IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202102369/A1
NCN [2022] EWCA Crim 1117

Royal Courts of Justice
Strand
London
WC2A 2LL

Wednesday 20 July 2022

Before:

THE VICE-PRESIDENT OF THE COURT OF APPEAL (CRIMINAL DIVISION)
(LORD JUSTICE HOLROYDE)

MR JUSTICE JAY

MR JUSTICE BENNATHAN

REGINA
v
LONEL-OCTAVIAN STANCIU

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MR A TROLLOPE QC appeared on behalf of the Appellant.
MR M HEYWOOD QC appeared on behalf of the Crown.

J U D G M E N T
(Approved)

1. THE VICE-PRESIDENT: This appeal, brought by leave of the Full Court, raises issues as to the correct approach to the determination of the appropriate minimum term in cases of murder where the death is caused by the offender setting fire to the home of the victim.
2. On 22 March 2021, after a trial in the Central Criminal Court before HHJ Leonard QC and a jury, the appellant was convicted of the murder of Ionut Manea (count 1) and causing grievous bodily harm with intent to Petrisor Manea, contrary to section 18 of the Offences Against the Person Act 1861 (count 4). His co-accused, Petra Deliu, was convicted of the manslaughter of Ionut Manea. The appellant was sentenced on count 1 to life imprisonment. The judge specified a minimum term of 31 years less the 748 days during which the appellant had been remanded in custody. No separate penalty was imposed on count 4.
3. For present purposes, the facts can be summarised as follows. The appellant, Deliu and their two victims had been friends. They would usually drink together on the streets of Barking in Essex after finishing their day's work as labourers. In June 2019 Deliu, Ionut Manea and Petrisor Manea were living in a makeshift hut beside a road in Ilford. On the night of 19 June the appellant, accompanied by Deliu who was acting as his guide, travelled by bus from Barking to Ilford. The appellant bought a can of petrol from a petrol station. He and Deliu then walked to the hut. The appellant used the petrol to set the hut on fire. Ionut Manea, asleep within, was very badly burnt, and died the following day. Petrisor Manea survived but suffered what the judge described as "horrendous and life-changing burn injuries".
4. The prosecution case was that each of the accused knew before they arrived at the hut that there would be one or more men inside it when it was set on fire. Deliu accepted that he knew the hut would be occupied. The appellant's case was that he and Deliu had planned to burn down the hut, but only in the belief that it would be unoccupied at the time. There was evidence that, immediately after the fire had started, the appellant ran into the road to stop a police vehicle and showed obvious distress.
5. The judge in his sentencing remarks referred to the anguish which the murder had caused to Ionut Manea's family and to the seriousness of the injuries caused to Petrisor Manea, who does not expect to be able to work ever again. He indicated that in specifying the minimum term, he would reflect the offence against Petrisor Manea. No criticism is or could be made of that approach. The judge decided that the appropriate starting point to be taken in determining the minimum term for the offence of murder was one of 30 years.
6. Petrisor Manea had given evidence that, earlier on that day, the appellant had said to him: "Tonight I will set you on fire". The judge accepted that evidence, which he referred to as a threat made by the appellant when angry and drunk. It followed, he said, that he did not accept that the appellant had only formed an intention to cause grievous bodily harm to Petrisor Manea upon arrival at the hut. The judge said:

> "With Deliu to show you the way, you bought a petrol cannister, which you filled with petrol, and then carried it to the campsite. You pushed the nozzle on the cannister before you got there. When you got there, you poured petrol into or around the hut and set it on fire. Over that period of time, you intended, as you had earlier said, to set fire to [Petrisor] Manea and therefore the other

occupant of the hut, Ionut Manea."

7. The appellant had only once before been sentenced by a criminal court, for offences of driving with excess alcohol and related matters. It was however an aggravating feature of his case that in relation to those matters, he had been bailed by a Magistrates' Court only the day before the murder.
8. The judge identified a number of other aggravating features, though he made clear that the 30-year starting point largely took them into account and he had not counted them twice in specifying the minimum term. They were that Ionut Manea was particularly vulnerable; the offences were committed under the influence of alcohol; fire fighters were put at risk; there was "a degree of planning and premeditation", more so on the part of the appellant than Deliu; and there was the use of an explosive material, namely the petrol.
9. The judge also identified a number of features of personal mitigation, namely that the appellant would serve his sentence away from his home country; he had intended to cause Ionut Manea really serious injury rather than to kill him, though the risk of death must have been obvious; the appellant had no relevant previous convictions; he had worked throughout his adult life, had supported others and was well liked in the community; he would be separated for a very long time from his wife and children; he had shown remorse at the roadside, asking himself: "Oh God, what have I done?" and had wanted to get assistance for Ionut Manea; and he had at a late stage entered a guilty plea to manslaughter, though that had not been accepted by the prosecution.
10. Taking all those matters into account, the judge imposed the sentences to which we have referred.
11. Mr Trollope QC, representing the appellant in this court as he did below, submits that the minimum term is manifestly excessive, in particular because the judge either made too great an increase from the starting point of 30 years, or gave insufficient weight to the personal mitigation, or both. Mr Trollope makes the following submissions.
12. First, the appellant had admitted that he had planned to burn down the hut but the judge should not have found that there had also been a premeditated plan to burn the occupants of the hut. Although the jury by their verdicts were satisfied that the appellant intended at least to cause grievous bodily harm to the two victims, Mr Trollope submits that premeditation of a plan to do so was inherently improbable given the friendship between the appellant and the victims. Further, the evidence was at least equally consistent with the appellant having formed the necessary intention only on his arrival outside the hut.
13. Mr Trollope submits that the judge should not have accepted the evidence in this regard of Petrisor Manea, who was an unreliable witness and who had given contradictory accounts on important matters. It is accordingly submitted that the threat to which we have referred should have been treated by the judge as referring only to the hut and not to anyone in it. Mr Trollope goes on to submit, in challenging the judge's findings of fact in this regard, that they were reached by the judge improperly picking and choosing and so accepting as true one part of Petrisor Manea's evidence, whilst simultaneously rejecting as unreliable another part of the same evidence. Mr Trollope submits that this is a case in which this court should conclude that the judge simply was not entitled to sentence on the factual basis he did.
14. Secondly, Mr Trollope submits that, notwithstanding the judge's expressed intention of avoiding the error of double counting, most of the aggravating features which he found had already been taken into account in selecting the starting point of 30 years, and the

judge should not have given further weight to them before going on to consider mitigation.

15. Mr Trollope relies in this regard on the decision of this Court in the case of R v Jones & Ors [2005] EWCA Crim 3115 and in particular on the decision of the court in that case when allowing the appeals against sentence of two of the appellants, namely Messrs Multani and Dosangh. He submits that the facts of the murder and section 18 offence committed by Multani and Dosangh were similar to, but if anything rather worse than, the offending by this appellant. The judge in their cases had set a minimum term of 23 years, which this court on appeal reduced to 21 years.
16. Mr Trollope indicated that whilst he did not argue against a starting point of 30 years, taking into account both the murder and the offence against Petrisor Manea, such a starting point would have been excessive had there been no second victim.
17. On behalf of the respondent Mr Heywood QC and Ms Oakley (who also appeared below) have resisted these submissions. Mr Heywood contends that the judge made no error of law or principle; was entitled, for the reasons which he gave, to make the factual findings which he did; and imposed a sentence which was not manifestly excessive. Mr Heywood in particular argues that the "picking and choosing" criticised by Mr Trollope was, on the contrary, a justified decision by the judge as to which parts of Petrisor Manea's evidence could be accepted as a basis for sentencing and which could not.
18. We are grateful to all counsel for their written and oral submissions.
19. We consider first the general approach to sentencing in cases such as this. For convenience, we shall refer to the relevant provisions of the Sentencing Code introduced by the Sentencing Act 2020 simply by reference to the number of the section or schedule concerned.
20. A sentence of life imprisonment, or the form of life sentence appropriate to a young offender, is of course mandatory upon conviction of murder. By section 321, unless the court is required to make a whole life order, it must specify a minimum term to be served before the offender can be considered for release on life licence. By section 322(2), the minimum term must be such part of the sentence as the court considers appropriate, taking into account the seriousness of the offence, or the offence and any one or more offences associated with it, and the effect of certain other statutory provisions. In determining the seriousness of the offending the court must, by section 322(3), have regard to the general principles set out in schedule 21.
21. Schedule 21, the successor to the similarly-numbered schedule to the Criminal Justice Act 2003 which was considered by this court in R v Jones & Ors, identifies a number of different starting points to be used in determining the minimum term. By paragraph 3(1) the appropriate starting point for an adult offender will be a minimum term of 30 years if the court considers that the seriousness of the offending is "particularly high". Paragraph 3(2) sets out a non-exhaustive list of cases which "would normally fall" into that category of seriousness. These include, by subparagraph (b), "a murder involving the use of a firearm or explosive".
22. By paragraph 4, the appropriate starting point will be 25 years where an adult offender "took a knife or other weapon to the scene intending to (a) commit any offence or (b) have it available for use as a weapon and use that knife or other weapon in committing the murder". That paragraph is the successor to what was previously paragraph 5A of

Schedule 21 to the 2003 Act, added to that Act by amendment with effect from 2 March 2010.

23. The appeals in R v Jones & Ors were heard in 2005. Lord Phillips CJ, giving the judgment of the court, drew attention at paragraph 7 to the "huge gaps" between the three starting points which the legislation then identified for adult offenders.
24. Multani and Dosangh had purchased petrol, smashed the window of their victim's flat, poured petrol inside and set it alight. One person was trapped inside and died. Another suffered burns and jumped from a first floor window sustaining further serious injuries. The judge had taken a starting point of 30 years for their minimum terms. He had found two aggravating features, which he balanced against the mitigation of their young age, their previous good character and their intention to cause grievous bodily harm rather than to kill.
25. On appeal this court rejected a challenge to the 30-year starting point, saying at paragraph 61:

> "Setting fire to a person's home with the intention of causing death or really serious personal injury is peculiarly horrifying. The judge approached sentencing on the basis that the jury had only found an intention to cause really serious injury rather than an intention to kill. We do not think that in a case such as this the difference is very material. Deliberately to cause really serious injury by fire is likely to involve agony for the victim and the possibility of permanent injury or disfigurement. Furthermore, such conduct carries with it the obvious risk of causing death. Although causing death by arson does not feature in the list in paragraph 5(2) of Schedule 21 of examples of cases where the seriousness is likely to be particularly high, we think that the judge was right to conclude that murder as a result of using petrol to set fire to a victim's home falls within that category. Were there any doubt, we think that this fell to be resolved by the fact that there was a second victim who was seriously injured as a result of jumping out of an upstairs window to escape the fire. Accordingly the judge cannot be criticised for taking 30 years as a starting point."

26. It is important to note that the court in that passage upheld the 30-year starting point on the basis of setting fire to a victim's home with the necessary intention, albeit that it went on to add as a further reason the fact that serious injury had also been caused to a second victim.
27. As to the balancing of the aggravating and mitigating features found by the judge in that case, the court at paragraphs 62 and 63 said:

> "62. The judge treated as aggravating features the fact that there was a significant degree of planning of the offence, as evidenced by the purchase of the petrol at a filling station, and the fact that these appellants knew that the flat was occupied. It seems to us

> that each of these factors was implicit in this type of offence and sufficiently reflected in the starting point. They should not have been weighed further in the balance.
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> 63. The judge deducted a little over 6 years from the starting point to reflect the ages of these appellants, the fact that they were of previously good character and the fact, as he assumed, that they did not intend to kill. Was this reduction less than it would otherwise have been because the judge had weighed against the mitigation the factors that he treated as aggravation? It is not clear to us that it was, but it may have been. In these circumstances, we have decided that the right course is to replace the minimum terms of 23 years, which made allowance for time served, with terms of 21 years."

28. We regard the decision in R v Jones and Ors as authority for the principle that in the case where the murder of one person is committed by using petrol or another accelerant to set fire to that person's home, a court may properly find that the seriousness of the offence is "particularly high" and the appropriate starting point is accordingly 30 years. We would add that, for the reasons clearly stated by the Lord Chief Justice in paragraph 61, such a case usually will fall into that category of seriousness, save perhaps in exceptional circumstances. That approach is, in our view, consistent not only with the earlier decision but also with the subsequent introduction by Parliament of a 25-year starting point in cases where a weapon is taken to the scene and used in committing the murder.
29. It is not necessary, and therefore would not be appropriate, for us to say anything about cases of murder which, although involving death by fire, do not involve the use of an accelerant to set fire to the victim's home when the victim is inside.
30. Within the narrow category of cases with which we are here concerned it is, as always, important to guard against inadvertent double counting of aggravating features. Proof of the requisite intention will almost always involve evidence that the offender knew or believed that the premises were occupied, and that fact is encompassed within the 30-year starting point. Such offences will necessarily involve the acquisition and use of an accelerant, and will therefore necessarily involve an element of premeditation and planning. That element is reflected in the starting point and accordingly should not also be used as an aggravating feature. It may be that the circumstances of a specific offence go beyond the level of premeditation and planning which is inherent in the crime: that will be for the court to determine on a case-specific basis. Similarly, one of the reasons why offences of this kind are particularly serious, and the starting point of 30 years is appropriate, is that the victim is particularly vulnerable because he is at high risk of being trapped inside the burning premises. Again, there may be a case-specific distinction to be drawn as to the precise level of vulnerability, for example, if the offender has deliberately waited until the victim will be asleep. Finally, offences of this nature will usually also involve risk to fire fighters, though again there may be issues of fact and degree in a specific case.
31. Where one or more other persons are also injured by the fire, the crimes committed against that victim or those victims will appropriately be reflected by the court making an

upwards movement from the 30-year starting point, before considering mitigating features.

32. Returning to the present case, we are satisfied that the judge, having presided over a long trial, was entitled to accept the material aspect of Petrisor Manea's evidence and to make the findings of fact which he did. Those findings of fact were, in our view, consistent with the jury's overall verdicts and with other evidence in the case. Whatever the criticisms of Petrisor Manea's unreliability, it was properly open to the judge to be satisfied so as to be sure that in relation to the threat, his evidence to the jury was accurate, truthful and reliable.
33. It follows from what we have said in considering the general principles that the aggravating features mentioned by the judge could only justify a limited increase above the 30-year starting point. But the judge made clear that he gave those features only limited weight. He was in the best position to assess the weight to be given to the personal mitigation. In deciding whether he failed to balance these factors fairly, it is important to remember that the minimum term had to reflect the seriousness of the offending as a whole, including not only the murder of Ionut Manea but also the serious offence against Petrisor Manea. Viewed in isolation, the section 18 offence was a category A1 offence under the relevant sentencing guideline, for which the appropriate starting point would be 12 years' custody with a range from 10 to 16 years.
34. We do not think the appellant can derive assistance from the fact-specific decisions relating to Multani and Dosangh. The trial judge in their case made his decision at a time when the legislation did not include what is now paragraph 4 of schedule 21. This court made its decision on appeal on the narrow basis that the judge may have struck an incorrect balance because he wrongly considered aggravating features which were already reflected in the starting point as adjusted by him.
35. In those circumstances, we are unable to accept that the minimum term specified by the judge in the present case was manifestly excessive. Grateful though we are to Mr Trollope, this appeal must accordingly be dismissed.