

NCN: [2020] EWCA Crim 573

No: 201903094/A3

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

Royal Courts of Justice  
Strand  
London, WC2A 2LL

Friday, 24 April 2020

**(VIRTUAL COURT)**  
**B e f o r e:**  
**LADY JUSTICE CARR DBE**

**MR JUSTICE GOOSE**

**RECORDER OF WESTMINSTER**  
**(HER HONOUR JUDGE DEBORAH TAYLOR)**

**(Sitting as a Judge of the CACD)**

**R E G I N A**

**v**

**LESLEY ANN DUNFORD**

Computer Aided Transcript of the Stenograph Notes of Epiq Europe Ltd, Lower Ground, 18-22  
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**NON-COUNSEL APPLICATION**  
**J U D G M E N T**

## LADY JUSTICE CARR:

### Introduction

1. On 15 April 2016, the applicant (now 41 years old) was sentenced to life imprisonment with a minimum term of 13 years for the murder of her 7-month old baby son, Harley, in August 2003. She renews her application for leave to appeal that sentence together with a necessary application for an extension of time of over 3 years.

### The Facts

2. We need only summarise the facts shortly. During the course of the applicant's marriage she had three children with her husband: Lucy, who was born in May 2000; a second child born in September 2001 and Harley, who was born in January 2003. On the morning of 27 August 2003, after her husband left for work, she contacted a neighbour and told her that she had found Harley in his cot not breathing. The ambulance service was called; Harley was found still in his cot with speckles of blood around his nose and fluid around his mouth. He was not breathing and his pupils were fixed and dilated. Despite emergency resuscitative medical treatment both in the house and hospital, Harley was declared dead later that morning.
3. A postmortem examination concluded that the cause of death was staphylococcal pneumonia. At the time the applicant said that she had fed Harley and put him in his cot only then to find him in a lifeless state when she next went to check on him. In view of this and the conclusion of the postmortem examination, no action was taken against the applicant at the time.
4. However, about 6 months later, on 2 February 2004, again after her husband had left for work, the applicant contacted the local vicar and told him that "it" had happened again; her eldest child, Lucy, had hit her head and was not breathing. The ambulance service was called; Lucy was found lying on her bed. She was not breathing and her pupils were fixed and dilated. Despite emergency resuscitative treatment she was declared dead later that morning.
5. A number of postmortem examinations were carried out and there was disagreement as to the cause of Lucy's death. No action was taken against the applicant at the time. But as a result of a subsequent inquest in 2009 into the circumstances of Lucy's death, the medical evidence was reviewed and it was concluded that the cause of death had been asphyxiation as a result of imposed upper airway obstruction.
6. Criminal proceedings were commenced against the applicant and she stood trial for Lucy's murder at Lewes Crown Court in 2012. She denied killing her daughter. However, she was convicted of manslaughter (though acquitted of murder). She was sentenced to 7 years' imprisonment.
7. About 2 years later, whilst serving that sentence, the applicant admitted to having killed Lucy by having hit her head against a wall or a headboard and then suffocating her. She then also admitted to having killed Harley by suffocating him, a matter which she said

caused her to feel "riddled with guilt". In a subsequent written statement she said that on the day in question, despite having fed Harley, he cried and would not settle. She said that something in her head "clicked", she went back into his bedroom and pushed his face into the mattress until he stopped breathing.

8. As a result of this further evidence the police commenced an investigation into Harley's death, during the course of which the applicant declined to answer questions in interview.
9. When the evidence from the first postmortem examination was reviewed it was noted that, although there was some evidence of pneumonia, it was very limited in extent and was not compatible with death, and that there was no underlying natural cause of death. In these circumstances and because asphyxia caused by smothering leaves little, if any, postmortem signs, the negative findings at the original postmortem examination were considered to be entirely consistent with Harley having died as a result of the actions described by the applicant in her confession.
10. When the applicant was first arraigned in January 2016 she pleaded guilty to murder. However, on 19 February 2016 a successful application was made to vacate the plea. When she next appeared in March 2016, it was clear that she was once again considering pleading guilty. The matter was adjourned for her to have the benefit of advice from her counsel. Following that advice, on the applicant's last appearance on 18 March 2016, she was re-arraigned and once again pleaded guilty to murder.
11. The Judge had the benefit of the psychiatric report of Dr Ley, dated 3 February 2016, which we have also considered. Whilst there was no significant past psychiatric history prior to the death of her children, the applicant, whilst in prison, presented with symptoms of depression and possible post-traumatic stress disorder. She was in the borderline learning disability range. Her diagnosis was not entirely clear; she had complex mental health problems. There was clear evidence of personality dysfunction and she likely filled the criteria for a personality disorder and a dissocial personality disorder. The killing of her daughter was most likely related to her low intelligence and personality difficulties. Dr Ley was of the opinion that the killings of both Lucy and Harley were impulsive actions. The applicant was deemed fit to plead and no mental health disposal was recommended.
12. Grounds of Appeal
13. The grounds of appeal appear as follows. First, the applicant had an emotionally unstable personality disorder, Asperger's Syndrome, autism and a mental age of a 12-year-old which makes her feel very vulnerable and unstable. Secondly, that she feels riddled with guilt even though she did not harm Harley she was left alone at the time and doing everything herself. Thirdly, that she only pleaded because she did not want to sit through another trial. Fourthly, that she wants to be moved to her family in a hospital to get the care she needs. Fifthly, that her son's death certificate shows that he died of pneumonia.

14. Analysis

15. Many of the applicant's submissions go to her conviction that she rightly does not seek to challenge, rather than going to the question of sentence. As to the conviction, it is clear that the applicant's final guilty plea was unequivocal and entered only after an adjournment and further legal advice from her counsel.
16. Turning to sentence, given the applicant's learning difficulties and the fact that she is unrepresented, we have sought to identify for ourselves whether there is any arguable ground of appeal against sentence, whether or not she has raised it. We have concluded that there is not.
17. When refusing leave the Single Judge commented that:
- i. "The logic of the judge... and his approach to sentencing is impeccable. The applicant is plainly a woman who has to deal with significant difficulties, but she has been responsible for the deaths of two children. She murdered one, and was convicted only of manslaughter of the second at a time when she had successfully concealed the murder. This was a difficult sentencing exercise which the judge approached properly and it is not arguable that a minimum term of 13 years is manifestly excessive or wrong in principle.
  - ii. That is so even though the effective length of time to be served before the Parole Board can consider release is the time starting from the imposition of the 7 year term in 2012. That is a total of 17 years before release can be considered but this reflects both offences, and both deaths."
18. We agree with this analysis. In what were full and careful sentencing remarks, the Judge correctly identified the relevant legal principles which he then applied fairly to the facts, identifying the relevant aggravating and mitigating factors. He took due account of the mitigation available to the applicant including her guilty plea, for which he allowed substantial credit, her confession, her mental health problems and low IQ. This was nevertheless the murder of an infant child, in the care of the applicant, who concealed her crime for years.
19. In circumstances where there has been very considerable delay and in the absence of any substantive merit in the application, the interests of justice do not require the grant of the necessary extension of time.

For these reasons, the application for an extension of time and leave to appeal against sentence is refused.

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

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