

**APPROVED**



**THE COURT OF APPEAL**

**Record Number: 56/2023**

**Birmingham P.  
Kennedy J.  
Burns J.**

**BETWEEN/**

**CC**

**APPELLANT**

**- AND -**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF  
PUBLIC PROSECUTIONS**

**RESPONDENT**

**JUDGMENT of the Court delivered on the 19<sup>th</sup> day of December,  
2023 by Ms. Justice Tara Burns**

1. This is an appeal against sentence following an unsuccessful conviction appeal (see *The People (Director of Public Prosecution v. CC [2023] IECA 295*).
2. On 11 November 2022 the appellant was convicted by majority verdict of the jury of the single charge before them, namely the

murder of Urantsetseg Tserendorj, a Mongolian national and mother of two children. As the appellant was a minor at the time of sentencing, the mandatory life sentence for murder did not automatically apply. On 20 February 2023, the appellant was sentenced to detention for life with a review after 13 years which was backdated to 21 January 2021 (the date from when the appellant had been in custody). Probation reports were ordered for specific dates at regular intervals over the review period.

### **Background**

3. On 20 January 2021, at approximately 9.30pm, the deceased was walking home from work along Custom House Quay, Dublin 1 when she was confronted by the appellant. The area was deserted, presumably because this was during a Covid lockdown period. The location where the appellant was accosted by the deceased is covered by CCTV cameras. The footage downloaded from the CCTV cameras depicted the appellant approaching the deceased, very quickly, on a bicycle. He got off the bicycle and walked towards the deceased, whereupon he produced a knife from his pocket and swiped it at the deceased who attempted to avoid his attack by walking backwards and raising her arms. The appellant again swiped the knife at the deceased but on this occasion towards her neck. Contact was made with the deceased's neck following which he separated from her. The deceased began to touch her neck and appears to talk to the appellant. She showed him her backpack. He got on his bicycle, cycled towards her and then cycled away.
  
4. The deceased continued on her journey home but walked at a slower pace and can be seen on the CCTV footage holding her neck. She rang her husband and spoke to him about what had just occurred. Her husband told the jury that she told him "*there was one guy with black hat and black mask...he asked me, just give me the money,*

*then she said that I don't have money. He just stab her, then go away... cycling away."*

5. Shortly afterwards, the deceased met her husband who had rushed to meet her on her route home. The deceased knew she was dying. She was brought to the Mater Hospital. It transpired that the deceased had sustained a significant, life-threatening laceration to her carotid artery which had been partially transected. Various procedures were carried out in an attempt to save her life, however she was declared brain dead on 29 January 2021, and died on 4 February 2021, when life support was turned off.
6. In relation to the appellant, when he heard on the radio the following day that a woman had been hospitalised following a robbery and an assault, he confessed his involvement to his family, whereupon it was agreed that he would go to the gardaí. As it happened, members of An Garda Síochána arrived at his house in relation to another matter very shortly after this decision was made. The appellant admitted to the gardaí that he stabbed the deceased. Having been cautioned, the appellant stated to the gardaí *"I pulled the knife out of my pocket. I panicked and stabbed the woman in the neck. I done it. I didn't mean to do it. I'm sorry for it"*. The appellant was subsequently arrested and detained in garda custody for the purpose of interview. In the course of an interview with members of An Garda Síochána, the appellant stated *"I did not mean to stab that woman, you know, it was an accident. And if I could sit in front of her now, I'd say I'm sorry."*
7. Twenty five minutes after the attack on the deceased, the appellant was involved in another incident with another woman. On this occasion, the appellant tried to grab an iPhone from this woman's hand but was unsuccessful. Words passed between this woman and the appellant resulting in the woman challenging the appellant's

assertion that he was only messing. She cursed at him during this exchange. The appellant then said to the woman "*what did you say*" and continued "*that could have been a lot worse for you*" as he opened up his jacket and took out a knife. The woman said "*sorry*" to which the appellant replied "*right*" and put the knife back into his jacket. He then departed the scene. When questioned by An Garda Síochána in relation to this matter, the appellant stated "*It's true, I did it. I'm sorry but I did it... I was just out of my head. I didn't know what I was doing and I wanted money... I was out of my head, that's all.*"

8. The appellant had also been involved in another incident at a Spar shop in the early hours of the morning before the fatal incident. The appellant had taken goods from the shop and said to the shopkeeper "*I have a fucking blade. What are you going to do about it?*"
9. The appellant entered a plea of not guilty to murder but guilty to manslaughter when arraigned before the jury. However, as already recited, he was found guilty of murder by the jury.

### **Grounds of Appeal**

10. By notice of appeal dated 7 March 2023, the appellant appealed against his sentence and set out his grounds of appeal as follows:-

*"1. The sentence of life imprisonment imposed by the Learned Sentencing Judge was disproportionate, unnecessary and wrong in principle. The sentence was insufficiently reflective of the constitutional duties owed to the Appellant, who was 14 at the time of the fatal assault and is still a child. A determinate sentence ought to have been imposed.*

*2. The Learned Sentencing Judge erred in characterising the Appellant's case as requiring condign punishment. In this regard, he failed to take proper account of the significantly lower sentences imposed on other children in this jurisdiction for the crime of murder, including in circumstances of far greater moral culpability.*

*3. The Learned Sentencing Judge failed to adequately reflect, in the sentence that he ultimately imposed, the mitigating circumstances which he had himself identified, including: that the Appellant was 14, and in the grip of a drug addiction, at the time of the fatal assault; the infliction of the injury was not premeditated and there had been no intent to kill, but rather a momentary intent to cause serious injury; the Appellant had attempted to hand himself in as soon as he realised the gravity of the incident and he immediately volunteered that he had carried out the attack; he was genuinely remorseful from the earliest stage; he had pleaded guilty to manslaughter prior to trial; a report prepared by the Probation Services illustrated that the Appellant had made progress in custody; and the prospects for rehabilitation were manifest.*

*4. The ultimate sentence, of detention for life with a review after 13 years, was entirely disproportionate. The Learned Sentencing Judge failed to have adequate regard to the fact that release after 13 years was not at all guaranteed, and so he was sentencing a child to the prospect of imprisonment for life. He further failed to consider that, even if release was granted after 13 years, that amounted to the equivalent of a determinate sentence of over 17 years."*

### **Personal Circumstances**

11. The appellant was a few days shy of his 15<sup>th</sup> birthday when he committed this murder. He laboured under a drug addiction since the age of 13, after a significant difficult event occurred in his life, and had engaged in criminality to fund his habit which had increased in severity in the six months prior to this event. The appellant had a difficult start in life related to drugs. He resided with his grandmother who had raised him since birth and has the support of his immediate family.

### **Sentencing Determination**

12. The sentencing hearing in this matter took place over the 22 December 2022; 20 January 2023; and 8 and 20 February 2023.
13. In relation to the gravity of the offending behaviour, the sentencing judge stated:-

*"This was, perhaps because it appeared on video, a shocking event. It was an unprovoked, violent and frightening attack on, essentially, a defenceless woman who was walking alone from work in a comparatively empty city centre in the hours of darkness during winter. [CC] was undoubtedly young, being just short of 15 at the time, but the documents that I've had recourse to don't demonstrate any particular immaturity or lack of cognitive faculties over and above that which would be average to the age. He was certainly physically big and strong. He knew right from wrong in the context of this and the other offending that has to be considered in this case. So, I don't need to dwell on the gravity of the offence. It is -- it was a very serious offence and one characterised by the jury as being murder and that speaks for itself but it wasn't as if [CC] was part of a group or anything of that kind. He's the only one who*

*is directly responsible for bringing about the death of Ms Tserendorg."*

14. In relation to mitigatory factors, the sentencing judge said:-

*"I do accept that there are mitigating factors, the first of which is that this was not a murder where there was an intention to kill at the outset. I am satisfied that the correct characterisation of the mental state involved here was an intention to cause serious injury and an intention to cause serious injury, which was perhaps formed immediately before the act causing death, although that being said the scene was set for Ms Tserendorg and [CC] by the fact that he made a determined decision to bring a knife out with him that night and when his specific purposes were to rob women walking alone in the hours of darkness. And that does, I'm afraid, contribute to the gravity of the particular offence with which we are now concerned.*

*It must also be said that there are mitigating factors to be spoken of in the particular context of [CC] as the offender. I've already referred to the support of his immediate family members. It is also the case that the probation reports and the other documents indicate, even in the short term that he has been in detention, a distinct improvement in attitude, in conduct and in his expressed attitudes and he has come to a clearer understanding of the nature and effect of his actions and the consequences that follow from it.*

*So, he certainly has progressed positively and engaged with the facilities that are currently available to him in the course of his detention and I regard these as very significant early signs that rehabilitation is certainly a distinct possibility for [CC] when it*

*comes to the time that these matters should be considered.*

....

*There was, as I have indicated, early admissions and full cooperation from the very start of the garda investigation. There was a plea to manslaughter which, although it was not ultimately regarded as appropriate, certainly limited the matters that had to be considered at trial because ...that was a plea that was made fully and openly in front of the jury and not kept back in the hope of some other eventuality emerging and I do think that is another significant point in his favour.*

....

*I take the point...not as an excuse, but as an explanation,... unfortunately [CC] had significant drug addictions and was in what Mr O'Higgins correctly described as that moral abyss which causes people to do things in thrall to their addictions, which they would not do if the situation were otherwise. I have referred to the positive reports that have arisen since and I note that he now refers to his victims and their families and that there has been a change in his attitude to drugs and offending and that, as I have previously noted, his test results and general attitudes have improved significantly over the recent year or two."*

15. In relation to imposing a life sentence as opposed to a determinate sentence, the sentencing judge said the following:-

*"[CC]'s preference, I think, as ultimately expressed, was for a determinate option. I've considered that and I've considered that in the context of the nearest relation to this offence, which is manslaughter and the kind of sentencing bands set out by*

*the Supreme Court in that case. Ultimately, I think there has to be a distinction between manslaughter and murder, which in cases involving adults, is expressed in the context of the mandatory life sentence, irrespective of the degree of culpability involved in any particular crime of murder. That is the policy expressed by the law and I think that this murder was of such a grave variety that a determinate sentence is not appropriate for that reason and is also not appropriate for other reasons that I'll return to later on".*

16. With respect to the sentence he was imposing, the sentencing judge stated:-

*"...my preference in this case, having weighed the aggravating and mitigating factors, would be to end up with the imposition of a life time period of detention, with a review in this case after a period of 13 years having been served in custody pursuant to that. That very much was my initial preference and thought in this case. I think that that is the minimum sentence of custody or detention that would be required to punish, because we can't get away from that, this is an offence which requires condign punishment, and to see that rehabilitation proceeds apace to a point where it is deemed, as I have pointed out, in his late 20s or early 30s, where it is deemed appropriate that [CC] should rejoin society and make the best of his way with the rest of his life. That is the ideal outcome as far as I am concerned."*

### **Submissions of the Parties**

17. The appellant's submission is that the sentence imposed in this matter was disproportionate, unnecessary and wrong in principle. It is argued that a determinate sentence was the appropriate sanction to impose having regard to the age of the appellant; the review period

is too long as it did not adequately reflect the mitigating circumstances of the appellant; and the ultimate sentence imposed on the appellant is out of line with other sentences imposed on juveniles in this jurisdiction.

18. The respondent's submission is that the sentence imposed was entirely proportionate and wholly justified given that the Court was dealing with the most serious of offences in the most serious of circumstances; the sentence imposed was in keeping with other sentences imposed on juvenile murderers; the potential release of the appellant is very much in his own hands and dependent on his interaction with the Probation Services during his period of detention; and the sentencing judge was alive to all relevant legislation, applicable sentencing provisions, and mitigating factors.

## **Discussion and Determination**

### **Imposition of a Life Sentence with a review date**

19. The appellant argues that the imposition of a life sentence with a review date is unconstitutional as it infringes on the executive power to commute a life sentence pursuant to Article 13.6 of the Constitution. The appellant further submits that the imposition of a life sentence rather than a determinate sentence fails to have regard to the principle of "*the best interests of the child*" as reflected in Article 42A of the Constitution and s. 96(5) of the Children Act 2001 ('the 2001 Act') and is disapproved of by the UN Convention on the Rights of the Child.
20. The issue in relation to the appropriateness of imposing a life sentence on a juvenile accompanied by a period of review has been considered on many occasions by the Court of Appeal, to include most recently *The People (Director of Public Prosecutions) v. MS* [2020]

IECA 178 and *The People (Director of Public Prosecutions) v. PB* (Unreported, Court of Appeal, Kennedy J. 5<sup>th</sup> December 2023). In *The People (Director of Public Prosecutions) v. DG* [2005] IECCA 75, the Court of Criminal Appeal addressed this very issue and determined that the imposition of a life sentence with a review did not infringe on the executive's power to commute a life sentence. Murray CJ., delivering the judgment of the Court stated at p. 12 of the judgment:-

*"Children or very young offenders convicted of serious offences which would normally involve lengthy custodial sentences must be considered as falling into a special category insofar as there is a special onus on the Court to have regard to their rehabilitation and welfare for the future because of their young age at the time and the reasons outlined above. In one sense counsel for the appellant is correct that there should be "a light at the end of the tunnel " for the appellant. However, in the Court's view the learned trial judge provided for this in determining that the sentence imposed should be reviewed by the Court in the year 2014, ten years after he had been taken into custody in connection with the offence. For young persons like the appellant who fall into the special category referred to above the provision for a later review of the sentence imposed may be appropriate when it is inappropriate for other categories of cases. Moreover, the imposition of a sentence, in this instance a life sentence, subject to a review by the Court, does not in any way impinge on the autonomous power of the Executive to exercise clemency or to provide for special or early release pursuant to statutory powers as and when the relevant authorities deem appropriate.*

*The Court is satisfied having regard to the callous and unprovoked nature of the murder, and the disposition of the appellant as found at the time of sentencing, that the trial judge was correct in imposing a life sentence subject to review by the Court.. The review means that the Court retains seisin of the case as regards sentencing so as to enable it to review the length of the sentence having regard to the matters, in particular rehabilitation, referred to in this judgment.”*

21. Kennedy J., delivering the judgment of the Court in *The People (Director of Public Prosecutions) v. PB* reflected this view in the context of an application for parole under the Parole Board Act 2019. She stated at paras 77 and 80 of her judgment:-

*“77. The point of a review of sentence as imposed by the sentencing judge is to enable a court to oversee the appellant’s detention and to have particular regard for his rehabilitation and reintegration into society. It enables a court to assess his progress and to take the decision at the relevant time, whether or not it is appropriate to release the offender into the community with whatever relevant safeguards considered suitable in the circumstances....*

*...*

*80. It is quite clear therefore that the appellant’s eligibility for parole after a period in excess of 12 years has been served has not been ousted by the judge applying a review date after a period of 13 years. However, it is also the position that the Parole Board may possibly be influenced by the fact that the appellant has a review date before the court proximate to a Parole Board hearing, but this does not deprive him of his rights under the 2019 Act.”*

22. Accordingly, the practice of imposing a life sentence accompanied by a review date has been recognised by the Superior Courts as an appropriate manner to sentence juvenile offenders who have committed murder.

23. Section 96(5) of the 2001 Act, upon which the appellant relies in relation to this ground of appeal, specifies a number of matters which the sentencing court is to have regard to when sentencing, in addition to the best interests of the child. It states: -

*"When dealing with a child charged with an offence, a court shall have due regard to the child's best interests, the interests of the victim of the offence and the protection of society".*

24. The Court is of the opinion that the practise of imposing a life sentence with a review date reflects the sentencing requirements set out in s. 96(5) of the 2001 Act. Such a sentence, in the first instance, marks the seriousness of the offence which has been committed, thereby having regard to the interests of the victims of the offence and the protection of society, but it also acknowledges the fact that the offender is a child within the meaning of the 2001 Act and that a lesser term of imprisonment may be appropriate, subject to the child reforming. The responsibility lies with the child, who is then moving into adulthood, to avail of the supports available to him in a custodial setting to demonstrate a reformed character which will result in his release from custody at the review date if appropriate progress has been made.

25. Accordingly, it appears to the Court that in light of the extremely serious offending before the sentencing court, the imposition of a life sentence accompanied by a review date was an appropriate manner

in which to approach structuring the sentence for the appellant and does not reflect an error in principle.

### **13 years review period**

26. The appellant submits that having regard to the age of the appellant and the particular circumstances of the offence, to include the mitigatory factors present, a review after 13 years is too long a period and that an earlier review date should have been imposed. It is also submitted that this period of review is significantly longer than some other sentences imposed on children for the offence of murder in circumstances where the level of culpability in those cases was higher; and that the sentence is disproportionate where release after 13 years is not guaranteed and in effect amounts to a determinate sentence of 17 years.
  
27. The sentencing judge determined that the intentional element which existed in the instant case was an intention to cause serious injury rather than an intention to kill. In addition, it was accepted by the sentencing judge that this was a fleeting intention to cause serious injury. However, the sentencing judge was of the opinion that the offending behaviour was of a very serious nature and that the appellant appreciated the wrongfulness of his actions at the time.
  
28. Mitigatory factors were identified by the sentencing judge to include that the appellant was in the grip of drug addiction; he intended to attend the garda station as soon as he learnt of the gravity of the assault; he made admissions; he pleaded guilty to manslaughter which limited the matters which were in dispute and had to be considered at trial; he was remorseful; and a positive report was received from the Probation Services.

29. A number of comparator cases were referred to by the appellant, to include, *The People (Director of Public Prosecutions) v. DG* [2005] IECCA 75, where a life sentence with a review after 10 years was upheld on appeal in relation to a 15 year old who had entered a not guilty plea to murder. The Court found that the crime was premeditated, unprovoked and that the accused had no remorse for the crime he had committed. However, it was also found that the accused had dysfunctional personality traits which affected his moral culpability; *The People (Director of Public Prosecutions) v. BH* [2021] IECA 129, where a life sentence with a review after 10 years was upheld on appeal in relation to a 16 year old, with no previous convictions, who had entered a guilty plea to murder at the earliest stage; *The People (Director of Public Prosecutions) v. PB* (Unreported, Court of Appeal, Kennedy J. 5<sup>th</sup> December 2023), where a life sentence with a review after 13 years was upheld on appeal in respect of a 17 year who entered a guilty plea at an early stage.
30. As this Court has previously commented upon, comparator cases can be of limited assistance when dealing with sentence appeals. This is particularly so in relation to cases of this nature as referenced in *The People (Director of Public Prosecutions) v. BH* [2021] IECA 129. However, of note in respect of these comparator cases is the fact that guilty pleas to murder were entered by the accused in all of the cases except for *The People (Director of Public Prosecutions) v. DG*. With respect to that case, the accused suffered from a dysfunctional personality trait which was found to have impacted his moral culpability.
31. In the instant case, the significant benefit at sentencing stage of a plea to the murder charge was not available to the appellant as he had contested the charge of murder. While the appellant was assessed by Dr. Lambe as having a mild range intellectual disability,

there is no suggestion that this impacted the appellant's moral culpability in respect of the offence at issue or his ability to know right from wrong.

32. Accordingly, these comparator cases do not, as had been suggested, establish a significant divergence from the appellant's case when the entire circumstances of those cases are considered.
33. In relation to the suggested comparator case of Boy A, the Court is of the view that this is not an appropriate comparator in light of the age of the accused in that case and the nature of the offending. The Court is also of the view that *The People (Director of Public Prosecutions) v. MS* [2020] IECA 178, is not an appropriate comparator in light of that case dealing with an undue leniency appeal in an attempted murder case where mental health issues were at play.
34. In considering the question of whether the 13 year review period was excessive, it is important to have regard to the nature of the serious offence at issue to determine the appellant's moral culpability. This was an intended attack, with a knife, on a defenceless woman in a deserted street late at night. While the intention relating to the offence of murder was accepted to be the lesser intention of causing serious harm, that does not detract from the premediated intention of the appellant to rob a person utilising a knife. This intention was in being prior to the attack as is established by the encounter with the shopkeeper earlier that day, and the encounter with the other woman 25 minutes after the fatal attack. The appellant intended to rob someone to feed his drug addiction and intended utilising a knife to do so. In terms of the appellant's interaction with the deceased women, as the CCTV footage reveals, almost immediately after confronting the deceased, a knife is produced with the intention of utilising it to cause injury. The knife is not produced for the purpose

of instilling fear in the deceased. It is produced to be used on the deceased, as the appellant immediately swiped the knife at her whilst all the time the deceased attempted to avoid it. Thereupon, with an intentional move to cause serious injury, the appellant stabbed the knife at the deceased's neck. While this was accepted by the sentencing judge to be a fleeting intention to cause serious injury in terms of the intentional aspect of murder, the appellant clearly intended to use this knife on the deceased to affect a robbery. This demonstrates serious moral culpability. The appellant knew what he was doing, and while he cannot be fixed with adult capacity, his age does not detract from that. Whilst it was accepted that he was intoxicated from drugs, his actions at this point in time demonstrate clear, intentional, planned behaviour to use a knife to affect a robbery which then developed into a fleeting intention to cause serious injury when he failed to obtain anything from this defenceless woman. The categorisation by the sentencing judge of the offending being of a very serious and grave kind is not an error having regard to this analysis.

35. The appellant submits that the sentencing judge failed to have regard to the mitigatory factors existent in the case. This is a difficult case to establish in light of the fact that the sentencing judge avers to all of these matters in detail, as already set out.
36. Having regard to the seriousness of the offence committed, whilst also having regard to the mitigatory factors which the sentencing judge identified during the sentencing hearing, the sentence imposed by the sentencing judge is within the range of the appropriate sentence which could be imposed in this matter. The sentence lies at the upper end of what could appropriately be imposed and it may be the case that had this Court come to sentence the appellant, a slightly earlier review date could have been fixed. However, the

sentence lies within the band of what is appropriate and having regard to the margin of appreciation afforded to a sentencing judge, it does not reflect an error in principle even though the sentence equates to a 17 year determinative sentence.

37. The Court does not accept that the sentence imposed was disproportionate because there is no guarantee that the appellant will be released at the 13 year review date. As recognised by the case law dealing with reviews for juvenile offenders, it is now for the appellant to work towards that 13 year review date to establish his rehabilitation and suitability for release.

### **Conclusion**

38. The Court is not satisfied that an error in principle has been established in the sentence imposed on the appellant. Accordingly, the appeal against sentence is refused.