



Neutral Citation Number: [2024] EWCA Crim 483

Case Nos: 202303776 A2  
202303003 A3  
202302529 A2  
202302046 A5

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 10/05/2024

**Before :**

**LORD JUSTICE WILLIAM DAVIS**  
**MR JUSTICE MORRIS**  
and  
**HIS HONOUR JUDGE PETER JOHNSON**

-----  
**Between :**

**YOUSIF SESAY**  
**LAURENCE GRIFFITHS**  
**KEAL RICHARDS**  
**CARL JAMES SILCOX**  
**- and -**  
**REX**

**First Appellant**  
**Second Appellant**  
**Third Appellant**  
**Fourth Appellant**  
  
**Respondent**

-----  
-----  
**Tim Storrie KC** (instructed by **Angela Taylor Solicitors**) for the **First Appellant**  
**Mark Rhind KC** (instructed by **CPS Appeals and Review Unit**) for the **Respondent**  
**Richard Thatcher** (instructed by **Bhatia Best Solicitors**) for the **Second Appellant**  
**Dawn Pritchard** (instructed by **CPS Appeals and Review Unit**) for the **Respondent**  
**Richard Thatcher** (instructed by **The Registrar**) for the **Third Appellant**  
**Mark Rhind KC** (instructed by **CPS Appeals and Review Unit**) for the **Respondent**  
**John Benson KC** (instructed by **Costly and Partners**) for the **Fourth Appellant**  
**Gordon Cole KC** (instructed by **CPS Appeals and Review Unit**) for the **Respondent**

Hearing dates : 16 April 2024  
-----

**Approved Judgment**

This judgment was handed down remotely at 10.30am on 10 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

WARNING: reporting restrictions may apply to the contents transcribed in this document, particularly if the case concerned a sexual offence or involved a child. Reporting restrictions prohibit the publication of the applicable information to the public or any section of the public, in writing, in a broadcast or by means of the internet, including social media. Anyone who receives a copy of this transcript is responsible in law for making sure that applicable restrictions are not breached. A person who breaches a reporting restriction is liable to a fine and/or imprisonment. For guidance on whether reporting restrictions apply, and to what information, ask at the court office or take legal advice.

Note - include here the details of any specific reporting restrictions that have been made by the court. This will have been identified in the Criminal Appeal Office Summary under the Reporting Restrictions heading or from the Court Order. The wording of any reporting restriction must appear in RED TEXT.

## LORD JUSTICE WILLIAM DAVIS :

### Introduction and general principles

1. These applications and renewed applications for leave to appeal have been listed together to allow the court to give guidance in relation to crediting periods of remand in custody when a life sentence is imposed. The applications are unconnected save for the common factor of a life sentence having been imposed in each case.
2. With one exception the applications relate to cases of murder. The Criminal Practice Directions 10.2.7 provide as follows:

In a renewed application for leave to appeal sentence that involves a fatality, where the prosecution is not represented and leave is granted, the court must consider adjourning the hearing so that the CPS may instruct an advocate, and the victim's family be given the opportunity to attend.

In this instance, the prosecution were represented and full opportunity to attend was given to the victim's family in each case. No issue of adjourning the hearing arose. In each case we gave leave to appeal albeit on a very limited basis. Had the prosecution and the victim's families not been present at or on notice of the hearing, we would have adjourned the hearing for the prosecution to consider the position.

3. In any application for leave to appeal it may appear to the Registrar that the only issue is that a wholly technical adjustment to a sentence is necessary to render that sentence lawful. If the time has passed for the Crown Court to make the adjustment pursuant to section 385 of the Sentencing Code, she will notify the prosecution of the position. Assuming agreement by the prosecution, the Registrar will refer the case to the full Court for a decision. That decision will be made on the papers with no representation order. The offender will be informed that no purpose will be served by their attendance at any hearing. This procedure may be adopted in cases involving a fatality. In those cases the prosecution will be under a duty to inform the victim's family of the fact that the sentence will be subject to a technical adjustment.
4. Where a life sentence is imposed, the court is obliged to set the minimum term to be served before the offender may be considered for release. In relation to a life sentence which is imposed for an offence where that is the sentence fixed by law i.e. murder, section 322 of the Sentencing Code applies. Insofar as is relevant for our purposes section 322(2) reads as follows:

(2) If the court makes a minimum term order, the minimum term must be such part of the offender's sentence as the court considers appropriate taking into account.....

(b) the effect that the following would have if the court had sentenced the offender to a term of imprisonment—

(i) section 240ZA of the Criminal Justice Act 2003 (crediting periods of remand in custody);

(ii) and section 240A of that Act (crediting periods on bail subject to certain restrictions);

including the effect of any declaration that the court would have made under section 325 or 327 of the Sentencing Act 2020 (specifying periods of remand on bail subject to certain restrictions or in custody pending extradition).

The equivalent provision in relation to other life sentences is in identical terms: section 323(2)(c) of the Sentencing Code.

5. The consequence of those provisions is that, whenever a life sentence is imposed, the minimum term is part of the sentence. Moreover, the minimum term must be set taking into account:
  - i) the number of days remanded in custody in respect of the offence for which the life sentence is imposed or a related offence;
  - ii) the credit period for any period on bail subject to a qualifying curfew with an electronic monitoring requirement;
  - iii) any period spent in custody awaiting extradition for the offence in respect of which the life sentence is imposed.
6. The minimum term for a life sentence imposed for an offence of murder first will be fixed by reference to the appropriate starting point in Schedule 21 of the Sentencing Code and taking into account relevant aggravating and mitigating factors. Once that period has been determined, the period or periods set out in section 322(2)(b) of the Sentencing Code must be deducted. The figure which is the result of that overall calculation will be the minimum term. Where the life sentence is not a sentence fixed by law, the minimum term is the relevant portion of the notional determinate sentence. That portion will vary depending upon the release provisions applicable to the offence. Once that period has been fixed, the same exercise in relation to periods on remand must be conducted as for a life sentence which is fixed by law. Again, the result of the calculation will be the minimum term.
7. The consequence of these provisions is, as was explained in *R v Cookson* [2023] 2 Cr App R (S) 12, that the minimum term is part of the sentence of the court. It is not amenable to administrative review. If an error is made in any part of the calculation pursuant to section 322(2)(b) or section 323(2)(c) of the Sentencing Code, it can be corrected pursuant to section 385 of the Sentencing Code. In an appropriate case, the correction can involve an increase in the minimum term in the event that too many days or too long a period have been taken into account. What cannot be done is to alter the minimum term administratively. Thus, if the statutory period of 56 days for altering the sentence under section 385 has expired, the only means by which the correction can be made is by an appeal to this court. By reason of section 11(3) of the Criminal Appeal Act 1968, this court will not be able to make a correction involving an increase in the minimum term unless some other element of the minimum term falls to be considered leading to a reduction in the starting point or notional determinate sentence.

8. Where an offender is sentenced to immediate custody and the custodial term is determinate, the time remanded in custody to count against the sentence is calculated automatically by HMPPS. The sentencing judge has no part to play in that calculation. The sentence will be announced without any deduction of days remanded in custody. Time subject to a qualifying curfew and time spent in custody awaiting extradition are required to be announced by the sentencing judge. In relation to qualifying curfew the judge must direct that the relevant period calculated in accordance with section 325(3) of the Sentencing Code is to count as time served by the offender as part of the sentence. In relation to time spent in custody awaiting extradition, the court must specify in open court the number of days that the offender (has) spent in custody.
9. Where a judge gives a direction in relation to a qualifying curfew or specifies the number of days spent in custody awaiting extradition, the formula identified in *Hoggard* [2014] 1 Cr App R (S) 41 should be used:

"The defendant will receive full credit for half the time spent under curfew if the curfew qualified under the provisions of section 240A. On the information before me the total period is ... days (subject to the deduct of ... days that I have directed under the Step(s) 2 and/or 3 making a total of ... days), but if this period is mistaken, this court will order an amendment of the record for the correct period to be recorded."

Where the offender has been in custody awaiting extradition, this formula will be adapted appropriately. As was explained in *Gordon* [2007] EWCA Crim 165 (when judges had to announce all remand days) this process means that

"the number of days to be credited may properly be regarded as a temporary rather than a final order, and therefore open to correction if and when any error emerges. If of course there were any continuing issue about the number of days, the case would have to be re-listed for a judicial decision in open court."

10. Where a judge imposes a determinate sentence and days subject to curfew and/or time on extradition remand are to count as time served, the judge's direction is not part of the sentence. So long as the judge makes it clear that the court order will be subject to correction if an administrative error is discovered, the correction can take place. A hearing may be required if there is disagreement as to the existence or the extent of any error. That will not be subject to the statutory period of 56 days since there will be no alteration of the sentence.
11. It is apparent from some of the individual applications with which we are concerned that judges believe that this process can be applied to a minimum term to be served in relation to a life sentence. It cannot. That is so even if some or all of the deduction from the minimum term fixed by reference to the starting point or the notional determinate sentence relates to days spent on qualifying curfew or on extradition remand.
12. In *Cookson* the court said that there was no requirement that a judge, having been informed of the number of days served on remand, should carry out the arithmetical

calculation. It was permissible to announce the minimum term as X years less Y months and Z days. This was in line with previous authority. We acknowledge that judges imposing a life sentence are accustomed to announcing the minimum term in that way. However, there are practical reasons in relation to the digital recording of the minimum term by the court and the application of the minimum term by HMPPS which make it highly desirable that the minimum term should be announced by the judge after carrying out the arithmetical calculation. It is also a clear expression of the true sentence for both the offender and others interested in the sentence. The minimum term is part of the sentence which consists of a specific period expressed in years and days. We conclude that a judge imposing a life sentence must announce the minimum term in that manner. We also conclude that the sentencing judge must announce in court the number of remand and/or curfew days which have been counted in order to reach the minimum term. If an error occurs in relation to calculation of days, that announcement will make it clear what the court took into account on the day of sentence.

13. Nothing we have said has changed the requirement that the parties come to the sentencing hearing fully armed with the necessary information. In any case where a life sentence is in prospect, the sentencing note of each party must include all relevant information in respect of periods on remand. What was said in *AA* [2014] EWCA Crim 2483 at [58] to [60] bears repeating:

“58.....A judge cannot perform the task of setting out the exact remand period to be taken into account, unless accurate information is provided to the court by the parties. In *R v Irving* [2010] EWCA (Crim) 189, at paragraph 13, the Court of Appeal stated that the duty of defence advocates was to ensure that the proper information was before the sentencing court. That exhortation was repeated by the Lord Chief Justice in *R v Leacock* [2013] EWCA Crim 1994 citing *Irving* with approval. In *Leacock* at paragraphs 45-49 the court addressed the situation where the sentencing judge had not been addressed on the time spent on a qualifying curfew. It stated that future time limits must be strictly applied.

59. That warning was reiterated in *R v Pink* [2014] EWCA (Crim) 579 at paragraph 11. Those advising convicted offenders have 28 days in which to consider the law in relation to sentence, and 56 days in which an alteration may be made by the sentencing judge without incurring delay and expense.

60. Lest there be doubt it is the duty of all advocates, both defence and prosecution, to assist the court. There should rarely, if ever, be room for a dispute between advocates as to the amount of time spent on remand, and advocates should be as equipped as they reasonably can be to assist the court in arriving at an exact figure, and then in ensuring that it is correctly expressed by the court.”

14. We accept that it is sometimes not a straightforward exercise to obtain the necessary information. In an environment where those engaged in criminal litigation are under

very considerable pressure, we acknowledge that the task will add to the burdens of counsel and solicitors. However, the imposition of a life sentence is hardly a regular occurrence for those engaged in criminal practice. In any case where the life sentence is fixed by law, the need to obtain the information will be known from an early stage. Where a discretionary life sentence is to be imposed, a duty rests on the sentencing judge to give proper notice that such a sentence may be a possibility. That duty is required to allow counsel and solicitors time to obtain the necessary information.

We turn then to the four specific applications which we have considered.

### **Yousif Sesay**

15. On 23 June 2023 in the Crown Court at Manchester Yousif Sesay (then aged 18) was convicted of murder. He had three co-accused, two of whom also were convicted of murder and a third who was convicted of manslaughter. On 3 October 2023 he was sentenced to detention at His Majesty's Pleasure. He had been aged 17 at the date of the offence.
16. The judge determined that the minimum term that Sesay should serve before being eligible for release was 22 years. He said that "time spent on remand or in youth detention will count towards your sentence". Although there had been discussion during the sentencing hearing about remand days in which the judge had been told the number of days in relation to each defendant, the judge made no reference to the specific number of days in the course of his sentencing remarks. In Sesay's case, he had spent 301 days on remand.
17. Sesay applied for leave to appeal against his sentence. His grounds were settled by his solicitors. They argued that the judge erred in distinguishing between him and a co-accused named Ludford. Ludford's position was effectively identical to Sesay's. Ludford was almost exactly the same age as Sesay. Neither his personal circumstances nor his involvement in the offence gave rise to any greater mitigation than existed in relation to Sesay. The minimum term in Ludford's case was 21 years. Sesay's minimum term should have been the same.
18. The Registrar has referred Sesay's application for leave to appeal to the full Court. She has granted a representation order for leading counsel, Tim Storrie KC. He has drafted supplementary grounds relating to the judge's failure to specify the number of days on remand to count as time served.
19. Given the issues in this application it is not necessary to set out the factual background other than in summary form. Sesay and his co-accused had a history of dealing in drugs. On 21 November 2022 Sesay was robbed in the course of a drugs exchange by a young male. Sesay and his co-accused were angry about the robbery. They decided to seek revenge. On the morning of 22 November they went out in a car to look for a young male named Todd whom they believed was responsible for the robbery. They were armed with knives. They were driving in South Manchester when they saw Todd who was with a 17 year old named Kyle Hackland. They stopped the car and jumped out. As they did so, Todd produced a large knife. When he realised that he was outnumbered by an armed group, he ran off down a nearby alleyway. Hackland continued walking along the pavement talking on his mobile

telephone. He recognised some of the group of whom Sesay was one. He did not see himself as being in any danger.

20. That was a fatal mistake on his part. He was set upon by the armed group. He was punched to the head by a 16 year old to whom we shall refer as S. Ludford also punched him. Someone shouted “cheff him” whereupon S stabbed Hackland in the back. This was a deep penetrating wound which damaged the kidneys, liver and lungs. It was the cause of Hackland’s death. Ludford then gripped Hackland round the neck. He kicked Hackland. Other members of the group joined the attack. Further stab wounds were inflicted. Sesay was identified by an eye witness as having a large hunting knife in his hand during the attack. Sesay was heard shouting accusations at Hackland about the robbery the day before even though Hackland had had nothing to do with that incident.
21. The group then left in the car leaving Hackland in the street mortally wounded. He approached a passer by to whom he said that he had been stabbed. He then collapsed. Efforts to save his life at the scene and thereafter at hospital were in vain. He died the same afternoon.
22. In sentencing the judge said that he was sure that Sesay was the person who had shouted “cheff him” which had incited S to deliver the fatal blow. He concluded that Sesay and the others in the group intended to kill their victim as revenge for the robbery the day before. Having conducted the trial, the judge said that he considered that, despite their ages, the group who attacked Hackland were cunning, resourceful and established drug dealers.
23. In relation to Sesay, the judge noted that the starting point for the minimum term by reference to paragraph 5A of Schedule 21 of the Sentencing Code was 23 years. The significant aggravating features were the planning and premeditation involved, an attack by an armed group and the fact that Sesay was subject to a youth rehabilitation order at the time of the murder. The judge treated Sesay’s difficult upbringing and his youth and immaturity as mitigating factors. Balancing the aggravating and mitigating factors, the judge reduced the minimum term by 12 months from the statutory starting point.
24. The aggravating factors in Ludford’s case were similar to those of Sesay. However, he was not in breach of a youth rehabilitation order. The mitigating factors in his case included a diagnosis of ADHD. This mental disorder affected his culpability. The judge also considered that there was some evidence of genuine remorse in that Ludford had admitted unlawful killing prior to the trial albeit not an intent to kill or do really serious harm.
25. The grounds of appeal settled by Sesay’s solicitor argue that there was unjustified disparity between the minimum terms imposed on him and on Ludford. Mr Storrie has not developed those grounds. He has helpfully set out the principles to be adopted where it is said that different sentences imposed on individuals convicted of the same offence cannot be justified. At the hearing he told us that he had explained the principles to Sesay and that Sesay now understood that the grounds of appeal settled by his solicitor were unarguable. We shall explain the relevant principles in very brief terms so that Sesay may understand that Mr Storrie’s explanation to him was wholly correct.



26. The test in relation to disparity is whether right-thinking members of the public would consider that something had gone wrong with the administration of justice. Apparent leniency to one offender is no ground for reducing a proper sentence on another. Establishing sufficient disparity to justify any interference with the sentence is not a hurdle easily surmounted. Applying those principles we have no doubt that there can be no criticism of the approach taken by the judge. There was a legitimate basis for the minimum term in Ludford's case being 12 months less than that relating to Sesay. In particular, it was not wrong for the judge to take account of Ludford's acceptance that he was involved in the unlawful killing of Hackland. That had some relevance to the issue of remorse. We refuse to give leave to appeal in relation to the original grounds.
27. We do give leave to appeal in respect of the judge's failure to specify in his sentence the days on remand to be counted as time served. As we set out above, the judge did not in passing sentence specify the number of remand days to count as time served. The warrant issued by the Crown Court states "301 remand days to count against sentence". It may be that this has been or will be treated by HMPPS as meaning that the minimum term is to be reduced by that period. We observe that there is some ambiguity in the terms of the warrant. Even if the warrant is to be read as setting a minimum term of 22 years less 301 days, this is of no effect. The sentence is the sentence as announced in court by the judge. The judge did not specify the time spent on remand which was to count as time served.
28. In line with the general guidance we have given, the minimum term in Sesay's case will be 21 years 64 days. To that limited extent the appeal is allowed.

### **Laurence Griffiths**

29. On 3 April 2023 in the Crown Court at Nottingham Laurence Griffiths pleaded guilty to wounding with intent. This plea was tendered on the day his case was listed for trial. He was also charged with attempted murder. This related to the same facts as the offence of wounding with intent. He was tried on the count of attempted murder. He was acquitted by the jury.
30. On 26 May 2023 Griffiths was sentenced by the trial judge to imprisonment for life. This was a sentence imposed pursuant to section 285 of the Sentencing Code. In relation to the minimum term the judge said: "The minimum term you must serve before being able to apply to the Parole Board is a period of eight years' imprisonment less the 305 or so days you have been remanded in custody".
31. Griffiths applied for leave to appeal against sentence on the basis that a life sentence was not justified. Although the judge was entitled to conclude that he presented a significant risk of serious harm from further specified offences in the future, a life sentence was unnecessary to protect the public from the risk posed by Griffiths. An extended determinate sentence would have provided sufficient protection.
32. The single judge refused leave to appeal in relation to that ground. Griffiths now renews his application for leave. He also seeks to rely on a ground of appeal not considered by the single judge, namely the trial judge failed properly to identify the number of days to be counted as time served.

33. In the early hours of 23 July 2022 Griffiths met a lady named Karen McNeil. This was a chance meeting. They were known to each other. They went to Ms McNeil's home address. They spent the night together there without incident. The next day Griffiths returned to Ms McNeil's address to collect something he had left there the previous night. Griffiths was looking for someone with whom to spend time. Ms McNeil agreed to go to his home. At his home Ms McNeil was poured a drink. Griffiths offered her some cocaine which she declined. That was the last thing she recalled until waking up in hospital nearly 2 weeks later. In evidence to the jury, Griffiths said that he had no recollection of what had happened at his home when Ms McNeil was there.
34. It was clear from the injuries sustained by Ms McNeil that Griffiths had subjected her to a sustained attack involving different types of force. She sustained fractures to several ribs on both sides of her chest. These indicated that she had been struck repeatedly with considerable force. There was grip mark bruising to one of Ms McNeil's arms which apparently was associated with Griffiths holding her whilst he inflicted blunt force trauma to her upper body. There were many knife injuries. Most significant was the injury to Ms McNeil's throat. This had been cut in two places. A jugular vein was severed. Muscles in the neck and the thyroid gland were damaged. The wounds were deep enough to expose the windpipe. These injuries were life threatening. There were six wounds to Ms McNeil's arm, some of which were deep, and 20 wounds to her stomach caused by the tip of a knife. These latter wounds were inflicted when Ms McNeil was unconscious and lying on the floor. After he had inflicted them, Griffiths moved Ms McNeil onto his bed. Some hours later he called a friend to say that he thought "I was going to have a dead body in my bed". He then called 999. Emergency services attended. Ms McNeil was taken to hospital.
35. The judge found that the injuries took a significant period of time to be inflicted. Most of them were inflicted when Ms McNeil was unconscious or defenceless. It was a prolonged assault against a particularly vulnerable victim. The judge concluded that the nature of the injuries demonstrated an element of sadism or torture on the part of Griffiths.
36. The long term effect on Ms McNeil has been profound. She made a VPS which was read out in full at the lower court. In summarising it we do not intend to minimise what Karen McNeil has said. She has had to undergo numerous operations to repair the damage to her throat and neck. The continuing physical effects of that damage are significant. The residual scarring is grave and disfiguring. The psychological trauma has been severe. Ms McNeil has left her home and currently lives with her parents. The judge found that the physical and emotional effects of the injuries would be permanent.
37. Griffiths is now aged 43. He has previous convictions. None is of particular seriousness. He had not served any period of custody in the past. His convictions for violence related to assaults on police officers in 2009 and 2011. The material before the judge showed that he was someone with issues of alcoholism and drug addiction.
38. The judge found that the offence fell into Category 1A within the SC guideline for the offence of wounding with intent. There were multiple high culpability factors: vulnerable victim; prolonged assault; use of a highly dangerous weapon. Harm was high because the injury was particularly grave and life threatening. The SP for a

Category 1A offence is 12 years. The category range is 10 to 16 years. The judge considered that Griffiths's offence required an uplift within the category range to 14 years.

39. Because the plea of guilty was tendered only at the start of the trial, the reduction in sentence to take account of that plea necessarily was limited. The judge concluded that 15% was the appropriate reduction. Thus, the notional determinate sentence was 12 years' imprisonment. Thus far, no issue is taken with any part of the reasoning of the judge.
40. The judge determined that Griffiths was a dangerous offender. He based this finding principally on the facts of the offence for which he was imposing sentence. He relied on the prolonged and sadistic behaviour involved in the infliction of the injuries. He said that the behaviour was so out of normal and without any explanation that it led to the conclusion that Griffiths was dangerous within the statutory definition.
41. The judge went on to state that Griffiths's inability to identify any trigger or background issue which could explain his behaviour meant that there was a continuing risk that he might act in a similar fashion in the future. The impact of alcohol and drug abuse on the part of Griffiths was significant. Such abuse was something he had been unable to control over many years. Thus, whilst the PSR indicated that the risk presented by Griffiths could be reduced were he to address his abuse of alcohol and drugs, the point at which he would be able effectively to do so could not be identified with any clarity.
42. With those matters in mind, the judge considered and applied the principles in *Burinskas* [2014] EWCA Crim 334. He assessed the seriousness of the offence as being very high. He determined that Griffiths posed a serious danger to the public. There was no reliable estimate of when that no longer would be the case. In those circumstances, the available alternative sentences (whether an EDS or a pure determinate sentence) would not provide sufficient protection for the public.
43. In support of the ground rejected by the single judge it is argued that the following matters served to reduce any risk posed: the absence of previous convictions for specified offences; no convictions for violence since 2011; no convictions involving knives; the fact that any risk was linked to alcohol and drug abuse which was capable of being addressed; the remorse expressed by Griffiths in a letter to the judge coupled with the plea of guilty. Taking all those factors together, it is said that the risk presented by Griffiths could be met by the imposition of an extended determinate sentence.
44. In the course of his sentencing remarks, the judge said that he considered that Griffiths had an intention not far short of an intent to kill. It is submitted that this was a misdirection on his part. Griffiths had pleaded guilty to wounding with intent to cause really serious harm. He had been acquitted of murder i.e. the offence requiring an intent to kill. The judge fell into error in his description of his intent. The error must have had an impact on the assessment of risk.
45. In our view the judge's conclusion that the offence of itself was exceptionally serious cannot be faulted. Ms McNeil was very lucky to survive the attack. The element of sadism and/or torture was very concerning - particularly so given that Griffiths was

unable to offer any explanation for his actions. It may be unusual for a life sentence to be justified in the absence of a previous history of significant violence. It is equally unusual for there to be an attack of the ferocity and persistence of the one committed by Griffiths. That was the context in which an indeterminate sentence was imposed.

46. We consider that many of the factors relied on in support of the argument that an extended determinate sentence would have been appropriate in reality amount to a submission that Griffiths did not and does not present a risk of future offending. That is untenable given the nature of the offence for which the judge had to sentence him. We reject the proposition that the judge's observation about the intent of Griffiths coming close to an intent to kill demonstrated an error of approach. The extent of an attack may be such that an intent just short of an intent to kill is demonstrated. An intent to cause really serious harm is not indivisible. The nature of the intent can vary.
47. The judge had had the opportunity to assess Griffiths in the course of the trial. We would have to be satisfied that he had gone wrong in the sentencing exercise in order to interfere with his judgment. We are entirely satisfied that nothing did go wrong. The judge reached a conclusion which was justified on the material before him. We refuse the renewed application for leave in relation to the grounds considered by the single judge.
48. The manner in which the judge expressed himself in respect of time spent on remand which would count as time served was imprecise. The period to count as time served is part of the sentence. The same degree of precision is required when stating that period as when stating the length of the primary sentence. Self-evidently it would not be appropriate to impose a minimum term of (say) "8 or so years". In this instance, the actual period spent on remand prior to sentence was 303 days.
49. We have in mind the provisions of s11(3) of the Criminal Appeal Act 1968. We have no jurisdiction to take a course which results in the appellant being more severely dealt with on appeal than he was dealt with by the court below. Here the court below failed to deal with the relevant remand period in a manner which permitted any certainty as to the extent of the time to be counted. It is arguable that there was no valid sentence imposed in terms of that part of the process. For us to impose a valid sentence when none was imposed in the Crown Court would not involve the appellant being dealt with more severely.
50. However, the period to which the judge referred was used when the order of the court was drawn up and provided to HMPPS. It must have been used to give information to Griffiths about the minimum duration of his sentence. On his behalf it is said that he now has a legitimate expectation of a minimum term which provides for 305 days to count as time served. We consider that to be a meritorious submission. Therefore, we shall give leave to appeal in relation to the remand time. The sentence should have been expressed to allow for 305 days to count as time served. We quash the minimum term as expressed by the judge. We substitute in its place a minimum term of 7 years 60 days. To that limited extent the appeal is allowed.

**Keal Richards**

51. As long ago as 9 November 2017 in the Crown Court at Leeds Keal Richards was convicted of murder. He was sentenced on the same day to imprisonment for life. The minimum term set by the trial judge was 33 years. The judge said this:

“...the minimum term which you must [each] spend in custody before you can be considered for release on licence is a term of thirty-three years. Therefore, the sentence I pass is a life sentence, and after deducting the time that you have already spent in custody you must [each] stay in prison for at least the next thirty-three years.”

The judge imposed the same sentence on two other men who also were convicted of murder.

52. The sentence imposed on Richards was the sentence pronounced in court by the judge. The trial record sheet completed by the court reads as follows:

“Life Imprisonment with a specified minimum term of 33 years  
Under Section 240 of the Criminal Justice Act 2003 282 days  
spent on remand are to count towards this sentence.”

53. Richards was 21 when he committed the offence and when he was sentenced. He did not apply for leave to appeal against his sentence until 14 June 2023 i.e. over 2,000 days out of time. His grounds of appeal were self-penned. They were considered by the single judge who concluded that they had no merit at all. In consequence, the single judge refused to extend time.
54. Richards renewed his application for an extension of time in which to apply for leave to appeal against his sentence. At that point the Registrar noted that there appeared to be an issue arising out of the pronouncement of his sentence and remand time. She assigned counsel to settle a fresh ground of appeal relating solely to that issue. That issue has been argued before us. We have considered the applicant’s original grounds on the basis of the papers.
55. In 2016 and 2017 Richards (together with his co-accused) was involved in the supply of Class A drugs in Leeds. There was a rival group of drug dealers known as “The Flock”. That group were trying to take over the area regarded by Richards and his co-accused as their territory. In August 2016 Richards had been shot and seriously injured. He believed that the person responsible was associated with “The Flock”.
56. Raheem Wilks (aged 19) was a member of “The Flock”. He was not the person who had shot Richards. He had been in custody at the time of that shooting. At around 1.15 p.m. on 26 January 2017 he was shot dead outside a barber’s shop in Leeds. This was a revenge attack for the serious injury caused to Richards. Wilks had been spotted at the barber’s shop by one of the co-accused. That man called the other co-accused who was travelling a taxi with Richards. They all went to the house of the man who had been with Richards. Richards went into the house and collected a semi-automatic pistol. All three men were driven to a street close to the barber’s shop. They got out of the car and walked to the shop. One of the co-accused shot Wilks once in the back. The bullet penetrated his heart.

57. The three men left the scene. Richards went to Leeds Royal Infirmary for a pre-arranged medical appointment. By coincidence that was the hospital to which the dying Wilks was taken. The co-accused disposed of the gun in Bradford. It was never recovered.
58. Later that afternoon Richards filmed himself speaking over a rap video. What he said was directly related to the shooting earlier in the day. He posted his video on Snapchat. As the judge commented, this amounted to Richards glorying in murder.
59. In sentencing the judge took a starting point of 30 years for the minimum term. The murder had involved the use of a firearm. The offence fell within paragraph 3 of Schedule 21 of the Criminal Justice Act 2003 (as then applied). He found four aggravating factors: the shooting occurred in the context of enforcing a criminal enterprise, each of the accused being involved in drug dealing; the killing was premeditated with an element of planning on the day of the shooting; Wilks was shot in broad daylight in a public place with at least one member of the public close by; after the shooting, steps were taken to conceal evidence i.e. the gun. To take account of those factors the judge increased the minimum term notwithstanding the relative youth of Richards. He imposed the same sentence on each defendant saying that Richards's desire for revenge was the driving force behind the offence.
60. We deal first with the grounds considered and rejected by the single judge. Richards relies on four broad grounds in arguing that the minimum term was excessive. He says that insufficient account was taken of his age. He argues that no proper account was taken of his disability. He identifies other cases involving the use of a gun in which a minimum term shorter than 30 years was set by the judge imposing sentence. The judge did not order a pre-sentence report or permit him time to obtain character references.
61. The single judge had no hesitation in rejecting all of those grounds. We take the same view. The sentencing judge referred to Richards's age. Its effect on sentence in the case of a man with some criminal experience who was part of a drugs gang could be modest at best. The judge's finding that the shooting occurred because of Richards's desire for revenge was an aggravating feature not applicable to the other defendants. Thus, it was properly open to the judge to set the same minimum term in relation to each defendant even though the co-accused were older. Whatever Richards's disability may have been, it did not prevent him from engaging in dealing in Class A drugs. Nor did it hamper him in taking part in the murder of Wilks. Other cases involving other people can provide no basis for an appeal. The issue for us is whether the sentence in this case was appropriate by reference to its particular facts. We are satisfied that it was. A pre-sentence report or a character reference would have been of no consequence to the outcome given the gravity of the offending.
62. The only point with any merit is the one raised by counsel assigned by the Registrar. The sentence imposed was the sentence announced in open court by the judge. This referred to deducting time already spent in custody. But the judge did not state what that meant in terms of days. On one reading of what he said, the sentence involved a minimum term of 33 years after allowance had been made for time on remand.
63. The court record sheet accurately records the number of days Richards had spent in custody prior to sentence. It purported to record the minimum term as 33 years less

the 282 days on remand. We conclude that is what the judge intended. He did not set it out in the terms required when imposing the sentence.

64. Doubtless HMPPS have been using the court record sheet as the basis for calculating the earliest date on which Richards will be eligible to apply for parole. In law the court record sheet was not an accurate reflection of the sentence imposed by the judge given the way in which he expressed himself in court. Because HMPPS will have applied the days on remand as shown on the court record, Richards thus far will not have appreciated that there was any issue with that aspect of his sentence. In those circumstances it is appropriate extend time for appeal against the sentence purely in relation to the crediting of remand time. We quash the sentence imposed by the judge so far as the minimum term announced by him is concerned. We substitute a minimum term of 32 years 83 days. To that limited extent the appeal is allowed.

### **Carl Silcox**

65. Silcox is aged 45. On 26 May 2023 in the Crown Court at Cardiff he was convicted of murder. On 7 July 2023 he was sentenced to imprisonment for life. The minimum term to be served was specified as 25 years. In relation to days on remand the judge said this:

“The 510 days that you have already spent on remand in custody will be deducted from that term. Any error in that calculation can be corrected administratively.”

The court order dated 7 July 2023 stated that time spent on remand to count towards sentence was 510 days. On 12 July 2023 that order was amended so that the time on remand was said to be 511 days. The latter figure was the correct calculation. There was no hearing at which the judge specified that figure.

66. Silcox applied for leave to appeal against his sentence. The application was refused by the single judge. Silcox now renews that application. As part of his renewed application and at the prompting of the Registrar, he now seeks to raise the issue of time on remand. A fresh ground of appeal has been added.
67. Silcox had been in a longstanding relationship with a lady named Adelle Cowan. She was 43 at the date of her death. On 17 October 2020 Silcox murdered her when she was staying at his flat. Precisely what he had done to Ms Cowan could not be specified. He called 999 just after midnight on 18 October 2020. He reported that he had woken to find Ms Cowan unresponsive in bed. When the ambulance arrived, it was obvious that Ms Cowan (who was fully dressed) was dead. Injuries to her face were obvious. Silcox was arrested on suspicion of murder. Throughout the criminal process Silcox denied causing any injury to Ms Cowan. That remained the position even after conviction.
68. The post mortem examination showed that Ms Cowan had sustained multiple injuries. As the jury found, that occurred at Silcox’s hand. She had bruising to her face and various parts of her body. There were five posterior rib fractures which were the result of trauma. Ms Cowan’s spleen was lacerated. There were grave pelvic injuries as follows: a laceration of the vulva and bruising of the vaginal entrance; perforation of the rectum and peritoneum. The latter injury was not consistent with ordinary

sexual activity. It would have required a fall onto an object or a deliberate sexual assault.

69. Silcox said that he had consensual sexual activity with Ms Cowan the day before her death. This had not involved the use of any object. Within the flat there was a broom. Faecal matter and blood was smeared along the last 15 cms of the handle of the broom. DNA analysis matched this material to Ms Cowan. At the end of the handle there was semen attributable to Silcox. Swabs from Ms Cowan's vagina and rectum revealed Silcox's DNA.
70. Ms Cowan's death was due in part to the fact that she was heavily intoxicated with alcohol when she died. Her state combined with the trauma inflicted on her caused her death. The rectal injury caused severe pain when it was inflicted.
71. In sentencing the judge drew attention to the VPS of Ms Cowan's niece. She described the shattering impact of the death on the whole family. Particularly distressing was the detail of how Ms Cowan had died.
72. The judge found that at least one significant cause of death was the penetration of Ms Cowan with the broom handle. She determined that the semen on the handle was not the result of consensual sexual activity. In consequence, the judge decided that the murder involved sexual conduct. Thus, the starting point by reference to paragraph 3 of Schedule 21 of the Sentencing Code was 30 years. The judge said that application of the starting point was not to be a mechanistic exercise. After considering the aggravating and mitigating factors, the appropriate minimum term was 25 years.
73. On behalf of Silcox Mr Benson KC (who appeared at trial) argues that the judge had insufficient evidence to be satisfied to the criminal standard that this was a murder involving sexual conduct. Forceful anal penetration with the broom handle was not unambiguously sexual. The genital injuries could have been the result of consensual sexual activity the day before Ms Cowan's death. The presence of semen possibly indicated no more than contact between the broom handle and Silcox's semen following consensual intercourse. In those circumstances the judge should have taken a starting point of 15 years for the minimum term.
74. If that submission fails Mr Benson submits that the nature of the sexual conduct was not sufficient to bring the case within paragraph 3 of Schedule 21. He invites us to consider authorities of this court in relation to sadistic conduct which establish that, where a sustained assault is said to involve sadistic conduct, there must be "wholly exceptional brutality accompanying the killing" such as to take the murder up from a starting point of 15 years to a starting point of 30 years: see *Boland and Tinsley* [2007] EWCA Crim 90; *Maynard Ellis* [2021] EWCA Crim 317. Since sadistic conduct and sexual conduct appear in the same sub-paragraph of paragraph 3, it must follow that the sexual conduct must involve exceptional brutality to justify a starting point of 30 years.
75. Finally Mr Benson argues that the judge failed to give sufficient weight to the mitigating factors of lack of intent to kill and absence of premeditation. By that route it is argued that the minimum term finally identified by the judge was manifestly excessive.



76. For us to accept Mr Benson's primary submission, we would have to find that no reasonable judge could have concluded on the evidence heard in the trial that the murder involved sexual conduct. In the absence of such a finding we could not say that the judge's conclusion was wrong. The judge in this case heard the trial. She saw and heard Silcox give evidence. She was in a prime position to assess all of the evidence and to determine the conduct underlying his use of violence. In those circumstances there would have to be a clear basis for saying that she was wrong on the facts. There is no such basis. Mr Benson can and does argue that there is an interpretation of the admitted facts which is consistent with Silcox's murderous attack not involving sexual conduct. It is certainly not the only interpretation. In our view the more plausible conclusion is the one reached by the judge. In fact, all we need to be sure of is that the judge's conclusion is one that was open to her. We have no doubt that it was.
77. We do not consider that the proposition that the parallel drawn by Mr Benson between sadistic and sexual conduct is sustainable. No authority was cited to support it. Insofar as assistance can be gained by decisions of this court, they indicate that murders involving sexual conduct are to be regarded as particularly serious because of the sexual element not because of the extreme nature of any sexual behaviour. By way of example, in *McSweeney* [2024] EWCA Crim 1250 the appellant had committed a violent sexual assault in the street before murdering his victim. However, there was no wholly exceptional brutality involved in the attack. The sentencing judge had used the starting point in paragraph 3 of Schedule 21 in fixing the minimum term. It was no part of the appeal that the judge was in error. A murder involving sexual conduct is particularly serious because of the sexual element. It is highly likely that sexual conduct linked to murder will be of a penetrative nature. Sexual offending of that kind is inherently grave. The rationale for murder involving sexual conduct being particularly serious is separate from and different to the reason for sadistic behaviour elevating the starting point in Schedule 21.
78. We consider that Mr Benson's final submission has no force. There were aggravating factors: the vulnerability of the victim due to her intoxication; the exceptional suffering experienced by Ms Cowan before she died; the use of a weapon; dressing her after her death; Silcox's drunkenness at the time of the offence. The mitigating factors were of less combined weight – no intention to kill, lack of premeditation and no relevant convictions – yet the outcome of the sentencing exercise was a minimum term of 25 years. There is nothing in the suggestion that the judge failed to give proper weight to the mitigation.
79. We turn then to the fresh ground. The court order as amended on 12 July 2023 accurately records the number of days Silcox had spent in custody prior to sentence. For the reasons we already have given this amendment was unlawful. It was of no effect. The number of days to be credited against the minimum term was the figure announced in court. That announcement was not susceptible to administrative amendment.
80. Doubtless HMPPS have been using the amended court order as the basis for calculating the earliest date on which Silcox will be eligible to apply for parole. In law that order was not an accurate reflection of the sentence imposed by the judge given the way in which she expressed herself in court.

81. We quash the sentence imposed by the judge insofar as the minimum term is concerned. We substitute a minimum term of 23 years 219 days. To that very limited extent the appeal is allowed.
82. The effect of the alteration in the minimum term is negligible. There can be no de minimis approach to errors in relation to remand days. The minimum term is the sentence of the court. If there is an error in the sentence, it must be corrected. That is why we have allowed the appeal even though it involves only a single day in respect of a minimum term before allowance for time served of 25 years.