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No: 201802438/A1

**IN THE COURT OF APPEAL**  
**CRIMINAL DIVISION**

Royal Courts of Justice

Strand

London, WC2A 2LL

Thursday, 17 January 2019

**B e f o r e:**

**LORD JUSTICE HOLROYDE**

**MR JUSTICE POPPLEWELL**

**HER HONOUR JUDGE WENDY JOSEPH QC**  
**(Sitting as a Judge of the CACD)**

**R E G I N A**

v  
"Z"

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**Ms R Trowler QC** appeared on behalf of the **Appellant**  
**Mr J Newton-Price** appeared on behalf of the **Crown**

**J U D G M E N T**  
(Approved)

1. LORD JUSTICE HOLROYDE: On 25 April 2016 this applicant, then aged 14 years and 9 months, went to her school armed with a knife. She stabbed a friend in the chest. The victim, then aged 15 years 3 months, fortunately escaped serious physical injury. The applicant admitted an offence of having a bladed article on school premises, contrary to section 139A (1) of the Criminal Justice Act 1988, an offence for which ultimately no separate penalty was imposed, and she admitted that she had wounded her friend. She denied an allegation of attempted murder, her defence being that she had no intent to kill. At her trial, in October 2016, she was convicted. After an adjournment to enable a psychiatric report and a pre-sentence report to be prepared, she was, on 16 December 2016, sentenced by the trial judge (Fraser J) to an extended sentence of 14 years, comprising a custodial term of 10 years and an extension period of 4 years. She now applies for an extension of time of 515 days to apply for leave to appeal against her sentence. Her applications have been referred to the Full Court by the Registrar.
2. Reporting restrictions apply in this case. In the court below the applicant was made the subject of an order pursuant to section 45 of the Youth Justice and Criminal Evidence Act 1999, stating that no matter relating to her may be published that would identify her including her name, address, any educational establishment or workplace she attends or any picture of her, this order to last until she attains the age of 18. An application was made by the media to lift that order after the appellant had been sentenced. It was refused by Fraser J for reasons which he gave in a decision published as [2016] EWHC 3728 QB. At the commencement of this hearing we directed that an order in similar terms should continue.

3. We understand that the appellant's trial lawyers advised her that there were no grounds of appeal. She subsequently contacted a helpline operated by those who now act for her. We have been given an explanation of the steps which were taken over a period of months culminating in the launching of the notice of appeal. This is relied upon before us as the basis of the application for an extension of time.
4. The learned judge below rightly described this as a highly unusual case and an exceptional one. He set out the facts in some detail in his careful sentencing remarks. Those sentencing remarks are appended to his published judgment in relation to reporting restrictions and it is therefore unnecessary for us to go into them in great detail. We give the following summary.
5. Prior to the offence the appellant had not been in any trouble with the police. She lived with her mother and brother and was in contact with her father who lived separately. She was academically bright, doing well at school and part of a friendship group identified by a senior member of staff as "the nice crowd". Her group of friends included the victim who had, at one time, been her best friend.
6. In 2015 the appellant suffered online bullying and abuse after her personal details had been posted on a website. She wrongly suspected that the victim of this offence had been involved in the posting of those details. Although this erroneous belief caused her to alter her feelings towards her victim, who ceased to be her best friend and was replaced in that role by another girl, the appellant at her trial denied that she had come to hate her victim. The judge in his sentencing remarks referred to this and said:

- i. "You denied this, and simply stated that she was the only member of your closely knit friendship group with whom you had any sort of issue, and that was why you had chosen her to be the victim. I accept that evidence. There was no animosity or hostility on your part towards [the victim]; she was just a convenient target."
  
7. The evidence showed that the appellant's use of social media and websites included all that one would expect of a teenage girl. It also however revealed a much darker side to her personality. The judge summarised the evidence as showing that the appellant had an obsession with serial killers and with school shootings. She watched "snuff" movies on the Internet and would show them to school friends for their shock value: these were films containing dreadful images of real people being actually tortured and killed. She also watched and showed to her friends a film of the rape of a tiny baby. The judge observed that whatever her mental state at the time, "common sense suggests that watching such material can only have made it far worse". Regrettably, no one brought any of this material to the attention of teachers or other adults. It appears that the school friends to whom the appellant showed it did not take it seriously.
  
8. The judge went on to summarise the evidence as including a description by the appellant of herself as being motivated by serial killers. Particular reference was made to school shootings in the United States. She based her school fashion project on a notorious serial killer. The judge, in his sentencing remarks, then continued as follows:
  - i. "You prepared a 'kill list' of about 60 people and made outline plans to carry out a school shooting of your own. You listed the names of people at school, as well as your own mother and brother, in your journal. You changed your mind about this plan and burned your journal in the presence of [the victim] and another friend... [the other friend]... knew what the journal contained, and knew about the kill list, but [the victim] did not. You then formed

another plan, this time to kill your mother and brother whilst they were asleep at home. You discussed this plan at length with your [other friend], who had become your best friend in Year 10 ... You discussed cutting your face like the Joker in the Batman films, pleading insanity, and going on the run together afterwards. She did not take you seriously, but went along with you. You said that you would blame it on voices in your head if anything went wrong with your plan.

- ii. You researched different ways to kill your mother and brother silently. Again, you did not have any particular animosity towards them, but the fact you lived with them made them easy targets. You researched online how to kill people with a knife, how to slit their throats, how to muffle their cries, how long it takes for a person to bleed to death, and what sort of knife should be used."

- 9. We should add that those references by the judge were to only some of the Internet researches made by the appellant. Others included researches into matters such as where a stab wound be fatal; where the heart was located within the body; and what the distance was from the outer skin to the heart.
- 10. Coming to the period leading up to the commission of the offence, the evidence relating to March and April 2016 shows many relevant messages and Internet searches which, as the judge put it, made for disturbing reading. The appellant told her friend that the attack had to take place in April because it had to be before her GCSEs. She said in her evidence at trial that she felt that one dramatic event could help all the smaller stresses in her life go away. The judge referred to the fact that, sadly, the appellant had also self-harmed from 2015 by cutting her arms and legs but her evidence was that this had not really helped.

11. She ultimately settled on the night of Sunday 24 April 2016 as the occasion when she would kill her mother and brother. In messages to others she said that she felt she was going a "little bit mad" and was having some "really weird and bad thoughts". She referred to having cut her face. She had in fact taken a kitchen knife to her bedroom and cut the sides of her face so as to resemble The Joker in the Batman films. Her evidence was that during the course of the night her plan to her kill her mother and brother faded. The judge concluded that was because she had realised she could not go through with it. However, she replaced that plan with a plan to stab the victim. It was at this point that she researched the position of the heart and the distance from the skin to the heart. She sent a message to her victim telling her to be sure to be at the normal meeting place at school in the morning because she had a present to give her, which she had to hand over in secret. The appellant's true plan, at that stage, was to stab and kill her victim.

12. The appellant covered her facial cuts with makeup and a scarf. She told a friend that she had a knife and was going to stab her victim, but the friend did not think that she was serious and so allowed the appellant and the victim to go to the back of a school building without having any misgivings. Having thus succeeded in taking the victim to a place secluded from others, the appellant told her to close her eyes and hold out her hands as she had a present to give her. The victim did as asked, never imagining what would happen. When she had closed her eyes the appellant deliberately moved the victim's long hair away from her chest and took from her bag the knife which she had brought with her from her home. She stabbed at her victim. By pure good fortune the victim, at the very last moment, opened her eyes, saw the appellant lunging towards her and reacted quickly enough to step sharply backwards. The knife struck her with sufficient force to go through the lapel of her blazer, the front panel of her blazer and her school blouse but did

not penetrate very far into her body. The appellant ran off. She discarded the knife, tried to phone her mother and hid in the area. Eventually she returned home to her parents.

When interviewed by the police she did indeed say that she had heard a voice in her head.

13. The judge observed, in the course of his sentencing remarks, that the appellant's evidence at trial about these events was:

- i. "... quite chilling. You described things in a matter of fact way, and explained facts relating to your planning and research as though they were wholly rational and normal. You said that after you had decided not to kill your mother and brother, you were concerned that you would lose face with [your friend] if you did not go through with something ...
- ii. There is simply no comprehensible motive for this attack at all, which was carefully planned and premeditated, and you could not explain it yourself. You said part of you did not want to commit this offence, but part of you was making you do it, and you felt you had no choice but to do it. I accept that statement accurately summarises how you felt at the time."

14. The victim, as we have said, fortuitously escaped serious physical injury, but nonetheless suffered severely as a result of the stabbing. She had not herself wished to make a victim personal statement, but there were before the judge two statements from the victim's mother. The judge said that these showed that the effect on the victim had been considerable. Having been tricked by her former best friend who then tried to kill her, she now unsurprisingly lacked trust in others and was left wondering how one friend could plan to kill her and another friend could not tell the victim of that plan. The judge

described the statements from the victim's mother as making "very sad reading". After the offence, the victim was in a state of emotional turmoil, part of which was that she was, to her credit, still concerned for the welfare of her former friend. However, the judge continued, the second of the mother's statements indicated that the position was far worse by the time the trial had concluded, because the victim had suffered a complete breakdown and had been diagnosed with post-traumatic stress disorder for which she was receiving therapy. The judge expressed the hope that her condition would over time improve but concluded that the offence had caused serious psychological harm to an entirely innocent 15-year-old girl.

15. As we have indicated, the judge was assisted by reports. The report of the consultant psychiatrist was particularly directed to the issue of dangerousness, as that term is defined for the sentencing purposes of the Criminal Justice Act 2003. The judge took the view, rightly, that the contents of both the psychiatric report and the pre-sentence report were highly concerning. The opinion of the psychiatrist was that the appellant did not suffer from a mental disorder which would warrant hospital admission. She had a lack of emotionality, was highly controlled and did not know very much about her own darker side. She had had an active interest in killing and may have a current interest in doing so. The psychiatrist said that there had been an aspect of her personality which was homicidal and might still be so. The psychiatrist observed, in relation to the offence, that there was little observable conduct which would make the appellant's behaviour either predictable or understandable. The relevant processes and triggers were entirely internal to the appellant.

16. The psychiatrist assessed her offence as being among the most concerning and concluded



that dangerousness was internal to the appellant. He added that the implication was that there would be no early warning of any other murder being planned until there was a victim. The psychiatrist was however able to express the view that therapeutic work with a clinical psychologist had the greater chance of assisting the appellant to deal successfully with the disturbing side of her personality.

17. The pre-sentence report painted a picture of a stable home life and high achievement at school, but concluded, in all the circumstances, that there was a medium risk of re-offending and a high risk of causing serious harm to others.

18. In the light of that evidence, and of his own assessment of the appellant over the course of a trial lasting some 8 days, the learned judge found that she was a dangerous offender. He was plainly entitled to reach that conclusion and indeed it is difficult to see that any other conclusion could have been reached. It was not opposed by trial counsel and is not the subject of any appeal at this stage.

19. The judge was satisfied that a life sentence was not justified but that the offending was clearly so serious that custody was inevitable. He summarised the features relevant to an assessment of culpability and harm in the following terms:

- i. "Because [the victim] managed to avoid the full force of the knife, the physical harm she suffered was not great: a small puncture wound. However, your culpability was high, as you took a weapon with you to the scene and formed a careful plan, which you carried out. Both of these are aggravating factors. You also took [the victim] to a secluded place and asked her to close her eyes, which rendered her vulnerable. Although there is an imbalance between culpability and physical harm, the level of psychological harm to [the victim] is very high and she has been diagnosed with PTSD. The level of physical harm intended, though, was very high,

namely death."

20. The judge referred to the absence of previous convictions and the good character of the appellant. He said that there was little sign of remorse but that that was not surprising given the psychiatric evidence. As to mitigation he took into account the appellant's good character and her very young age at the time she committed the offence, observing that a person aged 14 is not criminally culpable in the same way as an adult would be for the same offence. The appellant's age reduced her personal responsibility for the offending. The judge also referred to the appellant's self-harm which had continued since her arrest, which he regarded as showing that she was herself vulnerable. He took that into account also. He regarded the strongest mitigation as being her age.
21. The judge then considered the sentencing guidelines for attempted murder. Under that guideline the seriousness of offences of attempted murder is categorised at three levels. Level 1 relates to the most serious offences including those which, if the offence had been murder, would come within paragraphs 4 or 5 of schedule 21 to the Criminal Justice Act 2003. Level 2 covers offences involving "other planned attempt to kill" and level 3 covered offences of "other spontaneous attempt to kill".
22. In relation to each level there is a further categorisation by reference to the harm caused: serious and long-term physical or psychological harm; some physical or psychological harm; or little or no physical or psychological harm. In relation to each of those categories the guideline gives a starting point and a range of custodial sentences.
23. The judge found that the appropriate categorisation was at level 2. He said the offence

has caused serious psychological harm but it was not known how long term that harm to the victim would be. He said that:

- i. "I would place this offence as falling mid-way between the top two categories of Level 2, which would give a starting point for a determinate sentence mid-way between that for those categories for a first-time adult offender; I assess that starting point as being one of 18 years."

24. The judge then considered the then-current guideline about sentencing of young offenders and indicated that he had regard to the fact that the custodial sentence would have a greater impact upon a young offender than upon an adult. He also had regard to his obligation to have regard to the appellant's welfare. The guideline indicated that the starting point for a teenager aged 15 and above should be one-half to three quarters of the starting point for an adult and should be yet lower for an offender aged 14 at the time of the offence. He said he therefore took a far lower starting point than the one given in the guidelines for an adult.

25. The judge imposed the sentence to which we have referred. He explained that he had taken a starting point of 8 years for the custodial term having regard to the appellant's age. He had then adjusted it upwards to reflect aggravating and mitigating factors other than age to the term of 10 years.

26. We have been provided with very detailed written grounds of appeal which have been developed orally in submissions before us today by Ms Trowler QC on behalf of the appellant, who did not appear below, and responded to by Mr Newton-Price QC, who

did. We have considered all of the written grounds and have taken careful note of the oral submissions. It is not necessary for us in this judgment to deal with every point in the same detail as it has been advanced.

27. There are four grounds of appeal. The first contends that having spoken of a starting point "midway" between sentencing guideline levels of 15 years and 20 years, the judge was wrong then to assess the appropriate adult starting point as 18 years. We can deal with this point shortly because, in our judgment, there is no merit in it. The judge identified the two guideline starting points between which the appropriate starting point for an adult in the circumstances of the present case would fall. He assessed the appropriate starting point as being one of 18 years. His use of the phrase "midway between" cannot be regarded as dictating that he then adopted arithmetical precision and chose the exact mid-point between the figures in the guideline. The assessment which he made was an appropriate one and, for reasons to which we will come, could be regarded as lower than he might have selected.

28. Ground 2 contends that the judge fell into the error of double counting of aggravating features. It is submitted that he did so in two ways. First, in the passage which we have cited he referred to the appellant having intended a very high level of physical harm, namely death. The appellant submits that since an intention to kill is a necessary ingredient of the offence of attempted murder, that intent was already catered for by the guideline sentencing starting point and should not be regarded as an additional aggravating feature justifying an increase from the starting point. That submission is correct as far as it goes. But, as the respondent points out, it is important to read the relevant words of the judge in their context. He was, in our view, merely pointing out, by

way of description of the offence, that although the actual physical harm was limited, the intended harm was death. We do not regard that as being in any sense impermissible double counting. In developing this submission orally Ms Trowler submitted that the judge had plainly treated it as an aggravating factor, as was evident from other passages in his summing-up. We do not accept that submission. On the contrary, the judge specifically identified two aggravating factors, neither of which related to the intention to kill.

29. The second aspect of ground 2 is that it is submitted on behalf of the appellant that as a level 2 offence within the guidelines relates to a planned attempt to kill, the judge's references to the appellant's having formed a "careful" plan as being an aggravating factor indicates improper double counting. The appellant submits that the judge did not specifically say that, for example, the offence was extraordinary well planned or unusually well planned. In response to this submission the respondent points to the features of premeditation and planning which the judge noted in his sentencing remarks, to some of which we have referred, and to other troubling features of the evidence which the judge had heard during the trial. Ms Trowler, in response, argues that a fair assessment of the level of planning must take into account the appellant's state of mind, which the judge described as being in the hours preceding the stabbing, "an extraordinary degree of emotional turmoil". Ms Trowler also points to the risk that the appellant had been influenced by the material which she had seen on the internet and she relies on the judge's acceptance that at the time of the offence the appellant felt that she had no choice but to do what she did.

30. We are unable to accept these submissions on behalf of the appellant. As we have

indicated, the Sentencing Guideline categorises the offences at three levels. It is, in our view, clear that within level 2 there may be offences which are planned but which involve only limited planning over a short period of time, and offences which are planned and involve long premeditation and detailed planning with sophisticated features. The judge, in our view, was entitled to reflect these differing degrees of planning by moving upwards or downwards as appropriate from the guideline starting point. In short, the fact that the offence was planned puts it into level 2. But the detail and/or sophistication and/or duration of the planning and premeditation can affect the sentence within the appropriate range. In the present case there was, on any view, a high degree of premeditation and planning. The internet research, to which we have briefly referred, is in itself sufficient to show that. The emotional turmoil of which the judge spoke may go some way to explain why the appellant engaged in such planning but it does not mean that the degree of planning is to be discounted, still less ignored.

31. In oral submissions today Ms Trowler has sought to add a further ground which argues that the plan to kill the victim was only formed the night before the offence, and that any earlier planning related to potential killings of others which were not carried out and should therefore not be regarded as part of the careful planning of the stabbing of the victim. This is not a point which, in our judgment, can possibly assist the appellant. The judge was perfectly entitled to have regard to the fact that over a significant period of time (amounting to some 2 or 3 weeks) the appellant was making detailed plans to kill one or more persons and was engaging in detailed internet research as to methods of doing so and methods of avoiding the consequences. The fact that the identity of her target changed in the course of this period of planning does not mean that all previous planning ceased to be relevant once she took the decision, in the early hours of the

morning, to murder her friend. In any event, even at that late stage, she engaged in considerable planning, sending text messages in the early hours of the morning to the victim in order to lure her into the meeting on the following morning. For those reasons we reject the second ground of appeal.

32. The third ground of appeal contends that the custodial term is manifestly excessive because the judge gave inappropriate weight to the aggravating and mitigating features of the case, in particular, with regard to the appellant's chronological and emotional age. In relation to this ground Ms Trowler makes a number of submissions directed at the decision of the judge to increase his provisional starting point of 8 years to a sentence of 10 years after reflecting upon and balancing the aggravating and mitigating factors. The aggravating features identified by the judge were the taking of the knife to the scene of the crime and the fact that the appellant rendered her victim vulnerable by taking her away from the company of others and telling her to close her eyes. Ms Trowler contends that only limited weight could be given to these features. She accepts that carrying a knife at least probably aggravates the offence and that the vulnerability of the victim could be capable of doing so. But, she said, these are matters which have largely been taken into account by the judge's categorisation of the offence as a level 2 planned attempt to kill. They could not therefore aggravate or, at any rate, significantly aggravate the offence beyond that.

33. As to mitigation, the judge recognised that the appellant was of previous good character and had shown her own vulnerability by the episodes of self harm. It is submitted that he cannot have given sufficient weight to these because his balancing of the relevant features resulted in the increase by 2 years of the provisional starting point. Ms Trowler

particularly points to the self-harm as being a significant factor because the court was required, by statute, to have regard to the welfare of this young offender in sentencing her. A custodial sentence carried a risk of self harm. It is further submitted that the judge also failed to give sufficient weight to the fact that the appellant cut her own face shortly before the offence, a further episode of self-harm and a further indication of her emotional turmoil.

34. Whilst accepting that the judge followed the approach set out in the then current Youth Sentencing Guideline and took a starting point of just under one-half of the term appropriate for an adult, it is submitted that he did so in a rather mechanistic way and did not sufficiently consider whether the sentence was appropriate having regard to the appellant's emotional and chronological age. In this regard Ms Trowler points to a number of features such as the extent to which changes taking place during adolescence can lead to experimentation; the fact that a young person such as the appellant was unlikely to have the same capacity as an adult to realise the consequences or effects of her actions on others; the fact that a young offender may be less able to resist temptation, especially in the light of peer pressure; and the fact that a custodial sentence was likely to have a greater impact on a young offender than on an adult. She submits that there was here a failure by the judge sufficiently to take into account the capacity of a young offender for change and maturation during a comparatively short custodial sentence.

35. In response to these submissions in relation to the third ground of appeal the respondent contends that the judge took account of all relevant matters, expressly identified the various mitigating factors on which the appellant relies and was entitled to reach the conclusion that in all the circumstances the appropriate custodial term was one of 10



years. With particular reference to the appellant's cutting of her own face hours before the offence, the respondent points to indications that she did so because she wanted to "create a bit of an image" of herself. It is submitted by the respondent that the judge specifically recognised the emotional turmoil from which the appellant was suffering at the time and that he gave sufficient weight to her youth.

36. Reflecting on these submissions, we think it important to emphasise that the judge, having presided over the trial and knowing all the details of the evidence, was in the best possible position to assess what weight to give to the various aggravating and mitigating features. In his careful sentencing remarks he made clear that he had properly considered all relevant factors. It is important to bear in mind that some of the factors mentioned by the appellant's counsel are already effectively taken into account under the Youth Sentencing Guideline because they provide some of the reasons why young persons are sentenced much less severely than adults guilty of comparable offences. We reject the submission that the judge applied the guideline without proper regard to an overall assessment of age and maturity. When sentencing young offenders maturity is an important aspect, often at least as important as chronological age. In this case however, all the evidence is that the appellant was at least as mature as her peers and probably more mature than many of them. She was in a state of emotional turmoil and her thinking certainly shows some extremely disturbing and worrying features but she was not, on the evidence, immature for her age.

37. As to the fact that the appellant took the knife with her to the scene of the crime, we would respectfully point out an error in the judge's approach. As we have indicated, he considered what starting point would be assessed pursuant to the sentencing guideline in

the case of an adult offender, he then reduced that notional sentence very substantially by reason of the appellant's age and he then reflected his overall assessment of the balancing of aggravating and mitigating features by adding 2 years to the provisional sentence thus far reached. He should, rather, have considered both the guideline starting point and the adjustments to be made to that starting point to reflect aggravating and mitigating features, so as to determine what sentence would have been imposed in the case of an adult, and should at that stage have made the appropriate substantial reduction on grounds of the appellant's youth. But in so far as the judge fell into error in that regard, it was not an error which resulted in any prejudice to the appellant, for this reason. The sentencing guideline for offences of attempted murder came into force before the statutory amendment to schedule 21 to the Criminal Justice Act 2003 which introduced, in cases of murder, an increased starting point for murder committed with a weapon taken to the scene of the crime. The gravity with which Parliament viewed the use of a weapon taken to the scene is starkly illustrated by the fact that under schedule 21, in the case of murder, it is without more capable of increasing the adult starting point for the minimum term from 15 years to 25 years. In the light of that statutory amendment, it would have been open the judge, when considering the guideline starting point and ranges, to take a sentence significantly higher in the relevant ranges in order to reflect that view of Parliament as to the seriousness of knife crime and carrying weapons to the scene of a crime. He could, in that way, have taken into account what is undoubtedly a very serious feature of this offence, namely the deliberate taking of a weapon to the scene for the purpose of a murderous attack, and he would then only have had to consider a single aggravating feature, namely the victim's vulnerability. We would add that the vulnerability of the victim was in itself a serious aggravating feature: the victim was lured

away from the company of others and made to expose herself to the attack which the appellant intended to make. We are satisfied that if the judge had adopted that alternative approach, his sentence would have been no less than that which was in fact imposed. We are also satisfied that in his careful approach to what was a most difficult sentencing process, in a most difficult case, the judge sufficiently reflected the mitigating features.

38. We turn finally to ground 4. The appellant has put additional material before the court.

Formal application is made to adduce as fresh evidence a further psychiatric report and an updating report in relation to the therapeutic work in which the appellant has engaged whilst in custody. There is a report from the manager of the unit at which the appellant is detained. He speaks highly of her behaviour and indicates that she has achieved, at an early stage, the highest level on the unit's behaviour management system and has subsequently maintained that level. She is the only young person on that level and the system has been adapted to reflect her achievement. She acts as a mentor to others and has been appointed as a young person's representative. She has assisted staff in interviewing applicants for a management post and has resumed her studies and passed exams with higher grades than expected.

39. A clinical psychologist has provided the progress report in relation to therapeutic intervention in which the appellant has engaged well. There has been a noticeable shift in her thinking and her insight. She is taking responsibility for her offence and wishes to repair the damage caused. This material is relied upon in particular in support of ground 3.

40. In further material recently provided to the court, including the further psychiatric report which itself includes a detailed risk assessment, there is material on which the appellant

relies to demonstrate that she has been making exceptional progress whilst in custody serving her sentence.

41. Under this ground Ms Trowler wishes to advance a freestanding ground of appeal on the basis that, even if the court be satisfied that the sentence was perfectly proper when it was passed, it should nonetheless be reduced now because the appellant has made exceptional progress during her time in custody thus far. She relies in this regard on a passage in the decision of this court in the case of Re Caines; Re Roberts [2007] 1 WLR 1109. At paragraph 44 of the judgment given by Sir Igor Judge P (as he then was) the court refers to appeals against sentence in this court and says:

- i. "From time to time, the court will be provided with updated information about the offender. This sometimes takes the form of prison reports, sometimes confidential information from the police. The sources vary. The information may serve to show, for example, that the prisoner has provided considerable assistance to the police; sometimes aspects of the mitigation are significantly underlined in a way which may not have been as clear or emphatic in the Crown Court; sometimes the information may indicate that the offender has made significant progress since the sentence began, a feature particularly relevant in cases involving young offenders. The formal procedures for the admission of fresh evidence are not followed. This court simply considers the evidence before it. So, for example, if a young offender has responded positively to his custodial sentence, and his progress is such that it may be counter productive for him to serve the sentence actually imposed, it may be reduced on appeal, or changed to a non-custodial disposal, without any implied criticism of the decision of the Crown Court. In short, post sentence information may impact on and produce a reduction in sentence..."

42. Later in the judgment, at paragraph 52, the court made observations to the effect that

good behaviour alone is not enough to constitute exceptional progress. The standards should be very high. The progress must be exceptional and outstanding. Even where that high standard is reached the impact is likely to be very modest. In the context of the minimum term to be served under a life sentence, which was the context of that case, Sir Igor Judge observed that such progress logically falls to be considered when the minimum period is coming towards its end.

43. Relying on paragraph 44, Ms Trowler submits that there has here been exceptional progress and the reports from the staff at the unit, all highly supportive of the appellant, provide evidence that her progress will be impeded by the length of the sentence because it may act as an impediment to her being granted rather greater freedom of movement.

44. In reflecting on this point, we bear in mind the general principle that when hearing an appeal against sentence this court acts as a court of review. It is concerned with whether the sentence in question was wrong in principle or manifestly excessive when it was passed. In R v Shaw [2010] EWCA Crim 982, at paragraphs 11 and 12 Henriques J said:

- i. "11. The function of this court in relation to sentences passed in the Crown Court is, by contrast, to review the sentencing process which took place there. The general rule is that this court will only interfere with a sentence if persuaded that at the time it was passed it was unlawful or wrong in principle or manifestly excessive..."
- ii. "12. It is true that on occasions this court will have regard to matters arising since the sentence was passed, for example an appellant's good progress in prison. Generally speaking it is likely to do so only where it has already concluded that the sentence passed in the Crown Court was either manifestly excessive or unduly lenient and where it is considering what sentence to impose in its place."

45. A more recent statement of principle to similar effect is to be found in R v Roberts [2016] 2 Cr App R(S) 14, where Lord Thomas CJ referred to the principle and said at paragraph 20:

- i. "This court considers the material before the sentencing court and any further material admitted before the court under well established principles. It considers whether on the basis of that information the sentence was wrong in principle or manifestly excessive. It does not, years after sentence, in the light of what has happened over that period, consider whether an offender should be sentenced in an entirely new way because of what has happened in the penal system or because ... the offender has supplied information long after conviction."

46. The case of Caines was concerned with transitional provisions in schedule 22 to the Criminal Justice Act 2003 in relation to the setting of the minimum term in relation to a life sentence. It was not therefore directly concerned with a determinate sentence and therefore did not grapple with how progress in custody could be said to render such a sentence counter productive.

47. In R v Rogers [2016] 2 Cr App R(S) 36 at 8, Lord Thomas CJ cited paragraph 44 of Caines and Roberts as indicating the circumstances in which this court, on appeal, will receive updated information which was not before the trial judge. In the following paragraph the Lord Chief Justice went on to say that the exception was strictly limited.

48. We are unable to accept that the passage in Caines and Roberts upon which Ms Trowler

relies qualifies the review principle by introducing an exception of the width for which counsel contends. Neither she nor counsel for the respondent has been able to point to any case in which a sentence, otherwise unappealable, has been reduced solely on the ground of conduct of the offender post sentence. We have not heard detailed argument on this point and have not had detailed reference to case law which may bear upon it. We do not however find it necessary in the circumstances of this case to seek to decide the precise ambit of the words of the Lord Chief Justice in Caines and Roberts. We have considered all the material which has been put before us *de bene esse* and we are not persuaded that it justifies, still less requires, any reduction in the sentence. It undoubtedly shows the appellant has made very good progress to date and that she deserves much credit for the way in which she has conducted herself. We very much hope that she will continue to do so and will continue to benefit from the help which she has received. What cannot be said however, is that this good progress has been sustained over a long period. In our judgment, if exceptional progress is to be relied upon, the circumstances must show substantially more than good progress and must show it as being sustained over a lengthy period of time. That view is consistent with what is said in paragraph 52 of Caines and Roberts. The question is whether the exceptional progress is such as to make it appropriate to reduce the sentence notwithstanding the gravity of the crime. In our judgment, that cannot, in this case, be done on the basis of what has happened in the period of 2 years since the judge made his careful and, as we have found, unassailable decision as to the appropriate sentence.

49. We are very conscious that this is a long sentence for one so young, but it was a sentence which was just and proportionate in all the circumstances and we are not persuaded that there is any ground on which it could be disturbed.

50. In making her application for an extension of time Ms Trowler rightly relied upon the court's assessment of the merits of the grounds of appeal in determining whether to grant a long extension of time. For the reasons which we have given, we are satisfied that there is no ground of appeal capable of resulting in a reduction of the custodial term in this case. An extension of time would accordingly serve no purpose. The application for an extension of time is accordingly refused. It follows that the application for leave to appeal falls away.

**Epiq Europe Ltd** hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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