APPEAL COURT, HIGH COURT OF JUSTICIARY

[2022] HCJAC 29
HCA/2022/000082/XC

Lord Justice General
Lord Pentland
Lord Matthews

OPINION OF THE COURT

delivered by LORD MATTHEWS

in

APPEAL AGAINST SENTENCE

by

JORDAN ALLY DONALD OWENS (also known as JORDAN OWEN)

Appellant

against

HER MAJESTY'S ADVOCATE

Respondent

Appellant: McConnachie QC; G Brown (sol adv); Bridge Legal Limited, Glasgow
Respondent: Cameron (sol adv) AD; Crown Agent

22 July 2022

Introduction

[1] On 4 March 2022 the appellant was convicted after trial of two charges. Charge 1 was that on 8 July 2017 at an area of land near to Ballantay Terrace, Glasgow, he murdered Jamie Lee by discharging a firearm at him. Charge 2 was that on the same date and at the same locus he attempted to murder Joseph Lee by discharging a firearm at him to the danger of his life. Both charges were aggravated by having been committed on bail. The trial judge imposed a sentence of life imprisonment on charge 1, with a punishment part of 23 years.

On charge 2 he imposed a concurrent sentence of imprisonment for 12 years. The appellant appealed against the punishment part in respect of charge 1 but no appeal was taken in respect of charge 2. On 22 July we refused the appeal and indicated that we could give written reasons, which we now do.

Background

[2] The deceased Jamie Lee was 22 when he died and in a relationship with a young woman who had given birth to their child 3 weeks previously. He came from a large family.

[3] There was an ongoing feud between two family groups in Castlemilk which culminated in a heavily armed confrontation near a children's play park on 8 July 2017. A group of 6 or 7 people, including the deceased and the complainer in charge 2, had made their way towards the play park. Some of them were carrying machetes and other weapons. On the appellant's side were a group of 15 or so, many of whom were armed with machetes and swords. There was a confrontation over a fence and in the course of this the appellant fired shots. He had equipped himself with a gun and a bullet proof vest, demonstrating premeditation, but, while his method of departure from the jurisdiction in due course was sophisticated, the commission of the crimes did not demonstrate all of the hallmarks of the highest level of sophistication, as the trial judge puts it in his report. Counsel described the feud as a low level one involving rival gangs.

[4] The cause of death was a gunshot wound which damaged the femoral vessels in the left leg causing massive haemorrhage. While the right thigh was also injured, the wounds were consistent with a single projectile having passed from left to right with a slightly downwards trajectory. It was not possible to indicate any distance from which the shot had been fired. The size of the holes suggested that a .22 calibre bullet had been fired but no

weapon or bullet was found. Joseph Lee, the complainer in charge 2, suffered two wounds on his upper right arm, these being an entry and an exit wound. These wounds were cleaned and sutured.

[5] The appellant was 23 when he committed the crimes. He was smuggled out of the country a few days after the murder in a hidden compartment of a lorry. Thereafter he associated with a person in Antwerp who was providing technical services for a serious organised crime group with international connections. He was arrested on a European Arrest Warrant on 18 December 2019 in Lisbon before being extradited of consent. He appeared at Glasgow Sheriff Court on 27 January 2020 and was remanded in custody.

Plea in mitigation

[6] The trial judge was told that the appellant, who was now 27, had resumed a relationship with a young lady and they had a child now aged 4. During his period on remand there had been bonding visits with him. The appellant had a minor record and had never previously served a prison sentence. He had consented to extradition.

The trial judge's reasoning

[7] The trial judge pointed out that there were aggravating features which hardly suggested that the appellant lacked maturity. These were the lifestyle he was living, the fact that he was driving a smart car, his involvement with an adult partner who was expecting his child, his resourcefulness in arming himself with a gun and protecting himself with a bullet proof vest and his ability to escape from the country before sustaining himself abroad for more than 2 years. That confirmed that he was not a typical man of 23. The judge saw no indication that he was immature or susceptible to being led by others. It was his battle which

he chose to escalate. The judge took account of the appellant's limited criminal record but also had to consider the other crime on the indictment, the very serious one of attempted murder. He inferred that the murder was premeditated. He pointed out that the deceased lost his life in his early twenties and that his child would have to grow up without a father. The court had to do all it could to deter the use of guns.

Submissions for the appellant

[8] It was accepted that a significant punishment part required to be imposed. However, this was not a pre-planned assassination. It lacked the hallmarks of serious and organised crime. The cause of death was unusual, the single shot damaging femoral vessels in the deceased's left leg. It could be inferred that the appellant was wickedly reckless rather than harbouring an intention to kill the deceased. The trial judge had erred in concluding that the appellant was not a typical man of 23. No, or at least insufficient, weight had been attached to his relative youth at the time of the offence. There was limited evidence about his lifestyle and nothing to suggest that it demonstrated any particular maturity. The motor vehicle he drove was a Hyundai 4x4 of indeterminate age and value. It was not clear how driving that car enhanced his maturity. There was no evidence that it belonged to him. The fact that he was in a relationship and that his partner was pregnant did not suggest any additional maturity and arguably showed immaturity. There was no evidence where he obtained the gun or the bullet proof vest. There was no information as to how his escape was planned and whether it was his own resourcefulness that was the key factor or whether he had relied upon others. There was no evidence that he was in any way involved in or connected to serious organised crime at the time of the murder. It was a reasonable inference that he had displayed a level of bravado which demonstrated a lack of maturity on his part. He was not

even masked or disguised when he fired the shots in full view of witnesses. While the trial judge had to take account of the conviction for attempted murder, the complainer in that charge was shot in the arm.

[9] The sentence was excessive in the light of recent trends and a number of authorities. In *HM Advocate* v *Morton Eadie and others*, Glasgow High Court, Lord Beckett, 10 February 2022, four persons, namely ME, DE, RF and JK, had had punishment parts set at 22, 24, 22 and 26 years respectively for the murder of KR, who was shot once in the head through a car window. DE had previous convictions for violence and JK had two previous convictions in the High Court for firearms offences. In each case there was a further conviction for attempting to defeat the ends of justice. None of the offenders was under the age of 25. In *HM Advocate* v *Christopher Hughes*, Stirling High Court, Lady Scott, 22 April 2022, the accused had his punishment part set at 25 years for his involvement in the murder of MK, who was shot eight times in Amsterdam. The punishment part took account of a conviction for a contravention of section 28 of the Criminal Justice and Licensing (Scotland) Act 2010 (involvement in serious organised crime) and the libel spanned 7 years. The accused was involved in the most sophisticated criminal group ever seen by Police Scotland. In *HM Advocate* v *Neil Anderson and Thomas Guthrie*, Glasgow High Court, Lord Mulholland, 18 August 2021, the relevant periods were 21 years and 7 months and 21 years and 9 months but those cases were complicated by an adjustment for a period spent on remand in the case of NA and the fact that TG was serving a separate sentence for a series of assaults and robberies.

[10] In *Boyle* v *HM Advocate* 2010 JC 66 the court endorsed the approach in *Walker* v *HM Advocate* 2002 SCCR 1036 to the effect that some murder cases, including those where a firearm was used, would attract a punishment part in the region of 20 years. In *Flynn* v *HM*

Advocate 2005 1 JC 271 the appellant Peter McMurray murdered three individuals with a shotgun and on appeal the punishment part was reduced from 30 to 20 years. In *McDonald* v *HM Advocate* 2010 SCCR 619 the punishment part for murdering a man by shooting him through the front door was 18 years. That was not the subject of the appeal.

[11] It was accepted that punishment parts had in practice increased in recent years. In *McDonald* v *HM Advocate* 2012 SCL 613 two appellants were convicted of reset, three contravention of the Firearms Act 1968, two charges of attempted murder and one charge of murder after discharging self-loading firearms into a garage forecourt. Concurrent sentences of 5, 5, 10 and 5 years' imprisonment were imposed in respect of the reset and Firearms Act contraventions. No sentences were imposed on the charges of attempted murder but on the murder charge the trial judge imposed sentences of life imprisonment with punishment parts of 35 years. The appellants had records. On appeal the punishment parts were reduced to 30 years. It was observed that had the principal charges stood alone the punishment parts might have been reduced to 27 or 28 years. In *Andonov* v *Her Majesty's Advocate* 2013 SCCR 245 two appellants and another were convicted of the murder of the second appellant's brother. The first appellant was also convicted of attempted murder of another person in the same incident. The first appellant was a gunman hired by the second appellant. The first appellant's punishment part of 29 years was reduced to 27 on appeal but the punishment part of 25 years imposed on the second appellant was not reduced. The Crown appealed against the punishment part imposed on the third individual, who had helped to organise the murder, and his punishment part of 19 years was increased to 23 years.

[12] Reference was also made to *HM Advocate* v *William Paterson*, Glasgow High Court, Lord Armstrong, 28 May 2015, who was convicted of murder in 2010 by shooting the deceased 13 times, including 3 shots to the head. The accused thereafter fled to Spain where

he remained until returning for trial. He was 30 years of age at the time of the murder and received a punishment part of 22 years.

[13] In the instant case there was no suggestion that the murder was a pre-planned execution with a victim who was unarmed and unaware of the fate which was about to befall him. There was no question of the appellant being masked and burning his vehicle in order to destroy evidence which might lead to identification. The intention had clearly been in these other cases to kill the victim, which could not be said in the case of the appellant. It was accepted that a significant punishment part had to be imposed but 23 years was excessive.

[14] While the Sentencing Young People guideline did not apply to the appellant because of his age at the time of sentencing, greater weight should have been attached to his age at the time of the offences.

Analysis and decision

[15] Section 2 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (as amended) provides amongst other things, as follows:

> "(1) In this Part of this Act 'life prisoner', except where the context otherwise requires, means a person—
> …
> (aa) sentenced to life imprisonment for murder …
> and in respect of whom the court which sentenced him for that offence made the order mentioned in subsection (2) below.
>
> (2) The order referred to in subsection (1) above is an order that subsections (4) and (6) below shall apply to the life prisoner as soon as he has served such part of his sentence ('the punishment part') as is specified in the order, being … such part as the court considers appropriate to satisfy the requirements for retribution and deterrence … taking into account—
> (a) the seriousness of the offence, or of the offence combined with other offences of which the life prisoner is convicted on the same indictment as that offence; …
> (b) any previous conviction of the life prisoner; …"

[16] The proper approach where there is another conviction on the same indictment is set out in *Chalmers* v *HM Advocate* 2014 JC 229. The sentencing judge should decide whether the conviction on the lesser charge should be reflected in the punishment part. He or she should then make an overall judgment having regard to the punishment part that would have been appropriate if the murder conviction stood alone, the element of retribution and deterrence attributable to the conviction on the lesser charge and the loss of the opportunity for early release that an independent sentence on that charge would have given. The sentence on the lesser charge must be imposed to run concurrently with the sentence on the murder charge and would become relevant if the conviction on the murder charge was quashed. There is no suggestion in this case that the trial judge did not follow the appropriate procedure in assessing the punishment part, insofar as he took account of a number of factors including the conviction for attempted murder and, as we have indicated, it is not suggested that the sentence on the charge of attempted murder was excessive. The issue is as to the weight to be attached to the various factors highlighted in Senior Counsel's submissions.

[17] As was conceded, the Sentencing Young People guideline did not apply to the appellant but we disagree with the submission that the trial judge did not attach appropriate weight to the appellant's age and what he could gleam as to his maturity, albeit these are clearly relevant factors irrespective of the application of the guideline. While there may be some force in the submission that the fact that the appellant drove a particular vehicle and that he had become a father at a young age did not necessarily point to his maturity, these were minor factors in the judge's overall assessment, which included the highly significant features of the appellant's arming himself with a gun, obtaining a bullet proof vest and thereafter having the wherewithal, albeit assisted, to leave the country, and make his way ultimately to Portugal, sustaining himself in the meantime. The judge's assessment that he

was not a typical 23 year old cannot realistically be challenged. He was entitled to attach little weight to the appellant's age at the time of the offences and the circumstances were not redolent of immaturity. The contrary was the case.

[18] There is no suggestion of this being a targeted assassination and it may well be that the jury convicted on the basis of wicked recklessness. However, the courts have repeatedly made it clear that the use of a firearm to commit murder is something which must be deterred and which will be visited by severe penalties. In fixing the punishment part the trial judge had regard to the sentence of 12 years he imposed in relation to the charge of attempted murder. It is a reasonable inference that had the murder charge stood alone it would have attracted a punishment part of the order of 18 years. Neither that, nor the punishment part which in fact was imposed can be said to be excessive. An analysis of the cases to which counsel referred leads inevitably to the conclusion that the trial judge selected a punishment part which is entirely in line with recent authority and with recent trends. It is of a lesser order than punishment parts imposed in gangland executions.

[19] The appeal is refused.