



Neutral Citation Number: [2024] EWCA Crim 198

Case No: 2023/00801 A1

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM WINCHESTER CROWN COURT
MR JUSTICE MARTIN SPENCER
T20227024

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/02/2024

Before:

THE LADY CARR OF WALTON-ON-THE-HILL
THE LADY CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE HOLROYDE
THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION
and
MRS JUSTICE STACEY DBE

Between:

Ismaila Kamarra-Jarra
- and -
Rex

Appellant

Respondent

Ms Kate Lumsdon KC (instructed by **Penfold and McPherson Solicitors**) for the **Appellant**
Ms Sarah Jones KC (instructed by **The Crown Prosecution Service**) for the **Crown/**
Respondent

Hearing date: 20 February 2024

Approved Judgment

This judgment was handed down *ex tempore* on 20 February 2024 in Court 4.

.....

The Lady Carr of Walton-on-the-Hill, LCJ:

1. This appeal raises the question of the correct approach to sentencing co-defendants who have committed a murder jointly, where one is just over 18 years of age and the others just under. Whilst that in itself is not a novel issue, it arises now in the context of paragraph 5A of Schedule 21 to the Sentencing Act 2020, which was introduced by section 127 of the Police, Crime, Sentencing and Courts Act 2022, and applies to any person convicted on or after 28 June 2022. Paragraph 5A introduced a sliding scale of starting points for minimum terms for children convicted of murder, taking into consideration the age of the child and the seriousness of the murder.
2. On 26 January 2023, following a 12-week trial in the Crown Court at Winchester before Spencer J and a jury, the appellant, together with two co-defendants, Je-Daine Carty ("JC") and Cohan Daley ("CD") were convicted of the murder of Mr Frantisek Olah, aged 31 years. At the time of the murder, the appellant was 18 years and 4 months old (date of birth 13 January 2004); JC was 17 years and 10 months old (date of birth 17 August 2004); and CD was 17 years and 9 months old (date of birth 19 July 2004).
3. On 24 February 2023, the judge sentenced the appellant, JC and CD on the basis that the seriousness of the offending was "particularly high", being a murder done for gain, falling within paragraph 3 of Schedule 21. Under Schedule 21 the starting point for the minimum term for an offender aged 18 or over at the time of a murder of "particularly high" seriousness is 30 years (paragraph 3(1)). The starting point for an offender aged 17 years old at the date of a murder, for the same offending, is 27 years (paragraph 5A).
4. The judge sentenced the appellant to a mandatory life sentence, with a minimum term of 32 years (less 274 days spent on remand in custody). JC and CD were each ordered to be detained at His Majesty's pleasure, with a minimum term of 29 years (less the 274 and 270 days which they had spent respectively on remand in custody).
5. With the leave of the single judge, the appellant appeals against his sentence on the basis that it is manifestly excessive. In summary, it is contended that the judge made insufficient allowance for the appellant's youth and that the disparity between the sentences imposed was too great. Neither JC nor CD has sought to appeal.

The Facts

6. JC was a drug runner for Mr Olah, dealing in Class A drugs of heroin and crack cocaine for him in the Basingstoke area. In early May 2022, Mr Olah passed over a drugs line for JC to run for a share of profits. JC was in debt to Mr Olah, who put JC under increasing pressure to increase sales and his client base in order to repay him. Mr Olah also increased his drug prices. On 19 May 2022, the police raided the premises from which JC was dealing and seized drugs and money. Mr Olah added those losses to JC's debt to him.
7. The pressure on JC came to a head on 22 May 2022, where there was telephone evidence of Mr Olah harassing JC to go out and sell more drugs. Not seeing any way out of the spiral of debt, JC decided to rob Mr Olah and to kill him.

8. JC enlisted the help of the appellant and CD, both of whom were also drug dealers. The appellant had been released from custody only a few days earlier, on 18 May 2022.
9. On the afternoon of 22 May 2022, all three armed themselves with large knives, one of which was described as a Rambo knife with a three-foot serrated-edge blade. That night they arranged for a lift to take them close to where Mr Olah lived in Musgrove Close and then continued the remaining part of the journey on foot.
10. Shortly after 11pm on 22 May 2022, they arrived at Mr Olah's house where he lived with his partner and also young child, who was upstairs asleep at the time. JC knocked on the door and, as Mr Olah opened it, pushed it hard, causing Mr Olah to fall. JC had his knife out and immediately felled him in the hallway with two vicious chop wounds to the head. The appellant and CD followed in straight behind. JC pushed passed the prone Mr Olah to search the house for money, drugs and car keys, whilst the other two stabbed Mr Olah approximately 18 times. The fatal wound penetrated 12 centimetres deep, through Mr Olah's lung, causing it to collapse. It severed his pulmonary artery, causing severe internal bleeding, which sadly could not be survived. Mr Olah was gasping for breath from his collapsing lung as the three attackers fled the scene on foot. They laughed as they left, and early the following day made rap videos glorifying what they had done, including the detail of Mr Olah's breathlessness as he lay dying. They all left the Basingstoke area to try to avoid arrest. The appellant and JC went to Oxford, and CD went to Ilford, then Southampton.
11. The appellant and JC were arrested two days later when their car was stopped on the M40. CD was arrested in Southampton three days later, on 27 May 2022.
12. The police traced witnesses with whom the appellant and JC had spent time in Oxford, including a young witness called Larissa Ignac. In the weeks leading up to the trial, the appellant was in contact with Miss Ignac in connection with her evidence which she had previously given to the police, to the effect that he had admitted the offending to her.
13. All three defendants had a number of previous convictions and admitted to dealing in Class A drugs during the trial. JC's offences included theft, affray, battery and intimidating a witness. The appellant had convictions from the age of 13, including for assault occasioning actual bodily harm, two offences of attempted robbery, two offences of affray, firearms and witness intimidation offences. CD had previous convictions for offences of affray and causing grievous bodily harm with intent.

The Sentence

14. The material before the judge included pre-sentence reports for all three defendants, essential in a case like this, expert psychologist reports for JC and CD, and character references from family members.
15. The pre-sentence report for the appellant recorded the extreme circumstances of his adverse childhood experiences. We will return to them in more detail below, but they included chronic physical and emotional abuse and a lack of domestic stability. The appellant's mother had confirmed these matters in broad outline in her reference. The

author of the pre-sentence report also referred to the appellant's low maturity and to the fact that he showed remorse for the death of Mr Olah and insight into the impact on those around him, particularly Mr Olah's young son.

16. The judge described the killing as an execution and stated that all three were jointly responsible, although JC was the instigator. They had acted as a team and had intended to kill Mr Olah.
17. By way of mitigation, the judge stated that he had principally taken account of their age. He also accepted that there was an element of exploitation by Mr Olah of JC. Mr Olah was considerably older than JC and had involved JC in drug dealing when JC was only 16. The judge acknowledged the progress that JC had made in custody and that he had matured as he had grown older.
18. For the appellant, the judge noted the extremely difficult life that the appellant had had as a child, including chronic abuse. The judge said that he took into account in the appellant's case "... what has been described by your counsel as your extremely difficult life, even by the standards [with] which this court is depressingly familiar".
19. The judge identified what he described as a number of aggravating features. He noted all of the previous convictions. As to the facts of the offence, the murder took place in the victim's own home and it was premeditated, although there was not a significant degree of planning. The offence arose out of drug dealing. The judge did not treat the taking of knives to the scene as an additional aggravating factor; that was a feature encompassed already within the starting point for a murder for gain. Finally, the judge noted as an aggravating factor the appellant's attempt to stop Miss Ignac from giving evidence, specific only to his case.
20. The judge found that this was a murder for gain in the course of a robbery. He stated that he did not distinguish between the three defendants in relation to the events of 22 May 2022. He stated that he reduced the minimum term of 30 years applicable to the appellant in the case of JC and CD to reflect section 127 of the Police, Crime, Sentencing and Courts Act 2022. He then made an upward adjustment to their respective starting points of two years for each of them to reflect the aggravating features that he had identified. Thus he arrived at a final minimum term of 32 years for the appellant and 29 years for each of his co-defendants, preserving the three year differential from their respective starting points under Schedule 21. He stated in terms that he had taken account of their young ages and that all of their minimum terms would have been "significantly longer" if they had been older. He then calculated the time that each had spent on remand, which he deducted from each of their respective minimum terms.

The Parties' Respective Submissions

21. On behalf of the appellant, Ms Lumsdon KC submits that the judge made insufficient allowance for the appellant's youth and immaturity, which should have led him to make a downward adjustment to the starting point of 30 years, such features outweighing the aggravating features identified by the judge. The appellant's background is said to be highly relevant. This was a case of classic immaturity and stupidity, with an inability to recognise the consequences of the appellant's actions at the time. Secondly, she submits that, since the judge found that the appellant and his

co-defendants were equally culpable, the disparity between their sentences was too wide. As there was only a six month difference in age between them and they were in the same academic year at school, a three year difference to the minimum terms was manifestly excessive. She submits that a literal application may lead to unintended consequences in the sentencing of young adults aged between 18 and 21, when there had been no expressed political intention to change the approach of the courts to the determination of minimum terms for young adults.

22. For the respondent, Ms Jones KC submits that the sentencing remarks specifically recorded that regard was had to the appellant's age, as could be seen in the limited extent to which the starting point of 30 years had been adjusted to reflect what she submits are multiple aggravating features. It is said that in enacting paragraph 5A of Schedule 21, Parliament had given consideration to the extent to which the mitigation afforded by youth ceases to operate as powerfully as the threshold of adulthood is approached. Her submission is that impulsivity was not a hallmark of this offending, which was planned and involved weaponry. Nor was this a new type of activity for the appellant, who had an extensive criminal history. This was determined, gang behaviour. She also points to three elements said to be discrete to the appellant: his age; the fact that he had been released from custody only four days before the offence was committed; and the exertion of influence over a witness. These features, it is said, entitled the judge to distinguish between the appellant and his co-defendants. In any event, she says that disparity caused by legislation cannot provide a proper basis for a successful appeal.

The Relevant Sentencing Regime and Principles

23. As a young adult under the age of 21 at the date of conviction for murder, the court was required to pass a sentence of custody for life on the appellant under section 275 of the Sentencing Act 2020, and for his co-defendants to be detained during His Majesty's pleasure, under section 259 of the Sentencing Act 2020. Since this was not a case in which a whole life order was necessary, the judge was then required to set a minimum term. By section 322 of the Sentencing Act 2020, the minimum term must take into account the seriousness of the offence and any period spent on remand in custody. In considering the seriousness of the offence, the court must have regard both to the general principles set out in Schedule 21 and to any Sentencing Council Guidelines relating to offences in general which are relevant to the case and not incompatible with the provisions of Schedule 21: see section 322(3) of the Sentencing Act 2020. Section 59(1) of the Sentencing Act 2020 obliges the court to follow any relevant Sentencing Council Guidelines, unless it would be contrary to the interests of justice to do so.
24. In this case the court found that paragraph 3(1) of Schedule 21 applied, since it was a murder done for gain (in the course or furtherance of a robbery). As the appellant was over 18 years of age at the date of the commission of the offence, the starting point for his minimum term was 30 years. For his co-defendants, who were 17 at the time, paragraph 5A applied.
25. Paragraph 5A provides for new starting points for the minimum term for those under 18 at the date of the offence who are convicted of murder. The previous starting point for a child under the age of 18 at the time of a murder was 12 years. The practice was to have regard to the applicable starting point for an adult, and the 12 year starting

point would be increased substantially in appropriate circumstances, where, for example, a murder was committed in the course or furtherance of a robbery. Paragraph 5A sets out the appropriate starting points for determining the minimum term in the following table:

1	2	3	4
Age of offender when offence committed	Starting point supplied by paragraph 3(1) had offender been 18	Starting point supplied by paragraph 4(1) had offender been 18	Starting point by paragraph 5 had offender been 18
17	27 years	23 years	14 years
15 or 16	20 years	17 years	10 years
14 or under	15 years	13 years	8 years

26. The Explanatory Notes to the Police, Crime, Sentencing and Courts Act 2022 refer to section 127 as follows:

"138. Detention at [His] Majesty's Pleasure ... is a mandatory life sentence for offenders who commit the offence of murder when they are a child, as set out in section 259 of the Code. As with all life sentences, the court must set a minimum term to be served in custody before the offender can be considered for release by the Parole Board. Paragraph 6 of Schedule 21 to the Code sets the minimum term starting point at 12 years for all children. Section 127 amends the Code to introduce a sliding scale of starting points for minimum terms. The scale takes into consideration the age of the child and the seriousness of the murder. The older the child and the more serious the murder, the higher the starting point."

27. Having chosen a starting point, the court should take into account any aggravating or mitigating factors to the extent that it has not allowed for them in its choice of starting point: see paragraph 7 of Schedule 21. The Schedule then lists, on a non-exhaustive basis, a number of aggravating and mitigating factors that may be relevant: paragraphs 9 and 10 of Schedule 21. The age of the offender is identified as a relevant factor in paragraph 10(g).
28. As for age, paragraph 1.5 of the Sentencing Council Guideline for Sentencing Children and Young People reads:

"... Children and young people are not fully developed and they have not attained full maturity. As such, this can impact on their decision making and risk taking behaviour. It is important to consider the extent to which the child or young person has been acting impulsively and whether their conduct has been affected by inexperience, emotional volatility or

negative influences. They may not fully appreciate the effect their actions can have on other people and may not be capable of fully understanding the distress and pain they cause to the victims of their crimes. Children and young people are also likely to be susceptible to peer pressure and other external influences and changes taking place during adolescence can lead to experimentation, resulting in criminal behaviour. When considering a child or young person's age their emotional and developmental age is of at least equal importance to their chronological age (if not greater)."

29. Consistent with this, the authorities have long emphasised that it should be borne in mind that although 18th and 21st birthdays represent significant moments in the life of an individual, they are not necessarily indicative of the individual's true level of maturity, insight and understanding: see, for example, *R v Peters, Palmer and Campbell* [2005] EWCA Crim 605; [2005] 2 Cr App R(S) 101 ("*Peters*") at [11], and *R v Matthews* [2005] EWCA Crim 2399; [2006] 1 Cr App R(S) 88 at [6].

30. In *R v Clarke and Others* [2018] EWCA Crim 185, Lord Burnett of Maldon said at [5]:

"Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear. The discussion in *R v Peters* [2005] EWCA Crim 605, [2005] 2 Cr App R(S) 101 is an example of its application: See paras [10]-[12]. Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18th birthdays. Experience of life reflected in scientific research (e.g. *The Age of Adolescence*: thelancet.com/child-adolescent; 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18th birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18th birthday. ..."

31. More recently in *R v ZA* [2023] EWCA Crim 596 ("*ZA*"), at [52] May J, Judicial Lead for Youth Justice, said this:

"It has been recognised for some time that the brains of young people are still developing up to the age of 25, particularly in the areas of the frontal cortex and hippocampus. These areas are the seat of emotional control, restraint, awareness of risk and the ability to appreciate the consequences of one's own and others' actions; in short, the processes of thought engaged in by, and the hallmark of, mature and responsible adults. It is also known that adverse childhood experiences, educational difficulties and mental health issues negatively affect the development of those adult thought processes. ..."

32. Further, where two or more offenders fall to be sentenced in respect of the same murder, some of whom are just over 18 and some of whom are just under 18, it would

be neither just nor rational for significantly divergent terms to be imposed on grounds of age alone: see *R v Taylor (Joel)* [2017] EWCA Crim 803; [2008] 1 Cr App R(S) 4 (“*Taylor*”) at [8]. The proper approach is to move from each starting point to a position where any disparity is no more than a fair reflection of the age difference: see *Attorney General's References Nos 143 and 144 (R v Brown and Carty)* [2007] EWCA Crim 1245; [2008] 1 Cr App R(S) 28 at [27].

33. The advent of section 127 does not dictate a different approach when sentencing either a defendant who has just turned 18 or who is just under 18. It is never just a question of mathematical age. Age governs the normal starting point for a minimum term, but not the assessment of culpability by reference to maturity. The court is always obliged to look beyond mere chronological age.
34. This court has considered section 127 on several occasions. We highlight two cases.
35. In *Attorney General's Reference (R v SK)* [2022] EWCA Crim 1421; [2023] 1 Cr App R(S) 26, a case involving a 16½ year old convicted of murder, William Davis LJ noted at [27] that the principles set out in *Peters* remain valid, and in particular referred to what was said there at [11]:

"Therefore although the normal starting point is governed by the defendant's age, when assessing his culpability, the sentencing judge should reflect on and make allowances, as appropriate upwards or downwards, for the level of the offender's maturity."

36. *R v Boe Barton* [2023] EWCA Crim 1271 also concerned a 16 year old convicted of murder. Applying paragraph 5A of Schedule 21, the starting point for the offender was 17 years. The offence fell within paragraph 4(1). The sentencing court below had imposed a minimum term of 18 years, having noted a number of aggravating factors. In allowing the appeal and reducing the minimum term to 16 years, this court concluded that the judge had given insufficient weight to the overall effect of a number of factors, including the fact that the appellant had not long passed his 15th birthday, and his immaturity relative to his chronological age: see [25].

Discussion on the Facts

37. As has been said repeatedly, the starting points in paragraphs 2 to 6 of Schedule 21 are not to be applied mechanistically, but in a flexible way so as to achieve a just result. They inform the beginning of the process which culminates, after consideration of relevant aggravating and mitigating factors, in the minimum term. By paragraph 8, detailed consideration of aggravating or mitigating factors "may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order".
38. Accordingly, the appropriate sentence must always remain fact specific: see, for example, *Attorney General's Reference No 126 of 2006 (R v H)* [2007] EWCA Crim 53 at [33] and [34], and *Taylor* at [8]. It follows that in a case in which one defendant is over 18 and one under 18 at the time of the murder, the sentencer's focus must be on determining the individual minimum terms which are appropriate in all the circumstances of the individual cases, rather than on striving to maintain a strict

arithmetical relationship between the sentences which precisely reflects the differential starting points in paragraph 5A of Schedule 21.

39. On any analysis, the sentence imposed on the appellant was severe. Subject to the outcome of this appeal, he will be 50 years old before he can even be considered eligible for release by the Parole Board. He will have spent approaching two-thirds of his life – and all but four months of his adult life – in custody.
40. The judge was well placed to sentence the appellant and his co-defendants, following a lengthy trial, and he did so in careful sentencing remarks. He was right to identify a minimum term of 30 years as the starting point for his consideration of the appropriate minimum term for the appellant. He was also entitled to conclude that there were aggravating features which justified an increase from that starting point, as he identified.
41. Set against that was the appellant's extremely troubled background and immaturity.
42. The appellant has suffered a combination of many adverse childhood experiences which have inevitably impacted on his emotional and behavioural development. He has experienced multiple separations at crucial moments in his life. When he was seven months old he was removed from his mother because she was suffering from postnatal depression. She had been his sole carer. For the next two and a half years of his life, he lived with his father and his father's new partner. She did not welcome him and when he was but 3 years old, his father agreed with her that the appellant should no longer live with them. As his mother was unable to care for him at that time, he was sent to Africa to live with his maternal grandparents. He came back to the UK three years later, aged 6, and was returned to his father and stepmother. His stepmother made it clear that he was still not part of their family. He was subjected to chronic abuse, hidden at the time, as he was told that he would be hurt more if he told anybody, and he was too scared to report it. The abuse included being beaten with a wooden spoon, cables and belts, his head being hit against a wall; on one occasion his stepmother broke his finger. He was not allowed to use the toilet at home; food was withheld from him; and he was subjected to verbal abuse. When the appellant's father refused to accede to his new partner's demands to return the appellant to his mother, she fabricated untrue and malicious allegations that he had sexually abused his half-sisters. These allegations had a profound effect on the appellant and indeed he has not seen his half-sisters since.
43. At the age of 11 he went back to live with his mother, who was herself fleeing from domestic violence. She describes the trauma and pain experienced by the family from her fleeing domestic abuse and the impact of her being homeless, living in two refuges and moving six times in the space of four years when the appellant was entering his teenage years. The appellant himself was also subjected to violence by his mother's partners.
44. Unsurprisingly, the appellant struggles to trust adults and form relationships with them. He felt rejected by his mother, and he perceives a lack of support from the adults around him and from the authorities. He learnt as a teenager that his father was in fact not his real father but a family friend. At one point he was made subject to a Child Protection Plan. He was removed from mainstream education. He is on medication for ADHD.

45. The author of the pre-sentence report notes that he has low maturity levels and an inability to use pro-social methods. He has previously been assessed by the Youth Offending Team as being an impulsive young man who struggles to manage his motions effectively. He admits to often laughing in inappropriate situations when he does not know how to manage his emotions. The author of the pre-sentence report attributed this to his lack of maturity and poor attitudes. His mother describes the effect of both the abuse meted out on the appellant by his stepmother and the threat of further punishment if he were to tell of it have made him grow up angry and defensive. She describes the problems that she had managing him and the difficulty that the appellant had when coping with the death of his maternal grandparents. All of this, including the physical and emotional abuse suffered by the appellant during his wretched childhood, together with his low level of maturity, is also directly relevant to his record of offending which began when he was 13 years old.
46. The judge referred to the appellant's age (though not his immaturity) and his background, albeit only in general terms. He made no reference either to the impact of the appellant's immaturity and/or his extreme childhood experiences on culpability and thus on the seriousness of the offending. He made no mention of the Sentencing Council Guideline on Sentencing Children and Young People, which would have been directly relevant had the appellant been a few months younger when he committed the offence. Although the appellant had attained the age of 18, that guideline remained relevant when assessing the appellant's culpability; and it remained important to bear in mind paragraph 4.10 of the guideline, where importance is attached to a young offender's maturity and whether or not the conduct in question has been affected by "inexperience, emotional volatility or negative influences".
47. As stated in *R v Popoola* [2021] EWCA Crim 842 at [36], dealing with an offender just turning the age of 18:
- "...The sentencer must consider the offender's level of maturity at the time of the offence, and assess the extent to which young age and lack of maturity reduced the offender's culpability in committing the murder..."
48. The Sentencing Council Guideline on Sentencing Children and Young People requires sentencers to be alert, amongst other things, to any traumatic life experiences and the developmental impact they may have had, and the effect on children and young people of loss and neglect and/or abuse: paragraph 1.12. It notes that factors regularly present in the background of children and young people that come before the court include deprived homes, poor parental employment records, low educational attainment, early experience of offending by other family members, experience of abuse and/or neglect, negative influences from peer associates, and the misuse of drugs and/or alcohol: paragraph 1.13. It also states that when dealing with a child or young person who is a looked after child, courts should also bear in mind the additional complex vulnerabilities that are likely to be present in their background. Looked after children and young people may have no, or little, contact with their family and/or friends. They may have emotional and behavioural problems, and they are likely to have accessed the care system as a result of abuse, neglect or parental absence due to bereavement or desertion: paragraph 1.16. Particular factors which

arise in the case of black and minority ethnic children and young people also need to be taken into account: paragraph 1.18.

49. Nor is there any indication that the judge had regard to the guidance about lack of maturity and culpability in the Judicial College Publication, Children and Young People in the Crown Court Bench Book ("the Youth Bench Book"). In *ZA* at [87], it was said that all courts that are called upon to sentence a child or young person should be well-acquainted with the contents of this "essential guide". Chapter 15 of the Youth Bench Book provides a comprehensive, general guide to sentencing youths in the Crown Court, with sections on the overarching principles, the approach to sentence, the use of sentencing guidelines, age, the type of offender and procedural requirements. Of particular relevance in the sentencing of young adults is the following passage:

"Chapter 15 2E Age

20. It is now well recognised that, although the availability of a particular type of sentencing outcome depends upon the chronological age of the offender (whether at the date of the commission of the offence or upon conviction as appropriate), levels of culpability may be affected as much by their emotional or developmental age and levels of maturity as by their chronological age. Levels of immaturity or vulnerability may continue to have an effect on culpability even after the offender has reached adulthood."

50. It follows that the factors required to be considered when assessing the culpability of a young offender, as set out in the Sentencing Council Guideline on Sentencing Children and Young People and discussed in the Youth Bench Book, continue to be relevant when sentencing a young adult such as the appellant. As set out in the Youth Bench Book:

"17. The Youth Guideline sets out as factors that should be considered when assessing the culpability of a young offender:

- (1) The extent to which the offence was planned.
- (2) The level of force used (if any).
- (3) The extent to which the offender was aware of the possible consequences of their actions.
- (4) The inherent vulnerability of children and young people (compared with adults).
- (5) Any mental health problems or learning disabilities.
- (6) Their emotional and developmental age.
- (7) Any external factors that may have affected their behaviour."

The Youth Bench Book provides examples of external factors that may have affected behaviour. They include time spent as a looked after child; exposure to drug/alcohol abuse; familial criminal behaviour or domestic abuse; disrupted accommodation or education; lack of familial support; victim of neglect or abuse; experiences of trauma and loss: see paragraph 19. These factors were all present in the appellant's case.

51. We are satisfied that the appellant's lack of maturity and childhood experiences should have outweighed the aggravating features present. The starting point of 30 years' custody for offending of particularly high level seriousness encapsulates already many aspects of the offending in question, without more. We find it difficult to agree with the judge's suggestion that an older and more mature adult than the appellant would have received a minimum term "significantly longer" than 32 years.
52. In our judgment, the shortest possible minimum term commensurate with the seriousness of the offending should have been no more than 28 years, not 32 years (less the days spent on remand). By our calculation that produces a minimum term of 27 years and 91 days.
53. Further, whilst arguments of disparity are not a central driver behind our conclusions, the fact remains that the three defendants in this case were all born in the same calendar year and were all in the same academic year at school. As set out above, the judge stated expressly that he "[did] not distinguish between [the appellant and his co-defendants] in relation to the events of 22 May". He reduced the minimum terms for JC and CD by three years simply to reflect section 127 of the Sentencing Act 2020. It is counterintuitive, without the seriousness of the appellant's offending being far greater (which the judge found it not to be), that he should receive a minimum custodial term three years longer than his co-defendants.

Conclusion

54. Cases involving the sentencing of young adults and children to very long terms of custody are always disturbing and anxious. It is not just age, but maturity and any other factors going to culpability, that matter when arriving at a final outcome that is just and proportionate in all the circumstances. That principle applies to the sentencing of young adults now, just as it did before the introduction of paragraph 5A in Schedule 21. Sentencing decisions cannot be prescribed by accidents of time.
55. For the reasons set out above, we consider that the judge took an unduly prescriptive approach to the starting point of 30 years and paid insufficient regard to the appellant's lack of maturity and appalling childhood experiences, with the result that the minimum term of 32 years arrived at by the judge was manifestly excessive.
56. None of this is to condone what is accepted to have been offending of a particularly high order of seriousness. But it was also, as Ms Lumsdon termed it, immature offending, the product of what was an appalling upbringing.
57. For these reasons we allow the appeal. We quash the minimum custodial term imposed by the judge and substitute in its place a minimum term of 28 years, from which we have deducted the days spent on remand, as required by section 322 of the Sentencing Act 2020. Accordingly, the final minimum term is 27 years and 91 days.

Postscript

58. As a postscript we note that the judge stated that any arithmetical error in the calculation of the number of days spent on remand to be deducted from the minimum term could be corrected administratively. However, when sentencing for murder, or imposing a life sentence in any other circumstances, the precise determination of the minimum term is a judicial function: see *R v Cookson* [2023] EWCA Crim 10 (“*Cookson*”) at [9]. The judge is required to reduce the length of the minimum term by the number of days on remand. If the arithmetic is wrong, it may only be corrected under the slip rule, pursuant to section 385 of the Sentencing Act 2020, or by this court. Administrative adjustment is impermissible. It does not arise in this case. The judge calculated the correct number of days spent on remand and there is no need for amendment. We mention it only as a reminder.
59. *Cookson* also rightly stated that the deduction of days spent on remand to be taken into account can be pronounced in two ways: with arithmetic, by pronouncing the sentence with the days on remand factored in; or without arithmetic, by announcing the minimum term and the number of days which fall to be deducted. When a life sentence is imposed, it is recommended that the sentencing remarks should include the sentence with arithmetic, preferably having discussed and agreed the figures with counsel, to minimise the risk of consequential difficulties in calculation and any problems of the recording of the sentence on Common Platform.

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

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