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IN THE COURT OF APPEAL
CRIMINAL DIVISION



CASE NO: 2023 00368 A5

NCN: [2023] EWCA Crim 797

Royal Courts of Justice
Strand
London
WC2A 2LL

Thursday 29 June 2023

Before:

LORD JUSTICE STUART-SMITH

MR JUSTICE JACOBS

RECORDER OF SHEFFIELD
His Honour Judge Jeremy Richardson KC

REX

v

SHAUN HALL

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MR RUSSELL PYNE appeared on behalf of the Applicant

J U D G M E N T

MR JUSTICE JACOBS:

1. This is a renewed application for leave to appeal against sentence following refusal by the single judge.
2. On 22 December 2022 in the Crown Court at Winchester the applicant (then aged 40) was convicted of manslaughter. On 6 January 2023 the applicant pleaded guilty to an offence of burglary from a dwelling. On that day he was sentenced by Her Honour Judge Miller KC, who had presided over the trial of the manslaughter offence. The applicant was sentenced to 12 years for manslaughter and a consecutive term of 2 years for the burglary. In view of the applicant's prior criminal record, the burglary offence attracted a minimum custodial sentence of 3 years before a possible maximum 20 per cent reduction for plea, but the judge considered that it would be unjust to impose the minimum term for reasons of totality and accordingly her sentence was 2 years. The original application for leave to appeal would, if granted, require a short 3-day extension of time.
3. The facts concerning the offences were as follows. On 23 October 2021 the applicant unlawfully killed Clare Gafan (aged 40). A few days earlier, around 16 or 17 October, the applicant committed a dwelling burglary in Southampton. He had driven to the area from his home in Derby, having recently lost his employment and relapsed into cocaine use. The applicant entered a flat through the rear window while the occupier was out. He carried out an untidy search, and stole cash, two watches and a pair of diamond stud earrings with a total value of between £700-£800. His DNA was found at point of entry, and cell site evidence showed that he had been in the area. In his police interview, the applicant denied the offences but admitted being in Southampton to purchase drugs.
4. Having spent around a week in Southampton the applicant travelled to Bournemouth in his Audi motor vehicle. On Friday 22 October he stole £30 worth of Class A drugs from Clough Dent, a drug user from whom he had purchased drugs a couple of days earlier. On Saturday 23 October the applicant returned to the same area and was seen by a friend of Dent's. This friend told the group he was with what had happened the night before. The applicant was seen to drive down a dead-end road. The group, which comprised the deceased and a number of others, collected Dent, who happened to live on that same road. They then went to find the applicant. As they approached, the applicant accelerated away in his Audi, heading towards the group and striking the deceased. The expert evidence at trial was that the car reached around 19 mph and that it took 1.8 seconds to cover the 8 metres between where the car was stationary and where the deceased was hit. She was thrown over the roof of the car and landed heavily on her head. She immediately lost consciousness and never regained it. She died two days later in hospital from un-survivable brain injuries. There was an extensive fracture to the base of her skull, bleeding in the brainstem and underneath the membranes encasing the brain. Her shaken brain became soft and crumbly after being starved of blood and oxygen.
5. Following the collision, the applicant drove out of Bournemouth, but the damage to his vehicle's bonnet meant that he had to stop on the outskirts of town. The applicant contacted a car recovery company and said that he had hit an animal. In fact the applicant was able to drive back to the Midlands, where he was arrested later that evening.
6. In her careful sentencing remarks the judge described the incident and the defendant's background. He had many previous convictions, including for dishonesty, low level violence and dangerous driving, but these were all committed between 1995 and 2013, and the references provided on his behalf showed that he had subsequently held down a responsible and well-paid job. The judge accepted the prosecution's argument that this case of unlawful act manslaughter was culpability B under the applicable guideline, because death was caused in the course of an unlawful act which carried a high degree of death of grievous bodily harm which was or ought to have been obvious to the applicant. She rejected the

defence argument that this case fell into culpability C. She said that there was clearly an obvious risk of very serious harm by accelerating at the group. She described it as a case where the applicant was using his car as a weapon against the approaching group. She agreed that his primary design was to get away rather than to cause injury, but she said that the applicant did not care how he did it or whether anyone was injured. Under the guideline the starting point for culpability B manslaughter is 12 years with a range of 8-16. She identified as aggravating features the applicant's previous convictions, albeit that he had never committed a similar offence and that there had been a lull in his offending, and his actions after the event in leaving the scene and trying to get away. She accepted that there were two important mitigating factors - remorse and lack of premeditation; although she thought that the latter was a stronger point. The judge considered that the aggravating and mitigating features in effect balanced each other out and therefore that the appropriate sentence was at the starting point under the guideline, namely 12 years. For the burglary she imposed the consecutive sentence of 2 years.

7. In his written grounds of appeal Mr Pyne, who appeared on behalf of the applicant at the trial and sentence, submitted that the judge had erred in concluding that this was a category B culpability case. The lack of premeditation was a factor, he submitted, which reduced culpability. The driving was intended to cause fear rather than to cause harm; alternatively if it was category B, it was a less serious example of such an offence and therefore the judge's sentence was too high. It was also submitted that the judge had paid insufficient regard to mitigating factors, namely the applicant's remorse, his suicide attempt whilst awaiting trial, and the gap of 8 years between these offences and the applicant's previous offending. The decision to make the burglary sentence consecutive also made the total sentence manifestly excessive.
8. In his oral submissions this morning, to which I will return in due course, Mr Pyne has to some extent refined his submission or at least focused on a particular aspect of it. He has nevertheless maintained the points raised in his original grounds of appeal, and I start by addressing those by reference to what the single judge said. The single judge addressed the various points carefully and comprehensively when he refused leave to appeal. We agree fully with what he said and will quote the following:

"You complain that the Judge wrongly categorised your case within the Sentencing Council Guideline on Unlawful Act Manslaughter as one falling into category B. I disagree. You drove in the direction of a number of people, accelerating hard as you did so. This act created an obvious risk of killing someone or of causing someone the most serious injury. That entitled the Judge to categorise the case as she did. That is so despite your lack of premeditation and that your intention was to frighten people so that they jumped out of the way.

You also aver that, if this was a category B case, the Judge should have sentenced you to a term within the bottom part of the range and not, as she did, to the term set as the starting point for an offence in that category. In conjunction with that you assert that the Judge should have afforded more weight to your mitigation. The Judge heard the trial and was best placed to weigh up the competing factors at play in your case. The Judge accepted that you were to an extent remorseful but could not give great weight to that factor when you did not plead guilty and thus did not accept proper responsibility for what you had done. It is right, as set out in your grounds of appeal, that you did not have recent previous convictions but you had a number of serious convictions in the past which should rightly have been treated as aggravating

your offending on this occasion. The Judge considered this aspect of the case with care and decided that the mitigating and aggravating features of the case balanced out one another. It is not arguable that she was not entitled to reach that conclusion.

Finally, you complain about the consecutive sentence of 2 years for burglary which was imposed on you at the same sentencing hearing. A consecutive sentence was not wrong in principle. This was a different type of offence committed on a different occasion. As to length - you were a 'three-strike' burglar and thus could have expected a sentence of at least three years. The Judge reduced the term imposed upon you with totality in mind. Some Judges might have reduced it still further but the approach taken by the Judge did not result in an overall sentence which is arguably manifestly excessive."

9. In his submissions to us this morning, Mr Pyne has advanced essentially the same primary argument that failed before the single judge and he has focused on features of the offending which, he submitted, should on a fair assessment of culpability either take it into category C or at least should be factored into the analysis of where in category B the case sits. The point on which he focuses is that there was an element of self-defence, albeit not amounting to a defence, and this was an attempt to get away from people. The applicant's sole intention was to get away. The judge did refer to both aspects in her sentencing remarks and, as Mr Pyne acknowledged, these may simply be different aspects of the same coin.
10. We recognise that the sentencing guidelines for manslaughter do require different indications of culpability to be taken into account and that a fair balance needs to be struck. However, in the present case it is accepted by Mr Pyne that a category B factor was present. In our view this was unquestionably the dominant or overwhelming factor when it came to assessing the defendant's culpability in the present case and we do not consider it arguable that the judge's decision to impose a 12-year sentence after looking at mitigation and aggravating factors can be criticised as manifestly excessive. Ultimately therefore, and notwithstanding the concise and focused submission made by Mr Pyne this morning, we remain of the same view as that expressed by the single judge and indeed the trial judge. Accordingly, we refuse the renewed application for leave to appeal on the basis that it is not arguable that the judge's sentence was manifestly excessive. In view of that decision we also refuse the application to extend time.

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