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No: 201804856/A1

IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 2 April 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MRS JUSTICE ANDREWS DBE

HER HONOUR JUDGE TAYTON QC
(Sitting as a Judge of the CACD)

R E G I N A

v

DAVID PAWLUK

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Mr R Vardon appeared on behalf of the **Appellant**

Mr A O'Byrne QC appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. LORD JUSTICE HOLROYDE: On 29 October 2018, in the Crown Court at Manchester (Minshull Street), David Pawluk pleaded guilty to murder. He was sentenced by His Honour Judge Potter to life imprisonment with a minimum term of 16 years 8 months less 163 days which the appellant had spent remanded in custody. This is an appeal, brought by leave of the single judge, against the length of that minimum term.
2. The appellant is now aged 59. The victim of the offence was his wife, Margaret Pawluk, aged 63 at the time of her death. Both had previously been married. They met because the appellant was a regular customer at a bookmakers which Margaret Pawluk managed. They became engaged at Christmas 2016 and married in the summer of 2017. They lived in a house which Margaret Pawluk owned. Less than a year after the marriage, on 10 April 2018, the appellant murdered her in that home.
3. The appellant, who was working as a taxi-driver at the time of the offence, has for many years been a heavy gambler. There was evidence from his former wife that their former matrimonial home had been remortgaged several times as a result of financial problems stemming from his gambling. He was also prone to drinking heavily and was described by his former wife as having a very bad temper, though he was never violent. Following his marriage to Margaret Pawluk he continued to gamble modest sums at the bookmakers where she worked, but he also used other bookmakers so that she would not be aware of the full extent of his gambling.
4. At the start of their relationship Margaret Pawluk had savings of some £24,000, but by the time of her death that sum had been reduced to about £4,000. She had told a close friend, Colette Dale, that she intended to leave the appellant but he had managed to persuade her not to do so. Neighbours often heard them arguing. By April 2018 both were either taking or considering taking legal advice about a divorce.
5. Margaret Pawluk had two adult children, who had been the beneficiaries under her will. Before she married the appellant, Margaret Pawluk changed the terms of her will, making the appellant the sole beneficiary of her estate. The appellant's financial position at the time of the offence reflected his major gambling problem. He had cashed and spent a pension of some £40,000 and the proceeds of his divorce settlement, which were somewhere between £10,000 and £15,000. He was overdrawn at the bank by about £2,000 and had credit card debts of around £20,000.
6. At the same time Margaret Pawluk had decided to sell her home. A sale price of £108,000 had been agreed. The couple's offer of £65,000 for a bungalow had been accepted. That, of course, would have left a significant amount of available equity. However, when Margaret Pawluk found out that the appellant had lost £300 in one day gambling, she changed her mind about buying the bungalow in joint names with him. The appellant reluctantly agreed that the purchase of the bungalow would go ahead but in her name alone. The appellant, who seems to have had little insight into his gambling problem, later told the police that this made him feel worthless, as though he was but a lodger in his own home.

7. On 10 April 2018 Margaret Pawluk spent several hours socialising with her friend, Colette. She drank some alcohol but was not intoxicated. The appellant got home before her. He had consumed approximately 8 pints of beer and was drunk. As he later admitted to the police, he had decided to tell his wife that he was not prepared to accept not having his name on the deeds of the new house.
8. As soon as Margaret Pawluk returned he confronted her. She did not even have time to take her coat off. A neighbour in the adjoining house heard the appellant calling his wife a liar and heard Margaret Pawluk reply that she loved him. Although the appellant says that he can only remember part of what then happened, he admitted to the police that he had grabbed Margaret Pawluk by the back of the neck and had dragged her towards the kitchen door. He then pushed or dragged her to the floor, face down, with his knee in her back. The appellant then stabbed her repeatedly using a knife from the kitchen drawer. At one point he said he used two knives.
9. The evidence of the pathologist showed that there were multiple stab and incised wounds, concentrated around the face and neck but also, and in our view significantly, including some puncture wounds to the buttock and back of one leg. Many of the wounds were superficial but they represented repeated strikes with the knife or knives. Other wounds were deeper and more serious. In particular, there was a stab wound through the neck which penetrated 9 centimetres to the spine. The pathologist's evidence was that nothing less than severe force must have been used to inflict that injury. There were other serious wounds to the face, one of which penetrated the mouth and caused Margaret Pawluk to choke on her own blood.
10. Summarising the pathological evidence the learned judge (at page 4F of his sentencing remarks) said this:

"Throughout, she was unable to move much, if at all, save for her hands to try to defend herself, as it appears that you were positioned or stood over her on the floor, you having forced her to the floor, before inflicting such a vicious, fatal attack. Margaret did not die immediately but quickly after the attack had ended, the cause of death being the stab wounds to her neck. As she lay dying, you did nothing to try to save her. You summoned no help for her, and instead you took items of jewellery from her body and then stayed in the house looking for ways to self-harm, possibly trying to comprehend the enormity of what you had just done."
11. It is apparent, as the judge there indicated, that the appellant did, in the immediate aftermath of the murder, make serious attempts to end his own life in a variety of ways. He did so both in the home and elsewhere. In particular, at some point, he drove from the house in his car and attempted to gas himself using the exhaust fumes of the car. These various attempts resulted in injury to the appellant, such that, upon his arrest, he was assessed as unfit for interview - a situation which continued for the best part of 3 weeks. It is however relevant to note that, at some stage whilst in the house after the murder, the appellant had changed his clothing and sent a text message to a regular customer to say that he would not be able to pick her up at the usual time the following morning.

12. It seems that, at some point, the appellant returned to the house the items of jewellery which he had taken from the deceased. He did not however do anything to move the body of Margaret Pawluk or to report the murder until the morning of the 12 April, when he went to a local police station and said that he had killed his wife.
13. In interview, he admitted what he had done, within the limits of what he said he could remember, but he also sought to cast some of the blame for their arguing on Margaret Pawluk. He was asked about a series of six calls which he had made to his wife's phone in the space of about half-an-hour, shortly before she returned to the house on the night of her death. He denied that these were calls made because he was angry with her; he said that he was simply wondering why she was late back. He claimed, contrary to the evidence of others who knew Margaret Pawluk, that she was a heavy drinker and would suffer mood swings which he could not deal with.
14. At the sentencing hearing the judge had the assistance of two psychiatric reports. He accepted, from the more favourable of those reports, that the refusal of Margaret Pawluk, to continue her agreement to the new home being conveyed into joint names, had led to the appellant feeling low and less appreciated than he might otherwise have been. At page 3A of his sentencing remarks the judge said:

15.

"This, coupled with your gambling difficulties and occasional heavy drinking of alcohol to excess, it seems, resulted in you enduring a mild reoccurrence, in March or April of this year, of a depressive illness that you have apparently been prone to at various points of your life, especially when having suffered loss, particularly emotional loss."

The judge noted however, that both of the psychiatric reports discounted any mental health reason for the acts which the appellant had carried out.

16. Given the detailed contents of the psychiatric reports, no pre-sentence report was thought to be necessary and none is necessary now. The judge referred to the victim personal statement which had been written by Margaret Pawluk's daughter. Each member of this court has read with sympathy that very clear account of the impact of the murder on the family and friends of Margaret Pawluk, who was clearly much loved and is greatly missed.
17. The judge aptly summarised the murder as a savage attack on a defenceless woman in her own home. He was satisfied that the appellant had intended to kill rather than to cause serious bodily harm. He explained, in his careful sentencing remarks, that the sentence for murder was fixed by law and must be a sentence of life imprisonment. He took care to explain the practical effect of such a sentence. He referred to the provisions of schedule 21 to the Criminal Justice Act 2003 and agreed with the submissions of both counsel that the appropriate starting point, in accordance with that schedule, was one of 15 years. In doing so, he accepted that this was neither a case in which the murder weapon was taken to the scene, nor a case of murder committed for financial gain. He emphasised however, that in assessing the appropriate minimum

term, he viewed the use of one or more knives as a very grave aggravating feature of the crime. He continued, at page 6A:

18.

"I also view the following as aggravating features. Firstly, you did nothing to summon help or assistance at any time for your victim, you simply left her lying in situ for the police to find many hours later, admittedly after you had handed yourself in to the police and provided them with a key to gain access to your home. Secondly, this is an offence of domestic violence which, in itself, is an aggravating feature. Thirdly, the offence was committed by you whilst in drink, towards a defenceless woman in her own home.

I do not view your previous convictions as an aggravating feature in this case. You have previous convictions but, in fairness to you, they are of some antiquity and are mainly for dishonesty and can thus have, in my judgment, little impact upon the sentence I am to impose upon you.

By way of mitigation, I apply the following: I accept that you have expressed remorse; there is, I accept, a lack of premeditation here; there is some limited mitigation arising from the fact that at the time you are suffering from what Dr Crawford calls 'a mild depressive state.'"

19. The judge went on to say that he would allow the maximum permissible credit for the guilty plea, which in the circumstances was one-sixth. He accepted that the appellant had surrendered to the police voluntarily, had accepted responsibility for the killing from the outset and had made admissions in interview. The judge also accepted that there was mitigation available in the bundle of references and testimonials from persons who know the appellant well, who spoke highly of his helpfulness and of the absence of any violence on his part in the past.
20. It is apparent also from that bundle of documents, which each member of this court has read, that the appellant has made conspicuously good use of his time in prison and has helped other prisoners in various ways, including by helping to calm down prisoners who, for one reason or another, have become agitated.
21. The judge concluded, balancing the aggravating and mitigating features of the case, that the appropriate minimum term, after a contested trial, would be one of 20 years. Making the appropriate reduction for the guilty plea, he imposed the minimum term to which we have referred.
22. On behalf of the appellant Mr Vardon, in well-focused oral submissions, submits that the minimum term is manifestly excessive. He relies on the matters of mitigation which were specifically mentioned by the judge. He points to and emphasises other features of mitigation. There is here, he submits, genuine remorse, as particularly evidenced by what the appellant said to the police in interview and by his determined, though unsuccessful, attempts to end his own life shortly after killing his wife. Mr

Vardon also points to the frank confession made to the police, to the judge's finding that there had been a lack of premeditation, and to what Mr Vardon understandably describes as being a loss of control in reality, though not a loss of control in the technical sense appropriate when considering the partial defence to murder. The appellant, now 59 years old, has a history of good employment over many years. He was for many years happily married to his first wife and has shown no history of domestic violence at any point. Mr Vardon also draws to our attention, in his written submissions, indications that the appellant may pose a suicide risk in prison and he points to the fact that the appellant, whose modest record of previous convictions has been sufficiently mentioned, has never before received a custodial sentence. His core submission, in writing, was that the judge was wrong to increase the starting point of 15 years by as much as he did because there was no basis for doing so. In this regard, Mr Vardon asked rhetorically in his written submissions, what the minimum term would have been in the absence of any mitigation. In his oral submissions, he argues that the minimum term was manifestly excessive and that when appropriate weight is given to the particular factual features of this case, a shorter term was appropriate.

23. The respondent has provided a respondent's notice. This included reference to a number of previous decisions of this court, but each of those decisions was fact-specific and provides little assistance for the present case. In brief oral submissions Mr O'Byrne QC has underlined features of the case which, he submits, entirely justified the judge's conclusion.
24. We have reflected on these submissions, mindful of the importance of this case to all concerned.
25. The judge was plainly correct to take the starting point of 15 years for the minimum term in accordance with the relevant provisions of schedule 21 to the 2003 Act. But he was equally plainly correct to increase that starting point substantially to reflect the many aggravating features which he correctly identified and which, in our view, very substantially outweighed the mitigating factors to which Mr Vardon has rightly drawn our attention. The timing and manner of the appellant's confrontation of the deceased as soon as she entered her home shows that he was determined to argue with her about her entirely understandable decision not to put their proposed new bungalow into joint names. He either already was, or very quickly became, so angry that, as the judge found, he intended to kill her. The use of one or more knives was indeed a grave aggravating feature, in itself calling for a substantial increase above the starting point. The appellant attacked the deceased when she was on the floor and helpless. The number and location of the wounds and the defensive injuries to her hands show that the attack was prolonged over a period of time. It may not have been a long period in terms of minutes but Margaret Pawluk must have been terrified and in severe pain as she died. Far from trying to help her or to call an ambulance as she was dying, the appellant took her rings from her fingers and thereafter left the body in the house for two days before informing the police of what he had done. It is to his credit that he did eventually go to the police and admit the killing, but we do not think it can be said that he had shown immediate remorse for everything that he had done. His account of the events in police interview in which, as we have said, he claimed to have been wondering why his wife was late home, rather than angry with her, and tried to put

forward at least a partial excuse for his attack upon her, fell well short of a frank confession to which significant weight could be given.

26. The personal mitigation to which the judge referred, though undoubted, could carry only comparatively limited weight in the circumstances of this murder. Neither the fact that the appellant is now aged 59, nor the suggestion that a long minimum term might lead him to attempt suicide, could provide any compelling reason for reducing the minimum term which was otherwise appropriate. The judge clearly took into account the mitigation available to the appellant. We agree with Mr Vardon's analysis that the judge must therefore have reached, upon consideration of all the aggravating features, a minimum term in excess of 20 years before reducing that to 20 years to reflect the mitigation. We have no doubt however that the judge was justified in concluding that there must be such a substantial increase above the starting point.
27. Having balanced all aggravating and mitigating features and properly taking into account the limited mitigation which was available to the appellant, the judge's decision that the appropriate minimum term, after trial, would be one of 20 years was, in our view, within the range properly open to him. He allowed maximum credit for the guilty plea.
28. In all those circumstances, the minimum term, in our judgment, was not manifestly excessive in length. Grateful though we are for the way in which Mr Vardon has presented his submissions, this appeal accordingly fails and is dismissed.
29. Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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