Neutral Citation Number: [2019] EWCA Crim 1173

Case No: 201804119/C1; 201804268/C1; 201804272/C1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM Wood Green Crown Court
T2018/7007

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2019

Before :

LORD JUSTICE GREEN
MR JUSTICE JULIAN KNOWLES
and
HIS HONOUR JUDGE MAYO
(Recorder of Northampton)

- -

Between :

REGINA	**Appellant**
- and -	
Meikiel DIXON-NASH	**1st Respondent**
Claudette DIXON	**2nd Respondent**
Melique COOTE	**3rd Respondent**

- -

Ms Melanie Simpson (instructed by **Criminal Defence Solicitors**) for the **1st Respondent**
Mr Tom Price QC (instructed by **Wainwright Cummins Solicitors**) for the **2nd Respondent**
Mr Hossein Zahir QC (instructed by **Imran Khan & Partners**) for the **3rd Respondent**

Hearing date: Thursday 20 June 2019

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Approved Judgment

Lord Justice Green :

A. Introduction: Issue – Sentences for leaders and facilitators in conspiracies to transfer firearms and ammunition

1. The three appellants in this case have been granted permission to appeal to argue that the sentences imposed upon them for their involvement in a conspiracy to transfer firearms, were manifestly excessive.

2. During the sentencing exercise counsel argued before the judge by reference to the guidance provided by Lord Thomas LC in *AG References Nos 128 – 141 of 2015 and Nos 8-10 of 2016* [2016] EWCA Crim 54 ("the *AGs Reference*"). That was a case said by the single judge, when granting permission, to involve "*a sophisticated criminal enterprise involving the distribution of firearms and ammunition to criminals across the country*". The present case, in contrast, involved, as the single judge put it: "*offences committed by the applicants which involved storing and transferring a small quantity of weapons for a particular criminal group*".

3. The single judge observed: "*There must be some distinction"*, implying that it was arguable that the sentencing judge had failed properly to apply the guidance set out in the *AGs Reference* and he has permitted an appeal so that the scope of the guidance can be considered in the context of a factual situation not mirroring that in the guidance judgment.

4. The three appellants were convicted, following a lengthy trial at the Crown Court in Wood Green, for conspiring to transfer firearms contrary to the Criminal Law Act 1977. Meikiel Dixon-Nash ("*MDN*"), found to be the leader of the conspiracy, was sentenced to a determinate term of 20 years imprisonment. Claudette Dixon ("*CD*"), found to be a "*key facilitator*", was sentenced to a determinate term of 14 years imprisonment. Melique Coote ("*MC*") was sentenced to a determinate term of detention of 8 years. CD (46 years old at the date of offending) is the mother of both MDN (27 years old) and MC (16 years old).

5. Before moving to the facts of the case we would clarify one matter. MC was under 18 at the date of conviction. Technically, the appropriate sentence was not one of detention in a young offender's institution but detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000. To the extent that this has been misunderstood we now make that clear.

B. The Relevant Facts

6. Between approximately between 2007 and 2017, in the North London boroughs of Northumberland Park, Haringey, and Tottenham, two rival gangs engaged in violent clashes. This involved numerous knife stabbings and shootings which resulted in the loss of life. The two gangs were the Northumberland Park Killers ("NPK") and the Wood Green Mob ("WGM"). The vendetta focused, so it was believed, upon control of the territory and the distribution of drugs therein.

7. The indicted conspiracy concerns three prohibited firearms: a Russian made Baikal, referred to as the "*top slider*". This was found in the possession of a Kwuame James-Brown but was supplied to him by MDN and CD. That pistol was linked to two

shootings on 26th March 2017 and 1st May 2017. The second weapon was a Colt 45 self-loading handgun found in the possession of the appellant, CD, on 13th October 2017. The third weapon, a Mach 10 sub-machine gun, was also found on 13th October 2017.

8. Two incidents ultimately led to the arrest of the appellants. The first incident occurred on 26th March 2017. This involved a shooting at the home address of Isaiah Gable, a member of the WGM. He was not present at the time of the shooting, but his father was. When his father opened the door to the premises, multiple shots were fired into the house using the top slider. It is not said that the appellants fired the weapon.

9. The second incident occurred on 1st May 2017. On that day a charity event was being held in order to pay for the funeral of a local boy. The event was held at the Power League Soccer Centre. Members of the NPK and WGM gangs confronted each other. Machetes and other knives were used in the confrontation and one young man was stabbed. CCTV showed members of the NPK, including MDN, pursue a member of the WGM through the crowd before eventually he was cornered and stabbed in the nearby changing rooms. MDN was present throughout although there was no evidence indicating that he was directly involved in the stabbing. Kwuame James-Brown was, however, seen on CCTV wielding a large machete. At approximately 5.50pm that same day MDN and other gang members, some of whom had been involved in the earlier stabbing, congregated at a nearby block of flats at St Paul's House, London N17. CCTV showed a member of the rival WGM shoot at the NPK group in the car park of the block of flats. The NPK returned fire. Subsequent ballistics reports identified three firearms having been used including the top slider and the Colt 45. Fortunately, no one was injured but various vehicles were damaged. A mobile phone attributable to MDN, with his DNA upon it, was recovered from the scene of the shooting. MDN was also identified as a participant on CCTV. The appellant MC was also seen on CCTV. He was viewed, following the shooting, on the phone in conversation with MDN. It subsequently transpired that he was tasked with finding and picking up potentially incriminating evidence, for example spent bullets, from the ground at the scene of the attack.

10. On 8th May 2017, police officers went to arrest MDN for his involvement in the shooting. He was seen driving a white Mercedes in the company of his mother, CD. They were seen entering Bruce Castle Road in Tottenham where they were approached. Upon arrest MDN stated: "*So I get arrested for someone trying to shoot me*." He subsequently gave a no comment interview in connection with the shooting. He was not detained.

11. On 18th May 2017, Kwuame James-Brown was seen meeting with MC in an alleyway close to where MDN and MC lived in Waltham Cross. MC was seen to hand something (which the police concluded was a firearm) to Kwuame James-Brown, who was then stopped by police and found to be in possession of the top slider. He was arrested and subsequently pleaded guilty to possession of a firearm. He was sentenced to a term of imprisonment of 7 years. There was phone evidence between MDN, Kwuame James-Brown and MC leading up to the point in time when the firearm was exchanged. This indicated that MDN was arranging for Kwuame James-Brown to take possession of the top slider from MC.

12. On 13th October 2017, the police raided premises belonging to the father of CD. The father spent much of the year abroad. His daughter, CD, had access to and possession of the premises. Before the raid, CD and MC were seen removing items from the address and loading them into a car. This included a bag containing the Colt 45 and ammunition. The police stopped the car and recovered the gun from the boot. A subsequent search of the premises revealed a locked green trunk inside which was found a Mach 10 sub-machine gun. This had a mixture of DNA from at least two individuals and the scientists concluded that MC could also have contributed to some of the DNA. CD was in possession of keys to the house as well as to the trunk. CD was arrested on 13th October 2017. She answered no comment to questions posed in interview and she was charged on 14th October. MDN was arrested on 20th December 2017 and gave a no comment interview. He was subsequently charged with the conspiracy to transfer firearms.

13. Whilst in custody, awaiting trial, CD made approximately 900 calls. The intercepted prison phone calls revealed that she was directing her sons what to do and what to say in the course of preparation for trial. She instructed them to destroy evidence, to change phone numbers and to erase email accounts. She also sought to devise an explanation for the presence of the DNA of MDN on the green trunk in which the machine gun had been stored. In actual fact, the DNA of MDN was never found on the trunk.

C. **Relevant Legal Guidance**

14. We turn now to the law. Guidance has been given in a series of cases as to the sentences appropriate in the case of firearms trading and in particular *R v Avis* [1998] 1 Cr App R 420 which set out relevant questions for a sentencing court to ask.

15. The courts also take as a starting point (as the judge did in this case) the considerations set out in the observations of Lord Judge CJ in *R v Wilkinson* [2009] EWCA Crim 1925:

> "The gravity of gun crime cannot be exaggerated. Guns kill and maim, terrorise and intimidate. That is why criminals want them: that is why they use them: and that is why they organise their importation and manufacture, supply and distribution. Sentencing courts must address the fact that too many lethal weapons are too readily available: too many are carried: too many are used, always with devastating effect on individual victims and with insidious corrosive impact on the wellbeing of the local community."

16. This explains why the policy of the law is intended to reflect a need for deterrence; sentences for gun offences will be severe.

17. The present appeal focuses upon the guidance given by Lord Thomas CJ in the *AG Reference* (ibid) in the Court of Appeal. In that case all the defendants pleaded guilty to, or were found guilty of, conspiracy to transfer prohibited weapons and ammunition. Sentences were imposed ranging from sixteen and a half years for the principal offender, to four years and four months for defendants at the lowest end of culpability. The Attorney General sought leave to refer the sentences to the Court of

Appeal upon the basis that they were too lenient. Leave to refer was granted. The Court increased the sentences significantly.

18. The Court provided guidance (ibid paragraphs [6] – [8]) as to the principles to be applied. It laid down both general principles and guideline sentences for those assuming leadership roles in the conspiracy, for those in lower (subordinate) roles, and for purchasers. We would summarise these principles as follows.

19. First, as was pointed out in *Wilkinson* (ibid, paragraph [27]), criminals who are prepared to deal in lethal weapons represent a serious public danger and a sentence of life imprisonment always arises for consideration and therefore must expressly be considered by the judge.

20. Second, if a life sentence is not passed then the court must impose a long determinate sentence.

21. Third, the sentences to be imposed must be commensurate with the role played by each defendant in any activity in relation to the supply of guns. Sentences must reflect the hierarchy of the supply enterprise, the role played in individual transactions, and any previous convictions in relation to guns.

22. Fourth, for the leader of an enterprise engaged in the business of supplying guns and lethal ammunition, a "*very long*" determinate sentence was required. Prior to the reference it appears to have been assumed that a maximum determinate sentence of 22 years was appropriate for a leader of a large-scale enterprise engaged in the supply of guns. That assumption was false. A more appropriate starting point would be 25 years for a leader.

23. Fifth, a materially "*greater sentence*" than 25 years would be appropriate for a leader if there was any previous conviction for offences involving guns.

24. Sixth, it made no difference whether the criminal enterprise entailed converting or acquiring guns as opposed to importing them. The same level of sentence was appropriate. The essence of the criminality was the organisation of a criminal enterprise to supply guns and lethal ammunition to customers, irrespective of source.

25. Seventh, defendants engaged in the criminal enterprise below the level of (and under) the leader should receive sentences reflecting the sentence for the leader (before any discount for plea), depending upon the role they played.

26. Eighth, in the case of purchasers of weapons and lethal ammunition from the criminal enterprise it was ordinarily appropriate to proceed upon the basis that the purchaser required the guns and lethal ammunition to "*kill and maim, terrorise or intimidate*". This would certainly be the case where customers were engaged in the supply of class A drugs. The appropriate sentences for such purchasers would be in the region of 15 years

27. Ninth, significantly higher sentences would be required for purchasers in the event of any previous convictions in relation to guns

28. Tenth, with respect to defendants assisting in such transactions the sentence would vary. In relation to those who assisted in putting guns into circulation it was

inappropriate for there to be a starting point of less than 8 years. This took into account that Parliament had stipulated a minimum sentence of 5 years for those in possession of a gun. A sentence materially higher than 8 years would be appropriate where the assistance was significant.

D. **The Position of the Leader: Meikiel Dixon-Nash (MDN)**

29. We now consider the application of the guidance to the present appeals. The approach that we adopt is to start with the defendant who ranks highest in the hierarchy of the conspiracy (in this case MDN) and to determine the appropriate sentence for him by reference to the guidance in the *AGs Reference* for a leader. We then move to determine the sentences of those appellants at lower levels in the hierarchy, both in relation to MDN but also in relation to each other.

30. It is helpful to start by recording some of the key features of the facts as they related to the position of the leader of the conspiracy in the *AG reference* case. There the defendant leader presided over a conspiracy between March 2014 and January 2015 and the criminality was therefore treated as relatively time limited (months not years). The conspiracy was a "*sophisticated*" enterprise. It involved the supply of firearms and lethal ammunition (8 firearms and 492 live rounds) to other criminals in the West Midland and other parts of the United Kingdom. The leader was a person to whom others would "*turn"* when they needed guns and ammunition. The business involved obtaining and where necessary putting guns into working order and then supplying them together with lethal ammunition. As to the leader's state of knowledge in relation to future use of the weaponry: "*There can be only one purpose of acquiring a gun and ammunition – to kill or injure – and those supplying guns plainly knew this*." (ibid, paragraph [12]). There was no evidence that the leader was personally involved in the downstream criminality, which the supply of guns and ammunition facilitated.

31. Many of the weapons were antique firearms which could generally be held legally without a licence if possessed as a curiosity or ornament. The Court observed that an increasing and significant number of obsolete antique firearms were being recovered by the police, and in the majority of recoveries ammunition was also recovered. There was an increasing danger posed by criminals putting antique firearms into working order and providing ammunition to fit them.

32. In determining the overall seriousness of the offending the Court of Appeal observed that a court had to assess: " … *the entire factual circumstances, including the number and type of weapons in which the members of the criminal enterprise dealt, the provision of lethal ammunition, the period of time over which the criminal enterprise operated, the level of sophistication employed, the geographic range over which the criminal enterprise operated and any specific factors connecting the criminal enterprise to a locality where gun crime was particularly serious*" (ibid, paragraph [21]).

33. In the present case we consider the salient facts, as found by the judge, relevant to the appellant, MDN, to be as follows:

    a) The guns were being used in a vendetta against a rival London gang.

    b) The vendetta was of long duration, circa 10 years.

c) MDN had been involved in this vendetta since its inception.

d) The guns were intended to be used in broader gang related crime.

e) The weapons included a machine gun.

f) The appellant was the leading member of the conspiracy and directed its operations and was involved in at least one shooting.

g) The weapons were used in two incidents. In the first a gun supplied was used to intimidate a member of a rival gang and to kill or maim him and his family. In the second incident shots were fired and MDN was with the group firing in the presence of the public including a woman with a push chair.

h) The appellant was in overall charge of transferring weapons around London for at least six months.

i) This activity continued even though the appellant was aware that the police had seized one of the weapons supplied by him.

j) The appellant's involvement involved knowledge that the weapons would be used in offences including attempted murder.

k) The appellant recruited and used both his mother and teenage brother in the conspiracy.

l) The appellant had previous convictions and bad character evidence existed relating to admitted participation of long duration in gang violence and criminality. Whilst he had no previous convictions for firearms offences, he did have a conviction dating from 2009 for violent disorder involving an incident when a gang member was stabbed.

34. As required by the guidance the judge addressed the question of a life sentence and an extended sentence but decided against those courses of action. The appellant was sentenced to a determinate term of 20 years imprisonment.

35. Counsel argues on behalf of MDN in written and oral submissions that the judge erred in a number of respects. She focuses upon the facts arising in the *AGs Reference* and compares them to those in the present case. In particular, she has drawn our attention to differences in such matters as: the geographical scope and the duration of the conspiracy; the number of guns and rounds of ammunition involved; the degree of sophistication involved; and, differences in previous convictions. She argues that in the light of these difference a much lower sentence should have been imposed.

36. In analysing these arguments we start with a basic point. We accept that there is value in a comparative exercise whereby the instant facts are set against those in the *AGs Reference*. That case is intended to give guidance and it sets out indicative sentences for different types of participation. A comparative exercise helps as a rangefinder exercise to see, in a broad sense, how a defendant to be sentenced stands, relative to the indicative sentences imposed upon the defendants in the *AGs*

Reference. But the exercise can take one only so far. There is less value in a granular comparison of facts and circumstances, when each case will turn upon its own special facts and no two cases are identical. For instance in the *AGs Reference* the leader was not personally involved in the downstream criminality, whereas in the present case the appellant was. In the instant case the appellant had been engaged in a ten-year gang vendetta the effect of which will have been to create a more or less permanent climate of risk in the relevant North London boroughs, whereas there was no equivalent in the *AGs Reference* case. In the instant case the appellant involved his mother and young brother in the criminality, whereas there was no equivalent family involvement in the *AGs Reference* case. In the *AG Reference* case the wholesale supply was to criminals in the West Midlands and elsewhere in the United Kingdom, whereas in the present case it was more localised, yet still to sizeable and intensely urban areas in North London. Some of these factors are less serious than in the case of the leader in the guidance case; but others are more serious, such as the involvement of MDN in the downstream criminality.

37. We turn therefore to apply the guidance given in the *AGs Reference*. There the starting point sentence for a leader involved in regional and national wholesaling of guns and ammunition was 25 years before plea, and before taking account of previous convictions[1]. In the instant case the judge expressly recorded that the *AGs Reference* case had been cited to him and that he had made deductions by reference to it. This is not a case where it can therefore be argued that the judge failed to address a relevant consideration and thereby erred in principle. In the present case the sentence for MDN is *at least* (see below) 5 years less than the 25-year starting point in the guidance case. There was no plea, so no discount was justified. Moreover, MDN had 5 convictions for 8 offences including possession of drugs and conspiracy to commit violent disorder arising out of another gang incident, which involved a revenge stabbing in a nightclub. In addition the judge, in effect, took account of admitted bad character evidence. He added: "*I also cannot ignore your evidence that you've been a member of the [gang] for nearly a decade during which time you accepted that you were involved in gang-related crime, which is not fully reflected in your antecedents*" (page 8E). In our view the judge was entitled to treat this antecedent record and bad character evidence as significant aggravating factors. The previous convictions do not specifically relate to gun crime, but they are closely connected to the context in which the gun offences occurred, namely long-term gang related crime and violence. In the *AGs Reference* the Court of Appeal (ibid paragraph [7]) stated that previous convictions relating to guns would be significantly aggravating. It did not however say that *other* previous convictions or related matters were thereby irrelevant. In each case whether evidence of previous non-gun related offending amounts to an aggravating factor will be determined on ordinary principles in particular its relevance to the index offences.

38. The judge did not specify by what increment he increased the starting point to take account of previous convictions and relevant bad character evidence in order to arrive at a final figure of 20 years. But it is logical and apparent from his reasoning that he must have taken as his starting point a figure of less than 20 years in order to arrive at the 20-year total. Accordingly, the starting point was less than 20 years. It seems to

[1] On the facts of the case it appears that the Court of Appeal treated the leader's single previous conviction for perverting the course of justice many years earlier (in 2002) as irrelevant: See paragraphs [7] [20] and [22]. Accordingly, the 25 year starting point applies before any uplift for previous convictions is considered.

us that we should take a starting point of 18 years before considering previous convictions and cognate aggravating (bad character) considerations, which is therefore 7 years below the indicative sentence for a leader in the *AG Reference* case.

39. In these circumstances in our judgment there is no evidence to indicate any error on the part of the judge. Cases of this nature are highly fact specific. The Court of Appeal in the *AGs Reference* did not in any way undermine the guidance given in *Alvis* as to the sorts of factors to be taken into account. The judge took all of these, and indeed other factors, into account. This was a case where there were factors which were both less and more serious than those applicable to the leader in the *AGs Reference* (see paragraph [36] above). Given the factors that we have set out above at paragraph [33] we consider that the sentence was well within the discretion of the judge.

40. In our judgment a sentence of 20 years for a leader exhibiting the characteristics of the appellant is neither excessive nor manifestly so. We dismiss the appeal of MDN.

E. **The Position of "facilitators" / "key facilitators": Claudette Dixon (CD)**

41. We turn now to the appellant, CD, the mother of MDN and CD. She was sentenced to a determinate term of 14 years imprisonment.

42. In sentencing CD the judge took into account the following facts and matters:

i) CD was in possession of the keys of her father's house where weapons were stored as well as to the padlock on the trunk. She was plainly involved in storing and transferring firearms to and from the family address.

ii) The harm that would have been caused by the illegal use of the sub-machine gun could have been devastating. The judge observed that the conspiracy did not operate in a vacuum: it existed with the "*sole intention of arming a notorious London gang*". The firearms were intended to be used by others to "*terrorise, maim and murder*". This was a fact that CD "*knew full well*".

iii) The involvement of CD in the storage of the weapons was heavy. She secreted the weapons in her elderly father's house that she held the key of. He spent much of the year overseas and CD looked after the house for him whilst he was away and "*as such it was the perfect place to keep guns such as these*".

iv) CD had an outward appearance of respectability which acted as a "*perfect cover*". She was involved in the transfer of weapons under the directions of her eldest son, MDN. The judge rejected her argument that her involvement was limited to a single incident. On the basis of the facts as found by the judge, the only sensible inference to draw was that firearms were being stored at that address for a "*significant*" period of time with her full knowledge and cooperation.

v) CD was a "*key facilitator*". She was aware that these were gang weapons. She was aware that they were being used in gang violence and willingly played a part in their storage and movement.

vi) The intercepted calls from prison demonstrated that she was far from naïve. She was directing her sons what to do and what to say. She encouraged them to destroy evidence, to change phone numbers and to erase email accounts. She sought to concoct a story explaining the presence of her eldest son's DNA on the trunk in which the firearms were stored. These facts gave the court an insight into the true nature of her relationship with her sons and her detailed knowledge of their criminal activity. Counsel before us argued that this was irrelevant to the sentence upon the basis that it was quite discrete from, and subsequent to, the actual conspiracy. The judge however used this *ex post* evidence to reinforce his conclusion that CD was by no means a passive or reluctant participant; she was active and exercised sway and influence over her sons. As such, albeit after the event, this was evidence relevant to CDs place in the hierarchy *during* the conspiracy.

vii) It was an aggravating feature of her offending that she was willing to involve her youngest son, MC, in such serious offending. For a mother to behave in that way was nothing short of "*shameful*".

viii) In relative terms the judge observed that MC (see below) was "*more involved*" than his mother and that had he (i.e. MC) been an adult this would have been reflected in the sentence. This is significant in that, in terms of hierarchy, CD was therefore found to be the least involved of the appellants.

43. We start with three general points.

44. First, counsel for CD has cited to us a variety of different authorities said to be comparable, where lower sentences were imposed. They all pre-date the *AGs Reference* which made clear that previous assumption about starting points were false, as being too low (see paragraph [22] above). We do not consider that the cases cited to us assist.

45. Second, the judge described CD as a "*key facilitator*" This expression is cavilled with by Counsel who argues that it exaggerates CDs role. We consider that the judge was best placed, having presided over this lengthy five-week trial, to form a conclusion on labels such as this. We also consider that it is a fair reflection of the facts as found and as they relate to her.

46. Third, it is argued that the judge conflated and confused the sentences for offences of possession of firearms with intent to endanger life, with sentences for transferring firearms. There is an important distinction to be drawn between the respective offences and these should be reflected in the sentences imposed. The judge, however, ignored the clear parameters set out in the prosecution case against the appellant (storage and transfer) and sentenced her on a basis more akin to a gang member. We do not agree. The judge explicitly recognised the difference between the two offences in his sentencing remarks and did not conflate them. But he also, rightly in our judgment, concluded that he could not ignore context, which was that the weapons were, to the appellants knowledge, going to be used for gang related violence and crime. He therefore treated this knowledge as an aggravating feature of the indicted offence of transferring the firearms. In our judgment, for the reasons given by the judge, he was entitled, and indeed bound on the facts of the case, so to do. To argue otherwise would disqualify the judge from taking account of relevant aggravating

circumstances. We therefore reject the argument that the judge erred in conflating two different offences.

47. We now turn to the issue which we consider reflects the real nub of the appeal. In the *AGs Reference* the Court of Appeal indicated that in a conspiracy of this sort the sentences imposed on members of the conspiracy should be relative, depending upon the role played in the hierarchy: See paragraph [21] above. This reflects the more general proposition that sentences as between defendants should bear a proper relationship to each other.

48. In this case CD was treated as of effective good character. To conduct a comparative exercise it is necessary therefore to determine how a sentence of 14 years compares with that of the leader. We take the view that had MDN been of previous good character (thereby facilitating a comparison with CD) the starting point would have been 18 years (ie before any additions for previous convictions and cognate bad character which increased the sentence to one of 20 years – see paragraph [38] above).

49. The crux of the appeal is therefore whether a sentence of 14 years is commensurate to that of the leader with a starting point of 18 years. It is in our view material that MDN was the leading will and mind of the conspiracy and was also personally involved over a long period in the downstream violence and criminality during which weapons were used. He recruited both his mother and his younger brother into the conspiracy. These are important facts and they are material distinguishing features relative to the position of CD.

50. Even accepting the description of CD as a "*key facilitator*", it is our view that a greater degree of disparity was justified properly to reflect the role of CD in the hierarchy. On the analysis of the judge she was the least culpable of the three appellants.

51. In the *AGs Reference* the Court of Appeal increased the sentences on four defendants described as "*key facilitators*" (ibid paragraphs [28] – [32]). They were given sentences ranging from 16-20 years, which were therefore 5-9 years below that of the "*leader*". These sentences were determined by reference to the position of the leader who was sentenced to 25 years, thereby reflecting hierarchical differences. The sentence for the "*key facilitator*" who had the highest degree of culpability was thus five years lower than that for the leader. The facts relevant to this individual reflect a degree of involvement significantly greater than that applicable to CD. He was involved in large scale storage and transfer and he was also a frontman involved in marketing weaponry to customers e.g. by taking bullets out of store to show to prospective purchasers. He was involved in the hiring of cars to facilitate the trade. He carefully cultivated a respectable exterior, for instance by participating in community organisations, acting as secretary of a football club, etc. The least culpable of those sentenced received 16 years, ie nine years less than the leader. The facts of CD do not match up entirely with the facts of those sentenced as "*key facilitators*" in the *AG Reference* and, for the reasons we have given, precise comparisons are not especially useful. Nonetheless, we consider that the comparisons do show that there are ranges of culpability even within a descriptor such as "*key facilitator*" and that at the lesser end of the "*key facilitator*" range a significant difference with the sentence imposed upon the leader might be warranted.

52. In our judgment the difference in sentence between a facilitator such as CD, and a leader such as MDN, should have been around 7 years. It follows that a sentence of 11 years is more commensurate with the role of CD in the hierarchy. We therefore allow the appeal of CD and quash the sentence of 14 years. We substitute in its place a total sentence of 11 years.

F. **The Position of the Assister: Melique Coote (MC)**

53. We turn finally to the position of MC. He was 16 years old at the time of the offending. The judge made the following findings of fact about him. He was "*heavily involved*" in the conspiracy. He was involved in transferring the top slider to Kwuame James Brown and did so under the direction of his elder brother, MDN. Kwuame James Brown was known to the police and to the jury as someone who had been involved in the two incidents in April and May 2017. The top slider was used in the shooting incident and although no one was injured or killed this was, as the judge observed, "*just good fortune*". He was also, under the direction of his brother, active in seeking to locate and remove incriminating evidence related to the shooting.

54. He continued to be involved in storage even after the police seized the top slider. He was involved, with his mother (CD) in the transfer of the Colt 45. His DNA was also on the barrel and muzzle of the machine gun in the trunk under the control of his mother.

55. He also was aware of both the likely usages of the weapons and the devastating damage that they could inflict. He had a prior conviction for possessing an offensive weapon, namely a cosh which he held during the course of the conspiracy.

56. The judge concluded that he was "*neither naïve nor completely innocent*". In relative terms the judge said that he was "*more involved than his mother*" and had he been an adult at the time of sentence his sentence would have been higher.

57. A pre-sentence report indicated that MC did not accept any responsibility for his actions. The judge accepted that he acted under the direction of his brother and mother but also that he was not the sort of young man who would have taken much persuading. He knew full well what he was doing.

58. It is argued on behalf of MC that the sentence of 8 years detention was manifestly excessive. It is said that given the judges sentencing remarks the sentence for MC should, in fact, have been lower than that for his mother, had he been an adult. This is because he acted as no more than a courier. It is argued that the judge seems to have reduced MCs sentence by half to take account of his age but it is also said that the judge failed to have regard to the sentencing guidelines for children. In short, the judge should have taken as starting point lower than the sentence imposed on the mother (14 years) and then halved that, which would have been less than 8 years.

59. We do not agree.

60. First, the judge expressly records (at page 10) that he had regard to the definitive guidelines for sentencing children and young people and the core principles that needed to be borne in mind when determining the appropriate sentence.

61. Second, the judge found, based upon the evidence that he had heard at trial and which we accept, that MC was materially more involved than was his mother (who was not in the gang and did not become physically involved in the downstream gang activities). We can see no logical basis whereby the sentence for MC should have been linked to, and lower than, that of CD.

62. Third, it is correct that the judge does not state what percentage discount he used to take account of MCs age. There is force in the argument that a discount of 50% might have been given. If the sentence for MC, had he been an adult, would have been higher than that of his mother (14 years) then the starting point before the discount for age would most likely have been 15 or 16 years. On this basis a discount of about 50% might well have been given so as to arrive at an 8 year sentence.

63. Once again, the core of the appeal is whether a sentence of circa 15/16 years (before discount for age) is commensurate with that for MDN. Both appellants have previous convictions, so the basis of the comparison is the end sentence for MDN of 20 years. Is a differential of between 4-5 years sufficient to reflect relevant differences?

64. Various criticisms were made by counsel of the judge's findings of fact. We remind ourselves that the trial judge was vastly better placed to form a comparative view, than we are. We accept his fact findings. MC was active both in the upstream storage and transfers, but also in the downstream criminality where the weapons were used. We infer that the judge considered that a differential between MC and MDN of circa 4-5 years was appropriate. We consider, on the facts, that this was a conclusion that the judge was entitled to arrive at. But even if we were wrong in this, and the differential should have been greater, it would appear that the judge applied a discount for age of approaching 50%, which might be said to be on the generous side so that any under-reflection of the difference with MDN as leader was adequately compensated for by the scale of the discount. Standing back and looking at the sentence imposed from the perspective of totality, we can see nothing wrong in the approach adopted or the sentence imposed.

G. **Conclusion**

In conclusion we dismiss the appeals of Meikiel Dixon-Nash and Melique Coote. We allow the appeal of Claudette Dixon and quash the sentence imposed upon her of 14 years and impose a sentence of 11 years in its place.