Neutral Citation Number: [2021] EWCA Crim 797

Case No: 202100935 A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/05/2021

Before :

LADY JUSTICE THIRLWALL, DBE
MRS JUSTICE YIP
AND
HHJ JEREMY RICHARDSON QC, THE RECORDER OF SHEFFIELD, sitting as a judge of the COURT OF APPEAL CRIMINAL DIVISION

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REFERENCE BY THE ATTORNEY GENERAL UNDER S.36 OF THE CRIMINAL JUSTICE ACT 1988

Regina	**Applicant**
- and -	
Darren Dixon	**Respondent**

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S. Przybylska appeared for the Appellant/Applicant
J Dein QC and E Stuart-Smith appeared for the Respondent

Hearing date : 13.05.2021

- -

Approved Judgment

Lady Justice Thirlwall, DBE:

Introduction

1. This is the Solicitor General's application for leave to refer the sentence in this case to the court pursuant to section 36 of the Criminal Justice Act 1988 on the grounds that it is unduly lenient.

2. The respondent is 32. Until these offences he had no convictions. On 16th December 2019 at a Plea and Trial Preparation Hearing at Southwark Crown Court he faced a 15 count indictment in connection with the importation, conversion and sale of firearms together with the making and possession of an explosive substance. There were also a number of offences of forgery.

3. He pleaded guilty to counts 6 and 7. A trial on the remaining counts was fixed for 23 March 2020.

4. On 10 March 2020 the respondent's representatives notified the prosecution that he intended to plead guilty. On 23 March he was re-arraigned and pleaded guilty to all remaining counts. The case was adjourned for the preparation of a pre-sentence report to deal with the issue of dangerousness and a psychological report.

5. By this date the country was about to move into the first lockdown in the light of the spread of the Coronavirus Covid 19. The sentencing hearing was repeatedly delayed. Dates were allocated on 14th May and then on 17th July by which date it had still not been possible for probation to see the respondent. Both hearings were vacated at short notice. The case was listed again on 11th December 2020 when all parties attended but it was not heard as there was no courtroom available.

6. On 5 March 2021 HHJ Tomlinson sentenced him as follows:

   i) Counts 1 & 2 – fraudulent evasion of a prohibition on the importation of a prohibited firearm (seven blank-firing pistols) contrary to section 170 (2) (b) of the Customs and Excise Management Act 1979: seven years' imprisonment,

   ii) Count 3 – selling a prohibited weapon (four unconverted blank-firing pistols) contrary s5(2A)(b)) of the Firearms Act 1968: eight years' imprisonment,

   iii) Counts 4 & 5 – possessing a prohibited weapon (five unconverted blank-firing pistols; six modified and converted blank-firing pistols contrary to s5(2A)(c)) of the Firearms Act 1968: eight years' imprisonment,

   iv) Counts 6 & 7 – possessing a prohibited weapon (two CS gas canisters (count 6) and a stun device (count 7), contrary to s5(1)(b) Firearms Act 1968: 20 months' imprisonment,

   v) Count 8 – possessing a prohibited weapon (shortened shotgun, contrary to s5(1)(aba)) of the Firearms Act 1968 : seven years' imprisonment,

vi) Count 9 – possessing a firearm without a firearm certificate (blank-firing revolver) contrary to s1(1) (a) of the Firearms Act 1968: two years' imprisonment,

vii) Count 10 – possessing ammunition without being registered as a firearms dealer (102 cartridges), contrary to contrary to s3(1)(b) Firearms Act 1968: three years' imprisonment,

viii) Counts 11-12– making an explosive substance (gunpowder), contrary to section 4(1) of the Explosive Substances Act: six years' imprisonment,

ix) Counts 13-15 – forgery (false police identification cards), contrary to s1 of the Forgery and Counterfeiting Act 1981: three years' imprisonment.

7. All terms of imprisonment were ordered to run concurrently. The total sentence was eight years' imprisonment.

8. It is not disputed that this was a particularly lenient sentence. The issue for the court is whether it was unduly so. We give leave.

FACTS

9. On 9 October 2019, the Metropolitan Police executed a search warrant at the respondent's home in London NW5. He was arrested. He volunteered that there were guns in his bedroom and said that he had "a bit of an addiction" to guns. He said that a couple had been converted. He admitted to having ammunition and gunpowder. He directed the police to a file on his laptop with details of weapons he had sold and provided the password for his laptop.

10. In addition to 26 firearms and 102 live rounds of ammunition the police removed from his home parts of firearms, spent cartridges, equipment for converting firearms, ball bearings, cutting equipment and used targets.

11. The respondent lived with his partner and their 2 year old daughter. The photographs of their pleasant home reveal a relatively small flat in which all the items listed above were kept, unsecured.

12. The firearms and ammunition that were the subject of counts on the indictment were either recovered from the respondent's home or identified from his sales records and recovered from those he had sold them to. The records showed that he had despatched weapons to locations in Essex, Staffordshire and Dunfermline.

13. Of the 26 identified firearms, 16 were prohibited. 10 were not prohibited either because they were deactivated or not forward venting, but they were capable of being converted.

14. He had imported prohibited blank firing firearms from overseas, one from Slovenia (count 1) and six from Spain (count 2). He had sold four of these on for profit (count 3). He had not converted or modified these four weapons before sale. Weapons of this type are freely available in much of continental Europe, but possession is illegal in the UK.

15. The respondent had in his home five unmodified multi-purpose gas/blank/flare pistols (count 4) and six modified and converted blank-firing and multipurpose pistols (count 5). He had also two CS spray cannisters (count 6), a stun device (count 7), a shortened 12-bore shotgun that was prohibited as the barrels were less than 30cm long (count 8), a readily-convertible blank firing revolver (count 9), a quantity of ammunition, some of which was improvised or modified, (count 10) and homemade gunpowder (counts 11 and 12). He also had false Metropolitan Police warrant and identity cards and a false Interpol identification card (counts 13 to 15).

16. The respondent's laptop contained correspondence with customers showing his detailed knowledge of firearms.

17. The pleasant family home was not large. In addition to the firearms and ammunition it housed balaclavas, Metropolitan Police issue body armour, two zombie commando knives, an invoice for a cross bow, a CS Gas box, a laser sight pointer, smoke grenades and other equipment, all consistent with a high level of interest in, if not fascination with, military and policing equipment.

18. The respondent was interviewed by police officers on 9 and 10 October 2019 and answered all questions 'no comment'.

Sentencing Hearing

19. This took place over two days. The judge took time on the second day to consider his sentencing remarks.

20. The writer of the pre-sentence report considered that the respondent met the criteria for a dangerous offender but commented that he was remorseful, had accepted responsibility for his actions and understood how they could contribute to the commission of violent offences. The respondent said that he believed he was operating within the law, but he accepted that he knew that the firearms were not blank firing. He said that he believed that he had become addicted to what he was doing. He was thoughtful and reflective.

21. The prosecution submitted that in keeping these firearms and other items in his flat the respondent exposed his family, and his very young daughter in particular, to danger – from the weapons themselves and also from organised criminals should it come to light that he was selling firearms from his flat.

22. There were two reports from psychologists. Dr Farhy, consultant counselling and psychotherapeutic psychologist, in a report dated 30 October 2020, noted that the respondent's IQ was in the normal range. He had a very mild relative cognitive impairment, with difficulties in the fields of verbal comprehension and possibly also working memory. This would mean that he finds it more difficult than many to think about his actions, to anticipate the consequences of his actions, and to deal with complex situations which entail processing multiple stimuli at once. His functioning would not be at a disabled level but would be poorer than most of his peers. He had a historic diagnosis of depression.

23. Dr Watts, consultant clinical neuropsychologist in a report dated 21 February 2021, set out the respondent's significant depressive symptoms at the time of the offending. He

was "prone to introversion, social withdrawal and engaging in a rich fantasy world in part to regulate his mood and self-esteem". It was possible that he had some features of autism. Dr Watts considered that although material gain was clearly a significant factor, the respondent's personality traits and depression contributed to his actions and to his poor judgment.

24. In addition to the reports there was before the judge a very large number of letters of support from family and friends. They speak universally of a loving son/partner/father, a loyal friend and a person of great kindness. There was also a detailed letter from the prison chaplain to which we shall return later in the judgment.

25. The prosecution and defence had provided sentencing notes. There is no need to repeat them in detail. There was a huge gulf between the two. The Crown submitted that the overall criminality justified a life sentence. This was a dangerous offender. The case was one of "major seriousness", as described by the Court in **Attorney General's Reference (No 43 of 2009) [2009] EWCA Crim 1925, [2010]** 1 Cr App R (S) 100. In that case the court described the dealers of lethal weapons "on a wide basis" as representing a serious public danger and emphasised that indeterminate sentences will inevitably arise for consideration.

26. The comprehensive defence note started from the proposition, which the judge ultimately accepted, that the case was wholly different in character to those relied on by the prosecution, which tended to feature the possession and supply of firearms in the context of serious violent crime. Dangerousness could not be assumed from the seriousness of the offending alone. There was evidence of remorse and rehabilitation and the probation officer confirmed an absence of pro-criminal views. The mitigating factors were as follows:

    i) The respondent had intended to become a licensed firearms dealer but had not yet submitted an application.

    ii) He used his authentic contact, bank and other details to buy and sell guns and kept records.

    iii) He believed that he was only selling to collectors or those with a legitimate use for the guns and made enquiries.

    iv) He did not use the guns or intend to do so. He disassembled and modified them as he found it interesting and calming.

    v) He had no previous convictions.

    vi) He was of positive good character. A reference from the prison chaplain spoke of his "profound and culpable naivete" and that the offences were "grave departures" from the respondent's character, and that "there is no malice in him but there is an abundance of kindness and generosity".

    vii) His imprisonment would have an ongoing and significant effect on him two daughters, aged 4 and 11.

viii) He was genuinely remorseful. He had written to the court and the prison chaplain considered that his remorse was "utterly sincere" and extended to an appreciation of the great risk to others caused by his offending.

27. As to the Guideline the defence submitted that on counts 3, 4 and 5, the appropriate category was B3 (the crown having submitted it was A1). The defence accepted that count 5 was more serious than counts 3 and 4:

28. The respondent made no effort to avoid detection and the level of financial gain expected was modest. This was a small-scale, unsophisticated enterprise, with no connection to organised crime and no evidence or expectation that the items sold would be used in offending.

29. The judge was urged to reduce the sentence to take account of the prolonged delay between the pleas of guilty and the sentencing hearing and to reflect the very difficult conditions in the prison as a result of the Covid pandemic.

30. As to credit for plea Mr Dein submitted that the respondent should not be penalised for the fact that it had taken time for the defence experts to produce a report on the classification of the firearms. He was entitled to more credit than might usually be expected when a plea of guilty was indicated 13 days before trial. He pointed out also that when the police were at his home he had admitted much of the offending.

Sentencing Remarks

31. The judge observed that the most serious part of the offending related to the supply of firearms on four occasions, and the possession of other prohibited items with intent to supply. This was at the very least a part-time business, not a foolish hobby. The respondent had converted some firearms once they came into his possession. Counts 1 to 12 took place over a period of six months.

32. In relation to the forgery offences, the judge noted that a forged search warrant was found at the respondent's address, which appeared to have been executed on 5 September 2016 and appeared to bear the signature of a householder. The name of the officer on the false warrant corresponded with the name on one of the identification documents. The prosecution did not suggest that the respondent had played a part in that incident, but the judge considered it relevant to rebut a defence submission that there was limited use to which the forgeries could be put.

33. He considered that counts 1, 2, 3, 4 and 5 were the lead offences.

34. He was persuaded that the respondent was not dangerous.

35. He turned to consider the Guideline on Firearms – Transfer and Manufacture. This was directly relevant to counts 3, 4 and 5 and would assist with counts 1 and 2.

36. As to the respondent's culpability, the offending had been going on for some time and would have continued but for police intervention. The respondent took no significant steps to evade detection; he imported and sold items using his own address and credit card or bank account. There was an expectation of substantial financial gain but none of the other high culpability factors were evident: he did not have a leading role in group

activity, did not abuse his position and did not involve others through coercion. His actual profit was in the region of £2,000-2,500. His culpability was not however "lesser". The aspects of high culpability made it difficult to place him at the lower end of medium culpability. He referred to the psychological evidence that the respondent's mental characteristics had contributed to his offending.

37. In terms of harm there was again a balance of factors. The offending fell short of a large-scale commercial or highly sophisticated enterprise but there was a significant geographic range to the sales. On the other hand, there was an absence of any connection to organised criminal groups and no proved use of the weapons after their sale.

38. The judge found that the case fell into Category 2 harm, culpability straddled medium (B) to high (A). The lowest part of the range for a 2A offence was 12 years; the highest part of the range for a 2B offence was 14 years. That was the range he would consider before giving credit for plea and mitigation.

39. As to mitigation, the judge referred to the length of time the respondent had spent awaiting sentence on remand in the difficult prison conditions caused by the Covid-19 pandemic. He was impressed by the references from within the prison confirming that the respondent had earned the trust and respect of staff and had given up his time to assist vulnerable prisoners. His letter to the court demonstrated insight into the potential consequences of his actions. That, together with Dr Watts' assessment and the respondent's immaturity, allowed a ""modest" reduction to the starting point." He accepted the prison chaplain's assessment that the respondent's remorse was genuine.

40. On counts 3, 4 and 5 he adopted a starting point (by which he meant the sentence before reduction for the guilty plea) of 12 years, taking into account the mitigation and aggravating factors. He reduced that figure to nine and a half years to reflect the guilty plea, giving a reduction of 20%. He then reduced the sentence further to eight years to reflect the increased onerousness of a prison sentence in the Covid-19 pandemic.

41. The other sentences were as set out above. All sentences to run concurrently.

42. The judge informed the respondent that he would be required to serve two thirds of the six year sentences on counts 11 and 12 of the indictment. This was incorrect. Both offences are listed within Schedule 15 of the Criminal Justice Act 2003 but the provisions of the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 require a prisoner to be released having served two thirds of a sentence of seven years or more. It therefore does not apply to the sentences on counts 11 or 12.

Submissions

43. On behalf of the Solicitor General Miss Przybylska submits that the overall sentence fell outside the range reasonably open to the judge on the facts and so was unduly lenient.

44. The submissions made on behalf of the prosecution before the sentencing judge were not repeated in this court. The submissions in the final reference and before us were measured, reflecting a commendably careful review of the case before seeking the reference.

45. It was accepted before us that the judge was right to impose sentences on the lead offences which reflected the whole of the criminality with respect to the weapons and ammunition offences.

46. It was also accepted that although the offences of forgery were in a different category they could best be regarded as evidence of the respondent's fixation with law enforcement.

47. The principal submission was that the sentence on the lead offences did not adequately reflect either the seriousness of the offences at counts 3,4 and 5, or the overall criminality.

Starting point

48. The factors placing the offences in culpability B (medium) were the planning and significant financial advantage. The level of planning was not such as to place the offence squarely in culpability A, but the respondent was running an organised one-man business buying and selling prohibited firearms. The culpability was at the top end of category B. In terms of harm, the offending took place over a six month period and involved the sale of guns online to four different locations within the UK. There was a relatively large number of weapons and ammunition involved across the totality of the offending. The operation showed some sophistication: the respondent bought and sold online, using his knowledge of what could be bought legally readily on the continent and sold illegally in the UK, and acted as a knowledgeable broker in his dealings with customers. This was not a casual or opportunistic set-up. This was sophisticated commercial offending, albeit not quite at the large-scale level necessary to place the offences in Category 1.

49. Miss Przybylska submitted that the multiple factors relevant to categorisation, and the potential harm arising from the respondent's children having access to the weapons and from the possibility of the weapons falling into criminal hands, together with the need to reflect the totality of the offending, justified a considerable uplift from the ten year starting point for category 2B. In the reference it was submitted that in the absence of any mitigating factors, a sentence outside the Category 2B range would have been justified. In answer to a question from the court Miss Przybylska submitted that the sentence, absent mitigating factors, would have been 16 years' imprisonment. The respondent's remorse and lack of maturity justified a reduction, sufficient to give a sentence at the very top end of the range, 14 years' imprisonment. A sentence of 14 years, less reduction for guilty plea, would have been appropriate to reflect the gravity of the whole gamut of offences and the aggravating and mitigating factors present.

50. Miss Przybylska further submitted that the 20% reduction for the guilty plea was too high given that the respondent only indicated he would plead guilty two weeks before trial.

51. Miss Przybylska submitted that the delay between plea and sentence was not a mitigating factor. The time spent on remand by the respondent is credited towards his sentence and the fact that it was longer than it might have been does not reduce either his culpability or the harm caused by his offending. Once he pleaded guilty to the offences there was no doubt that he would be sentenced to a significant custodial term; the only question was the length. There has been no prejudice to the respondent caused

by the delay and the detrimental effect on him is limited to anxiety at the likely term of imprisonment.

52. Miss Przybylska further submitted that the 18 month reduction on account of prison conditions during the Covid-19 pandemic was excessive and unnecessary. She submitted that the decision of this court in **R v Manning [2020]** EWCA Crim 592 is not authority for the giving of an automatic discount in every case sentenced during the pandemic. In accordance with well-established sentencing principles, any judge should have regard to the likely impact of a custodial sentence upon the respondent. The significance of the pandemic is that the impact of custody is likely to be heavier because of a lack of visits and increased time spent by prisoners in their cells. The more serious the offence and the longer the sentence, the less relevant the impact of the pandemic will be. The proportion of a long custodial sentence spent under lockdown conditions is likely to be relatively small, and the material impact across the length of the entire sentence will be insignificant. It followed that there should have been no 'Covid reduction' at all.

53. **Respondent's submissions**
Mr Dein QC and Ms Stuart Smith in powerful written and (Mr Dein) oral submissions accepted that the sentence was lenient but contended that it was not unduly so and that this court should not interfere.

54. He reminded the court that this case had been allocated to HHJ Tomlinson at an early stage. He was very well acquainted with every aspect of it, he had reviewed all of the evidence and listened to submissions on the facts and law over two days, had taken the time to consider the matter and had come to a the right conclusion as to sentence. We should not lightly interfere with a careful sentencing exercise by such an experienced judge.

55. The judge was right, he submitted, to put the case into category culpability Category 2, Harm B.

56. He reminded us of all the mitigating factors which the judge had considered and had referred to in sentencing, as we have set out above. He argued cogently that what lay behind the offending was not deep seated criminality but rather a desperate desire to join the police or the army, something he had endeavoured to do over many years. He had applied to a number of police forces and to the army. He had been rejected repeatedly for health reasons and because of his tattoos. He had spent thousands of pounds having them removed. He had also applied unsuccessfully to MI5 and MI6. He was eventually accepted for training in the army. He sustained a serious injury during training which put an end to his hopes.

57. The respondent's fascination with all things policing and military had led to the offending. He was entirely open in what he was doing, which was why it was so easy for his dealings to be detected. He had told the truth to the police from the outset. Whilst he had pleaded guilty only a short time before trial that was because his advisers were awaiting expert evidence on the classification of the firearms before they could properly advise him as to his plea.

58. We have referred already to the character references from family and friends. Mr Dein drew our attention in particular to the letter from the Chaplain at HMP

Wandsworth dated 22 November 2020 to which the judge referred in some detail. The letter was written after the respondent had spent 8 months awaiting sentence. The chaplain writes that "Reviewing Mr Dixon's electronic prison record one is struck by the exceptional number of "Positive" entries …. incidents of creditable behaviour made by a large number of officers and staff." The letter goes on to record that he is hard working, helpful, polite and, of significance "sacrifices his own time to assist others". Given how little of his own time there is, as Mr Dein points out, this is impressive. Some of that time was spent supporting other prisoners who were struggling with prison conditions for complex reasons. The chaplain, like others, points out that the respondent recognises with great regret the damage he has done to his own family, in particular to his two young daughters. More widely he acknowledges the dangers to which he may have exposed others as a result of his offending. The chaplain gives a number of examples of practical steps that the respondent has taken to improve the lives of others. Mr Dein reminded us of the chaplain's observation, to which the judge referred that "there is no malice in Darren Dixon but there is an abundance of kindness and generosity".

59. Mr Dein placed significant emphasis on the effect of Covid on the respondent. First, it had led to very protracted proceedings. The number of listings which were then changed, culminating in the listing which could not continue for want of a court room, had taken their toll on the respondent and his family. The delay was properly reflected in the sentence.

60. While in prison the respondent had been confined to his cell for 23.5 hours a day for many months. There was no hot water in Wandsworth prison for a very prolonged period. He could receive no visits, from his legal representatives, psychologists, probation. He could not see any of his family (his partner and daughter, and an older daughter from his marriage). There was no purposeful activity available. This level of additional punishment, as it would undoubtedly have been experienced, should be reflected in the sentence, he contended, either as a specific Covid reduction – per the decision of this court in **R v Manning** or as part of general mitigation in accordance with ordinary sentencing principles.

Double Jeopardy

61. Mr Dein submitted that this was a case in which the court should have regard to the principle of double jeopardy, accepting that such a course is rare. He submitted that the respondent had suffered significant uncertainty for months before sentence, compounded by the uncertainty experienced while awaiting the hearing of the reference reflect the principle of double jeopardy. Taken along with the very unusual circumstances of the offence and the offender made this a rare case where the principle of double jeopardy should carry weight.

Discussion

62. **Delay/Covid reduction**
The period on remand awaiting sentence was much longer than would normally be necessary or acceptable. It was the result of the effect of the pandemic on the prisons, courts and probation. The main cause of the strain upon the respondent and his family while awaiting sentence was the knowledge that he was facing a long period in

prison for serious offences. We accept that the repeated listings and then removals from the list led to additional anxiety for him and for his family, particularly when the case could not be reached when listed in December 2020. We do not accept that it is of no relevance to sentence, as was submitted on behalf of the Solicitor General, but its significance is limited.

63. What is of greater significance is the effect of the pandemic prison conditions on his sentence so far. We have set out above the conditions in Wandsworth prison. They would by wholly unacceptable in normal times. In May 2020 in **R v Manning** prison conditions during the pandemic were considered in the context of the decision whether or not a sentence of imprisonment could or should be suspended.

At paragraph 42 the Lord Burnett CJ said
"Applying ordinary principles, where a court is satisfied that a custodial sentence must be imposed, the likely impact of that sentence continues to be relevant to the further decisions as to its necessary length and whether it can be suspended. "the current conditions in prisons represent a factor which can properly be taken into account in deciding whether to suspend a sentence. In accordance with established principles, any court will take into account the likely impact of a custodial sentence upon an offender and, where appropriate, upon others a well. Judges and magistrates can, therefore, and in our judgment should, keep in mind that the impact of a custodial sentence is likely to be heavier during the current emergency than it would otherwise be. Those in custody are, for example, confined to their cells for much longer periods than would otherwise be the case – currently 23 hours a day. They are unable to receive visits. Both they and their families are likely to be anxious about the risk of the transmission of Covid-19."

64. The court's focus there was on much shorter sentences than those we are considering here. As a proportion of a much longer sentence 12 months of living in Covid conditions is less than it would be of a shorter sentence. It does not follow however that the impact of Covid conditions should be ignored. Where a custodial sentence is suspended the effect of the decision in **Manning** and the application of ordinary principles may often be that the defendant avoids the harsh prison environment altogether. In this case the defendant had lived through the conditions we have described for well over a year.

65. We are satisfied that the impact of the pandemic prison conditions should be reflected in the sentence we cannot accept that a reduction of 18 months was justified even in the unusual circumstances of this case.

66. In our judgment the combination of the delay and the prison conditions should have reduced the sentence by no more than six months.

67. **Credit for plea**
Less than a month ago, in **R v Plaku [2021]** EWCA Crim 568 this court considered again the provisions of the Sentencing Council's definitive guideline "Reduction in sentence for a guilty plea." At [6] Holroyde LJ emphasized three points:-
i) that the court must follow any relevant sentencing guideline unless satisfied that it would be contrary to the interests of justice to do so
ii)the focus is on the time when it is indicated
iii) there is a clear distinction deliberately drawn between the reduction in sentence

available at the first stage of proceedings and the reduction available at any later stage. He drew attention to section D of the guideline which so far is relevant to this case states:

"**D. Determining the level of reduction**

….

D2. Plea indicated after the first stage of proceedings – maximum one quarter – sliding scale of reduction thereafter

After the first stage of the proceedings the maximum level of reduction is **one-quarter** (subject to the exceptions in section F).

The reduction should be decreased from **one-quarter** to a maximum of **one-tenth** on the first day of trial having regard to the time when the guilty plea is first indicated to the court relative to the progress of the case and the trial date (subject to the exceptions in section F). The reduction should normally be decreased further, even to zero, if the guilty plea is entered during the course of the trial."

Holroyde J continued "The section F exceptions referred to in that quotation cover a number of situations. The application of any of those exceptions in a particular case will of course be a fact-specific decision, and a court making that decision will be careful not to go beyond the limited terms of the exception. Fairness to all defendants, in all courts, requires that the exceptions should not be extended beyond their proper scope.

A court will also keep in mind the practical difficulties of defendants accessing legal advice during the Covid-19 emergency, a point noted by the Sentencing Council in a statement published in June 2020 concerning the application of well-established sentencing principles during the emergency.

Exception F1 makes provision for cases in which the accused needs further information, assistance or advice before indicating his plea. It states that a reduction of one-third should still be made where the court is satisfied that

"… there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done."

Exception F1 goes on to distinguish, in this regard, between

"… cases in which it is necessary to receive advice and/or have sight of evidence in order to determine whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal."

68. Although the judge did not say so explicitly he must have accepted the defence submission that the respondent came within the exception F1. It was not submitted either to us or the judge that the application of the exception should have led to the maximum reduction. Mr Dein reminded us that the defendant had made no attempt to disguise what he was doing and had assisted the police during the search of his house. No one expected there to be a trial. The prosecution obtained evidence as to classification. It was several months before the defence report was produced, for reasons connected to the pandemic. Had it been available earlier the plea of guilty would have been made earlier.

69. Whilst this account is correct it overlooks the reality that the respondent knew the classification of the firearms. He was buying and selling them. He had the prosecution report which confirmed what he knew. He was entitled to wait for the

result of his investigation to decide how to plead but on a proper application we cannot accept that he was entitled to a reduction in the sentence of 20%.

70. The judge correctly categorised the offences at counts 3, 4 and 5 as 2B. This properly reflected the fact that there was no connection with organised, or indeed any, crime – although how long that would have pertained once his reputation went further and organised criminals moved in on him we cannot know. He is to be sentenced for what happened.

71. The starting point for category 2B is 10 years. The judge was bound to move up from the 10 year starting point to reflect the seriousness of the offences and the whole of the criminality. As he said, this was a case that was on the border of A and B. Taking account of all the aggravating factors as set out by the judge and including the fact that this was a sentence for 3 offences and was then to reflect the whole of the criminality a significant upwards move from 10 years was required, beyond the range, to 15 years.

72. There were a large number of mitigating factors beginning with his lack of previous convictions, his ready cooperation with the police at the outset. and all the evidence about his positive good character. The letter from the Prison chaplain is powerful. The report from Olney prison says, "His general behaviour and attitude towards staff has been exemplary, and he is regularly recorded as being a polite, respectful and "model" prisoner". We add that it is recognised that he still suffers from depression. His mental health has suffered in prison.

73. The effect of his imprisonment had been shattering on his family. They and he had struggled to cope with the knowledge that there was to be a long period of separation. He recognises that he may lose his family altogether.

74. In our judgment all of those factors are to be treated as mitigation in the conventional way, together with the reduction in respect of the delay and the prison conditions. They would lead to a sentence of 13 years before the reduction for the plea of guilty.

75. We have hesitated to interfere with the judge's assessment of the reduction for the guilty plea but on a proper application of the guideline as set out above we are satisfied that the appropriate reduction is one of 15%.

76. Applying that reduction to the sentence of 13 years results in a sentence of 11 years which properly reflects the whole of the offending and the mitigation in this unusual case.

77. We do not consider that the principle of double jeopardy has any application here.

78. Accordingly, we accede to the Solicitor General's application. We quash the sentence on each of counts 3,4,5 and substitute on each count a term of imprisonment of 11 years to be served concurrently with each other and with the sentences on the other counts with which we do not interfere. None of the offences other than those in respect of counts 11 and 12 are listed in Schedule 15 and so the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 is of no application to any of the sentences. In those circumstances the respondent will serve one half of the total sentence.

79. We are grateful to all counsel for the focus and clarity of their submissions.