Neutral Citation Number: [2019] EWCA Crim 1300
No: 201900982/A3
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Tuesday, 9 July 2019

B e f o r e:
LORD JUSTICE DAVIS
MR JUSTICE WARBY
HIS HONOUR JUDGE POTTER
(Sitting as a Judge of the CACD)
R E G I N A
v
LIAM JACOB TURNER

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Mr W Hughes QC appeared on behalf of the **Appellant**
Mr A Blake appeared on behalf of the **Crown**

J U D G M E N T
(As Approved by the Court)

1. LORD JUSTICE DAVIS:

Introduction

Following a trial in the Crown Court at Reading before His Honour Judge Dugdale and a jury, the appellant, a man now aged 29, was convicted on 11 February 2019 of murder. It had been long since been admitted by the appellant that he had killed the unfortunate victim. The only issue for the jury at the trial was the issue of diminished responsibility; and the appellant had previously pleaded guilty to manslaughter on that basis. The judge, in due course, sentenced him, as required by law, to imprisonment for life. The judge specified the minimum term as 16 years less 306 days, representing time spent on remand.

2. It is against that sentence which the appellant now appeals and he does so by leave of the single judge.

Background Facts

3. The background facts can be relatively shortly stated for present purposes.

4. On 10 April 2018, at around 2.40 in the morning, the appellant was driving his car on the A329 in Bracknell. The deceased, a man called Mr Miroslaw Januszkiewicz, was walking alone. It would appear that he may have been in a state of intoxication. The appellant and the deceased were entirely unknown to each other.

5. CCTV, which was played to the jury, showed that the appellant slowed his car alongside the deceased and then stopped. The appellant got out from his car and there was a brief conversation between the two. The appellant is then seen to return to his car and the deceased started walking away. The deceased then appeared to turn back and walked again towards the car. The appellant then approached him and attacked the deceased. He did so by punching him to the face causing him to fall to the floor. The appellant then stamped in the area of the deceased's face and head approximately, as found by the judge, 10 times, as can be seen from the CCTV. The movement of the appellant's upper body on the recording was consistent with kicking and stamping, albeit his lower body and the deceased lying on the ground were obscured by street obstacles. The overall attack on the deceased whilst he lay on the ground lasted in the region of up to 30 seconds. The appellant then drove away from the scene, leaving the deceased lying prone on the ground. He was found lying at the side of the road when he was seen by a passing delivery driver shortly after 3.30 the same morning. The deceased died the next day in hospital. The cause of death was blunt force head trauma most likely caused by kicking and stamping.

6. CCTV and automated number plate recognition enquiries identified the car which had stopped by the deceased as registered to the appellant.

7. He was arrested in the early hours of 11 April 2018, initially for attempted murder. Subsequently, upon the certified death of the deceased, he was further arrested for murder. In due course he was charged with murder on 13 April 2018. Although at his very first interview the appellant had denied responsibility for the killing, by the time of

his third interview on 12 April 2018 the appellant had accepted that he had committed the killing and expressed remorse. Psychiatrists were then instructed and, as a result, he raised the partial defence to murder of diminished responsibility.

8. We will have to come on to the reports in due course. Suffice it to say that by the time of the PTPH later in 2018 the appellant, as is agreed, had given a firm indication that he would be pleading to manslaughter on the basis of diminished responsibility and the court had been so informed.

9. For various reasons it had not proved practicable for the appellant formally to be arraigned until the first day of the trial, which was in February 2019. On that occasion he did indeed duly plead guilty to manslaughter and the jury were so informed. As we have said, the sole issue at trial was the issue of diminished responsibility. The only oral evidence, as we gather, which was adduced at trial was evidence from some of the psychiatrists who had submitted reports in this regard.

10. The appellant does have an antecedent history. There are minor drugs offences on his record and also incidents of using threatening and abusive behaviour in 2017 and 2018. He had not previously been subject to a custodial sentence, although this particular act of homicide occurred whilst he was subject to a community order imposed on 10 November 2017.

The psychiatric issues

11. It is quite plain that mental health issues of one kind or another had formed part of the background of the appellant. In the weeks and months leading up to the killing he had come to the attention of the police and Mental Health Services on numerous occasions. There were several incidents where the police were called to deal with the appellant's troubling behaviour; and indeed Mental Health Services first become involved with the appellant earlier in 2016, when he was detained under the provisions of the Mental Health Act 1983 and diagnosed with a suspected drug induced psychosis. In this regard it should be noted that the appellant has been a heavy user of cannabis since his teenage years. There was also evidence that he did not fully confront his problems and frequently (as on the night in question) would not take his prescribed medication.

12. Of the many psychiatric reports that were obtained, particular reliance was to be placed by the defence on the reports of Dr Latham, Dr Davies and Dr Attard. It is not necessary to refer to the details of such reports. In the initial report of Dr Latham, Dr Latham was to say this by way of conclusion:

> "There is, in my opinion, very little doubt that Mr Turner has a psychotic mental illness. This is, in my opinion, a mental disorder which, at its core, resembles schizophrenia but includes significant symptoms affecting his mood (of affect) so that the eventual diagnosis may be schizoaffective disorder or schizophrenia. Cannabis has undoubtedly played a part and may have contributed to both the development of his mental illness and at times worsened or maintained symptoms..."

A little further on, he said:

> "Mr Turner's mental illness is the most important factor in understanding this offence. He was, in my opinion, suffering from an abnormality of mental functioning arising from a recognised medical condition..."

The opinion was also expressed:

> "... that his abnormal mental function substantially impaired his ability to both exercise selfcontrol and form rational judgments..."

The opinion of Dr Latham was that this led to a conclusion that diminished responsibility was available to the appellant.

13. The report of Dr Davies was, although differently expressed to like effect. He was to describe the appellant as indicating multiple psychotic symptoms. At paragraph 259 Dr Davies said:

> "In terms of diagnosis, in my opinion Liam Turner is suffering from a schitzoaffective disorder with affective (depression, elation, overactivity) and psychotic delusions ..."

That report went on to indicate a view that a defence of diminished responsibility would be available to him. The report of Dr Attard was to similar effect, he also taking the view that the appellant met the diagnostic criteria of schitzoaffective disorder.

14. The Crown instructed Dr Phillip Joseph, a consultant psychiatrist. He took a different view of the matter. In his first report he stated firmly:

> "I reject the suggestion that the defendant is suffering from a mental illness, for example schizophrenia or a schitzoaffective disorder ..."

Subsequent reports of Dr Joseph maintained that view.

15. In his final report, dated 20 January 2019, that is to say only shortly before trial, Dr Joseph said this:

> "I acknowledge, in my second report, that I cannot rule out the possibility that the defendant suffers from a schizoaffective psychosis. This is because psychiatry is an inexact science and it is often to rule out diagnosis entirely. However, when looking at all the circumstances surrounding the killing, it is more likely that the defendant's behaviour at the time was due to personality structure, interacting with voluntary intoxication, rather than due to schizophrenia affective psychosis. Hence I reject that diagnosis when considering the defence of manslaughter on the grounds of diminished responsibility."

16. Various other reports were also before the jury. It was confirmed that the appellant was fit to stand trial. There was also a report indicating that it had not been necessary recently

to have him transferred from custody (he being on remand) to a secure psychiatric hospital.

17. At all events that was the nature of the evidence before the jury and diminished responsibility was the issue that the jury had to consider. As we have said, the jury convicted of murder.

Sentence

18. When he came to sentence, the judge dealt with the matter fully and carefully. He had noted the previous indication of plea of guilty to manslaughter by reason of diminished responsibility, which had not been accepted by the prosecution. The judge then referred to the facts and referred, understandably, to the impact of the death of the deceased on his close family. The judge described the attack as a wholly random attack without any provocation whatsoever from the deceased.

19. The judge then reviewed the psychiatric evidence. Having done so, he stated his own conclusion that the appellant was not suffering from either schizophrenia or from a schizoaffective disorder at the time of the murder:

> "I find ... his behaviour was as a result of anti-social personality traits, coupled with his anger and stress and possibly exacerbated by cannabis and alcohol consumption ..."

It can be deduced from that the judge, consistently with the verdict of the jury, plainly had accepted the evidence of Dr Joseph.

20. The judge then dealt with the aggravating factors relating to the attack. He also addressed the mitigation, which essentially was in the form of the mental health disorder, and assessed whether that lowered the degree of culpability. As to that, the judge said this:

> "In my view it did, but only to a small extent. The mental health disability from which Mr Turner was suffering would have been significantly improved had he co-operated with the mental health professionals by taking his medication ..."

Later:

> "... I accept that this mental health disorder was a contributory factor to his behaviour in April, even though it falls short of a statutory defence and even though much of the culpability for his mental health contributing to his behaviour lies with him."

The judge then turned to consider credit for the guilty plea, accepting that he had entered a guilty plea to manslaughter at the earliest opportunity and:

> "...has always accepted the facts of what took place, without seeking to mitigate."

The judge then referred to the case of R v Markham [2017] EWCA Crim 739, and indicated that this was not a case for full credit. In that regard the judge referred to the severity of the attack on a victim who was wholly unknown to the appellant and who was a victim who had done nothing to provoke the attack. Having so stated the judge then went on to say this:

> Were I sentencing for manslaughter, I am of the view that this would still have been a life sentence, but probably with a lower minimum term. Under those circumstances, it would not be correct sentencing policy for a defendant to benefit from an early guilty plea to manslaughter, whatever the result of the subsequent trial for murder. However, Mr Turner fully admitted the facts of this matter and his role at very early stage. In my view, that admission does warrant proper recognition as mitigation and some reduction in sentence."

The judge then correctly took the starting point as 15 years pursuant to the relevant provisions of the Criminal Justice Act 2003. He took the view that the aggravating features of the case raised that starting point by 3 years, that is to say to 18 years. He then reduced that by one year to take into account his mental health disorder and by a further year to take into account his early admission of the facts.

Disposal

21. Mr Hughes QC, on behalf of the appellant, advances three grounds. First, he submits that insufficient weight had been given to the appellant's mental health issues when considering his culpability. He submits that a deduction of just one year from the stated figure of 18 years was insufficient to reflect the mental health issues of the appellant. Second, he complains that the further reduction of one year was entirely insufficient to reflect the appellant's earlier admissions of killing the deceased and furthermore, his early acceptance of guilt of manslaughter by reason of diminished responsibility. Third, he criticises the judge's assessment of the aggravating factors whereby the judge increased the starting point from 15 years to 18 years before factoring in such mitigation as was available.

22. We can take that last point shortly. This was, as the judge said, gratuitous and unprovoked violence, at night, on an innocent victim, walking home alone (probably under the influence of drink) and who was an entire stranger to the appellant. The assault was initiated by a punch followed by a number of stamps and kicks with a shod foot to the victim whilst he lay prone on the ground. As the judge said, this was a "sustained and ferocious attack". Further, the appellant does have some antecedent history and this offending occurred during the currency of a community order. Moreover, the appellant then had callously left the deceased lying on the ground when he drove away. In all the circumstances, we consider that the judge was entitled to assess the aggravating factors as he did in moving up to a figure of 18 years' imprisonment before mitigation and credit were taken into account.

23. However, the other two grounds perhaps have rather more substance. As to the appellant's mental state and hence his culpability, we understand the points which Mr

Hughes has sought to make. But ultimately as we see it, this was a matter for the judge and his appraisal of the evidence. He had the conduct of the trial. He had seen and heard a number of the experts give their evidence. His sentencing remarks made clear that he had preferred evidence of Dr Joseph. That was a conclusion properly open to the judge. Moreover, all that happened had to be put in the context of the appellant knowing, by reason of his past history, of the need for him to take medication and when the evidence was clear that, notwithstanding his family's attempts to persuade him to take it, he had refused or failed to do so. The previous incidents in which he had been involved in effect had represented a warning shot for him but he paid no sufficient attention. Moreover, his sustained consumption of cannabis clearly also had operated to exacerbate the overall situation. We think, therefore, that the judge was entitled to assess matters as he did in considering the level of culpability.

24. That then leaves the issue of credit for the early admission that the appellant had indeed killed the deceased. He may not have done it at the very earliest occasion, in that he disputed liability at the first interview; but the admission followed within 24 hours. Thereafter, as the judge had explained, he has never sought to mitigate away from the facts. As we have said, he was formally arraigned only on the first day of trial; but he had always indicated at what was accepted to be at the first practical moment, an intention to plead guilty to manslaughter: as indeed he duly did.

25. In such circumstances, Mr Hughes says that a discount of just one year was simply insufficient and was wrong in principle. In percentage terms it connoted a discount of less than 10%. Even allowing for the fact that the maximum discount available was one-sixth of the minimum term, this still was much too little he submitted. In this regard, he also referred us to the Definitive Guideline on Reduction on Sentence for a Guilty Plea issued by the Sentencing Council. At paragraph F1 this is said:

> "Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea **sooner than was done**, a reduction of one-third should still be made.
>
> In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal."

26. Mr Hughes submitted that in the circumstances it was entirely reasonable for the appellant to adopt the stance that he had in the light of the psychiatric evidence available to him.

27. We were further referred, as had been the judge, to the case of Markham (supra). That was a rather unusual case on its facts, not least that it concerned two relatively young children involved in the most horrific of murders of two people. One had pleaded guilty

at the day of trial. The other had contested the trial, based on expert psychiatric evidence but had been convicted. It had nevertheless been taken as appropriate in that particular case for both defendants to receive the same sentence.

28. At paragraph 71, the President of the Queen's Bench Division, giving the judgment of the court, said:

> "This analysis should not be taken as indicating that in every case of murder, pursuing a defence of diminished responsibility should not deprive a defendant of credit as if a guilty plea had been entered at the first available opportunity. In most cases, a defence of diminished responsibility depends on a version of facts which in large part emanates from the defendant; if those facts are rejected by the jury, there should be no question of credit for admitting manslaughter beyond that which is identified in para. 11(c) of Schedule 21 to the 2003 Act ('mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act 1957), lowered his degree of culpability'). Furthermore, depending on the nature of any disorder or disability, adults will be in a different position to children, and more likely to be able to make informed decisions based on an assessment of the evidence. The facts in this case are very unusual, and must be seen as such."

At paragraph 72 the President went on to say:

> "Each case must be considered on its own merits ..."

29. In the present case, of course, the appellant is an adult. He was, in that sense, able to make an informed decision. Nevertheless Mr Hughes presses the point that he had at an early stage accepted the facts of the killing and then he had made clear that he was not disputing that he was at the least guilty of manslaughter. Further, that was based on a body of opinion from a number of expert psychiatrists who had all considered that a defence of diminished responsibility was available. Yet further it was pointed out that the reports of the various psychiatrists continued to come in until very shortly before the date of trial; and then he did duly plead guilty to manslaughter on the first day of trial when first arraigned.

30. The background here raises, in our view, a position of some difficulty. On the face of it, a discount of just one year, when there had been such admissions by the appellant and when he had never sought to dispute the underlying facts, seems very limited. It is right, on the other hand, to say that the judge cannot be said to have had no regard to the point: because he expressly did have regard to the point and then selected a discount of one year to reflect the plea. Clearly, the appellant could not receive the maximum credit available: because that would equate with the position as if he had pleaded guilty to murder at the earliest possible stage. But it still remains the position that he had, from an early stage, accepted all the facts and had then advanced, entirely reasonably in the light of the expert reports available, a defence of diminished responsibility at trial.

31. We also have to say that some of the observations which the sentencing judge made with regard to credit for plea seemed to have no obvious bearing on that particular issue. For example, he referred again in this context to the severity of the attack; but that had already been factored into the assessment of the aggravating factors and could not properly come back into the picture when considering what the appropriate credit for plea was. Moreover, with all respect to the judge, we find somewhat cryptic his reference to sentencing "policy" not being available for a defendant to benefit from an early guilty plea to manslaughter, as articulated by him.

32. We think that in all the circumstances of this particular case this appellant was in principle entitled to greater credit than the judge accorded him. We do accept that there is of course flexibility in these situations, as the decision in Markham connotes. Overall, the entire background here does indicate that the discount should have been greater than one year and, in our view, it should have been two years. In such circumstances, we will reduce the overall sentence to one of 15 years' imprisonment by way of specified minimum term; and the time spent on remand in custody will continue to count towards sentence.