## REGINA *v.* BLAKE.

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1961
*June* 19;
*July* 3.

Hilbery, Ashworth and Paull JJ.

*Crime—Sentence—Consecutive sentences—Spying—Indictment containing five counts, each charging separate offence—Maximum penalty for offence* 14 *years—Three consecutive sentences of* 14 *years passed —Whether sentence too severe—Official Secrets Act*, 1911 (1 *&* 2 *Geo.* 5, *c.* 28), *s.* 1 (1) (*c*)—*Prison Act*, 1952 (15 *&* 16 *Geo.* 6 *&* 1 *Eliz.* 2, *c.* 52), *s.* 27 (1).

The applicant pleaded guilty to an indictment containing five counts, each alleging a specific and separate offence contrary to section 1 (1) (*c*) of the Official Secrets Act, 1911, as amended.[1] Consecutive sentences of 14 years' imprisonment were passed on the first three counts, and sentences of 14 years, to run concurrently with those passed on the first three counts, were passed on the fourth and fifth counts. The total sentence was therefore 42 years.

The applicant applied for leave to appeal against sentence on the grounds, inter alia, that since a maximum sentence of 14 years was provided for an offence under section 1 of the Act of 1911, to pass consecutive sentences of 14 years was to evade the limit of the Act; and further, that since it was now usual for the Home Secretary in the exercise of his powers under section 27 (1) of the Prison Act, 1952,[2] to release on licence after 10 years any prisoner serving a sentence of life imprisonment, no court should pass a sentence which exceeded what was meant in practice by life imprisonment:—

*Held*, refusing the application, (1) that where each count in an indictment charged a separate and distinct offence and the maximum sentence for each offence was 14 years, it was for the judge in the exercise of his discretion to determine whether the sentences should

[Reported by J. A. Buttery, Barrister-at-Law.]

[1] Official Secrets Act, 1911, s. 1: "(1) If any person for any purpose "prejudicial to the safety or interests "of the State . . . (*c*) obtains or "communicates to any other person "any sketch, plan, model, article, "or note, or other document or in- "formation which is calculated to be "or might be or is intended to be "directly or indirectly useful to an "enemy; he shall be guilty of "felony. . . ."

Official Secrets Act, 1920, s. 8: "(1) Any person who is guilty of a "felony under the principal Act [the "Official Secrets Act, 1911] or this "Act shall be liable to penal servi- "tude for a term of not less than "three years and not exceeding "fourteen years."

[2] Prison Act, 1952, s. 27: "(1) "The Secretary of State may at any "time if he thinks fit release on "licence a person serving a term of "imprisonment for life subject to "compliance with such conditions, "if any, as the Secretary of State "may from time to time determine. "(2) The Secretary of State may "at any time by order recall to "prison a person released on licence "under this section, but without pre- "judice to the power of the Secretary "of State to release him on licence "again; . . ."

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be consecutive or concurrent, and such discretion was not limited so as to prevent him passing sentences totalling more than the maximum permitted for any one of the offences taken by itself.

(2) That, in passing a long sentence of imprisonment, a judge should not pay regard to the fact that by virtue of the Home Secretary's exercise of his powers under section 27 (1) of the Act of 1952, to release on licence, a person sentenced to life imprisonment might only serve a sentence of 10 years, and that in all the circumstances of the present case there was no ground for granting the application for leave to appeal against sentence.

*Rex* v. *Fuchs*, The Times, March 2, 1950, distinguished.

APPLICATION for leave to appeal against sentence.

The applicant, George Blake, pleaded guilty at the Central Criminal Court to an indictment containing five counts. Each count alleged a specific and separate offence committed during the period 1951 to 1959 contrary to section 1 (1) (*c*) of the Official Secrets Act, 1911, as amended. Lord Parker C.J. passed consecutive sentences of 14 years on each of the first three counts and sentences of 14 years, to run concurrently with those passed on the first three counts, on the fourth and fifth counts. The total sentence was therefore 42 years.

The applicant applied for leave to appeal against sentence on the grounds that the sentence was too severe, it being contended that it was wrong in principle to pass consecutive sentences of 14 years, that the sentence was inordinate, unprecedented and manifestly excessive, and that there were circumstances surrounding the conduct of the applicant which were given no weight when sentence was passed.

*Jeremy Hutchinson Q.C.* and *W. McL. Howard* for the applicant. The sentence is wrong in principle. The Official Secrets Act, 1911, as amended by section 8 (1) of the Official Secrets Act, 1920, provides that the maximum penalty for the offence of spying shall be imprisonment for 14 years. After the death penalty or a sentence of life imprisonment, a sentence of 14 years is, with one exception, the maximum penalty which can be imposed for a criminal offence. Life imprisonment used to mean 20 years with remission of a quarter of the sentence. Thus a prisoner would serve about 15 years. More recently this has been reduced to about 10 years. It is wrong in principle to pass a sentence for spying which exceeds what amounts in practice to a life sentence. If Parliament puts a limitation of 14 years' imprisonment for a particular offence into a statute, whatever the principle may be as regards the propriety of passing consecutive

sentences in the ordinary way, to pass consecutive sentences of 14 years is to evade the limit laid down in the Act, for if life imprisonment had been the maximum sentence imposed by the Act, the most a prisoner would have served in practice would have been 20 years.

Under the Prison Act, 1952, s. 27 (1), the Home Secretary has power to review sentences of life imprisonment and other non-determinate sentences, but there is no power to review determinate sentences. In passing a sentence which exceeds in aggregate a life sentence, the court is depriving the applicant of the statutory protection which he would have had if he had received a life sentence: Royal Commission on Capital Punishment, 1953, para. 646. Reliance is placed on *Rex* v. *Fuchs*.[3] A sentence of this length cannot be administered. There is nowhere under the present system where a man could serve such a sentence.

In the circumstances of the case the sentence is inordinate, unprecedented and manifestly excessive. [The greater part of the argument on this point was heard in camera.]

*Sir Reginald Manningham-Buller Q.C.*, *A.-G.* and *Mervyn Griffith-Jones* for the Crown. Where the maximum penalty for an offence is 14 years' imprisonment the courts have power to pass consecutive sentences. The passage from the Royal Commission on Capital Punishment, 1953, relied on by the applicant, refers only to the length of detention of prisoners convicted of murder. The circumstances considered there bear no relation to the circumstances in this case. The report was signed before the Homicide Act, 1957, when certain capital offences were made punishable by life imprisonment. It is possible that the Home Secretary will in time consider that the facts set out in the paragraph referred to require adjustment in the light of the new Act. It is said on behalf of the applicant that the Home Secretary has power to review certain sentences under the provisions of the Prison Act, 1952. No Minister or government department has power to do that. It can only be done by the exercise of the royal prerogative. The power of the Home Secretary under the Act is to release on licence.

It is said that the sentence is too long in the light of the physical and mental effects it would have on a prisoner. It is apprehended that the courts always consider the possible effects of imprisonment on prisoners when passing sentence.

[3] The Times, March 2, 1950.

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HILBERY J. This is an application for leave to appeal against sentence, and the only ground put forward in the notice of application is that the sentence was too severe. The accused pleaded guilty at the Central Criminal Court to each of the five counts in an indictment charging him in each count with an offence under the Official Secrets Act, 1911. Each count alleged a specific and separate offence committed at some particular time during the period between 1951 and 1959. Lord Parker C.J. passed sentences of 14 years on each of the first three counts and 14 years on the fourth and fifth counts, making the first three sentences of 14 years consecutive and the sentences on the last two counts concurrent with the sentences on the first three. The total sentence was, therefore, one of 42 years. It is that sentence which the applicant complains is too severe.

On the applicant's behalf it was expressly stated by Mr. Hutchinson that his application for leave to appeal against that sentence was not based on any point of law, and the application did not, therefore, involve a question of law. His contention was that the sentence was wrong in principle and, furthermore, in the particular circumstances of this case, was manifestly excessive. In support of the argument that the sentence was wrong in principle his contention in the first place was that the Official Secrets Act provided a maximum sentence of 14 years for an offence against the Act such as was alleged in each of the counts in this indictment, and that to pass consecutive sentences of 14 years was to evade the limit in the Act. The answer to this is that there is no settled principle that a judge may not pass consecutive sentences in respect of a number of offences for any one of which the maximum sentence is 14 years where each offence charged in each count is separate and distinct. Whether the sentences shall be concurrent in such circumstances or consecutive is a matter for the judge to determine in the exercise of his discretion. This discretion is not limited so as to prevent the judge awarding consecutive sentences which will total more than the maximum permitted for any one of the offences taken by itself.

Mr. Hutchinson referred us to evidence given by the Home Office before the Royal Commission on Capital Punishment, which shows that now, where a life sentence is passed, it is usual for the Home Office (indeed he put it as high as to say it was the normal practice of the Home Office), in the exercise of the powers given to the Home Secretary under section 27 (1) of the Prison Act, 1952, to release on licence after 10 years any prisoner on whom a sentence of life imprisonment has been passed, and that

as that is so, no court ought, by making sentences consecutive, to pass a sentence longer than the one which a prisoner would, in practice, serve if sentenced to life imprisonment. One answer to this is that where, as in the case of non-capital murder, the Homicide Act, 1957, enacts that the sentence shall be one of life imprisonment, this court passes that sentence giving the words of the statute their natural and ordinary meaning, and that sentence remains the sentence, the Home Secretary having no power to alter it. The only power which the Home Secretary has under section 27 (1) of the Prison Act, 1952, is power to release the prisoner on licence with power, however, to recall him at any time to serve the rest of his sentence. The sentence remains what it is, one for life imprisonment. Furthermore, a court in passing such a sentence has no regard to the possibility of the exercise by the Home Secretary of his power to release a prisoner on licence. It has been laid down by this court that in passing sentence a court should not pay any regard to the fact that nowadays a prisoner serving his sentence may, by good conduct, earn remission and so in practice be confined to prison for a much shorter time than the length of sentence passed upon him, and there is no logical distinction between taking into consideration the possibility of remission for good conduct and the possibility of remission through the Home Secretary exercising his discretion to allow out on licence and so shorten the period of a prisoner's confinement.

Mr. Hutchinson also relied on *Rex* v. *Fuchs*,[1] but the circumstances in that case, so far as one can judge from the report, were entirely different from those in the case under consideration. It is true that in that case Lord Goddard C.J. passed a sentence of 14 years on each count concurrent, remarking, however, that for a man of high education and ability, punishment as such did not mean a great deal. It has been said, rightly, that in passing sentence a judge has to consider the offence and the offender, but he has also to consider the interest of society. When this applicant and his conduct and the particular circumstances of this case, as they have been revealed to us, are considered, *Fuchs'* case is clearly not comparable to this one.

It was further argued that sentences totalling 42 years could not be administered, in that no person is capable of serving so long a sentence or, indeed, any sentence in excess of 20 years. We are quite unable to accept the premise on which this argument

[1] The Times, March 2, 1950.

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is based, nor can we accept the further contention that there is no suitable prison where the applicant can serve his sentence. The age of the applicant and his capacity to serve the sentences imposed on him were doubtless considered by Lord Parker C.J., and we see no reason to interfere with his conclusion on these matters.

Disinclined as we are to act otherwise than in public, we thought it right to hear part of this application in camera, because the applicant's statement to which counsel wished to refer regarding the second ground on which the application was based that, in the particular circumstances of this case, the sentence was manifestly excessive, included matters which we were satisfied would be prejudicial to the interests of the State to have mentioned in public. This course could not in any way prejudice the applicant. These matters could be put before this court just as well in closed as in open court, and it is this court and not the public that the applicant has to satisfy that the sentence passed upon him should be reduced.

We listened very carefully to all that was said on behalf of the applicant. Amongst other things, it was pointed out that Lord Parker C.J. accepted, as we do, that the applicant took no money for the traitorous services which he rendered; that when the applicant was a prisoner in Communist hands the only books provided for him and his fellow-prisoners were the works of Karl Marx, Engels, Lenin and Stalin, and that so great was the boredom of captivity that he read them and other Russian literature devoted to disparaging the way of life of this country and the west, and preaching salvation by Communism, until at last he succumbed and decided to dedicate his life to the cause of Communism. When he returned to this country he did not, as one would have expected if he had a shred of honesty, resign from the service and pay of this country. The doctrine he had accepted so poisoned him that he decided to remain in the pay and service of this country and by every means in his power to betray it, thus helping the cause he had secretly espoused. From then onwards for nine years, not once, but on every occasion when he had it in his power to do harm to this country and his fellow-citizens he did so by betraying secret information of great importance. In his own words, "there was not an official document of any importance "to which I had access which was not passed to my Soviet "contact."

We repeat, because it accurately represents our view, the words of Lord Parker C.J. when he said: "Your case is one of

"the worst that can be envisaged in times of peace." It is of the highest importance, perhaps particularly at the present time, that such conduct should not only stand condemned, should not only be held in utter abhorrence by all ordinary men and women, but should receive, when brought to justice, the severest possible punishment. This sentence had a threefold purpose. It was intended to be punitive, it was designed and calculated to deter others, and it was meant to be a safeguard to this country.

*Application refused.*

Solicitors: *Claude Hornby & Cox; Director of Public Prosecutions.*

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## WILSON *v.* EVANS.

1961
*Dec.* 12, 13.

Lord Parker C.J., Slade and Widgery JJ.

*Metropolis — London Government Act — Inspection of documents — Minutes of committee of local authority—Committee acting under delegated powers—Power to act without reporting to council—Whether minutes of committee "minutes of proceedings of a local "authority"—Whether open to inspection—London Government Act,* 1939 (2 *&* 3 *Geo.* 6, *c.* 40), *s.* 173 (1) (7).

A local government elector for the area of the London County Council asked the defendant, an official employed by the London County Council whose duties were to act as assistant to the clerk of the town planning committee of the council and certain of its sub-committees, if he might inspect the minutes of the town planning committee relating to two decisions of that committee; the minutes in question were sufficiently identified to the defendant. The two decisions were made by the town planning committee acting under powers delegated by the council, and when making those decisions under delegated powers the committee could act finally without reporting to the council. The defendant refused to allow the elector to inspect the minutes and the elector preferred an information against the defendant alleging that he had committed an offence against section 173 of the London Government Act, 1939.[1]

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[Reported by H. JELLIE, Barrister-at-Law.]

[1] London Government Act, 1939, s. 173: "(1) The minutes of proceedings of a local authority shall be open to the inspection of any local government elector for its area on payment of a fee not exceeding one shilling, and any such local government elector may make a copy thereof or an extract therefrom. . . . (6) A document directed by this