a victim of a pre-planned attempted robbery and did not initiate the violence.

41. We agree with Ms Whitehouse QC for the prosecution that the first ground, of insufficient sentencing differential between the two appellants, overlooks that Khalid had recruited Bowen to go along with him that evening and that, as the judge found, they were both anticipating the occurrence of violence and therefore, as she said, there must have been a conversation between the two of them about the nature of the meeting that was to going to take place with Kyle and McLaughlin and that the murder was committed against the background of Khalid's escalating drug dealing.

42. The reliance on Kelly was misconceived. In his written submissions Mr Stone sought to emphasise the passage where the court said that paragraph 5A would not provide the

starting point where a participant in a joint enterprise was not party to the taking of a knife to the scene but when violence erupted was participating in it and well aware that a knife would be or was being used with murderous intent. However, this was not such a case. As the judge found, Khalid had known of Bowen's possession of the knife and was in joint possession of it, so that the second half of the passage from Kelly that we have quoted is what is relevant. Khalid was party to the taking of a knife to the scene so that the paragraph 5A starting point of 25 years is applicable and to be fair to Mr Stone, in his oral submissions to us this morning, he accepted that that was the appropriate starting point.

43. Of course the judge was then obliged to reflect in the sentence passed on the two appellants the fact that it was Bowen who took the leading role and who wielded and used the knife to attack Kyle, whereas Khalid was party to it being taken to the scene and in joint possession of it did not personally use it. In our judgment, the difference of six years between the two sentences, equivalent to more than 20 per cent, is a sufficient reflection of the respective culpability of the two appellants.

44. In relation to the second ground of appeal, as we have already said in the context of the appeal by Bowen, the weight of mitigating features diminishes the more serious the offence - see, for example, R v Sarwar [2015] EWCA Crim. 1886, [2016] 1 Cr.App.R (S) 54, at paragraph 55, per Treacy LJ, to which Ms Whitehouse referred the court. Given that this murder occurred against a background of escalating drug dealing by Khalid, it seems to us that the judge was entitled to conclude that his previous good character, apart from that drug dealing, did not warrant any substantial reduction from the starting point.

45. So far as the third ground is concerned, it is necessary to look at each of the mitigating factors to which it is said the judge failed to pay sufficient regard and then to look at the overall picture. In relation to age, the present Lord Chief Justice in Attorney General's

Reference (R v Clarke) [2018] EWCA Crim 185, [2018] 1 Cr.App.R (S) 52, at paragraph 5, has said that reaching the age of 18 is not a cliff edge for the purpose of sentencing and that the youth and maturity would be factors informing any sentencing decision, even when the offender has passed his 18th birthday. The critical question here is to what extent Khalid's youth affected his culpability. He may have only been 19 but he was clearly an intelligent young man and a university student who was running a drug dealing business and sufficiently astute and acute to recruit Bowen on the evening in question. There was no evidence that any lack of maturity contributed in any way to his offending. The judge said in terms that he bore in mind Khalid's age and we consider that there was no question here of the substantial discount being required to reflect any youth and immaturity.

46. We agree with Ms Whitehouse that the absence of statutory aggravating factors cannot itself be a mitigating factor. In relation to the absence of intention to kill and lack of premeditation, we would reiterate what we have already said in the appeal by Bowen. Khalid essentially recruited Bowen to go with him to the meeting with Kyle and McLaughlin. Khalid knew that Bowen had at least one knife and the judge found that he was in joint possession of the knives and they both set out that night with Bowen armed with those knives prepared to inflict violence if necessary, given the risks inherent in drug dealing of this kind at night. Those facts, together with the judge's finding that this was not excessive self-defence but retaliation for the attempted robbery, point to the absence of intention to kill and premeditation being matters which the judge was entitled to conclude gave rise on the facts of this case to little or no mitigation.

47. The fact that Khalid only hit or punched Kyle for a few seconds and caused minor injuries is, as Ms Whitehouse submitted, reflected in the fact that he was sentenced on the basis

that he played a less serious role than Bowen. We would add that, in one sense, the fact that at this point in the joint enterprise Khalid chose to join in the violence when Bowen had already stabbed Kyle underlines the fact that this was a retaliatory attack and it might be said to aggravate Khalid's culpability rather than mitigate it. At all events the judge cannot be said to be at fault for not applying any discount for that factor.

48. Finally, Mr Stone relied upon the fact that Khalid was the victim of the pre-planned robbery and did not initiate the violence. The judge expressly took those matters into account in his sentencing remarks, so they were clearly factored into the sentence passed on Khalid. We also agree with Ms Whitehouse that the fact Khalid was the victim of an attempted robbery should not lead to any further discount in sentence when he had brought about the circumstances in which the attempted robbery occurred, a drug deal on the street at night, and although he had anticipated the risk of violence, hence taking Bowen with him armed with knives, he had attended the meeting with Kyle and McLaughlin in any event.

49. Looking at this sentence in the round, in our judgment the judge was correct to conclude the starting point was 25 years under paragraph 5A, given that Khalid was aware that Bowen had a knife and the judge found he had joint possession. The reduction of four years from that starting point properly reflected both his lesser role, that he did not use a knife (although he was clearly prepared for a knife to be used by Bowen if necessary) and also reflected the mitigating factors, including his youth, that he had not initiated the violence and to the limited extent which the judge correctly considered appropriate the lack of intention to kill and of premeditation. We also consider that the differential between the two sentences of six years accurately reflected the level of culpability of the two appellants.

50. Overall the minimum term for Khalid of 21 years whilst severe properly reflected his culpability for this offence and was not manifestly excessive. His appeal against sentence is dismissed.

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