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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Case No: 2020/01796/A3, 2020/01827/A3
202001842/A3 & 2020/01844/A3

NCN: [2021] EWCA Crim 616



Royal Courts of Justice
The Strand
London
WC2A 2LL

Thursday 22nd April 2021

LADY JUSTICE CARR DBE

MR JUSTICE LAVENDER

THE RECORDER OF NEWCASTLE

(His Honour Judge Sloan QC)

(Sitting as a Judge of the Court of Appeal Criminal Division)

REGINA

- v -

COREY SEAN ROTHERO

AARON DOUGLAS JONES

TYLER GREENWAY

NICHOLAS ROTHERO

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Mr G S Garcha QC appeared on behalf of the Appellant Corey Sean Rothero

Mr B Williams appeared on behalf of the Appellant Aaron Douglas Jones

Mr R Cowley appeared on behalf of the Appellant Tyler Greenway

Miss T Hunt appeared on behalf of the Appellant Nicholas Rothero

JUDGMENT

Thursday 22nd April 2021

LADY JUSTICE CARR:

1. This is the hearing of four appeals against sentence following the convictions and sentencing of the appellants as follows:

(1) Corey Rothero ("Corey"), now 20 years old (and 18 at the time of conviction), was convicted on his guilty pleas to conspiracy to rob (count 1); conspiracy to commit burglary (count 2); conspiracy to steal (count 3); and conspiracy to possess an imitation firearm with intent to commit an indictable offence (count 4). He was sentenced to 15 years' detention in a young offender institution ("detention") on count 1; three years and nine months' detention on count 2; 13 months' detention on count 3; and four years and five months' detention on count 4. The sentences were all ordered to run concurrently. Thus, the overall sentence was one of 15 years' detention. Further, a suspended sentence of 18 months' detention, imposed in March 2019, was activated in full, but ordered again to run concurrently with the other sentences.

(2) Aaron Jones ("Aaron"), now 29 years old, was convicted following trial on count 1, and on his guilty pleas to counts 2, 3 and 4. He was sentenced to 27 years' imprisonment on count 1; six years' imprisonment on count 2; 18 months' imprisonment on count 3; and eight years' imprisonment on count 4. The sentences were all ordered to run concurrently with each other. Thus, the overall sentence was one of 27 years' imprisonment.

(3) Tyler Greenway ("Tyler"), now 20 years old (and 19 at the time of conviction), was convicted following trial on count 1, and on his guilty pleas on counts 2 and 3. No evidence was offered against him on count 4. He was sentenced to 15 years' detention on count 1; three years and nine months' detention on count 2; and 13 months' detention on count 3. The sentences were all ordered to run concurrently with each other. Thus, the overall sentence was one of 15 years' detention. No separate penalty was imposed on him for having been convicted of an offence during the currency of a community order.

(4) Nicholas Rothero ("Nicholas"), now 35 years old, was convicted on his guilty pleas to counts 1 to 4. He was sentenced to 24 years' imprisonment on count 1; six years' imprisonment on count 2; 18 months' imprisonment on count 3; and six years and three months' imprisonment on count 4. The sentences on all counts were ordered to run concurrently. Thus, the overall sentence was one of 24 years' imprisonment.

2. A co-accused, Darren Saddler ("Darren"), pleaded guilty to count 1 and was sentenced to four years' imprisonment, which was ordered to run consecutively to the sentence that he was already serving, making a total of 16 years' imprisonment. No evidence was offered against him on any other counts.

3. On 24th June 2020, in the Crown Court at Birmingham, all of the appellants, and Darren, were sentenced by His Honour Judge Bond ("the Judge").

4. The appellants appeal against sentence by leave of the Single Judge. Leave was limited in the cases of Aaron and Tyler, but there is no renewal of any application for leave in relation

to the grounds that were refused. The single basis of each permitted appeal is that the overall sentence in each case was manifestly excessive.

5. We have had the benefit of submissions from Mr Garcha QC for Corey; Mr Williams for Aaron; Mr Cowley for Tyler; and Miss Hunt for Nicholas. We commend them for what were models of oral appellate advocacy.

The Facts

6. Nicholas is the father of Corey and the half-brother of Aaron. Darren was a long-term associate of Nicholas. Tyler was a close associate of Corey and well known to the Rothero family.

7. Between October 2018 and April 2019 the appellants and Darren committed a series of armed robberies and burglaries at commercial and residential premises, mostly within the West Midlands. The evidence in the case was compiled from forensic evidence, association evidence, telephone communication and cell site evidence. The offences all involved stealing or attempts to steal, and many involved the deployment of serious violence, particularly towards the end and involving residential premises. Many of the incidents were captured on CCTV footage, albeit there was no direct capture of faces, given the very significant lengths to which the appellants went to disguise their appearances.

8. On many occasions the offences were targeted against vulnerable individuals: for example, small stores with very limited staff. The appellants would arrive in vehicles, often stolen for the purpose. They generally ensured that there was a getaway driver so that they could escape with the greatest possible speed. Many victims were subjected to very significant threats of force. The appellants took different roles during the commission of the respective offences, but each was aware of the intention to steal, where necessary by the threat or use of force. As indicated, the offences took place over the course of approximately six months. Even though there were occasions upon which the police investigation interrupted activities, for example Darren's arrest, the appellants continued their offending.

9. The prosecution referred to a schedule of events over the course of the conspiracy. It included four thefts, nine dwelling house burglaries and 11 robberies.

10. In order to understand the outcome on these appeals, it is necessary for us to set out the events in a little detail. They commenced shortly before Nicholas' release from custody on 8th October 2018 and continued, as we have already indicated, beyond Darren's arrest in January 2019.

11. Several of the events were robberies of various One Stop Stores (events 3, 6, 7 and 9), which took place on four occasions between October and December 2018. These robberies involved several males entering the premises, disguised and armed and shouting threats. Staff were manhandled and threatened with, for example, knives and hammers. A female member of staff member was grabbed by the hair. Staff were forced to open safes and tills. Cash was stolen – £7,800 in event 3; £7,600 odd in event 6; and just under £4,000 in event 7, together with an unknown quantity of cash in event 9. On one occasion a three year old child was present in the store when the offence took place. On another, a male staff member had a panic alarm torn from his neck. The appellants made sure that their knives and other weapons were visible and they put knives to the necks of various staff members. A member of the group stood guard at the door.

12. Event 5 took place in November 2018 and involved a robbery at the Barnt Green Public House. Those involved arrived in a stolen Ford Focus. Three males entered the pub via a

back door. Two entered the office where a female member of staff was counting the takings. The third fetched another staff member from the kitchen and dragged him into the corridor leading to the office. Threats of violence were issued by the males who were armed with knives. One held a large knife towards the female and demanded where the money was. She directed them to two open safes, and two of the males emptied the safes, taking £11,000. The chef who had been dragged from the kitchen was made to stand, at knifepoint, with his hands up as the males helped themselves. On leaving, the males took the female's handbag and her mobile telephone. One of the males punched the chef in the face. All of this took place in the space of only a few moments. The robbers then left and were driven away by the getaway driver who was waiting outside. A delivery driver who had happened to arrive at this time had a knife brandished at him in the car park and was told to turn around and walk away. He managed to make a note of the vehicle registration number before it departed. That showed that the vehicle had been stolen the day before from a residential driveway. The victim had watched as his car was being stolen but had decided not to challenge the men (who were masked).

13. Event 8 was a robbery at an EE Phone Shop in December 2018. Three males wearing masks entered the shop. One threatened a member of staff with a kitchen knife, shouting "Don't you fucking do anything, take us to the phones or I'm going to stab you". One member of staff was ordered to "Get down on the floor or I'll fucking stab you". Another male dragged the victim to an office at the rear and threatened another staff member. They grabbed mobile telephones valued at over £60,000 before leaving.

14. Within 90 minutes of that incident, event 10, a robbery at Buzz Bingo, took place. Two males wearing balaclavas entered the building and demanded money from staff. In fact the cash that they were demanding had just been banked. The males then turned their attention to a cash drawer. A member of staff was frogmarched to the drawer, he believed at knifepoint. The males probably thought that there would be more money there. Had the offence taken place ten minutes earlier, that would indeed have been the case - several thousands of pounds had been there.

15. Of particular significance was event 12, a robbery at a Carphone Warehouse. The offenders arrived in a stolen Volkswagen Golf at around 5.10pm in January 2019. Four masked males entered the store, armed this time with a machete, and demanded access to the safe. Staff had no choice but to acquiesce. The offenders loaded over £40,000 worth of mobile telephones into a large sack. The sack and telephones were in fact discarded by those who managed to flee the scene. The sack was found, containing a meat cleaver. The offenders left the store and made towards the stolen vehicle. However, nearby plainclothes police officers attended. Three of the offenders managed to escape on foot after a considerable struggle, but Darren was arrested from the driver's seat. During the arrest, one of the offenders was heard by the police to shout "Fucking stab them". Three knives, including a machete, were recovered from the Golf, together with a balaclava.

16. The arrest of Darren was a significant factor in the case against the appellants. He was, as we have indicated, a known associate of the Rotheros. Telephone evidence showed that he remained in contact with Nicholas, even after his arrest.

16. There were dwelling house burglaries in February and March 2019 (events 13 and 14). CCTV footage from event 13 showed that one of the males who forced entry into the property was carrying a hunting type knife, demonstrating the readiness of the offenders to be armed and ready to deal with any resistance. Event 15 involved one of the offenders carrying a machete. The homeowners were not present at the burglaries in events 13 and 14, but in event 15, where a BMW vehicle, valued at £55,000 was stolen, the homeowner witnessed the

offenders arrive. He took refuge in an upstairs bedroom and immediately telephoned the police. Subsequently, video clips of the BMW being driven were found on Nicholas' telephone.

17. On 8th March 2019, there was a robbery at a Tesco Express (event 16). This showed an escalation in the threat level. At 11.10am three males pulled up close to the location in a stolen Volkswagen Passat. Two men got out of the car and ran into bushes directly opposite. The driver remained in the car until a Loomis cash van drove past, at which point the driver got out and immediately joined the other two males. Loomis staff have a routine designed to protect them and to deter assailants. The first officer walked into the premises with a dummy cashbox and then reported to his colleague, the second officer, that it was safe to enter and to bring the ATM cash cassettes into the secure room. CCTV footage captured what then happened. As the second officer arrived, he was attacked and demands were made for the door to the room to be opened. The offenders were wearing balaclavas. Two were armed with knives or machetes and one (Nicholas) had a black pistol. The man with the gun threatened to shoot the guards unless they complied, and made a specific threat to shoot the guards in the leg. The threat was reinforced by three full-force blows to the guard's head. The offenders stole the ATM cash trays, no doubt believing them to contain large amounts of cash, although they were in fact empty. They ran back to the VW Passat, which was then driven away from the scene. The available CCTV footage confirmed the involvement of a gun, a machete and a large knife on this occasion.

18. Event 17 was a robbery of a dwelling house in Twatling Road, Barnt Green on 12th March 2019. Four males arrived at the residence, possibly in the same stolen VW Passat as had been used for the Tesco Express robbery. The vehicle had been parked behind a hedge which separated the premises from neighbouring property. Three offenders, armed with knives and wearing masks, forced entry into the house and threatened the 22 year old female occupant, who was lying asleep in her bed in an upstairs bedroom with her six week old son. As she lay on her bed she became aware of the presence of a man. She awoke, noticed that he was masked and carrying a large black knife. She was, understandably, terrified. Two further men entered the bedroom, both also carrying knives. At one point a gold coloured knife, which had been in the bedside table of the female victim's partner, was wielded by one of the attackers. The female victim told the offenders that her mother was on the way, to which one of the men responded: "Well, she's going to get hurt then, isn't she?"

19. During the time that the three men were in the house, the fourth male came in (thought to be Tyler). He was wearing dark clothes and a balaclava. He entered the house but did not go upstairs. He helped to remove items that were stolen from the property, which included a safe to which the men demanded access. Tyler was seen walking towards a Mercedes vehicle parked on the driveway, but he failed to gain access because he had taken the wrong set of keys. The men had also intended to steal a Range Rover at the address, but the female occupant begged them not to because she needed it to transport her son. Her boyfriend was a professional football player, and the offenders asked her where he was. This suggested that they had carried out some research into the identity of the occupants of the premises. They took bank cards, money, watches and jewellery, together with keys for a car. The incident was all the more disturbing for the female occupant because the premises had been burgled on a previous occasion in December 2018.

20. The female victim was able to raise the alarm within a few minutes of the offenders' departure and was able to give officers descriptions of the attackers and of some of the weapons. When Nicholas was eventually arrested the police recovered a knife which she was shown. She believed it to be the weapon used by the first male who threatened her as she lay in bed. A further large knife had been found at the side of her bed, which must have been

dropped by the offenders, although there were no fingerprints or DNA evidence on it. However, later evidence from Nicholas' telephone showed a chat which appeared to be a reference to the robbery at Twatling Road. Aaron's telephone revealed a search for the footballer's name and club.

21. Event 21 involved a robbery at Lower House Barn in Bromsgrove in April 2019. The property was a converted barn in a rural area. The house where the owners lived bordered their business premises, both of which were behind secured gates. The appellants drove up to a neighbouring property and came over a small wall. At about 8.55pm a family of three were at home sitting down to eat dinner. They heard a smashing noise and were then confronted by three men, one of whom carried a sawn-off shotgun and issued threats to "blow away" the man as he pointed the gun at him. Another of the men was carrying a yellow crowbar, similar in appearance to one used in a dwelling house burglary two days earlier (event 20). The male holding the gun fitted Aaron's description. The identity of the man holding the crowbar was not known. The third male fitted Nicholas' description.

22. One of the women attempted to pacify the intruders by showing them where the cash box was in the study. She was frogmarched there and the cash box snatched. At this stage she was separated from her partner and her daughter who were being held in the dining room by the man pointing the shotgun towards them. A number of air weapons were stolen from the property after the men had conducted a search throughout the house. The male victim, who had some military experience, was convinced at the time that the shotgun was real. Jewellery was taken from the daughter's bedroom, some of which were the last effects she had received from her deceased father's estate.

23. During the robbery one of the males threw something that looked like flour or talcum powder when he entered the room. It had no smell and did not irritate the victims, but it appeared that this was done to frighten the victims into believing that it might be poisonous or corrosive. CCTV footage showed one of the offenders carrying a disguised fire extinguisher. The substance was later found to be consistent with the dry powder that comes from fire extinguishers. On 3rd April 2019 (the previous day) Nicholas and Corey, together with another, had been seen to buy a fire extinguisher in Selly Oak.

24. Event 24 was a burglary in Stourbridge on 10th April 2019. Four windows were smashed to gain entry and a very large amount of jewellery was taken. The whole house was subjected to an untidy search, with drawers opened and their contents thrown around. There was clear CCTV footage of the arrival of a Seat Leon and Tyler could be identified in possession of a yellow crowbar. Two items from this burglary were recovered from the VW Golf following arrests in April. These included a necklace and very personal letters written to the owner by his grandchildren.

25. Throughout the latter period of the conspiracies the appellants were under surveillance. The police eventually made their move and the appellants were arrested. All of them made no comment in interview.

The sentencing hearing

26. The sentencing hearing took place over two days. The Judge delivered his sentences the following week. His remarks were lengthy, detailed and obviously carefully prepared. Again, it is necessary to refer to them in a little detail.

27. The Judge indicated that the appellants and Darren would be sentenced for their involvement in one or more conspiracies to rob, burgle, steal or possess an imitation firearm with intent. They were not to be sentenced for the substantive offences that were committed,

but for entering into a criminal agreement that was then executed ruthlessly and with a real degree of success. In each case the Judge said that he would look at their involvement in each of the events in order to determine culpability and harm.

28. He identified that there were four thefts, nine dwelling house burglaries and 11 robberies. One robbery involved the use of a handgun. It was never recovered, so the Judge could not say if it was real. The robbery at Lower House Barn involved the use of a sawn-off shotgun. The Judge would proceed on the basis that it was an imitation, although the victims believed they were real weapons which could potentially kill them. The offenders carried them, said the Judge, to instil fear so that people would co-operate.

29. The Judge said that his conclusion was that events 13, 14 and 15 formed part of the conspiracy to rob. In his judgment, the key feature in the case was the professionalism with which the offending was carried out. In every single case facial disguises were worn. This meant that not only were their facial features hidden from CCTV cameras, but it also caused their victims to feel intimidated when confronted. Victims were made to feel scared, helpless and, on some occasions, fearful for their lives. Not a single person was able to fight back or offer any form of resistance when confronted by a gang of masked criminals issuing threats, often with a frightening weapon in their hands.

30. Their professionalism was also demonstrated by the speed of the offending and the fact that they often arrived at the scene of a crime in a vehicle that had been previously stolen and was on false number plates. The vehicles would be stored, used and then sold on to their contacts in the criminal underworld. Nicholas had the ability to make false number plates at his home. Dwelling houses were entered quickly by smashing windows, rather than by having to deal with locks and keys. Vulnerable commercial premises were targeted. The sophistication of the offending was also demonstrated by the wearing of gloves to ensure that fingerprints were not left and the fact that before, during and after the offences the offenders stopped using their mobile telephones, aware of the potential significance of phone and cell site evidence.

31. The robberies at the phone shops were professionally planned commercial robberies, as were the robberies carried out at the One Stop shops and the robbery at Buzz Bingo.

32. The Judge then went through each substantive offence, pointing out the aggravating features and referring from time to time to the Victim Personal Statements. In his view, all (save events 17 and 21) were professionally planned commercial robberies. They all fell into high culpability, because a bladed article or an imitation firearm was used to threaten violence. Where a knife was held to the throat of a victim, the Judge concluded that this was the use of very significant force in the commission of the offence. In the majority of cases, there was group activity. The offenders who were present wearing disguises and armed with a weapon had a leading role. These offences fell into category 1 harm because of the serious psychological harm caused to the victims and the fact that very high value goods or sums were targeted.

33. Before looking at additional aggravating factors and mitigation in each defendant's case, the Judge said that the starting point was 16 years' custody after trial for each separate offence. Twatling Road was a robbery in a dwelling. It was a category 1A offence with a starting point of 13 years' custody. The robbery in a dwelling at Lower House Barn was also a category 1A offence, but the Judge said that he found it difficult to think of a more serious robbery in somebody's home where large sums of money were being targeted from the commercial premises next door. The starting point for this offence, he said, was 16 years' custody.

34. The Judge correctly identified that only limited weight was to be granted to the circumstances arising out of the Covid 19 pandemic, given the length of sentences to be imposed. He also rejected any suggestion that there should be a reduction in sentence due to the change in release provisions on 1st April 2020.

35. He turned, first, to Nicholas, who was identified as the architect of the conspiracies. His previous convictions were an aggravating factor: 26 convictions for 86 offences. He had served 15 custodial sentences for offences involving dishonesty and motor vehicles; and he had six convictions for dwelling house burglaries. He had also been convicted of conspiracy to burgle dwelling houses and possessing an offensive weapon in a public place. After his release from prison, he returned to his dishonest ways within a matter of days.

36. The real aggravating feature of his offending was the fact that he was on licence from his last prison sentence for an offence of dwelling house burglary. He committed ten robberies, seven burglaries and one theft. It was hard, said the Judge, to think of a series of armed robberies with so many aggravating features, including the use of weapons, the use of imitation firearms in two cases, targeting vulnerable premises, the use of stolen vehicles on cloned number plates that were stored and then sold on, the long-lasting effects on the victims, targeting a security van, the use of balaclavas, taking items of huge sentimental value, using his contacts in prison to obtain information about premises to rob or burgle, and the sheer number of separate offences. This was, said the Judge, not an exhaustive list. In relation to the Tesco robbery alone, with his aggravating features, the sentence after trial would have been 18 years' imprisonment for that single offence.

37. The Judge could not ignore the fact that Nicholas was so determined to target high sums of money and high value goods as part of the conspiracy to rob that the arrest of Darren acted as no disincentive, and the seriousness of his offending became greater as he started to carry imitation firearms.

38. In mitigation, there were no previous convictions for robbery. The Judge had read his letter apologising for his actions and expressing regret. He had read the letter from Nicholas' cousin and noted his progress in prison. He also noted Nicholas' guilty pleas.

39. The least sentence after trial on count 1, said the Judge, reflecting culpability and harm, would have been 30 years' imprisonment. After credit for the guilty plea, that was reduced to 24 years. The Judge said that he found Nicholas to be a dangerous offender but would not impose an extended sentence because the determinate sentence imposed would adequately protect the public.

40. Turning to Corey, the Judge said that he was now 19 years old and no doubt was recruited into the conspiracies by his father. He was 17 years old when events 1 to 10 took place; and he was involved in six of the robberies. However, despite his youth, he had demonstrated his willingness, whilst in disguise, to hold knives in his hand and to threaten people with them in order to make them open a safe or an ATM. The Judge accepted that, to start with, Corey was trying to impress his father. However, as time went on this was just a job, and Corey played a leading role in all of the offences. He was not simply a foot soldier, as demonstrated by the CCTV footage.

41. When he turned 18, Corey went on to commit events 11 to 21 and events 23 and 24. During the Tesco robbery he held the handgun whilst the offence was committed. He had a leading role in the preparation and execution of the robbery where a sawn-off shotgun was used. In total he had committed ten robberies, nine dwelling house burglaries and one theft.

42. His best mitigation was his guilty pleas and his youth, for which the Judge would give a separate discount. The aggravating features had already been set out, both generally and in relation to Nicholas' case. In addition, Corey had previous convictions for motoring offences. As recently as March 2019 he had given a suspended sentence for a dwelling house burglary, the theft of a vehicle and a non-dwelling burglary. This meant that his offending up to event 18 was committed whilst he was on court bail. After the imposition of the suspended sentence, he breached it just five days later. Both of these matters were serious aggravating factors.

43. The Judge referred to the pre-sentence report which omitted any mention of the weapons used by Corey. The Judge had regard to the position of Corey as a fully enhanced prisoner, and noted that there were signs that he was maturing. He read the supporting letters, including one from his grandmother. The Judge said that if Corey were being sentenced as an adult, the least sentence on count 1 would be 27 years' custody. The Judge would make a 25% reduction for age and a further reduction for his guilty pleas. Taking these matters into account, on count 1 Corey was sentenced to 15 years' detention.

44. For breach of the suspended sentence, the sentence was activated in full because of the blatant and immediate breaches. Having regard to totality and to Corey's age, the sentence was ordered to run concurrently. Again, the Judge found Corey to be dangerous but concluded that he did not need to impose an extended sentence.

45. Turning thirdly to Aaron, the Judge said that he was sure that Aaron was recruited into the conspiracies by Nicholas. Aaron was now aged 29 years old. He had 18 convictions for 31 offences. He had committed various assaults and in 2010 had received a sentence of four years and three months' imprisonment for a dwelling house burglary and reckless arson. He had previously served four separate custodial sentences. His antecedent history was an aggravating factor. The Judge repeated that he found it hard to think of a series of armed robberies with so many aggravating features.

46. In total, Aaron had committed ten robberies, five dwelling house burglaries and one theft. Once recruited, he played a full and leading role. He was not a foot soldier, again as demonstrated by the CCTV footage.

47. The Judge said that he had read the letters that Aaron had sent to him and to the victims. The Judge accepted that Aaron now expressed remorse. He also referred to the character references which showed a different side to Aaron's character.

48. Having regard to all of these matters, the Judge said that the least sentence that could be imposed on count 1 was 27 years' imprisonment.

49. Finally, Tyler, now aged 20, was 18 at the time of the offending. He was involved in events 13, 17, 18, 19, 23 and 24, namely, five dwelling house burglaries, one robbery and one theft. His culpability on the most serious offence of conspiracy to rob did not cover the robbery at 26 Twatling Road alone, but also event 13, the burglary at 8 Walmley Close. The Judge rejected the defence submission that Tyler had had no knowledge of the weapon carried during the course of the Twatling Road robbery.

50. Although Tyler pleaded guilty to the conspiracies to burgle and steal, he was convicted by the jury of the most serious offence, the conspiracy to rob. Nor was Tyler a man of good character. In 2017 he pleaded guilty to six separate offences of attempted dwelling house burglary and four offences of interfering with a vehicle. All of the three offences he now

faced were committed while subject to a 12 month community order which had been imposed upon his guilty pleas to an attempted dwelling house burglary. That was a serious aggravating feature in this case.

51. For the robbery at Twatling Road alone, the Judge said that the least sentence that could be imposed was 14 years' imprisonment. The Judge had regard to Tyler's youth and noted that this was his first custodial sentence. He said that the least sentence that could be imposed on count 1 to reflect his culpability was 15 years' detention. The community order had now expired and, having regard to the principle of totality, the Judge made no further order for that breach. Again, the Judge found Tyler to be dangerous but that it was not necessary to impose an extended sentence.

Grounds of Appeal

52. We record at the outset that no appellant suggests that the Judge erred in principle in any way. It was common ground that the commercial robberies were culpability A and category 1 harm, as defined by the Sentencing Council Guideline for Robbery ("the Robbery Guideline"), with a starting point after trial for a single offence of 16 years' custody, and a range of between 12 and 20 years. Equally, the dwelling house robberies were culpability A and category 1 harm, with a starting point after trial for a single offence of 13 years' custody, and a range of between ten and 16 years.

53. On behalf of Corey, Mr Garcha submits that, notwithstanding the grave nature of the offending, a starting point of 27 years' custody after trial was unduly harsh; that the cumulative effect of all of the offending did not necessitate a starting point of seven years beyond the top of the range. He submits that there also ought to have been a greater distinction between Nicholas and his son in recognition of their differing culpability. Nicholas was the controlling mind behind all of the offending. Corey was young and not criminally sophisticated like his father.

54. On behalf of Aaron, Mr Williams submits that this was not a case of a conspiracy involving multiple offences of particular severity, as identified in the Robbery Guideline. He points to the words (in bold) at page 11 of the Robbery Guideline:

"Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place, sentences in excess of 20 years may be appropriate."

Mr Williams says that two points are to be taken from this statement: first, a conspiracy may concern multiple offences of severity, but not of particular severity; and secondly, even if the offences are of particular severity, it may nevertheless still not be appropriate to go above the top end of the range of 20 years. He submits that a totality argument is implicit in a consideration of these factors. Whilst he concedes that the primary offence committed by Aaron was very serious, he submits that it was not serious enough to go beyond the top end of the range for category 1A offending and in any event, not to go beyond it to the extent that the Judge did. A term of 20 years ought to have been "an anchor" from which the Judge ought not to have drawn back.

55. On behalf of Tyler, Mr Cowley correctly submits that Tyler was granted leave simply on the contingent basis that Tyler might benefit if the appeals of Corey and Aaron were to succeed. By reference to parity arguments, Mr Cowley pointed to Tyler's lesser involvement in the conspiracy to rob and the fact that he played only a "significant", not a "leading" role in

the Twatling Road offence.

56. Finally, on behalf of Nicholas, Miss Hunt submits that the starting point of 30 years adopted for him went further outside the remit of the Robbery Guideline that could be justified on the basis of the number of offences committed. Each offence taken separately would be within, and not above, the relevant sentencing range. The use of significant force did not encompass the infliction of any injuries, and there was no weapon used to inflict violence. Like Mr Williams, she submits that the offences were not of “particular severity”. If a term over 20 years was appropriate, 30 years was “too far in excess of it”. There was simply too great a departure from the “anchor” of 20 years.

Discussion and Analysis

57. The Judge was well placed to sentence the appellants following the trial for Aaron and Tyler. He had, for example, heard live evidence from some of the victims. He had seen extensive CCTV footage. He expressly referred repeatedly at the sentencing hearing and again in his sentencing remarks to the various impressions that he had gained and the conclusions that he had drawn from the evidence that he had both heard and seen. He also had the assistance of full submissions at what was a lengthy sentencing hearing. The prosecution opening of the facts occupied the best part of a day and a half.

58. The Judge appears to have taken full advantage of both those benefits. This court should be slow to interfere with his evaluative assessment of the appropriate sentences to be passed on each appellant, unless there is a clear and principled basis for a conclusion that those sentences were manifestly excessive. In the Judge’s own words, he thought “long and hard” about the sentencing outcomes.

59. For the reasons set out below, we do not consider that there is any such clear and principled basis.

60. As identified by the Judge in his sentencing remarks, this was a truly appalling catalogue of offending with multiple aggravating factors. All four appellants fell to be dealt with for offences of conspiracy to commit armed robbery, to burgle dwelling houses and to steal. All, with the exception of Tyler, additionally fell to be dealt with for a conspiracy to possess imitation firearms with intent to commit indictable offences. The offending occurred over a period of six months. The conspiracies resulted in the commission of 11 robberies, nine committed at commercial premises and two at dwelling houses; nine dwelling house burglaries, three of which fell within the ambit of the conspiracy to rob; and several thefts of motor vehicles stolen and disguised for use as getaway vehicles, or stolen during the course of dwelling house burglaries. The offending was planned, sophisticated, professional and, with the passage of time, became increasingly ruthless. When committing offences of robbery and burglary, the conspirators would operate as an efficient and effective team. Weapons, for example bladed articles, hammers and crowbars, and on two occasions imitation firearms, namely a pistol and a sawn-off shotgun, were carried and extreme violence threatened. Often force and violence were used, sometimes gratuitously. Very high value goods or large sums of money were stolen or targeted. Accordingly, a number of the individual offences of robbery and burglary committed as part of the conspiracies fell within category 1A of the relevant Sentencing Council guideline. Then individual offences would involve individual, additional aggravating factors: for example, the wearing of masks to conceal identities; the targeting of vulnerable individuals; the presence of children; continuing offending, notwithstanding the arrest of one of their number; and the marked and continuing effect upon victims.

62. In our judgment, the Judge was clearly entitled to go above the top end of the relevant

range for category 1A offending, as identified in the Robbery Guideline, namely 20 years. As the Robbery Guideline states:

"Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place, a sentence in excess of 20 years may be appropriate."

63. Whilst there may have been no serious injury caused, significant violence and even death was threatened. The submissions advanced on behalf of the appellants ignore the serious psychological harm that the Judge so clearly found.

64. This was an entrenched pattern of offending arising out of over 20 incidents. The commercial robberies in particular were at the very top of the relevant category range. In addition, the sentences on count 1 were intended in each case to reflect each appellant's overall criminality.

65. Against that background, it is logical to start first with the appeals of the younger appellants, namely Corey and Tyler, since the outcome of their appeals dictates the outcome of the appeals of the other two.

66. As for Corey, we do not consider that a custodial term of 27 years for an adult in Corey's position, to reflect his overall criminality and before considerations of youth and credit for the guilty pleas, can be impugned. Corey committed ten robberies and nine dwelling house burglaries, three of which fell within the ambit of the conspiracy to rob. He was involved in the most serious offences: the Tesco Express robbery, which involved an imitation pistol; the Twatling Road robbery, which involved a mother and baby; and the Lower House Barn robbery, which involved the sawn-off shotgun. The judge appreciated that Corey had been recruited and influenced by his father, but Corey was nevertheless an enthusiastic and committed participant. As the Judge commented, it "became a job for him".

67. The Judge was in the best position to calibrate the sentences to be imposed on father and son on the basis of all the material before him. There were then significant individual aggravating features, including that Corey was on bail, and indeed only five days into a suspended sentence at the time of his offending up to event 18. There can be and nor is there any realistic complaint as to the reduction of 25% afforded by the judge to reflect Corey's youth, or as to the further arguably generous reduction of 25% for his guilty pleas. In addition, the activated suspended sentence was ordered to run concurrently.

68. In short, the sentence imposed on Corey, whilst severe, was not manifestly excessive. Nor did it offend the principle of totality.

69. Tyler was involved in a lesser number of offences and was not convicted on count 4. He was slightly older than Corey. He committed one robbery and five dwelling house burglaries, one of which fell within the ambit of the conspiracy to rob. He was also involved in event 17 – the particularly appalling incident involving the mother and baby. Even if his role was only "significant", he still carried high culpability.

70. There were significant individual aggravating features in his case, including that Tyler offended whilst subject to a community order and that he had previous convictions for attempted dwelling house burglaries. A custodial term after trial on count 1 of 15 years – significantly lower than that imposed on the others – reflecting his overall criminality, again, whilst severe, cannot be said to be manifestly excessive, nor to offend the principle of totality.

71. Having reached these conclusions, we also dismiss the appeals of Nicholas and Aaron. The term of 30 years' imprisonment, before credit for the guilty pleas, in Nicholas' case reflects his greater role as the architect. This was essentially a family business run by the Rotheros to seek substantial gain through serious criminal offending. There were, again, significant individual factors, including that he was on licence from a custodial sentence imposed for a dwelling house burglary at the time, having returned to his dishonest ways within days of release.

72. The term of 27 years' imprisonment following trial in Aaron's case likewise stands firm against the custodial term of 27 years adopted by the Judge for an adult in Corey's position. Again, there were significant individual aggravating factors, including his antecedent history of convictions for dwelling house burglary and arson.

73. For all of these reasons these appeals against sentence will be dismissed.

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

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