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Ref: MOR10180

Judgment: approved by the Court for handing down

Delivered: 25/1/2017

*(subject to editorial corrections)**

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

—————
THE QUEEN

-v-

PETER GREER
—————

Before: Morgan LCJ, Weatherup LJ and Weir LJ
—————

MORGAN LCJ

[1] The applicant was convicted following a trial at Downpatrick Crown Court on 22 March 2013 of the following offences committed on 13 May 2011:

- (1) Murder of Duncan Morrison;
- (2) Attempted Murder of Stephen Ritchie;
- (3) Possession of a shotgun with intent to endanger life; and
- (4) Possession of a handgun with intent to endanger life.

He was sentenced to life imprisonment for murder. On 10 May 2013 the learned trial judge fixed the life sentence tariff at 20 years and also imposed discretionary life sentences for the remaining offences with tariffs of 20 years in each case. He lodged a notice of appeal against conviction on 8 May 2013 in respect of which time was extended. That appeal was dismissed on 25 November 2014. He now applies to extend time for leave to appeal against sentence, that application having been refused by the single judge. Ms McDermott QC appeared with Mr McGarrity for the applicant and Mr McCollum QC with Mr McDowell QC for the PPS. We are grateful to all counsel for their helpful oral and written submissions.

[2] The notice of intention to appeal against sentence was not received until 10 June 2015. It is the applicant's case that throughout the currency of the Crown Court proceedings he was represented by solicitors and counsel other than those who are presently engaged. After the trial he appealed his conviction but no notice of appeal

was lodged in respect of sentence. He was represented for a substantial time during the currency of the proceedings before the Court of Appeal by trial counsel and solicitors. Shortly before the hearing of the appeal against conviction his present solicitors and counsel were engaged. After the dismissal of his conviction appeal the applicant sought further advice on the merits of an appeal against sentence from the representatives presently engaged.

[3] The single judge considered that there had been considerable delay in this case. Substantial grounds had not been provided to explain the entire period. No reason is put forward why an appeal against sentence had not been mounted at the time the appeal against conviction was lodged. Moreover no explanation has been given as to why thereafter there continued to be a delay in applying for such leave until 10 June 2015. Secondly the single judge considered that it was an inadequate explanation for the considerable delay that the applicant had sought further advice from alternative legal representatives who in any event had represented him in his appeal against conviction. Relying on the decision of this court in R v Brownlee [2015] NICA 39 the single judge concluded that an extension of time could only be granted where the merits of the appeal were such that it would probably succeed. The applicant agrees that this is the test which we should apply.

Background

[4] The background to the conviction is helpfully set out in the Court of Appeal judgement. At approximately 12:15pm on 13 May 2011 two men wearing balaclavas, one armed with a handgun and the other with a shotgun, entered a property in Hazelbrook Avenue, Bangor. Duncan Morrison and Stephen Ritchie were present in the house. The masked man with the handgun fired three shots. Two shots hit Duncan Morrison and one shot hit Stephen Ritchie. Duncan Morrison died at the scene. The two masked men made their getaway in a silver Honda Civic car, driven by a third person. This car was later found burnt out at the Somme Centre just off the carriageway between Bangor and Newtownards.

[5] The appellant Greer lived at a property in Mountcollyer Avenue (the 'Mountcollyer Property'), Belfast, and owned a silver Volkswagen Golf, Registration Mark UCZ 1615 ("Greer's Golf"). His co-accused Smith lived at a property in St Anne's Square, Belfast (the "St Anne's Square Property"). On 3 March 2011 a silver Honda Civic, Registration Mark SKZ 2442 ("the Honda Civic") was stolen in a 'creeper burglary' in West Belfast. On 29 April 2011 the Honda Civic and Greer's Golf were captured on an Automatic Number Plate Recognition ("ANPR") camera driving 6 seconds apart on the Knock dual carriageway in the vicinity of the Belvoir estate.

[6] On 12 May 2011, the day before the shooting, at approximately 11:05am Greer's Golf was captured on CCTV leaving Mountcollyer Avenue. By using ANPR and CCTV evidence the prosecution showed that the Golf travelled to the Upper Newtownards Road, through Dundonald, the Hartford Link, Newtownards, and to the bottom of the Clandeboye Road/Church Street, Bangor, opposite the entrance to Hazelbrook Avenue. The Golf then returned to Mountcollyer Avenue at

approximately 12:26pm whereupon a person wearing a grey hooded tracksuit got out and walked over to the Mountcollyer Property. At the same time CCTV showed that a silver Honda Civic appeared in Mountcollyer Avenue. At 5:21pm Greer's Golf left Mountcollyer Avenue again. A silver Golf was captured on CCTV in Academy Street near St Anne's Square at 5:28pm. At 5:35pm Greer's Golf returned to Mountcollyer Avenue. Shortly afterwards Greer's Golf and the silver Civic left Mountcollyer Avenue. At 6:00pm an ANPR camera captures both Greer's Golf and the stolen Civic driving through Dundonald towards Newtownards. Prosecution evidence showed that the two vehicles travelled passed the Moat Inn and Harry Corry's. At 6:27pm an ANPR camera captured Greer's Golf at the Dundonald Hospital heading back towards Belfast. At 6:43pm Greer's Golf with two occupants left Mountcollyer again. A silver Golf was seen by CCTV on Academy Street near St Anne's Square at 7:29pm. Greer's Golf returned to Mountcollyer at 7:50pm.

[7] On 13 May 2011 Greer's Golf left Mountcollyer at 10:45am. A silver Golf was captured by CCTV on Academy Street near St Anne's Square at 10:59am. Further CCTV evidence showed a silver Golf on Milltown Road at 11:24am. Greer's Golf was captured by ANPR at the Belvoir Road at 11:33am and again at 11:40am on the Knock dual carriageway near PSNI Headquarters travelling towards Newtownards. It was captured for a third time by ANPR at 11:46am near the Ulster Hospital. A Golf was then seen by CCTV at 11:48am at the Ulster Bank and at the Moat Inn; then at Harry Corry's at 11:49am; and at the Spar shop at the Hardford Link at 11:56. Then, ten minutes later, at 12:06, the Honda Civic was captured by ANPR on the Newtownards to Bangor carriageway. The prosecution case was that the Honda Civic was parked overnight at the Somme Centre and Greer's Golf was used to transport those involved in the murder to the Civic. The driver with the two gunmen drove the Honda Civic to Hazelbrook Avenue, Bangor and then returned to the car park at the Somme Centre. The Civic was burnt out and the Golf was used as a getaway vehicle.

[8] The applicant's co-accused was detected in Greer's Golf less than one hour after the shooting driving the car in Ormeau Avenue, Belfast. The keys of the burnt out Honda Civic were found in the vehicle. A search of Greer's home at the Mountcollyer Property retrieved, inter alia, a pair of gloves from the bedroom. Forensic examination of these gloves for cartridge discharge residue uncovered five particles of lead, barium and antimony on one glove, and a single particle on the other glove. Ms Irwin, the forensic witness, opined that this provided support for the proposition that the first glove had been in contact with the cartridge found at the murder scene and weak support that the second glove had been in contact with it. The inside of these gloves were also examined for DNA. The major profile matched that of Peter Greer.

[9] During his police interviews Greer denied any involvement in the murder and denied being in Hazelbrook Avenue on 13 May. He confirmed his ownership of the Volkswagen Golf in question but did not answer questions about his movements or whereabouts, or that of his car, on either 12 May or 13 May and he did not volunteer an alibi. Eventually he claimed that he lent someone whom he did not

identify his car on 13 May and then went drinking. He did not give evidence at his trial.

The conclusions of the learned trial judge

[10] The judge concluded that this was a premeditated, well thought out and carefully constructed plan to kill. Two weapons were used although only one was discharged. Two gunmen with their features disguised by balaclavas entered the house and a third man drove the car involved in the attack at Hazelbrook Avenue. The Civic was burnt out shortly afterwards at the Somme Centre. The Civic had been stolen in a creeper burglary some months earlier and was associated with Greer's Golf. There had been reconnaissance of Hazelbrook Avenue Bangor and parking of the Civic at the Somme Centre on the previous day. The Civic was the car used to carry the murder team and Greer's Golf was used as the ultimate getaway car.

[11] If not a gangster killing it was at the very least a planned and targeted assassination carried out with ruthless efficiency involving a number of persons, probably in excess of those at the scene of the murder. Although the evidence did not establish what role Greer played the court was satisfied that the roles of Greer and his co-accused were integral to what happened in Hazelbrook Avenue. There was nothing to distinguish between their roles. The judge was wholly satisfied that the fell beyond the normal starting point of 12 years and engaged the higher starting point of 15/16 years for the tariff on the basis that it was a planned execution.

[12] In considering the aggravating factors he said as follows:

"Apart from the contest and the absence of remorse there are additional factors which I regard as aggravating factors, these are the careful planning, the number of persons involved in the plot, the two weapons used and the number of victims. The efficiency of the planning was only thwarted by events that were not foreseen by those involved. This was carried out, as I have said, with ruthless efficiency. The object was either to kill one person and eliminate any witnesses or to target the two individuals who were shot."

[13] This passage was criticised on the basis that contesting the charge and the absence of remorse were not aggravating factors. We accept that submission recognising that genuine remorse and an early guilty plea can be substantial mitigating factors. The judge went on to accept the assessment of probation that the applicant presented a significant risk of serious harm to members of the community. That was not in issue in this appeal. He took into account the victim impact reports. He assessed the tariff for the murder at 20 years in the case of Greer and 21 years in the case of his co-accused on the basis of that person's recent record. We accept that he was entitled to make the difference he made and no issue of disparity in our view arises. He imposed life sentences on the other counts with the same tariff.

Consideration

[14] R v McCandless and others [2004] NICA 1 is the leading authority in this jurisdiction on the determination of the tariff period for murder. There was no dispute about the fact that this was a case in which the higher starting point applied on the basis that this was a professional killing in which the offender's culpability was exceptionally high. It was submitted that because it could not be established that the applicant was one of the gunman or indeed the driver of the Honda Civic he was a secondary party and accordingly his culpability was less.

[15] We do not accept that submission. This court noted in R v Brown and Taylor [2013] NICA 5 that there are many circumstances in which there was no parity of culpability between principals and secondary parties. That does not, however, lead to the conclusion that the culpability of a secondary party need be materially less than that of the principal. Each case is fact specific. In some cases the culpability of the director of the crime is greater than that of the principal. In this case although the learned trial judge was not able to ascribe a particular role to the applicant he was satisfied that his role was integral to the execution of the crime. The jury very clearly supported that conclusion because the convictions in respect of the firearms count showed that the applicant was deeply implicated in the commission of the offence. There was no reason to depart from the higher starting point of 15/16 years.

[16] We accept the submission that the planning of the killing should not be treated as a separate aggravating factor in this case since it is implicit in the conclusion that this was a professional murder thereby leading to the higher starting point. We are satisfied, however, that there were two very significant aggravating factors. Firstly, the crime was committed by using a firearm. As previously indicated the applicant was convicted of possession of both firearms. Secondly, in addition to the murder of Mr Morrison the crime involved the attempted murder of Mr Ritchie. That of itself would inevitably require a substantial upward adjustment of the starting point.

[17] In our view there was ample material on these facts for the learned trial judge to impose a tariff of 20 years. We wish to make it clear that if it had been established that the applicant or his co-accused had been the gunman a further substantial upward adjustment would have been appropriate. This is an area where the public are entitled to expect substantial deterrent sentences. Accordingly we refuse leave to extend time in relation to the tariff for murder.

[18] We note that the learned trial judge imposed the same tariff on the other convictions. We consider that the learned trial judge ought to have determined the appropriate tariff in each case by considering the appropriate determinate sentence and imposing a tariff representing half of that period. Adopting that approach we extend time for leave to appeal and substitute a tariff of 10 years on the attempted murder count and eight years on each of the firearms counts. These adjustments will not affect the minimum term which the appellant must serve.

Conclusion

[19] We refuse the application to extend time to appeal the tariff in relation to murder but grant the application in relation to the remaining counts as set out at paragraph [17] above.