

Neutral Citation No: [2020] EWCA Crim 650

Case No: 201903138/A2

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Sitting at Cardiff Crown Court
Law Courts
Cathays Park, Cardiff, CF10 3PG

Thursday, 5 March 2020

B e f o r e:

LADY JUSTICE NICOLA DAVIES DBE

MRS JUSTICE JEFFORD DBE

MR JUSTICE HILLIARD

R E G I N A

v

CHRISTOPHER STREDWICK

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Mr J Jones appeared on behalf of the **Applicant**

Miss L McCormick appeared on behalf of the **Crown**

J U D G M E N T

(Approved)

LADY JUSTICE NICOLA DAVIES:

1. On 14 February 2008 in the Crown Court at Newport, the applicant pleaded guilty to the offence of arson being reckless as to whether life was endangered. On 14 May 2008 he was sentenced by the Recorder of Cardiff to an indeterminate sentence of imprisonment for public protection (“IPP”) pursuant to section 225 of the Criminal Justice Act 2003, with a specified minimum period of three years’ imprisonment less 219 days spent on remand.

Present proceedings

2. The applicant seeks an extension of time of approximately 11 years in which to apply for leave to appeal against sentence and to adduce fresh evidence pursuant to section 23(2) of the Criminal Appeal Act 1968 (“the 1968 Act”). The applications have been referred to the Full Court by the Registrar. We grant leave.
3. In this appeal the appellant invites the court to quash the sentence of imprisonment for public protection imposed in 2008 and make an order pursuant to section 37 of the Mental Health Act 1983 (“the 1983 Act”) for his admission or continued detention at Ty Gwyn Hall Hospital, Abergavenny. The appellant also invites the court to make an accompanying Restriction Order without limit of time under section 41 of the 1983 Act.
4. The Crown does not oppose this appeal, nor the orders sought.

Factual background

5. On 5 October 2007 emergency services were called to a property at 96 Victoria Street, Cwmbran. The house was divided into two flats, the top flat was occupied by the appellant, the lower flat was vacant. The property was ablaze, a sofa had been placed at the top of the stairs in an upright position intended to prevent access to the appellant’s flat. The appellant was outside the property. His head was in his hands. He was asked if it was his address and he replied: “Yes, it is. I did it. Someone’s after me.”
6. At the date of the sentencing hearing the appellant had seven previous convictions for offences of theft, burglary, criminal damage and one for the offence of arson endangering life to which he had pleaded guilty. In December 2002 the appellant received a sentence of four years imprisonment for this offence.
7. The property in the 2002 arson belonged to the appellant’s uncle. The appellant was sharing the property with him at the time. He gave a number of reasons for starting the fire, one of which was that he wanted to get even with the voices that he was hearing.
8. Before the sentencing court in 2008 was a report from Dr Roger Thomas, consultant forensic psychiatrist. He recounted that when interviewed, the appellant described feeling paranoid, anxious and depressed in the months leading up to the index offence. He told the doctor he had burnt the property because he felt people were threatening his life. His intention was not to harm anyone else but to kill himself. Prior to the offence the appellant said he heard voices telling him to kill himself and he had disturbing thoughts about harming people. At the time he set fire to the house he was aware that he was the only person in it.
9. Dr Thomas reviewed the appellant’s personal, medical, alcohol and drug history. The

appellant's first contact with the psychiatric services was in July 1998 in respect of a charge of burglary. The assessing psychiatrist was of the opinion that the appellant presented with a serious mental illness which required urgent psychiatrist admission for assessment. In July 1998 the appellant was admitted to Whitchurch Hospital under section 35 of the 1983 Act. However, a report for the court stated that the appellant was probably not suffering from mental illness but with an acute stress reaction which required further assessment or inpatient hospital treatment.

10. In December 1998 the appellant was admitted to hospital pursuant to section 2 of the 1983 Act. He had held a knife to his throat and threatened to kill himself. The appellant was later discharged but there were subsequent hospital admissions in 1998, 1999, 2001 and 2002.
11. Following the imposition of the four-year sentence of imprisonment for the offence of arson, the appellant's condition deteriorated in prison and he was admitted to the Caswell Clinic under sections 47/49 of the 1983 Act in November 2003. During late 2003 and early 2004 the appellant was stating that he was part of the Matrix and was continuing to hear the voice of his deceased girlfriend. He was discharged from the Caswell Clinic in January 2007. In the following months the appellant was reviewed by a number of psychiatrists and in June 2007 was admitted to hospital pursuant to section 2 of the 1983 Act. A second admission took place in August 2007. On each occasion it was felt that the appellant was not suffering from mental illness.
12. In September 2007, Dr Lyons, a consultant psychiatrist, noted that the appellant did not have an ongoing mental illness within the meaning of the 1983 Act but diagnosed a personality disorder with a long history of poly-substance abuse. He had admitted to feigning symptoms in order to be moved to hospital. Dr Lyons noted that the appellant posed a risk to himself and the public, not through mental illness, but because of a combination of his inability to cope, attention-seeking behaviour which was compounded by the disinhibiting effects of alcohol and illicit drugs.
13. In his report for the court in 2008, Dr Thomas described the appellant's admission of having set fire to the house with the intention of killing himself as not in the setting of major mental illness but as a de-compensatory response to stress. He concluded that although the appellant was stressed and distressed, there was no real evidence to support a current depressed mood state, nor the presence of real psychosis. His presentation was very similar to presentations in the past where psychosis was believed to be malingering in nature. Dr Thomas did not think that the appellant had a mental illness of a nature or degree which would warrant a medical disposal. In the final paragraph of his report, Dr Thomas stated:

“However, I would add that as Christopher Stredwick's mental health problems are extremely complex and intermittent, the clinical picture might possibly change in the future, and it may be necessary to re-assess him at some future time, and he therefore should clearly be identified as a very vulnerable person who will require significant therapeutic import and support.”
14. In sentencing the appellant, then aged 30, the judge considered and relied upon the report of Dr Thomas. He determined that the sentence of IPP was necessary, the offence of reckless arson was serious, extensive damage was caused and the consequences to the fire service

and other residents could have been much worse. The judge noted that an early release was extremely unlikely, but he thought more likely a transfer to a secure mental unit in the future. The judge stated that had it been appropriate to impose a determinate sentence, the term would have been one of nine years following discount for the plea of guilty, that would be reduced to six years, thus the minimum term was half the six years less the days spent on remand.

Application to adduce fresh evidence

15. The appellant seeks leave to adduce the reports of Dr Gaynor Jones (dated 1 June 2018) and Dr Alan Talabani (dated 10 December 2018). The Crown seeks leave to adduce the report of Dr Owen John Davies (dated 29 January 2020). We are satisfied that the provisions of section 23(2) of the 1968 Act are met in respect of the three reports.
16. The report of Dr Jones, consultant forensic psychiatrist at the Caswell Clinic in Bridgend, contains a detailed history of the appellant, which includes his psychiatric history, for which the court is grateful. Following his sentence in 2008, the appellant's mental state deteriorated. In early 2009 Dr Jones assessed the appellant. She was impressed by the quality and breadth of his descriptions of his voices and psychotic symptoms. Without knowledge of his background history, she thought his was likely to be a psychotic illness.
17. In June 2015 the appellant was seen by Dr Jane Ewbank, consultant forensic psychiatrist. Dr Ewbank concluded that the appellant's difficulties could be understood as a personality disorder but raised the possibility of an underlying enduring mental illness. Dr Ewbank recommended the appellant's transfer from prison to hospital under sections 47/49 of the 1983 Act. As a result, on 3 May 2016 the appellant was admitted to the Caswell Clinic Medium Secure Unit. Following admission, the appellant was prescribed Clozapine, an anti-psychotic drug. He reported hearing voices, some of which were threatening to kill him. By January 2017 the appellant had applied for a Mental Health Review Tribunal, his motivation being to change the section requiring his detention to section 37 of the 1983 Act as he did not want to be discharged and returned to prison. Community leave was permitted.
18. In her capacity as the appellant's responsible clinician, Dr Jones prepared the report dated 1 June 2018. She states that the attempt to find one diagnosis had clouded the medical profession's understanding of the appellant and his problems. In the opinion of Dr Jones the appellant fulfilled the diagnostic criteria for borderline personality disorder, psychosis/schizophrenia, anxiety, substance misuse and has traits of autistic spectrum disorder which causes him significant impairment. The appellant's borderline personality disorder may have contributed to his differing accounts, as to his symptomatology and the reasons underpinning his offending. She noted that the appellant has consistently reported psychotic symptoms since July 1998 and had been prescribed anti-psychotic medication. Dr Jones' states that the appellant was now receiving the correct treatment, but his symptoms of anxiety are likely to remain. He has undertaken substance misuse work. All his drug and alcohol testing has been negative. By June 2018 the appellant had received extensive leave within the community.
19. Dr Jones concludes that the appellant presents as a vulnerable individual with complex and serious mental health needs on many differing levels. He will not be able to progress

without significant support and monitoring of his mental health in the future, not least in the management of the Clozapine medication. He would not progress within the prison environment as he would remain stuck on the IPP. Had Dr Jones prepared a report at the time of sentence in 2008, she would be recommending a Hospital Order pursuant to section 37 of the 1983 Act, with a recommendation to the court to consider a Restriction Order pursuant to section 41 of the 1983 Act.

20. Dr Jones and the team are of the opinion that it is not in the appellant's best interest to return to prison, it would not manage his complex mental health needs, nor his risk profile in the short or long term. The appellant is going to need a long-term supportive environment to enable him to live successfully and he will require a discharge to the Mental Health Service. In the foreseeable future he will need a supportive environment in the community for such work.
21. Dr Jones supports the appellant's appeal to overturn his indeterminate IPP and to substitute for it a Hospital Order under section 37, she also recommends that the court considers a Restriction Order pursuant to section 41 of the 1983 Act.
22. The second report prepared on behalf of the appellant is by Dr Alan Talabani, consultant psychiatrist at the Ty Gwyn Hall Hospital, Abergavenny. At the time of compiling his report, the appellant was resident at Ty Gwyn Hall Hospital under the care of Dr Talabani. In the report, Dr Talabani states that all the appellant's behaviours and problems were part of his evolving mental disorder which is now stable and under control. The appellant is progressing with his recovery and is now ready to step down from a locked unit to an open rehabilitation placement. The current section 47/49 placement was impacting upon the appellant and impeding his progress. In particular, as a sentenced prisoner the appellant was not entitled to any money or benefits. Access to money is a necessary part of the successful rehabilitation programme. It will allow the appellant to budget, become financially aware and will allow him to learn how to live within his means when in the community.
23. Dr Talabani reviewed the history of the appellant and concludes that his previous behaviours, prior to the disorder of psychosis, indicate prodromal phases of the mental disorder. When the appellant was commenced on Clozapine his symptoms and the disorders appear to settle. Dr Talabani states that they will never completely disappear but the Clozapine results in changes, making the patient easier to manage, more law-abiding, insightful and accepting of medication. As a result, he can be rehabilitated, working towards step-down living in a community setting.
24. Dr Talabani agrees with Dr Jones that the appellant's index offence and other offending related to his disturbed mind due to disorders, which were not recognised at the time as he was going through the prodromal phases. The appellant was not fully responsible for his conduct and behaviour. The appellant now has a formal diagnosis of mental disorder and is responding to treatment. Dr Talabani stated that it would be in the appellant's best interests and that of the wider society for the appellant to remain under the psychiatric services to ensure a safe and secure environment which is supported by professionals.
25. Dr Talabani recommends that the current section under which the appellant is in hospital be changed to section 37 of the 1983 Act, with the added restriction of section 41 to allow the appellant's current and any future team to treat his illness and manage his risks and

behaviours. Dr Talabani states that a return to prison will serve no benefit. It will lead to a relapse in the appellant's condition, it will increase the risk of him stopping medication and abusing drugs.

26. Dr Talabani is the responsible clinician for the appellant. He gave evidence to the court for which we are grateful. The appellant is residing in the open rehabilitation unit at Ty Gwyn Hall Hospital, Abergavenny. He is in a four-bedded unit where the residents cook, clean the room and shop for themselves. Dr Talabani says that the appellant is doing "really well". He describes him as a model patient.
27. Dr Talabani re-affirmed the diagnosis given in his report, namely that of paranoid schizophrenia, anxiety and ADHD. It has been an evolving illness. The supervision and monitoring of the appellant in hospital has allowed the treating clinicians to better assess his mental state and provide appropriate treatment. He describes the appellant's response to Clozapine as 'dramatic'. All drug and alcohol tests continue to be negative.
28. Dr Talabani told the court that the appellant is almost ready for a conditional discharge from the hospital. A section 37/41 order is required in order to permit that discharge to a mental health residential placement where there will be 24-hour staffing and where the appellant will continue to be under psychiatric supervision. If there is any concern as to the appellant's condition, any possibility of relapse, he can be immediately recalled. A section 41 order will lessen the risk which the appellant poses to himself and to the public. Dr Talabani describes the appellant as still being very vulnerable to stress, he requires monitoring and support. Dr Talabani reiterated his opinion that a return to prison would lead to a swift deterioration in the appellant's condition, as he would not receive the support and monitoring which he requires.
29. The report of Dr Davies, consultant forensic psychiatrist instructed on behalf of the Crown, was before the court. He also noted that since the appellant has been treated with Clozapine, his symptoms and presentation have markedly improved which has enabled him to make significant progress regaining insight and improving his quality of life. Dr Davies that the appellant meets the diagnostic criteria for a depressive disorder and that the appellant would have previously met the diagnostic criteria for alcohol and illicit substance dependence syndrome. He is now abstinent and is in remission.
30. Dr Davies is of the opinion that the appellant was suffering from severe symptoms of paranoid schizophrenia at the time of the index offence in 2008. These were longstanding but became increasingly distressing and overwhelming, leading him to engage in a desperate set of actions. The appellant's thought processes would have been significantly altered by his psychotic illness. The appellant's auditory experiences and delusional belief system would have appeared very real to him and it would have been difficult for him to differentiate reality from otherwise.
31. Dr Davies does not criticise the previous. It would have been very difficult to foresee the degree to which the appellant's symptoms had become clearer and, in return, responded to medication. Paranoid schizophrenia is often a developing and evolving illness. The appellant's significant illicit substance and alcohol misuse were integral in clouding the matter. Nevertheless, the subsequent evidence is overwhelmingly supportive of a diagnosis of paranoid schizophrenia, which is intrinsically linked to the appellant's actions in the index offence.

32. Dr Davies considers that the appellant's mental disorder has vastly improved following treatment. He has made significant rehabilitative progress and his risks are largely managed under the auspices of mental health care and support. As a result, Dr Davies is supportive of the sentence of IPP being quashed and replaced with a Hospital Order pursuant to section 37 of the 1983 Act, in order for the appellant to be treated appropriately in hospital. In addition, Dr Davies recommends that a section 41 order be considered in view of the severity of the offence and the clear risks which the appellant poses to himself and others. Such an order will provide the appellant with the treatment and support he requires in order to make further progress but will also provide a means for managing his mental health and therefore the risks in the community. This is preferable to the appellant being supervised by the probation service, as the appellant's risks are almost exclusively linked to his mental health disorder.
33. In conclusion, Dr Davies considers the appellant's mental disorder to have been both of the nature and degree to warrant detention in hospital under the 1983 Act and it remains so today. It is essential that the appellant receives adequate treatment and rehabilitation in a hospital setting for his own health and safety, but also due to the risk he poses to others.

Discussion and conclusion

34. It is clear from the evidence before the court that the appellant suffers from a mental disorder and that he did so in 2008 when he committed the index offence. All three psychiatrists conclude that the appropriate disposal of this appeal, to benefit not only the appellant but the wider community, would be a Hospital Order under section 37 of the 1983 Act.
35. We have considered and followed the guidance in *R v Vowles* [2015] EWCA Crim. 45, [2015] EWCA Civ. 56. At [10] the court identified the options available to the sentencing court in respect of an offender suffering from a mental disorder. Relevant to this appeal are two, namely: (1) a Hospital Order under section 37 with or without restriction under section 41; (2) a determinate or indeterminate sentence of imprisonment and direction pursuant to section 45A of the 1983 Act.
36. The relevant provisions of section 37 are as follows:

“37 Powers of courts to order hospital admission or guardianship

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

(2) The conditions referred to in subsection (1) above are that—

(a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from mental illness,

psychopathic disorder, severe mental impairment or mental impairment and that either—

(i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and, in the case of psychopathic disorder or mental impairment, that such treatment is likely to alleviate or prevent a deterioration of his condition; or

(ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and

(b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.”

37. Further, the relevant part of section 41 of the 1983 Act is as follows:

“41 Power of higher courts to restrict discharge from hospital

(1) Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section, either without limit of time or during such period as may be specified in the order; and an order under this section shall be known as ‘a restriction order’.”

38. At [54] of *R v Vowles* (above) it is stated that where the court determines a Hospital Order is required, section 45A should firstly be considered. A section 45A order allows for an IPP to continue with an accompanying direction for the person subject to the same to be admitted into hospital. It is not open to this court to impose an order under section 45A since an order under section 45A was not available to the original sentencing court. The appellant was sentenced on 14 May 2008. Section 45A came into force (with effect from November 2008) by virtue of section 11 of the Mental Health Act 2007.
39. Having considered the evidence of the three psychiatrists in their written reports, and the oral evidence of the responsible clinician Dr Talabani, we are satisfied that the appellant is suffering from a mental disorder, namely paranoid schizophrenia, of a nature and degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him. We note that he is responding well to such medical treatment. We are satisfied that the response of the appellant to the treatment, in particular to the use of Clozapine, has been instrumental in reducing the risk which he poses to himself and others. It follows that we are satisfied that the requirements of section 37(2)(a)(i) of the 1983 Act are met.
40. As to the conditions set out in section 37(2)(b): the offence of arson is serious, but all three

psychiatrists now conclude that at the time of the index offence the appellant was suffering from this mental disorder. In our judgment, there is no realistic alternative method of treating this appellant which would provide him with the treatment and support which he requires for the mental disorder and which will also serve to reduce the risk which he poses to himself and others.

41. We accept the recommendation of each of the psychiatrists that in addition to the section 37 order, a section 41 Restriction Order without limit of time is both necessary and proportionate in order to manage: (i) the mental health of the appellant; (ii) the risks which he poses; and (iii) to protect the public.
42. Accordingly, we quash the sentence of imprisonment for public protection imposed at Cardiff Crown Court on 14 May 2008 and substitute for it an order made pursuant to section 37 of the Mental Health Act 1983, together with a section 41 Restriction Order pursuant to that Act, without limit of time. To this extent, the appeal is allowed.

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

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