APPEAL COURT, HIGH COURT OF JUSTICIARY

[2022] HCJAC 40
HCA/22-194/XC

Lord Matthews
Lord Tyre
Lord Boyd

STATEMENT OF REASONS

delivered by LORD TYRE

in

APPEAL AGAINST SENTENCE

by

LUKASZ CZAPLA

Appellant

against

HIS MAJESTY'S ADVOCATE

Respondent

Appellant: Macara KC (Sol Adv); Beltrami & Co Ltd
Respondent: E Campbell, AD; Crown Agent

27 October 2022

Introduction

[1] The appellant was convicted after trial of ten charges. This appeal is concerned with only one of them: the appellant's conviction for the murder of his two year old son. The sole issue for the jury was whether the appellant was guilty of murder or of culpable homicide due to diminished responsibility.

[2] The trial judge imposed the mandatory sentence of life imprisonment with a punishment part of 23 years. The appellant contends that the punishment part was excessive.

Circumstances of the offence

[3] The appellant had been in a relationship with the child's mother for a number of years. They separated sometime after the child was born. The child stayed with the appellant at weekends. The appellant professed to be concerned that the child was not being properly looked after by his ex-partner, but he was also jealous that she was in a new relationship.

[4] On the night of 20 November 2020, the child was staying with the appellant. The appellant and his ex-partner exchanged text messages which began amicably, but the appellant's messages became abusive when his ex-partner spoke of introducing her new friend to the child. The accused drank beer and at least one bottle of wine. He consumed a very large quantity of anti-depressant medication that had been prescribed to him. According to his account, his intention was to commit suicide but because he was concerned about his son waking to find his body and being left with a mother who abused and neglected him, he resolved to kill his son. He shot the child in the head with ball bearings from a BB gun but this did not kill him. The child woke up distressed and appeared to be partially paralysed. The appellant then stabbed him in the chest with a skewer and smothered him with a pillow. In the morning the child's mother arrived to find him dead.

[5] At the trial three consultant psychiatrists gave evidence in relation to the jury question of whether the appellant had had diminished responsibility at the time of the offence. Their opinion on the appellant's mental condition was not unanimous. Dr Debbie

Mountain, who had examined the appellant very shortly after the offence was committed, at a time when the appellant was maintaining that he could remember nothing of the killing, found no evidence of any mental illness or mental disorder other than mild depression which was being treated by his GP. Dr Alex Quinn considered that the appellant had a depressive illness which had a substantial role to play in the events that led up to the killing of his son. However in the course of the trial Dr Quinn conceded that this contradicted information in his earlier report pointing towards narcissistic motivation rather than altruistic motivation. He also conceded that his conclusions were dependent upon what the appellant had told him being true. Dr Khuram Khan's opinion was that the appellant did not suffer from frank major depressive disorder but did suffer from emotionally unstable personality disorder. Dr Quinn disagreed with Dr Khan's diagnosis and observed that Dr Khan had not used the conventional tools used to diagnose emotionally unstable personality disorder. Dr Khan also conceded during the trial that altruism was not the appellant's only motive.

[6] There was evidence that following his arrest and detention, the appellant contacted various friends to ask them to support his position that he suffered from depression.

Sentencing remarks

[7] When sentencing the appellant, the trial judge made the following remarks:

> "As a result of your actions, your son will never grow up and his loving mother has lost him forever and can only be haunted by the knowledge of the truly evil things you did which I will not repeat.
>
> Suffice it to say that you showed considerable determination to ensure that a defenceless child would die, causing him considerable distress. It is no excuse that you were full of drink and drugs, indeed it is significantly aggravating when you were trusted to look after a two year old. You acted out of spite, killing your own

> child to punish his mother for leaving you and getting on with her life. The Court must do all it can to deter such cruelty being inflicted on an infant."

In these circumstances the judge imposed a punishment part of 23 years.

Submission for the appellant

[8] The appellant submits that that punishment part was excessive. Previous case law suggested that a punishment part of 20 years was appropriate for the murder of a child. It was acknowledged that the jury rejected the special defence of diminished responsibility, but it was clear that the appellant had been suffering from depression during the 4-month period leading up to the killing of his son. The appellant acted out of character not only in committing the fatal attack but also in consuming drugs and alcohol in such quantities that he became intoxicated to the extent that he did. His depression was not so severe that it provided him with a defence to the charge of murder but it was a consideration that the judge ought to have taken into account in assessing the appropriate punishment part to impose.

The sentencing judge's reasoning

[9] In his note to the Court the judge explained his reasons for selecting a period of 23 years as follows. It had not been suggested that the appellant suffered from a severe depression; his prison medical notes suggested that he was able to function reasonably well without being on an antidepressant. It was true that he had been prescribed medication at the time of the killing but he chose to take it in quantities grossly in excess of prescribed levels whilst also consuming beer and perhaps two bottles of wine before assaulting his son. Bearing that in mind, the judge did not, in all the circumstances of the case, consider that the

appellant's suffering from anxiety and depression was a particularly compelling mitigating factor given what he did and all of the circumstances in which he did it. Although depression formed a relevant part of the background, it was not depression but self-induced intoxication that had fuelled the jealousy and spite felt by the appellant such that all normal inhibition and protective parental instinct was lost.

[10] The judge was aware of guidance in *Boyle* v *HM Advocate* 2010 JC 66, where the court endorsed the view that where the victim of murder was a child, a punishment part in the region of 20 years might be imposed. In the appellant's case, the victim was an infant, his two year old son whose mother had entrusted him to the care of her former partner for the weekend. The judge concluded on the evidence that the appellant's principal motivation was sexual jealousy of his ex-partner having formed a new relationship and that he was substantially actuated by spite. He wanted to hurt her and chose the cruellest possible way to do so. The child would have been defenceless in his care even if he was awake but the attack commenced as he slept and was persisted in after the child was awake and distressed. The appellant showed considerable cruelty and determination to kill him. Whilst it was not possible to be certain of the precise sequence in which the injuries were inflicted, the appellant repeatedly shot his son to the head and body, stabbed him deeply with a skewer and smothered him with a pillow. On his own account, once the appellant realised that he had not killed his son by shooting him, rather than seeking the assistance of an ambulance, he used other means to ensure he died. In all the circumstances of the case the judge considered that a punishment part of 20 years would not be sufficient to mark the gravity of the crime and sufficiently meet the objectives of punishment and deterrence in the circumstances of this murder of a very young child, even for an effective first offender. He concluded that a punishment part of 23 years was the minimum he ought to impose.

Decision

[11] The appeal proceeds on the basis that the appellant suffered from a depressed state of mind that caused him to consume excessive alcohol and antidepressant drugs and then, while his reasoning was impaired, to kill his son. It will be apparent from what we have quoted from the judge's remarks and report that he did not accept that this was established by the evidence. Rather, he considered that the appellant's primary motivation was a spiteful desire to punish his ex-partner. Having heard the evidence, the trial judge was best placed to assess the appellant's motivation. Nevertheless, we must consider whether he was entitled to approach the matter in this way.

[12] We are satisfied that he was so entitled. There was a conflict of views among the consultant psychiatrists. Even when the psychiatrists were expressing views that the appellant suffered from depressive illness or (as the case may be) emotionally unstable personality disorder, they acknowledged that they did so on the assumption that the appellant was telling them the truth. There was no requirement for either the judge or the jury to make that assumption. The psychiatrists further acknowledged that altruism (however misguided) was not the only motivation for the killing of the child. The jury rejected the contention that the appellant had had diminished responsibility. That appears to us to leave very little room for a contention that the appellant nevertheless suffered from a mental disorder that caused him to behave out of character to the extent of committing a horrific and sustained assault on his two year old son. We consider that there was ample evidence to justify the approach to sentencing adopted by the judge, namely that the primary cause of the child's murder was a desire on the part of the appellant (fuelled by

alcohol and an overdose of prescription drugs) to inflict pain on his ex-partner, and not any form of depressive disorder.

[13] That being so, the remaining question is whether a period of 23 years was nevertheless too long. We conclude that the circumstances of this case as summarised by the trial judge: the attack on the appellant's sleeping son; the cruelty and determination with which the killing was carried out; the child's distress; and the appellant's persistence in ensuring that he died, justify a punishment part in excess of the 20-year guidance provided in *Boyle*. In all the circumstances we do not consider that a punishment part of 23 years fell outwith the range reasonably open to the sentencing judge.

[14] For these reasons the appeal is refused.