NCN: [2020] EWCA (Crim) 330
No: 201901906 A4
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 26 February 2020

B e f o r e:

LORD JUSTICE SIMON

MRS JUSTICE CHEEMA-GRUBB DBE

MR JUSTICE CHAMBERLAIN

R E G I N A
v
ADRIAN RODI

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Mr R Wright QC appeared on behalf of the **Applicant**

Miss K Melly QC appeared on behalf of the **Crown**

J U D G M E N T

LORD JUSTICE SIMON:

1. On 24 September 2018 in the Crown Court at Leeds, the applicant, now aged 51, pleaded guilty to the manslaughter by diminished responsibility of Angela Ryder. On 12 November, after the preparation of psychiatric reports and the hearing of oral evidence, he was sentenced by His Honour Judge Bayliss QC to life imprisonment with a minimum term specified under section 82 of the Powers of Criminal Courts (Sentencing) Act 2000 of 10 years, less 251 days spent on remand. He was also made the subject of a hospital direction and a limitation direction under section 45A of the Mental Health Act 1983, as amended. He is represented today by Mr Richard Wright QC, who did not appear at the sentencing hearing, and who seeks a 162-day extension of time in which to appeal against that sentence, as well as substantive leave. Those applications have been referred to the full court by the single judge. Miss Kama Melly QC appears on behalf of the Crown, as she did at the sentencing hearing.

2. Angela Ryder was the applicant's ex-wife. On 5 March 2018 the applicant telephoned the police to say that he had strangled her. Paramedics went to her home and found her body. There was never any dispute that the applicant had caused her death by strangulation. She was aged 51 at the time when she was killed. She and the applicant had been in a long-term on/off relationship. It was marked by his controlling behaviour and intermittent violence. He had assaulted her, including by strangulation, on previous occasions.

3. In December 2014 he had been sentenced to a hospital order without restrictions for an offence of assault occasioning actual bodily harm, during which she had lost

consciousness. He had been diagnosed at the time as suffering from a severe depressive disorder with psychotic symptoms. He was later discharged from hospital with treatment in the community which included medication. However, he soon started to miss his medication and withdrew from contact with the mental health team.

4. At the sentencing hearing in November 2018, the judge had before him a number of reports from three consultant forensic psychiatrists: Dr Jonathon Green, the applicant's treating clinician since 2014, instructed by the defence, whose report is dated 17 October 2018; Dr Lucy Bacon, who was also instructed by the defence, whose reports were dated 21 April, 17 June and 4 September 2018; and Dr Suraj Shenoy, who was instructed by the prosecution and whose reports were dated 14 August, 13 September and 11 November 2018. He is the applicant's current treating clinician.

5. Dr Green and Dr Shenoy also gave oral evidence before the sentencing judge. They agreed that the applicant was suffering from a serious mental illness at the time of the killing, but disagreed as to the level of responsibility he retained. In summary, Dr Shenoy considered that the applicant had deliberately and voluntarily stopped taking his medication and receiving treatment with a complete understanding of the extent of his illness and the likely consequences. Again in summary, Dr Green's view was that his illness played a major factor in his decision to withdraw from treatment and that he had been let down by the mental health services who had failed to understand the seriousness of his illness when discharging him from hospital following his 2014 conviction.

6. There were three victim personal statements before the Crown Court, which we too have

read, from Tracey Mills (Angela Ryder's sister), Wendy Brown (her mother) and Sara Ryder (her daughter). They speak movingly in different ways of their profound sadness and sense of loss at Angela Ryder's death at the hands of the applicant.

7. He was aged 50 at the date of sentence and had two previous convictions recorded against him, comprising three offences. In February 1995, at Morley Magistrates he had been convicted of assault occasioning actual bodily harm and common assault and had been fined a total of £300 and ordered to pay costs and compensation. As we have noted, in December 2014 at the York Crown Court he had been convicted of assault occasioning actual bodily harm and had been made the subject of a hospital order.

8. The judge took considerable trouble over his sentencing remarks, and for that reason we refer to them rather more fully than otherwise we might.

9. He treated the plea of guilty to manslaughter on the grounds of diminished responsibility as having been tendered at the first available opportunity so that maximum credit of one-third would be given. He also took into account the impact statement of Angela Ryder's sister, mother and daughter. It was clear from these statements and reports that the applicant's relationship with Angela Ryder was controlling and coercive with occasional acts of violence; indeed, the applicant had admitted to Dr Bacon that he had used violence and asphyxiation against Angela Ryder on three occasions prior to the fatal incident. The judge described these three previous incidents. The first was in Greece when he strangled her until she was unconscious. The second was during their honeymoon in Thailand when he pushed her head into the pillow. The third was in 2014

when for a second time he strangled her until she became unconscious. It was this that led to the conviction for the section 47 assault.

10. In relation to the index offence, the judge was quite sure that the applicant intended to kill his victim, but accepted that his actions were not premeditated. He also accepted that he bitterly regretted what he had done. He had contacted the police to inform them, and on arrest had immediately admitted his guilt.

11. The judge referred to the reports of the psychiatrists and to the live evidence he had heard from Dr Shenoy and Dr Green. All three experts were of the opinion that at the time of the killing the applicant was suffering from a recognised medical condition, severe depression with psychotic symptoms, and that the illness had played a significant contributing role to his acts. The criteria for section 2 of the Homicide Act 1957 were met and the prosecution had accordingly accepted the plea of guilty to manslaughter by virtue of diminished responsibility.

12. The judge also noted that Dr Green and Dr Shenoy both agreed that the applicant was dangerous within the meaning of the Criminal Justice Act 2003. He agreed with that assessment. The applicant had repeatedly attacked his partner in such circumstances that he must be considered to present a significant risk of causing serious harm. The judge began by considering whether there should be a penal element to the sentence. He referred to the definitive guideline on sentencing for manslaughter by reason of diminished responsibility applicable to offenders over the age of 18, sentenced on or after 1 November 2018. The starting points and sentencing ranges were to be determined in all

cases of manslaughter by reason of diminished responsibility by the "degree of responsibility retained".

13. In this context the judge summarised the opinion of Dr Shenoy set out in his three reports. He had commented that following discharge from hospital the applicant's compliance with medication and engagement with psychiatric services was irregular. The hospital order did not succeed in ensuring that he continued to take his medication and was not effective in managing the risk he posed. In his opinion the applicant had insight of his illness, he understood the nature of his symptoms, the risk he posed when unwell and the importance of taking medication. When he decided not to comply with his treatment he knew there was a risk his symptoms would recur and there was a risk that his use of violence might escalate. He did not advocate a mental health order under section 37 with restriction, but instead advocated a hospital and limitation direction pursuant to section 45A of the Mental Health Act. He had pointed out that the bulk of the applicant's depressive and psychotic symptoms had already been addressed, and the next logical step would be rehabilitation and release within two to three years. Dr Shenoy acknowledged that a restriction order would ensure regular supervision and that the intensity of a hybrid section 45A order would be less. However, in prison the prison authorities could apply under section 47 for a return to hospital if the applicant failed to take his medication and his condition became worse.

14. Summarising the reports of Dr Green, the judge noted that, although he thought that the applicant's decision to discontinue medication and disengage from psychiatric follow up was in part precipitated by the recurrence of his depressive disorder, he had conceded in

evidence that the applicant's decision was voluntary. He thought the decision to disengage was driven by social factors, together with a lack of appreciation for the potential for relapse. The judge did not agree with this analysis. The applicant had been told to take his medication and he had chosen not to, knowing full well what had happened on the previous occasion in 2014 when he had strangled his partner to the point of unconsciousness. The judge noted that Dr Green had argued for a hospital order with a restriction under section 41 of the Mental Health Act. That reflected his view that the applicant's culpability should be considered low and his suggestion that blame rested with the mental health services for failing to acknowledge the risk that he posed. The judge did not accept this view. He considered it was entirely the applicant's decision to comply with treatment or to take his medication. Nor did he agree with Dr Green that the risk could be addressed by a hospital order with a restriction or that the specialist mental health teams would be more qualified to assess the applicant's risk than the prison authorities where the degree of this report was not as robust.

15. The judge concluded that it was the applicant's own failure to engage with treatment and take medication which led to the mental illness which in turn led to his responsibility being diminished. There was nothing to suggest that his mental illness was the cause of his disengagement with the mental health services. Accordingly, the judge determined that the applicant retained a high level of criminal responsibility for his actions.

16. The judge identified the aggravating features, taking care, as he said, to avoid double-counting. There was the statutory aggravating feature of his previous conviction for strangling his victim in 2014, the history of abuse and sometimes violence within the

relationship, and the fact that the killing occurred in the victim's own home where she was entitled to feel safe. He identified the mitigation; the lack of premeditation and the applicant's almost immediate expression of regret, and that he was recovering from his illness and was genuinely remorseful. He also accepted that in 2011 the applicant had been diagnosed with a relapsing and remitting form of multiple sclerosis.

17. Having heard the medical evidence, the judge was satisfied that the criteria for a hospital order were met, the applicant was still suffering from a mental disorder and in his judgment it was appropriate for him to be detained in hospital for medical treatment which was available at Newton Lodge Secure Unit. However, in his view, a hospital order alone, even with a restriction order, would not meet the justice of this case. There must be a penal element to reflect the harm caused by the applicant and his culpability. The harm was the needless loss of life. As to culpability, in the judge's view this remained high, notwithstanding the plea to manslaughter by virtue of diminished responsibility.

18. Turning to the length of sentence, the judge noted that manslaughter was a serious specified offence and the requirements of section 225(2) of the Criminal Justice Act 2003 were met. The applicant presented a significant risk of causing serious harm by committing further similar offences. The judge was satisfied that the offence was so serious as to justify a sentence of imprisonment for life. He therefore imposed that sentence and a hospital direction, and limitation direction under section 45A of the Mental Health Act 1983.

19. As to the minimum term of the life sentence, having assessed culpability as high and having regard to the guidelines as well as the aggravating and mitigating features, the judge considered that a sentence of 30 years would have been appropriate. Giving full credit for the guilty plea he reduced that term to 20 years; and because the applicant would serve up to half that period in custody, the judge fixed the minimum term as 10 years less 251 days spent on remand - nine years and 114 days.

20. In the grounds of appeal, Mr Wright submitted that the case of *Vowles and others* [2015] 2 Cr.App.R (S) 6 and *Edwards and others* [2018] EWCA Crim. 595 provided helpful guidance as to the correct approach when sentencing in a case that potentially engages the dangerousness provisions of the Criminal Justice Act 2003, as amended, and disposal under the Mental Health Act 1983, as amended. So far as relevant to the present case, if the court found that the case called for a penal sentence under section 45A it was required to consider whether the offender was a dangerous offender. If he were not, a determinate sentence would be appropriate; if he were, the court should then consider whether to impose a life sentence or an extended sentence. If a life sentence, then it would have to determine the appropriate minimum term by fixing the notional determinate sentence, then halving it and reducing it from any time spent on remand. Mr Wright acknowledged that these steps were properly taken by the judge. His issue was as to the conclusion that he reached.

21. The Sentencing Council Guidelines for Manslaughter by Reason of Diminished Responsibility came into force as from 1 November 2018 and therefore the judge had been right to apply them. These guidelines call for a staged approach to sentencing by

reference to various steps. Step 1 was to determine the extent of retained responsibility, categorised as high, medium or low. The judge had identified the level of responsibility as high. Mr Wright criticised that assessment in the third of his grounds of appeal to which we now turn.

22. Ground 1 is that the judge erred in imposing a penal sentence. He had acknowledged in his sentencing remarks that the applicant continued to suffer from a mental disorder and one that required him to be detained in a hospital for treatment. He rejected the hospital order disposal because he concluded that the applicant's responsibility for the killing remained high. Mr Wright contrasts that conclusion with the judge's acceptance that the applicant would not have committed the offence "but for your mental illness". The judge paid too little regard to the views of Dr Green who was better placed to comment than Dr Shenoy as the treating clinician. We pause to observe that a complaint that a judge preferred the views of one expert that he heard over another is not a submission that is likely to succeed in this court. Nevertheless, it is said the judge erred in assessing this as a case of “high culpability”. At its highest it was medium culpability and was not one where the need for a penal element outweighed the need for the offender to be detained in hospital with restriction. Mr Wright argued that the judge failed to have regard to other considerations bearing on culpability that weigh the other way.

23. Ground 2 is founded on the argument that the judge erred in imposing a life sentence. Although the dangerousness criteria were properly met, the judge was wrong to conclude in the perfunctory way he did that the case was so serious that only a life sentence was justified. He should have set out clearly why he imposed a life sentence rather than an

extended sentence.

24. Ground 3 is a complaint that viewed overall the sentence was manifestly excessive. The judge relied on what he concluded was the high level of the applicant's retained responsibility, first to impose a penal sentence and not a hospital order, second to conclude that only a life sentence was appropriate, and third to take a starting point that was significantly above the starting point mandated by the guidelines at the highest level of retained responsibility, 24 years' custody. This was, Mr Wright submitted, a triple-counting of this single factor. If the case fell in the high culpability category, it was only just within it and a starting point of 24 years would have met the justice of the case. The uplift to 30 years was not justified and the overall sentence was simply too long.

25. We have considered these submissions, the Respondent's Notice and short oral response from Miss Melly this morning. Where there is a conviction for manslaughter by reason of diminished responsibility, the legal responsibility is diminished but not exhausted or extinguished. One of the sentencing court's tasks is to assess the degree of that responsibility. Step 1 of the Sentencing Council Guidelines makes clear that the court should determine "what level of responsibility the offender retained" - high, medium or low. That assessment is a matter to be weighed by the judge upon his or her view of the circumstances of the killing and the medical evidence which may bear on the question. Where the offender exacerbates the mental disorder by voluntarily failing to follow medical advice, this may increase responsibility; but in considering the extent to which the offender's behaviour is voluntary, the extent to which the mental disorder has an impact on the offender's ability to exercise self-control or engage with medical services

will be relevant. The judge considered that the level of responsibility retained was high. Mr Wright criticised that assessment in the light of the judge's observation at page 8C of the sentencing remarks: "I accept that you would not have committed this offence but for your mental illness". We do not accept that submission. The judge was making clear that he had in mind that the applicant's responsibility was diminished, not assessing the extent to which the level of responsibility was retained. He had done that at an earlier point at page 7A:

> For the reasons I have already stated, I have come to the clear conclusion that it was your failure to engage with treatment or to take medication that has led to the mental illness which, in turn, has led to your responsibility being diminished. There is nothing to suggest, in my view, that your mental illness was the cause of your disengagement with the mental health service. You were not symptomatic. You were aware of the risks and you voluntarily chose to disengage from medication and support with catastrophic consequences so far as your mental health was concerned and with the catastrophic consequences that you killed Angel Ryder. It must follow that I have concluded that, for the purposes of the Sentencing Guideline, that you retained a high level of criminal responsibility for your action.

26. That was also the view of Dr Shenoy expressed in his 11 November 2018 report, in the following terms. Under the heading "An assessment of the issue of whether the defendant would have become ill if he had engaged with his psychiatric treatment/medication and whether the lack of engagement with such treatment was due to his mental illness", he said this:

> Mr Rodi would have been made aware of his diagnosis, his symptoms when unwell, the early warning symptoms he develops if his mental state were to deteriorate again and the protective factors to prevent/minimise the risk of relapse (namely regular compliance with medication, abstinence from drug/alcohol misuse and managing stress appropriately) before he would have been discharged from hospital.

> The general consensus in psychiatric practice is that the longer a person remains compliant with medication, the less the chance of relapse. In Mr Rodi's case, as he had suffered with an episode of severe depression with psychosis, the advice would have been that he comply with medication upon discharge for at least a few years. I am therefore of the opinion that Mr Rodi's relapse is strongly linked to his non-compliance with anti-depressant/anti-psychotic medication and disengagement from the Community Mental Health Team follow-up.
>
> The lack of engagement with treatment itself is unlikely to be due to his mental illness as there appears to have been a gap of at least five months between him discontinuing his then prescribed anti-depressant medication in December 2015 and him being discharged by the community forensic team in Leeds in April 2016. In my view, he would not have been discharged if he was symptomatic at that time.

27. Although Dr Green took a different view to Dr Shenoy, the judge was entitled to prefer the view of Dr Shenoy and form his own view in any event. Furthermore, Dr Green at paragraph 20.4 observed that it was more likely that the applicant's decision to disengage from treatment was driven by social factors, with a decision to re-locate to Greece, alongside the lack of appreciation of the potential for relapse. In our view the judge was entitled to the view that the applicant's level of retained responsibility was high for the reasons he gave.

28. Step 2 involves assessing the starting point and category range. For a high level of retained responsibility, the starting point was 24 years' custody and a range of 15 to 40 years. The guideline then sets out factors which increase seriousness, while warning to avoid double-counting factors already taken into account when assessing the retained level of responsibility. This is what the judge did. There were at least two specified aggravating factors as described by the guideline. First "previous convictions having regard to (a) the nature of the offence to which the conviction relates and its relevance to the current and (b) the time that has elapsed since the conviction. The previous

conviction for strangling the victim in 2014 was a conviction that plainly increased the seriousness of the offence. There were also the two other incidents of strangling or asphyxiation. On each of the three occasions his victim had lost consciousness. Second, there was a history of violence within the relationship, and evidence of controlling and coercive behaviour towards the victim. We would add that the defence did not suggest at the sentencing hearing, and could not have suggested, that this behaviour was limited to his relationship with Angela Ryder. Third, and perhaps counting for less, and to that extent we accept Mr Wright's submission today, the killing occurred in her own home. Nevertheless, this was a factor. Against that there was the mitigation of his remorse and immediate regret and the lack of premeditation.

29. In our judgment, taking into account the serious aggravation of the previous offending of assaults and the history of abuse, the sentence at stage 2 of 30 years was not manifestly excessive.

30. Step 3 involves a consideration of the dangerousness provisions of the Criminal Justice Act 2003. Mr Wright sensibly accepted in paragraph 39 of the grounds that it is "beyond argument that the dangerousness criteria were properly met". He submits that the judge was wrong to conclude "in the perfunctory manner he did" that the case was so serious that only a life sentence was justified. We agree that the judge's reasons for imposing the life sentence were somewhat conclusory, but the real issue here is whether the comprehensive sentencing remarks taken as a whole provided a proper basis for passing a life sentence. That involved considering whether the seriousness of the offence, the defendant's previous convictions, the level of danger posed to members of

the public and whether there was reliable estimate of the length of time he would remain a danger and the available alternative sentences: see *Attorney General's Reference No 27 of 2013 (Burinskas)* [2014] EWCA Crim 334. A life sentence is a sentence of last resort; but in our view the judge was entitled, bearing in mind those considerations which he had addressed during the course of his sentencing remarks, to pass a life sentence on the facts of this case.

31. Step 4 involves consideration of mental health disposals under the Mental Health Act 1983. The guidelines indicate that "all sentencing options including a section 45A direction" and the importance of a penal element taking into account the level of responsibility assessed at step 1 should be considered. If a penal element is appropriate and the mental disorder can appropriately be dealt with by a direction under section 45A, then the judge should make a direction. It is clear from the judge's questions to the expert and his sentencing remarks that he had the relevant test in mind, including the analysis of this court in *Edwards* [2018] EWCA Crim. 595. There was plainly sufficient evidence for the judge to conclude that a penal element in the sentence was required and that a section 45 hybrid order was justified. We have no basis on which to upset that view.

32. Step 5 calls for consideration that may warrant an adjustment to the sentence to see whether the sentence as a whole meets the objective of punishment, rehabilitation and protection of the public in a fair and proportionate way.

33. The final steps for present purposes were to give credit for the plea. The judge properly gave full credit.

34. Notwithstanding the clear and persuasive submissions advanced by Mr Wright today, for the reasons we have given, we are satisfied that the judge was entitled to pass the sentence that he did. Accordingly, although we grant an extension of time, we refuse leave to appeal.