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IN THE COURT OF APPEAL

CRIMINAL DIVISION

ON APPEAL FROM THE CROWN COURT AT WINCHESTER

MR JUSTICE WALL 44SC0500922

CASE NO 202301720/B5

[2024] EWCA Crim 963

Royal Courts of Justice
Strand
London
WC2A 2LL

Tuesday 30 July 2024

Before:

LADY JUSTICE MACUR

MR JUSTICE PICKEN

SIR ROBIN SPENCER

REX

V

DONOVAN NEIL THOMAS

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NON-COUNSEL APPLICATION

J U D G M E N T

LADY JUSTICE MACUR:

1. On 26 April 2023, Donovan Thomas (“the applicant”) was convicted, after trial, of murder. The following day, he was sentenced to imprisonment for life with a minimum term of 27 years. His two co-accused, Mulangala and Onyeasi, were also convicted of murder and were sentenced to custody for life and life imprisonment, with a minimum term of 23 years respectively.
2. This is the applicant’s renewed application for leave to appeal against sentence and for a representation order after refusal by the single judge.

The Facts

3. On 24 July, the applicant and his co-accused were driven to a private address in Southampton. The three men got out of the car when it was stationary at traffic lights and walked in the direction of the driveway where their victim, Dawid Such (aged 17), was cleaning his car. One of them shouted “Get him”, at which they all started running, taking the victim by surprise, and cornering him on his own driveway. Mulangala stabbed Mr Such four times. The knife severed a number of significant blood vessels causing such a catastrophic loss of blood that there was no chance of survival. Onyeasi and the applicant prevented the victim’s escape. Dawid Such fell to the floor, where he was kicked by at least two of the trio, leaving footwear impressions on his head and torso.
4. The exact motivation for the attack was unclear. However, there had been a confrontation in Southampton town centre in the early hours of that same morning which involved at least Mulangala and Onyeasi on the one side, and Dawid Such on the other.

Mulangala and Onyeasi were runners for a drug line operated by the applicant which dealt in Class A drugs. The victim was involved in supplying Class B drugs.

5. Following this initial conflict, Mulangala and Onyeasi went back to the flat they shared. When the applicant learned of what had transpired, he took a taxi to their accommodation. The trial judge ultimately found that, during that meeting, they all planned the fatal attack before the applicant returned to his own hotel and arranged for the three of them to be driven to the victim's address later that day.
6. The knife used in the stabbing was later recovered from Mulangala and Onyeasi's flat. It was a knife that belonged to Onyeasi which he had used for protection as part of his drug dealing.

Sentence

7. The trial judge concluded that the earlier incident in Southampton town centre was drug related. The applicant had allied himself with an act of revenge for an incident which he perceived to have been an attack on his own business. All three men were aware of "the fearsome" knife being taken with them, and that with the specific intention of it being used was indicative of an intention to kill. The starting point, therefore, for setting the minimum term was, by virtue of Schedule 21 paragraph 4 of the Sentencing Act 2000, one of 25 years in each case. The judge determined that Mulangala was the knifeman, Onyeasi provided the knife and the applicant was present and "had a controlling influence over events as the older man, who wanted his business protected through violence." This was a true joint enterprise.

8. The aggravating features were their previous convictions, coupled with the fact that the offence had been committed to protect another criminal enterprise, namely the drug dealing business.
9. Mulangala had previous convictions, including for assault, possession of a firearm with intent to cause fear of violence and conspiracy to burgle. He was on licence at the time he committed the murder. Onyeasi had convictions for assault and previous drug-related offending. The applicant had many more previous convictions than his co-accused, including for drugs offences, carrying weapons and serious violence. He too was on licence when he committed the murder. The judge considered that the aggravating features justified an upward adjustment of the minimum term to 27 years.
10. Mulangala was only 20 years old and was noted to have had a very difficult upbringing. The combination of age and immaturity, as observed by the trial judge throughout the trial, went to some reduction in the starting point. Onyeasi was only 21 years old. He too had a difficult upbringing and there was medical evidence that supported a diagnosis of ADHD. He was seen to be more easily led than many and susceptible to being exploited by others. At the time of sentence, he had symptoms of depression and post-traumatic stress disorder. His mental disorders, as the judge found, were not wholly unrelated to his offending. The applicant however had no mitigation. He was:

“... older and sufficiently mature to recognise the truly appalling way in which you, as a group, were behaving. You were the leader of the drugs line and I am sure had influence over the actions of your more vulnerable co-Defendants. It would have been within your power to stop what went on rather than to encourage it.”

11. In those circumstances, the judge determined that his minimum term would remain at 27 years.

The Appeal

12. It is conceded on the applicant's behalf that the starting point and the uplift were fully justified and are not arguably manifestly excessive. However, it is said that the applicant has a justified sense of grievance that his two co-defendants were given reductions of 4 years each in their minimum terms while he received no such reduction. In this case, the applicant contends, the judge attached undue weight to the personal mitigating factors of the two younger men and gave insufficient weight to the limited role he had played in the offence. The sole ground of appeal, therefore, is upon the basis of disparity.

13. The single judge, in refusing the application for permission to appeal said:

“Disparity is rarely a successful ground of appeal, and I do not consider that it is arguable that your sentence...is manifestly excessive on that ground. You had a leading role in the planned revenge attack on Mr Such, even if you did not stab him yourself. The Judge, who had presided over a lengthy trial, was in the best possible position to determine the level of your involvement, and there is no arguable case for challenging his factual conclusions...

You were significantly older than your co-defendants who were also convicted of murder... You also had a worse criminal record. Furthermore, (as the Judge found) Mulangala was both young and immature and Onyeasi was both young and had mental health issues. All of these factors were properly reflected in the Judge's sentencing decision in respect of both you, and your co-defendants. His decision to impose a 27 year minimum term for you, and a lower 23 year minimum term for the others, was well within the scope of the sentencing discretion and cannot even arguably be criticised.”

14. We agree. It is not arguable that there was insufficient justification to deal with the applicant differently from his co-accused. He was an older, more heavily convicted man of considerable influence upon his younger and vulnerable co-accused. Whilst the applicant may continue to suffer from a sense of unfairness and injustice, this is entirely misplaced. The renewed application for permission to appeal sentence is refused.

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

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