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IN THE COURT OF APPEAL
CRIMINAL DIVISION

CASE NO 202103778/A4-202103814/A4



[2022] EWCA Crim 734

Royal Courts of Justice
Strand
London
WC2A 2LL

Friday 13 May 2022

Before:

LORD JUSTICE COULSON

MR JUSTICE GARNHAM

MR JUSTICE BOURNE

REGINA

V

SCOTT PALMER

LEE PALMER

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MS A POWER appeared on behalf of the Applicant Scott Palmer.

MS C OBORNE appeared on behalf of the Applicant Lee Palmer.

J U D G M E N T

LORD JUSTICE COULSON:

1. Scott Palmer is now 36; Lee Palmer is now 27. On 8 November 2021 in the Crown Court at Snaresbrook, HHJ Kamil ("the judge") sentenced Scott Palmer to 9 years' imprisonment for firearms and drug offences with a consecutive extended sentence of 10 years (8 years' imprisonment and an extended period of licence of 2 years) for false imprisonment. She sentenced Lee Palmer to 8 years' imprisonment for false imprisonment. Both applicants seek to renew their application for permission to appeal against sentence following refusal by the single judge.
2. The Criminal Appeal Office has, late yesterday, raised a specific issue about the extended sentence imposed on Scott Palmer. On behalf of Scott Palmer, Ms Power has asked the Court to make the position on that issue clear, and later on in this judgment we are happy to do so.

The Facts

3. On the morning of 1 December 2017 armed police executed a search warrant at the flat where Scott Palmer was living with his partner and children. During the delay between the announcement by the police that they were outside and wished to come in, and their admission into the flat, the toilet was heard repeatedly flushing.
4. Once the occupants in the flat had been detained, the flat was searched. In a freezer in the kitchen the officers found a Belgium FN Browning Hi Power self-loading pistol which had one round in the chamber. The freezer also contained a list of names and numbers consistent with drug dealing. In the laundry room the police found a magazine containing

12 rounds of ammunition which was compatible with the pistol. Approximately 100 grams of cocaine (valued at about £2,500) was found in the flat along with £100,000 in cash. Some of the cocaine was found on a toilet brush and white powder was also noted in the bath. The only logical conclusion, when taken together with the evidence of the toilet being repeatedly flushed before the police gained entry, was that quantities of cocaine had been flushed down the toilet.

5. Scott Palmer was interviewed on 1 December 2017 and again on 1 May 2019. He did not answer any of the questions put to him in either of the interviews.
6. On 3 June 2019, in other words just a month after that second interview and while Scott Palmer was still under investigation in respect of the firearms and drug offences, he was involved in the kidnapping of Mr Simon Crowley. Mr Crowley owed a debt of £10,000 to the father of Scott and Lee Palmer. Scott Palmer contacted Mr Crowley's girlfriend and arranged to meet him. At around 9.30 pm on 3 June 2019, Mr Crowley went to the agreed location and got into Scott Palmer's car. Lee Palmer was on the back seat. Mr Crowley was told to hand over his phone and he did so. His hands were tied with cable ties. A scarf was wrapped round his eyes and secured with black gaffer tape.
7. Mr Crowley was taken to a scrapyard and put in the back seat of a car. He was held overnight. He was repeatedly assaulted by Lee Palmer, who struck him over the head, legs and arms whilst Scott Palmer made demands for the return of the money. Scott Palmer contacted Mr Crowley's family and demanded the repayment of the money from them. After a total of 21 hours, Mr Crowley was put into the back of a Transit van, the

ties were cut from his wrists and the tape was removed. He was released on condition that he still had to pay up. By then it was 10 past 6 on the evening of 4 June 2019.

8. Scott Palmer was arrested on 7 June and again refused to answer any questions. Lee Palmer handed himself in to the police on 9 June and gave a "no comment" interview.

The Progress of Proceedings

9. The applicants were held in custody when they were charged with the kidnapping offence. They both pleaded not guilty. They remained in custody whilst preparations were made for the trial, and it appears at least one trial date was fixed but then not met. It was not until 22 December 2020 that both Scott Palmer and Lee Palmer changed their pleas to guilty to the charge of false imprisonment. It appears that this was some three or four weeks before the re-fixed trial date.
10. As to the gun and drug offences, Scott Palmer did not change his plea to guilty until after the trial had started on 16 April 2021.

The Sentencing Exercise

11. The pre-sentence report was dated 29 July 2021. It assessed Scott Palmer as posing a high risk of serious harm to others.
12. In sentencing him, the judge dealt first with the gun and drug offences from 2017. By reference to the applicable sentencing guidelines, she said that, in relation to the firearms offence, the proper starting point was 7 years, but she reduced that to 5 years because of

totality and the relevant mitigating factors. In relation to the drug offences it was agreed that this was category 3 street dealing. The judge found that Scott Palmer had played a leading role. That produced a recommend starting point for the drug offence of 8 years' imprisonment. The judge then reduced that to 4 years, again to reflect totality, mitigation and the late guilty plea.

13. As to the false imprisonment of Mr Crowley, the judge said that the correct starting point was 10 years for both Scott and Lee Palmer. That was her figure because there are no applicable sentencing guidelines, although she had been referred to a number of authorities dealing with sentences in false imprisonment cases. The judge reduced the 8 year starting point by 20% in respect of mitigation, the late guilty pleas and other matters. So that therefore became the term imposed on Lee Palmer, and it comprised the custodial element of the term imposed on Scott Palmer. In addition the judge found that Scott Palmer was dangerous and she therefore imposed an extended sentence, pursuant to section 279 of the Sentencing Act 2020, with an extended period of licence of 2 years. The suggestion made now by the Criminal Appeal Office is that the sentencing remarks do not make it clear that the 2-year extended term was being added in respect of the false imprisonment alone, or by reference to all of Scott Palmer's offending. If the latter, the sentence was potentially unlawful. As we have said, we return to that point at the end of the judgment.

The Section 31 Proceedings

14. Both applications for permission to appeal were refused by Jeremy Baker J. He set out in some detail the reasons why he had concluded that in both cases there were no arguable grounds for suggesting that the sentences were manifestly excessive. We do not repeat

what he said in his remarks since much of what he said is reflected, in one way or another, in this judgment.

15. It is a feature of these renewed applications that, prior to this morning, neither applicant had produced any material to suggest that Jeremy Baker J had misunderstood or misinterpreted some element of the facts or had erred in principle in his reasons for refusing the applications. At the hearing today Ms Osborne made the point that Jeremy Baker J misinterpreted one of the authorities. That is a point to which we will return. But that has been the extent of the references to the single judge's section 31 comments.
16. Whilst a defendant whose application has been refused under section 31 has the right to renew that application to the Full Court, that should not be regarded as some sort of free hit particularly where, as here, the experienced single judge has set out in detail the reasons why the applications were not arguable. If a point is to be taken about the way in which the single judge dealt with the applications then notice of that point needs to be provided to the Full Court in writing so that it is possible to see how it fits into the overall appeal.
17. All of that said, we acknowledge at once the assistance that we have derived from the oral submissions this morning of Ms Power and Ms Osborne. We are very grateful to them for the way in which they have dealt with the issues.
18. We turn first to deal with Scott Palmer's renewed application in respect of the firearms and drug offences. We then consider both renewed applications in respect of the false imprisonment offence.

Scott Palmer: Firearms and Drugs

19. It is accepted on behalf of Scott Palmer that it was open to the judge to impose consecutive sentences in respect of the firearms and the drugs. The two specific issues raised by this application are the submissions that i) the 7-year starting point was too high and ii) that the judge erred in finding that Scott Palmer played a leading role for the drug offence. In our view, neither of these submissions is sustainable.

20. First, we address the 7 year starting point for the firearms offence. We note that this carries a 5 year minimum term and a maximum term of 10 years imprisonment. Accordingly, any room for manoeuvre is pretty limited. The applicable Sentencing Guidelines identify high culpability (category A) as including those situations where an offender intended the firearm to be used for a criminal purpose "or is reckless as to whether it would be so used". Category B includes where the firearm is loaded with compatible ammunition. As to harm, the Guidelines identify category 1 as referable to a high risk of distress, death or serious injury; category 3 as a minimal risk of such consequences; with category 2 being appropriate for all cases where neither category 1 nor category 3 apply.

21. The judge did not identify which category she put this offence into. The 7 year starting point to which she referred, and the range from 6 to 8 years, is recommended for category 1B and category 2A. In our view, this was a case of high culpability (category A) because it was plain that Scott Palmer intended to use the gun, if it was necessary, to further his drug dealing. Harm could have been category 1. It might be asked: who leaves a loaded

gun in a freezer for his children to find, and then suggests there was not a high risk of serious injury? And if not, it would definitely fall within category 2. In this way, this was on any view a category 2A offence, with a 7 year starting point, and the range from 6 to 8 years. Thus the 7 year starting point was plainly open to the judge. She could have gone higher.

22. But even if Ms Power was right, and that this was a category 2B case, the factors that we have identified would put it at the top end of the recommended range. Again that is 7 years. That is primarily because of the risk that Scott Palmer ran of keeping a loaded gun in his freezer. Accordingly, the 7 year starting point, in our view, is unassailable however you approach it.
23. The judge then made a generous reduction from 7 to 5 years to reflect the mitigating factors, the very late guilty plea and totality. In view of the statutory minimum term of course, she could not have gone any lower than the 5 years that she imposed for the firearms offence. That is another reason why the 5 year term imposed cannot sensibly be criticised.
24. As to the drugs offence, it was accepted that this was category 3 street dealing. For a leading role, the recommended starting point is 8 years 6 months, according to the applicable Sentencing Guidelines, with a range of 6 years 6 months to 10 years' custody. The judge took an 8 year starting point, and then reduced it significantly to 4 years to reflect totality, mitigation and the modest credit for the late guilty plea.

25. The criticism made by Ms Power is that, in arriving at the 4 year term, the judge erred in concluding that Scott Palmer played a leading role in the supply of the cocaine. In our view, that submission, although clearly put, is not sustainable. Scott Palmer was a drug dealer. He was so involved in that activity that he required the protection of an illegal firearm to carry it out. He bought and sold drugs: that is the critical ingredient for someone playing a leading role. As the judge said, he also had a significant financial incentive, which is also indicative of a leading role.
26. Ms Power's point came to this: that in the Sentencing Guidelines a *significant* financial interest equates to a significant role whilst a *substantial* financial interest equates to a leading role. She therefore makes the point that the judge did not use the adjective *substantial* when describing Scott Palmer's financial interest, and therefore erred when finding that he played a leading role.
27. With respect to Ms Power, we doubt very much whether that overly semantic approach to the Sentencing Guidelines was something that the judge had in mind when she was sentencing these applicants. As we have said, the main reason why it was plain Scott Palmer was playing a leading role was because of the buying and selling of the drugs, which was his responsibility. There was no suggestion that either his partner or his children could have been playing the leading role in the drug operation that was found in the flat, and no third parties giving Scott Palmer directions were identified. In our view therefore, the judge was quite entitled to take 8 year as the starting point.
28. Furthermore, as we have noted, the judge halved that starting point to a term of 4 years, in

order to recognise all the various factors she identified, and in particular totality. A significant reduction was appropriate in all the circumstances. But in all the circumstances of this case, Scott Palmer can have no complaints when the reduction applied by the judge halved the otherwise appropriate sentence.

29. For those reasons therefore, we consider that the 5 year term for the firearm and the 4 year consecutive term for the drugs were appropriate sentences and properly took into account all the relevant factors, including totality. We do not consider that it is arguable that such a sentence was manifestly excessive. Accordingly, Scott Palmer's renewed application in respect of those sentences is refused.

Scott and Lee Palmer: Kidnapping and False Imprisonment Offence

30. The judge took as her starting point for the false imprisonment offence a term of 10 years imprisonment. She then reduced that by 20% (in both cases) to reflect the mitigation and the late change of pleas. That gave rise to the 8 year term imposed on Lee Palmer and the 8 year term which formed the basis of Scott Palmer's extended sentence.
31. On behalf of both applicants it is submitted that the judge took too high a starting point because she failed to take into account two decisions of this Court, namely *Attorney-General's Reference No 92 of 2014 (R v Danny Gibney)* [2014] EWCA Crim 2713 and *R v Osei* [2018] EWCA Crim 2728. We have considered that submission carefully and we have studied those authorities. We note that in *Gibney*, where the kidnapping lasted 10 hours and the physical assault was limited, the sentence was increased to 10 years. In *Osei*, the kidnapping was not planned and although the victim

suffered a fractured eye socket, it was not the appellant who caused that injury (albeit that the appellant had been involved in some violence). The sentence in that case was reduced from 11 years to 8 years.

32. In our view, those cases, which are not Guideline cases, do not suggest that the judge erred in this case in taking a 10 year starting point. On the contrary, in our judgment, they support it. As the single judge pointed out, this was a more serious offence than *Osei* because that was not planned and there the appellant was not held to be responsible for the worst injury suffered by the victim. Ms Obourne is right to point out that the appellant had perpetrated some violence but, contrary to her submissions, that does not undermine the single judge's analysis. In the present case, the kidnapping was planned, hence the use of cable ties, Gaffer tape and so on and Lee Palmer was expressly responsible for the injuries inflicted on the victim, while Scott Palmer directed the extortion threats.
33. We pause to say a word about Mr Crowley's injuries because those too were referred to by the judge in her sentencing remarks. There are photographs of Mr Crowley after his ordeal. He was hit around the head and the photographs showed bruising and damage to his eyes and ears. There are also injury marks to his shoulders and legs. The cable ties bit into his wrists and his hands swelled as a result. As the judge noted in her sentencing remarks, the entire event unsurprisingly caused Mr Crowley substantial and lasting psychological damage.
34. For all these reasons therefore, we are in no doubt that the judge was quite entitled to say that the starting point in this case was a term of imprisonment of 10 years. As we have

said, the judge then reduced that term (in both cases) to a custodial term of 8 years.

35. On behalf of Lee Palmer, Ms Osborne took two points. She said that the case of Osei suggested a lesser sentence. We have already dealt with that submission and rejected it.
36. Her second point was that the judge did not properly reflect in her 20% reduction two matters, namely Lee Palmer's age (he was 24 at the time of the false imprisonment) and his progress in prison. We do not accept that submission. The judge in a case like this has a wide latitude to come to an overall percentage reduction for the various mitigating factors. The 20%, in our view, was a reasonable deduction in all the circumstances of Lee Palmer's case. Although he was 24, beyond that statement of fact there was nothing further to indicate that his age played any role in his culpability or offending. There was no suggestion that he immature or had in any way been suborned by his older brother. In any event, any mitigation relating to Lee Palmer's age might be said to be counter-balanced by the fact that it was he who had inflicted the injuries on Mr Crowley over a long period.
37. As to the progress in prison, that was plainly something that the judge had in mind. She expressly said so; beyond that, the precise amount of the reduction was, as we have said, a matter for her. We do not consider that it is arguable that, because she only made a deduction of 20% rather than, say, 25% or even 30%, the term was manifestly excessive. Ultimately it was a matter for the judge. Accordingly Lee Palmer's renewed application for permission to appeal against sentence is refused.
38. On behalf Scott Palmer, Ms Power made a number of points about the 8 year custodial

term imposed in respect of the false imprisonment. First, she says there was no separate reduction to reflect totality. She is right about that. But in our view no such reduction was appropriate. This was a completely separate offence to those involving the firearms and the drugs, and a consecutive sentence was appropriate. It is difficult in those circumstances to see how the principle of totality could apply, particularly given that the offending was 2 years apart. In any event, even if a modest reduction for totality might otherwise have been appropriate, it would have been immediately counter-balanced by the fact that the false imprisonment of Mr Crowley took place just a month after Scott Palmer's second interview in relation to the firearms and the drugs offences for which he was still under investigation. That was, in our view, an aggravating factor in his case. Accordingly, we do not consider that there can be any complaint about the 8 year custodial term imposed on Scott Palmer in relation to the false imprisonment.

39. In Scott Palmer's case, that leaves the question of the extended sentence. Ms Power submits that the judge was wrong to impose an extended sentence in this case. She relies on the positive references for Scott Palmer and in particular the work that he has done in prison.
40. There are three difficulties with that submission. First, that was again a matter for the sentencing judge. Secondly, it ignores the clear finding in the pre-sentence report to the effect that Scott Palmer posed a high risk of serious harm to the public. The pre-sentence report uses the word "*gangster*" to describe him. Given his involvement with firearms, drugs, false imprisonment and violence, it cannot be said that that is an unfair description. Although it is said that that conclusion was reached without knowledge of his progress and

conduct in prison, we do not consider that those matters could make any meaningful difference to the clear finding of the high risk of harm. As was indicated during submissions, dangerousness is largely measured by risk of harm to the public outside, not an offender's conduct in prison.

41. Secondly, and Ms Power was very careful not to put this too high, there is an element of the submission as to dangerousness which seeks to attack Mr Crowley's victim impact statement and the judge's reliance upon it. We do not consider that that argument is fair. It is plain that there were some elements of the victim impact statement which were contradicted by the officer in the case, but the judge was careful not to refer to those elements, or to take them into account in her sentencing remarks. Shorn of those aspects, we consider that the victim impact statement makes troubling reading, and the judge was quite entitled to rely on what Mr Crowley said when reaching a view as to the dangerousness of Scott Palmer. So for those reasons, we reject the suggestion that the judge should not have imposed an extended sentence.

42. We come therefore finally to the point raised yesterday by the Criminal Appeal Office, to the effect that the sentence might have been unlawful because the judge did not clearly affix the 2 year extended licence to the false imprisonment offence, and that it would not be possible to attach it to the 2017 offending in any event. We accept that the judge's phraseology may could have been better, and we accept that the judge should have been crystal clear as to the offence to which the 2 year extension was being applied. We do consider, however, when taken in the round, that it was (or certainly should have been) clear to everyone in court that the judge intended to make the 2 year extension applicable

to the false imprisonment offence. That much could be seen from the fact that the custodial part of the term, namely the 8 years, was the same as the term imposed on Lee Palmer, and the only difference was that Scott Palmer was held to be dangerous and Lee Palmer was not.

43. In her submissions this morning, Ms Power said that the position had not been entirely clear, not least with the prison authorities. She said she would be grateful if this Court made the position crystal clear. We are happy to do so. Accordingly, we expressly confirm in open court that the extended sentence imposed on Scott Palmer, and therefore the 2 year extended licence period, was referable to the false imprisonment offence, and not the drugs and firearms. Thus, the extended sentence is 10 years for the false imprisonment, made up of a custodial term of 8 years and an extended licensed period of 2 years. The 2 year extended licence period has nothing do with, and is not to be affixed to, the total of 9 years for the firearms and the drugs. Having made that position clear, we go on to refuse Scott Palmer's renewed application for permission to appeal against sentence.

LORD JUSTICE COULSON: Ms Power, given that we have accepted that the judge's phraseology was not perhaps as good as it could have been, was mine?

MS POWER: Yes, my Lord it was. Thank you very much.

LORD JUSTICE COULSON: Obviously we are refusing the renewed application but that is not to say that, as part of our refusal, we can make the point about the extended sentence clear. So we have done that, and it will be recorded in the note of what we have decided.

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